

# **General Terms and Conditions of German Airways GmbH & CO. KG**

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## **Section 1 Scope**

1. The following General Terms and Conditions apply to all business, contractual and legal relationships between German Airways GmbH & Co. KG and its vicarious agents ("GERMAN AIRWAYS") on the one hand and GERMAN AIRWAYS's clients, users and customers ("Client") on the other. All of GERMAN AIRWAYS's services including future services, in particular but not limited to the planning, preparation and performance of flights, shall be provided solely on the basis of these General Terms and Conditions, unless otherwise agreed and confirmed by GERMAN AIRWAYS. It is the Client's responsibility to provide documentary evidence of divergent agreements.
2. GERMAN AIRWAYS's General Conditions of Carriage (GCC) of passengers and baggage are additionally applicable to the carriage of passengers and baggage.

## **Section 2 Offer and Conclusion of Contract**

1. GERMAN AIRWAYS's offers (charter offers) are subject to change without notice and are not binding. Contracts have no legal force unless GERMAN AIRWAYS has issued a written order confirmation (charter confirmation).
2. Contracts are concluded subject to GERMAN AIRWAYS obtaining the necessary landing, take-off or traffic rights. GERMAN AIRWAYS is entitled to withdraw from the contract if it is not granted these rights. GERMAN AIRWAYS shall not be liable for any damages provided that it has taken all necessary steps to obtain these rights, or it was the Client's obligation to obtain such rights. The Client shall indemnify GERMAN AIRWAYS against any third-party claims relating to such damages.
3. Where GERMAN AIRWAYS withdraws from the contract in accordance with Section 2 (2) above and it was the Client's obligation to obtain the relevant rights, GERMAN AIRWAYS shall be entitled to charge a cancellation fee as set out in Section 4.
4. All contractual obligations entered into by GERMAN AIRWAYS are subject to the proviso that they are not contrary to relevant mandatory legal provisions, that any necessary permits are granted and that the necessary decisions and requirements of the authorities are issued and can be fulfilled.

## **Section 3 Pricing/Invoicing/Payment**

1. The agreed prices shall cover the services stipulated in the order confirmation/charter confirmation issued by GERMAN AIRWAYS only. Any additional costs for handling out

of hours, at night-time or on public holidays, or costs due to essential flight diversions or de-icing shall be passed on to the Client at cost.

2. The agreed prices shall in no event cover the costs of transporting passengers, their baggage or freight from and to the airport, the costs of endorsements, customs clearance, customs fees, airport tax, passenger tax, the cost of security checks and security fees or similar passenger or freight duties.
3. Any catering included in the price of passenger flights is agreed to refer to GERMAN AIRWAYS's standard catering unless other catering arrangements have been confirmed by GERMAN AIRWAYS in writing.
4. Any increase in fuel prices greater than 5% that arises between the conclusion of the contract and the actual flight performance shall be passed on to the Client by GERMAN AIRWAYS. This provision shall also apply in the event of an increase in the dollar exchange rate.
5. Where the period between the date the order confirmation/charter confirmation is issued by GERMAN AIRWAYS and the date of the flight is greater than 3 months, and the insurance premiums increase by more than 10%, such increase shall be passed on to the Client.
6. All prices are net and exclusive of VAT where the services provided by GERMAN AIRWAYS are subject to VAT.
7. The agreed prices must be paid by the Client to GERMAN AIRWAYS prior to the agreed departure time, unless GERMAN AIRWAYS has explicitly agreed other terms of payment. Should the Client fail to make payment in full by the departure time, GERMAN AIRWAYS shall be discharged from its obligation to render the service. Where GERMAN AIRWAYS has agreed other terms of payment, the invoices issued by GERMAN AIRWAYS shall be paid in full within 14 days of receipt.
8. Payment must generally be effected by bank transfer, exclusive of bank service charges and fees, in EUROS to the following bank account of GERMAN AIRWAYS:  
  
Deutsche Bank AG  
IBAN: DE95 3707 0060 0610 5027 00  
BIC: DEUTDEDKXXX  
  
Foreign currency cheques should not be sent. GERMAN AIRWAYS shall be entitled to pass on any bank service charges, fees and exchange rate losses to the Client.
9. The client may only set off payments where counterclaims have been determined by final judgement or are not disputed.
10. If the Client fails to make any payment by its due date, it shall be obliged to pay interest on the overdue amount at 5% above the ECB's base rate. This shall not affect GERMAN AIRWAYS's right to bring a higher claim for damages due to the delay.
11. The Client's payments are applied to costs first, then to interest, and then to GERMAN AIRWAYS's oldest claim against the Client.

#### **Section 4 Cancellation by Client**

1. Where the Client terminates/cancels a contract concluded by it in whole or in part without GERMAN AIRWAYS being at fault, the Client shall pay the following cancellation fees:

- 10% of the agreed price for cancellations made after the date of the written order
- 20% of the agreed price for cancellations within 60 days of departure
- 40% of the agreed price for cancellations made within 30 days of departure
- 60% of the agreed price for cancellations within 7 days of departure
- 85% of the agreed price for cancellations within 48 hours of departure.

All cancellations must be made in writing. The Client shall pay 90% of the agreed price for cancellations made after the scheduled time of departure.

2. The Client shall retain the right to demonstrate that no damages were incurred or that they were substantially lower than the cancellation fees.
3. Any additional costs incurred by GERMAN AIRWAYS in the event of the termination/cancellation of parts of the contract/flight where GERMAN AIRWAYS is at fault, particularly but not limited to the costs of ferry flights, stand and parking fees must be borne by the Client in addition to the cancellation fee in accordance with Section 4 (1). In the event of the Client terminating/cancelling parts of the contract, GERMAN AIRWAYS shall be entitled to cancel the entire contract at its discretion, charging a cancellation fee in accordance with Section 4 (1) in proportion to the part of the contract terminated/cancelled by the Client.
4. Should GERMAN AIRWAYS waive its right to charge cancellation fees in case of termination/cancellation of a contract once or several times during the existing business relationship, such waiver shall only apply in each specific case. This cannot be construed as a waiver of GERMAN AIRWAYS's right to charge cancellation fees in future cases.
5. Should the Client fail to pay the agreed price by the time of departure and no other terms of payment are agreed (Section 3 (6)), the Client shall pay 90% of the agreed price if GERMAN AIRWAYS does not fulfil the order.
6. Notwithstanding the provisions of Section 4 (1), (2), (3), (4) and (5), the Client must pay the agreed price in full if the cancellation is made in order to award the contract/order to one or several other providers, or the cancelled flight/flights is/are performed by one or several other providers. This applies mutatis mutandis to payments not made in time in accordance with Section 3 (6).

## **Section 5 Performance/Completion of flights**

1. GERMAN AIRWAYS is entitled to deviate from the flight schedule, seating capacity, the maximum baggage allowance per passenger or the maximum payload if this is required by circumstances beyond GERMAN AIRWAYS's control.
2. Times indicated in the flight schedule and the carriage documents are approximate. GERMAN AIRWAYS does not guarantee that it will comply with these times and is entitled to deviate from the agreed times and flight schedule times, if this is required as a result of circumstances beyond GERMAN AIRWAYS's control or for reasons of flight safety.
3. The commander of the aircraft is entitled to take any safety measures required at any time. He has complete discretion regarding acceptance of passengers, loading, distribution, tiedown and unloading of the baggage and freight carried on the aircraft. He shall also take all decisions as to whether the flight shall be performed and if so the manner in which it is performed, whether there should be any deviations from the scheduled route and the location of any landing or stopover.

4. The entire transport capacity of the aircraft chartered by the Client shall be at its disposal. Any transport capacity not used by the Client may be used by GERMAN AIRWAYS for its employees and relatives, subject to prior agreement.
5. The Client shall ensure that the passengers and their baggage are at the check-in counter, and freight is at the place of delivery, on time in accordance with local conditions, but at least 1 hour prior to the agreed time of departure.
6. Where the aircraft cannot depart at the scheduled time from the starting point or after a stop-over due to a delay caused by the Client, its passengers or their baggage or its freight or its vicarious agents and subcontractors, or by the Client's failure to provide complete documentation or the Client's overbooking, GERMAN AIRWAYS shall delay departure for an appropriate period provided that such delay does not have any substantial effects on its flight operations or would cause substantial costs or is incompatible with any of GERMAN AIRWAYS's subsequent assignments. Otherwise GERMAN AIRWAYS is entitled to exercise its discretion as to where to perform the flight without any further delay or to refuse to perform the flight, cancel the contract and claim its rights as set out in Section 4. The Client shall indemnify GERMAN AIRWAYS against any third-party claims in the event of cancellation.
7. Where a flight confirmed by GERMAN AIRWAYS in accordance with Section 2 (1) is unable to depart on time for technical or flight operational reasons, the Client is entitled to cancel the contract once six hours have elapsed since the scheduled time of departure. This also applies where a flight must be interrupted due to technical or flight operational reasons.
8. The Client shall issue and hand the travel and carriage documents, which must name GERMAN AIRWAYS as the operating air carrier, to the passengers unless GERMAN AIRWAYS has explicitly accepted responsibility for this in writing.
9. The documents required for the performance of the flight shall be issued by GERMAN AIRWAYS. The Client shall provide GERMAN AIRWAYS with all the necessary information and documents regarding passengers, baggage and freight no later than 48 hours before the scheduled time of departure unless otherwise agreed in writing. By that point, GERMAN AIRWAYS must also have in its possession a final passenger list, which must state any special characteristics such as: "transit passenger from ..., disabilities, diseases, specific seat allocations".
10. The Client is responsible for all damages due to the absence of valid documents (identity card, passport and endorsements if applicable) which are necessary for the performance of the booked flight. The Client shall indemnify GERMAN AIRWAYS against any third-party claims relating to such damages, *if any*, at first request. The Client shall reimburse GERMAN AIRWAYS all costs arising where GERMAN AIRWAYS is required by order of the relevant authority to return a Passenger to the place of departure or other destination because he is refused entry to a country (transit country or country of destination). This also applies to all fines or other sums GERMAN AIRWAYS is required to pay or deposit.
11. The Client shall be liable for all damages due to incorrect or incomplete travel documents or carriage documents or the failure to provide or issue such documents. The same applies to incorrect or incomplete information and documents that are required to be provided to GERMAN AIRWAYS in accordance with Section 5 (9) or the failure to provide such information and documents, and also to any damages due to overbooking by the Client (subject to Section 5 (6)). The Client shall indemnify GERMAN AIRWAYS against any third-party claims relating to such damages.

12. The Client shall ensure that perishable, fragile and highly sensitive items such as computers, electronic devices etc., photographic equipment, money, jewellery, precious metals and other valuables, as well as business documents, samples and live animals shall only be checked in as baggage or air freight after consultation with GERMAN AIRWAYS. GERMAN AIRWAYS shall not be liable for any items contained in Registered Baggage in contravention of this requirement. Important medication, valuables or fragile items should not generally be contained in Registered Baggage but must be carried as hand baggage or declared separately.
13. The Client shall ensure that pressurised containers (spray cans, oxygen bottles etc.), explosives (fireworks, ammunition etc.), highly inflammable substances and liquids (petrol, alcohol etc.), corrosive or oxidising substances, poisons, tear gas, radioactive materials, mercury and magnetic materials are only brought aboard the aircraft with GERMAN AIRWAYS's prior knowledge and explicit approval. The Client shall ensure that the freight to be carried is suitable for carriage by air and appropriately packaged (in accordance with the IATA's regulations on the transportation of dangerous goods by air).
14. Passengers are not permitted to carry weapons of any kind, in particular but not limited to firearms, cutting weapons, stabbing weapons and ammunition. Items which can be used outside their intended use such as toy pistols, razors, nail scissors, tail combs, syringes, are prohibited in the passenger cabin area.
15. Special baggage (unusual or outsize items of baggage) must be declared in all cases. Special baggage may only be carried if explicitly confirmed by GERMAN AIRWAYS. Special baggage includes sports equipment such as bicycles, golfing equipment, surf boards, skis and diving equipment, but also wheelchairs or large musical instruments. Special baggage is carried subject to capacity being available and must comply with applicable safety regulations.
16. The Client shall ensure that freight and baggage to be carried do not contain any items that may endanger the aircraft or persons or which are not permitted to overfly any country based on its laws and regulations or other provisions.
17. The Client shall ensure that the freight to be carried is suitable for carriage by air and is packaged appropriately.
18. The Client shall ensure that any bags or items brought on board as hand baggage do not exceed 55 x 40 x 23 cm in size, or a maximum weight allowance of 8 kg per passenger. GERMAN AIRWAYS is not obliged to carry items that exceed the size or weight allowance. This shall not affect the captain's right to set a lower maximum weight allowance per seat for safety reasons in accordance with Section 5 (3).
19. Any deviations from the agreed route and schedule requested by the Client shall only be performed with GERMAN AIRWAYS's prior approval in writing. The Client shall bear any additional costs arising from such deviations in all cases.
20. GERMAN AIRWAYS is entitled to refuse carriage, without entitling the client to cancel the contract, of:
  - a) persons suffering from contagious diseases or who may represent a risk to the safety of the flight or who are guilty of a breach or attempted breach of aviation authority or border police regulations or customs regulations;
  - b) baggage or freight which may pose a risk to flight safety;

- c) minors between 2 and 12 years of age. Minors under the age of 6 may only travel when accompanied by an adult who is at least 18 years of age, or brothers and sisters, who must be at least 16 years of age. Unaccompanied minors between 6 and 12 years of age are carried subject to prior arrangement with us.
  - d) Pregnant women from the 28th week of pregnancy onwards must present a medical certificate issued in the last seven days stating that it is safe to fly prior to travel. Failure to do so may result in carriage being refused. Travellers should bear in mind that an additional medical certificate may be required for the return flight, particularly if it is scheduled for more than 7 days later. Travellers who do not provide such certificates shall not automatically be entitled to board the aircraft. Carriage will normally not be considered for women in the 32nd week of pregnancy or later.
21. When transporting goods, GERMAN AIRWAYS is only obliged to inform the consignee where this has been explicitly agreed.

### **Section 6 Liability, Default**

1. The Client is liable to GERMAN AIRWAYS for all damages culpably caused by it, the passengers or their baggage, loading or carriage of freight, or by third parties it subcontracts. The Client is liable for any dangerous goods carried, in particular those defined in Section 5 (13), even if GERMAN AIRWAYS is aware of or has approved such carriage.
2. GERMAN AIRWAYS shall not be liable for defaults due to force majeure such as war or similar events, hostilities, uprising or civil war, arrest, seizure or obstruction by government bodies or other persons, quarantine measures and strike, lockout or walkout. In the event of a strike, lockout or walkout at GERMAN AIRWAYS, GERMAN AIRWAYS shall be entitled to terminate the contract with immediate effect.
3. GERMAN AIRWAYS's liability under Section 5 (7) and Section 5 (20) is limited to the waiver or reimbursement of the agreed price for the part of the route and/or the respective passenger, baggage or freight affected. This limitation of liability does not apply where GERMAN AIRWAYS can be shown to have acted with malicious intent.
4. GERMAN AIRWAYS has statutory liability in the event of injuries to life, limb or health. In all other cases GERMAN AIRWAYS's liability to the Client is limited to damage where gross negligence or malicious intent can be shown. GERMAN AIRWAYS's liability is limited to damages where wilful misconduct can be shown if the Client is a registered trader as defined in the German Commercial Code.
5. The Client shall indemnify GERMAN AIRWAYS against any third-party claims relating to damages where it has no liability towards the Client.
6. The exclusion or limitation of GERMAN AIRWAYS's liability, together with the provision on indemnity against third-party claims, shall also apply to and be for the benefit of GERMAN AIRWAYS's staff and its vicarious agents.
7. This shall not affect the Air Carrier's strict liability under Article 44 to 49c of the German Air Traffic Act (LuftVG) for damages up to the minimum amount stipulated in the Act.

## **Section 7 Extraordinary Termination**

1. The statutory right of either party to give notice of extraordinary termination for good cause remains unaffected.
2. GERMANY AIRWAYS may, in particular, terminate concluded contracts with immediate effect where:
  - a) the Client is in breach of material contractual obligations, in particular where it fails to pay the agreed price in full and in a timely manner on the agreed terms;
  - b) insolvency proceedings have been initiated against the Client's assets or a freezing injunction has been obtained over parts or all of its assets or the Client is in financial difficulties or has stopped payments.
3. Where the contract is terminated by GERMANY AIRWAYS for good cause, particularly in the cases set out in Section 7 (2), the Client must pay the cancellation fees in accordance with Section 4.

## **Section 8 Miscellaneous**

1. GERMANY AIRWAYS is entitled to assign the performance of all or some of its obligations under the contract concluded with the Client to third parties.
2. These General Terms and Conditions, and the entire legal relationship between GERMANY AIRWAYS and the Client, are governed by the law of the Federal Republic of Germany and GERMANY AIRWAYS's General Conditions of Carriage for Passengers and Baggage as amended as well as, where applicable, the Montreal Convention for the Unification of Certain Rules for International Carriage by Air, as amended.
3. The Client shall ensure that all passengers have the opportunity to familiarise themselves with GERMANY AIRWAYS's General Conditions of Carriage for Passengers and Baggage. These form an essential part of the contractual relationship between GERMANY AIRWAYS and the Client.
4. Should individual provisions of these General Terms and Conditions be or become void or invalid wholly or in part, this shall not affect the validity of the other provisions of this contract. The invalid or impractical provision or gaps shall be replaced by a provision with one that is as close as possible to the sense and spirit and purpose of what the parties' intention would have been, had they realised the situation.
5. Clients, that are trading companies, legal entities or funds under public law, or do not have a place of general jurisdiction within Germany, shall, at GERMANY AIRWAYS's discretion, be deemed to be incorporated in Cologne which shall be the sole jurisdiction for all disputes connected with the contractual relationship between GERMANY AIRWAYS and the Client.
6. German and English versions of these General Terms and Conditions have been published. The German version is legally binding and forms part of the contract. The English version is provided for convenience only.
7. All references to sections and numbers refer to the corresponding provisions in these General Terms and Conditions.