

# CONDITIONS OF CARRIAGE BY CHARTER FLIGHT

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Condition of Carriage by Charter Flight / Nippon Cargo Airlines  
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## I. GENERAL RULES

### 1. DEFINITIONS

**Advance Arrangement** means any special arrangement between the charterer or shipper and NCA, made prior to tender of the shipment.

**Air Waybill**, which is equivalent to air consignment note, means the non-negotiable document entitled "Air Waybill/Consignment Note" made out by shipper or NCA or charterer on behalf of the shipper which evidences the contract between shipper and NCA for carriage of cargo over the routes of NCA pursuant to charter agreement.

**Applicable Laws** means such laws, cabinet orders and ministerial ordinances and other governmental regulations, rules, orders, demands or requirements of any state or country as will apply to Carriage of a Passenger, Baggage, and/or Cargo to be performed by NCA.

**Baggage** means such articles, effects and other personal property of a Passenger as are necessary or appropriate for wear, use, comfort or convenience in connection with his/her travel. Unless otherwise specified, it includes both Checked and Unchecked Baggage of the Passenger.

**Baggage Identification Tag** means a document issued by a NCA solely for the purpose of identification of Checked Baggage and consisting of two portions: the baggage tag portion which is attached by NCA to a particular article of Checked Baggage and the Baggage claim stub which is given to the Passenger.

**Baggage Check** means those portions of the ticket which provide for the carriage of passenger's checked baggage by charter flight and which are issued by NCA as a receipt of passenger's checked baggage.

**Charge** means an amount to be paid for carriage by charter flight based on the applicable charges for such carriage or an amount to be paid for special or incidental services in connection with such carriage.

**Cargo**, (1) which is equivalent to the term goods, is anything carried or to be carried in an aircraft, other than mail or baggage.

(2) which is equivalent to the term 'shipment', means one or more pieces of goods accepted by the carrier from one shipper at one time and at one address, receipted for in one lot and moving on one Air Waybill to one consignee at one destination address.

**Carriage by Charter Flight**, which is equivalent to charter transportation, means carriage of cargo by air, gratuitous or for reward, pursuant to the charter agreement.

**Charter Agreement** means an agreement between charterer and NCA concerning the chartering of a whole or any portion of aircraft equipped and manned with crew for

one or more determined trip or trips, pursuant to which NCA contracts with shipper for carriage of cargo by charter flight.

**Charter Application** means an application for charter flight completed and signed by the charterer in the form prescribed by NCA, by which NCA checks and confirms the charterer's eligibility for charter flight in accordance with the terms and provisions of the charter regulations approved by Ministry of Land, Infrastructure and Transport, Japan and in respect of the statements of which the charterer warrants to be true and correct to the best of his knowledge and belief. The charter regulations may be inspected at any of NCA downtown offices and its offices at any airport from which NCA operates regular services.

**Charterer** means any person whose name appears on charter agreement as the party contracting with NCA. Any action taken by the charterer in respect of air waybill shall be deemed to be done as agent for the shipper.

**Checked Baggage**, which is equivalent to registered luggage, means baggage of which NCA takes sole custody and for which NCA has issued a baggage check and baggage (claim) tag (s).

**City Terminal Service** means the surface carriage of shipment between NCA city handling station and the airport of departure or destination, as the case may be.

**Consignee** means the person whose name appears on the air waybill as the party to whom the shipment is to be delivered by NCA.

**Convention** means whichever of the following instruments is applicable to the contract of Carriage:

"Convention for the Unification of Certain Rules Relating to International Carriage by Air", signed at Warsaw on 12th October, 1929 (hereinafter referred to as the "Warsaw Convention");

"Warsaw Convention as amended at Hague in 1955" signed at Hague on 28th September, 1955;

"Warsaw Convention as amended at The Hague" as amended by Protocol No.4 of Montreal 1975 (hereinafter referred to as "Warsaw Convention as amended at Montreal" );

"Convention for the Unification of Certain Rules for International Carriage by Air" , done at Montreal on 28th May, 1999 (hereinafter referred to as the "Montreal Convention").

**Customs Consignee**, which is equivalent to customs clearance agent, means a customs broker or other agent of the consignee designated to perform customs clearance services for the consignee.

**Days** means full calendar days, including Sundays and legal holidays; provided that

for the purpose of notification, the balance of the day upon which notice is dispatched shall not be counted; provided further that for the purpose of notification in connection with the carriage of cargo by charter flight, when the last day falls on Sunday or a legal holiday, such Sunday or legal holiday shall not be counted.

**Delivery Service** means the surface carriage of inbound shipments from the airport of destination to the address of the consignee or that of his designated agent or to the custody of the appropriate government agency when required.

**Destination** means the ultimate stopping place shown in the air waybill or ticket.

**Flight Coupon** means a portion of the passenger ticket that indicates particular places between which the coupon is good for carriage of passenger.

**French Gold Francs** means French francs consisting of 65 1/2 milligrams of gold at the standard of fineness of nine hundred thousandths. 250 French Gold Francs will be treated to be the conversion equivalent of 19 SDR. (Refer to the following for the definition of SDR.)

**International Carriage** means (except when the Convention is applicable) carriage by charter flight in which, according to the contract of carriage, the place of departure and any place of landing are situated in more than one country. As used in this definition, the term "country", which is equivalent to "state", includes all territory subject to its sovereignty, suzerainty, mandate, authority or trusteeship.

**NCA** means Nippon Cargo Airlines Co., Ltd.

**NCA's Regulations** means NCA's rules and regulations, other than these Conditions of Carriage, for International Carriage of Passengers, Baggage and/or Cargo including, but not limited to, NCA's tables of Charges and Rates.

**Passenger** means any person, except member of the crew, carried or to be carried under the contract of carriage.

**Passenger Coupon** means that portion of the passenger ticket constituting the passenger's written evidence of the contract of carriage between NCA and passenger.

**Passenger Ticket** means those portions of the ticket issued by NCA which provide for the carriage of the passenger.

**Pick-up Service** means the surface carriage of outbound shipments from the point of pick-up to the airport of departure.

**Rate** means the amount charged by NCA for carriage of a unit of weight (or volume) or value of goods.

**SDR** means Special Drawing Rights as defined by the International Monetary Fund.

Conversion of the SDR sum into a national currency shall be made as follows:

- (1) In the case as defined in Article 73 of these Conditions of Carriage, it shall be



made at the exchange rate between the currency and SDR in effect on the date of issuance of the air waybill.

- (2) In the case as defined in Article 74-4, Article 76-(3) and (4) of these Conditions of Carriage, it shall be made, in the case of judicial proceedings, at the exchange rate between the currency and SDR in effect on the date of the final court hearing of such proceedings, and, in any other case, at the exchange rate between the currency and SDR in effect on the date on which the amount of the damages is finally fixed.

**Shipment**, which is equivalent to consignment, means one or more packages or pieces of cargo accepted by carrier from one shipper at one address, receipted for in one lot and under a single Air Waybill or a single shipment record, for carriage to one consignee at one destination address, except as otherwise provided herein.

**Shipper**, which is equivalent to consignor, means the person whose name appears on the air waybill as the party contracting with NCA for carriage of cargo pursuant to the charter agreement.

**Stopover**, which is equivalent to a break of journey, means a deliberate interruption of a journey by the passenger, agreed to in advance by NCA, at a point between the place of departure and the place of destination.

**Ticket** means the "Passenger Ticket and Baggage Check", including all flight, passenger and other coupons therein, issued by NCA, which provides for the carriage of the passenger and his baggage.

**Unchecked Baggage**, which is equivalent to hand luggage, is baggage other than checked baggage.

## 2. APPLICATION OF CONDITIONS

- (1) Nothing in these Conditions of Carriage or NCA's Regulations shall, unless permitted by the Convention and otherwise expressly provided herein, constitute a modification by NCA of any provision of, or waiver by NCA of any right granted to it by, the Convention.
- (2) To the extent not in conflict with the Convention these Conditions of Carriage shall apply to all carriage of cargo by charter flight including all services incidental thereto, performed by NCA at charges established in connection with these Conditions of Carriage, and shall constitute terms and conditions and provisions under which NCA performs or undertakes to perform such charter flight to the same extent as if these Conditions of Carriage were included as terms and conditions and provisions in the charter agreement or air waybill and expressly agreed to by the charterer and shippers.

### 3. GRATUITOUS CARRIAGE

With respect to gratuitous carriage by charter flight, NCA reserves the right to exclude the application of all or any part of these Conditions of Carriage.

### 4. CHANGE WITHOUT NOTICE

Except as will be prohibited by Applicable Laws, NCA may change, modify or amend any provision of these Conditions of Carriage or of NCA's Regulations without prior notice; provided that no contract of Carriage by Charter Flight shall be subject to such change, modification or amendment made after the Carriage by Charter Flight to be performed pursuant to such contract commences.

### 5. APPLICABLE CONDITIONS

All Carriage by Charter Flight for Passengers Baggage and/or cargo shall be subject to these Conditions of Carriage and NCA's Regulations in effect as of the date of commencement of the Carriage by Charter Flight.

### 6. CHARTER AGREEMENT

No carriage by charter flight shall be performed unless a written charter agreement, in the form prescribed by NCA, is executed by the charterer and NCA. A charterer shall submit a written charter application to NCA and get its approval before the execution of the charter agreement. The charter application approved by NCA shall be made part of the charter agreement at the execution of such agreement.

### 7. SELECTION OF FLIGHT ROUTE

NCA shall have the right to select the flight route for the charter flight; provided however, that the shortest route which, in the opinion of NCA, is safe and feasible, will be followed.

### 8. SUBSTITUTION OF AIRCRAFT

In the event NCA deems it impossible to provide the charterer the type of aircraft specified in charter agreement, NCA may without any notice and without any liability effect the transportation by means of an aircraft of another type or arrange for the substitution of another air carrier who will effect the transportation in question on behalf of NCA by means of one of their aircrafts of the same type or of a type other than that stipulated in charter agreement. In the

event NCA substitutes a different aircraft from the aircraft originally chartered, the charges shall in no event be higher than the applicable charges for the aircraft originally chartered; however, if an aircraft is substituted for which charges are less than the applicable charges for the aircraft originally chartered, such lower charges shall apply. The charterer shall indemnify and hold NCA harmless from claims by shippers, consignees or other persons having any interest in the charter flight pursuant to such charter agreement, arising out of or in connection with such substitution of air carrier or type of aircraft.

#### 9. SCHEDULES, DELAYS AND CANCELLATIONS OF FLIGHT AND LIABILITY

- (1) The operation schedules of the charter flight set forth in charter agreement are approximate and shall not be guaranteed by NCA.
- (2) NCA may, without notice, cancel, terminate, divert, postpone, advance or delay any charter flight or proceed with any charter flight without all or any part of the cargo, passengers and/or baggage and determine if any departure or landing should be made, without liability of any kind to the charterer, shipper, consignee and any other person having any interest in the charter flight:
  - (a) because of any fact beyond its control (including, but without limitation, meteorological conditions, acts of God, force majeure, strikes, riots, civil commotion, embargoes, airport slot limitations, wars, hostilities, disturbances, or unsettled international conditions), actual, threatened or reported, or because of any delay, demand, conditions, circumstances or requirement due, directly or indirectly, to such fact; or
  - (b) because of any fact not to be foreseen, anticipated or predicted; or
  - (c) because of any government regulation, order, demand or requirement; or
  - (d) because of shortage of labor, fuel or facilities, or labor difficulties of NCA or others; or
  - (e) because of mechanical or operational difficulties related to the safety of chartered aircraft; or

In the event of such cancellation before the commencement of such charter flight, NCA shall refund the sum deducting charges and expenses actually incurred by NCA for such charter flight from the charter price and other charges and expenses collected. In the event of such termination after the commencement of the charter flight, the charter price and other charges and expenses for the transportation performed shall be calculated in accordance with Article 21 and the difference will be refunded.

#### 10. SPACE AND WEIGHT LIMITATIONS

Charterer or shipper shall have the right to utilize all or any part of space on the chartered aircraft during the charter flight in accordance with the charter agreement, provided, however, that the space and weight available on any portion of the charter flight shall be decided solely by NCA. Cargo, passenger and/or baggage will be carried within such space and weight limitations of the chartered aircraft. Any such space in the chartered aircraft not utilized by the charterer or shipper may be utilized by NCA for the carriage of persons and property without diminution of the charter price as provided in Article 16 and other charges and expenses.

#### 11. CHARACTERISTICS OF AIRCRAFT

The characteristics of the chartered aircraft available to the charterer shall be specified by NCA at the execution of charter agreement. Such characteristics may be changed by NCA in case of adverse meteorological conditions, or for other operational, mechanical or economic reasons.

#### 12. CREW IN CHARGE

The chartered aircraft shall at all times be under the exclusive command and control of NCA's crew in charge, who are authorized to take all necessary measures to insure safety. In this respect, they shall have complete discretion concerning the load carried, its distribution, the route to be flown, the time of departure from the original point and all intermediate points, when and if the charter flight shall be undertaken and as to where landings should be made. The charterer, shipper and passengers shall accept all such decisions as final and shall strictly comply with all orders issued by the crew in charge.

#### 13. FALSE REPRESENTATIONS AND OTHER VIOLATIONS BY CHARTERER

NCA may cancel charter agreement, or in case charter flight has commenced, terminate the charter flight immediately without special warning or formal notice being given and also without liability of any kind to the charterer, shipper, consignee and any other person having interest in the charter flight, in the event that any provision of charter agreement, government rules, regulations, orders, requirements and directions is violated or inobserved by the charter or by any such person or in the even that any representation in the charter application by the charterer is false. In the even of such cancellation before the commencement of the charter flight, NCA may collect cancellation charge provided in Article 19

from the charterer. In the event of such termination after the commencement of the charter flight, NCA may collect cancellation charge as provided in Article 19 as termination charge.

Neither the cancellation nor the termination of charter agreement for such reason shall affect NCA's right to collect damages from the charterer for such violation, inobservance or false representation. The charterer shall indemnify and hold NCA harmless from claims by shippers, consignees or other persons having any interest in the charter flight pursuant to such charter agreement, arising out of or in connection with such cancellation or termination.

#### 14. NECESSARY ARRANGEMENT BY CHARTERER

The charterer shall make all necessary arrangements to ensure the arrival of cargo and baggage for loading and passengers for embarking, at the time specified by NCA or its crew in charge. In the event that the charterer does not have the cargo, passengers and/or baggage ready for loading at such time specified, the charter flight may proceed without the full load and NCA shall be under no obligation to delay departure of any chartered aircraft operating any portion of the charter flight. In the event the charterer requests a delay in any such departure and NCA agrees thereto, the charterer shall pay NCA all additional charges, costs and expenses incurred by NCA in connection with such delay.

#### 15. DESCRIPTION OF PROPERTY

Prior to the commencement of the charter flight, the charterer will furnish NCA with a declaration setting forth description and/or value of cargo to be transported on the charter flight, which list (s) and declaration shall be signed by or on behalf of the charterer.

### II. CHARTER PRICE AND OTHER CHARGE

#### 16. CHARTER PRICE

- (1) The following charges applicable to charter flight (hereinafter referred to as "charter price") shall be payable by the charterer.
  - (a) Flight charges computed on the basis of the charter mileage (statute miles as provided by NCA) of the charter flight and/or the charter hours from the time of commencement of the take-off run to the time of conclusion of the landing run of the chartered aircraft, or flight charges fixed for each portion;
  - (b) Ferry charges computed on the basis of the ferry mileage (statute miles as provided by NCA); and/or ferry hours (flight hours from the time of

commencement of the take-off run to the time of conclusion of the landing run), or ferry charges fixed for each portion, if any ferry is necessary to place the chartered aircraft at the point required by the charterer and to return it to the point required by NCA;

- (c) Retaining or layover charges in case that chartered aircraft is delayed or held at the request of the charterer at any point after the reasonable period ordinarily required;
  - (d) Valuation charges on cargo, if any, assessable in relation to declared value; and
  - (e) Landing charges (including charges imposed by an airport authority), parking charges, hanger charges, ground service charges and/or dispatch service charges assessed in connection with each landing or handling requested by charterer, shipper or other person on behalf of the charterer, made at an airport not regularly served by NCA.
- (2) The costs of the chartered aircraft with crew, fuel, oil, maintenance and appropriate meal in flight, shall be on the account of NCA.

#### 17. ACCESSORIAL SERVICES AND CHARGES

The followings are not included in the charter price and shall be paid in addition to such charter price, by charterer, shipper, consignee or owner, as the case may be, in accordance with the provisions of these Conditions of Carriage.

- (a) Ground transportation services (including ground transfer services);
- (b) Cost for customs inspection fees, customs duties and any other taxes, charges, penalties and fees imposed in accordance with applicable laws, government regulations, orders and requirements;
- (c) Cost of personnel or special equipment or facilities to be hired or procured;
- (d) Insurance charges;
- (e) Pick-up, delivery and city terminal services;
- (f) Storage and warehouse services and facilities;
- (g) Advanced charges and disbursement charges;
- (h) Expenses in repairing faulty packing;
- (i) Charges for carriage of cargo forwarded, transshipped or reforwarded by any other transportation service or returned to point of origin;
- (j) Valuation charges on the cargo assessable in relation to value declared by shipper for carriage by charter flight after the execution of charter agreement; or
- (k) Any other similar services, charges or expenses.

## 18. APPLICABLE CHARTER PRICE AND OTHER CHARGES

- (1) Except as otherwise agreed by NCA, NCA will not perform carriage by charter flight until the charterer or shipper has paid the applicable charter price and other charges and expenses for such carriage, insofar as they have been ascertained before the commencement of charter flight.
- (2) Applicable charter price and other charges and expenses for carriage by charter flight for Passenger and Baggage are duly established by NCA, and shall be those in effect on the date and hour of commencement of carriage by charter flight. Applicable charter price and other charges and expenses for carriage by charter flight for Cargo are duly established by NCA, and shall be those in effect on the date of issuance of the air waybill by NCA. When the charter price and other charges and expenses collected for such carriage are not the applicable charter price, charges and expenses, the difference will be refunded to or collected from the charterer, passengers, shipper, consignee and/or owner, as the case may be, in accordance with the provisions of these Conditions of Carriage.
- (3)
  - (a) Subject to currency exchange laws, government regulations and acceptability to NCA, payment of charter price and other charges and expenses may be made in a currency other than the currency in which the charter price and other charges and expenses are established. The rate of exchange established by NCA will be used to convert the charter price and other charges and expenses into the selling currency unless otherwise provided in NCA's Regulations.
  - (b) The charterer shall pay to NCA the charter price and other charges and expenses, prior to the commencement of carriage by charter flight, in the manner specified by NCA; provided, however, that, with respect to any charter price and other charges and expenses which cannot be determined before the commencement of carriage by charter flight, any necessary adjustment will be made at the completion or in the course of carriage by charter flight and any additional amount due to NCA will be paid by the charterer, shipper, consignee, as the case may be, in accordance with the provisions of these Conditions of Carriage, promptly upon receipt of statement therefor from NCA. If required by NCA, the charterer or shipper must deposit with NCA a sum estimated by NCA to be sufficient to cover any charter price and other charges and expenses which cannot be determined before the commencement of carriage by charter flight. Any balance due from NCA to the charterer, shipper or vice versa in connection with such deposit shall be paid after completion of carriage by charter flight and

determination of the exact amount of such charter price and other charges and expenses.

#### 19. CANCELLATION CHARGES AND INDEMNITY

The charterer may, by giving written notice effective upon its receipt by NCA, cancel charter agreement. In such event the charterer shall pay to NCA as cancellation charges:

- (a) 10% of the charter price as provided in charter agreement if more than 60 days before the time scheduled for the commencement of the charter flight;
- (b) 25% of the charter price as provided in charter agreement if within 60 days but more than 14 days before the time scheduled for the charter flight departure;
- (c) 50% of the charter price as provided in charter agreement if within 14 days of the time scheduled for the charter flight departure;
- (d) 100% of the charter price as provided in charter agreement if the notice to cancel is received on or after the scheduled time of departure.

In the event of such cancellation by charterer the difference between the cancellation charges and charter price, and other charges and expenses collected will be refunded to or collected from the charterer, as may be appropriate.

#### 20. INDEMNITY

In the event of such cancellation by charterer as provided in Article 19 after the issuance of air waybill, the contract of carriage with shipper pursuant to such charter agreement shall be automatically cancelled and the charterer shall indemnify and hold NCA harmless from claims by shipper, consignee and other persons having any interest in the charter flight pursuant to such charter agreement, arising out of or in connection with such cancellation.

#### 21. CHARTER PRICE AND OTHER CHARGES IN CASE OF CANCELLATION AND TERMINATION

- (1) Unless otherwise specifically provided in these Conditions of Carriage, NCA will refund the charter price and other charges and expenses collected, in the event of cancellation of charter agreement before the commencement of charter flight. In the event of termination of charter flight after the commencement of charter flight, unless otherwise provided in these Conditions of Carriage, the charter price and other charges and expenses for the transportation performed will be the sum of flight and ferry charges for the transportation performed, calculated in the manner provided by NCA plus other charges and expenses (including layover, landing,



parking, hanger, ground service and dispatch service and other accessorial service charges) actually paid or incurred by NCA for the transportation performed and the charter price and other charges and expenses shall be adjusted by such sum; provided, however, valuation charges shall not be refunded after the charter flight has commenced.

- (2) All refunds will be subject to Applicable Laws of the country in which charter price and other charges and expenses were paid and of the country in which the refund is being made. Subject to the foregoing provisions, refunds will be made, at the option of NCA, in the currency in which the charter price and other charges and expenses were paid, or in lawful currency of Japan or of the country where the refund is made or in the currency of the country in which the charter price and other charges and expenses were paid, in an amount equivalent to the amount due in the currency in which the charter price and other charges and expenses were collected. When refunds will be made in a currency other than the currency in which the charter price and other charges and expenses were paid, the rate of exchange established by NCA' s Regulation will be used to convert the charter price and other charges and expenses into refunds amount.
- (3) NCA will make refund through its general accounting office or regional sales or accounting offices, and will require prior written applications for refunds to be prepared by charterer, shipper or consignee on form approved by NCA.
- (4) Refunds of charter price and other charges and expenses shall be made to the person who paid them to NCA.

### III. CARRIAGE OF CARGO

#### [A. AIR WAYBILL]

#### 22. PREPARTION BY SHIPPER

- (1) The shipper shall make out, or have made out on his behalf, an air waybill in the form, manner and number of copies prescribed by NCA, and shall deliver such air waybill to NCA simultaneously with the acceptance of the shipment by NCA for carriage by charter flight. The issuance by NCA of the air waybill shall constitute the conclusion of contract with shipper for carriage of cargo by charter flight pursuant to the charter agreement. No amount of rates or charges shall be entered in the air waybill, instead, the identification of the charter flight will be shown.
- (2) NCA may require the shipper to make out, or have made out on his behalf, separate air waybill when all of the shipment cannot, without breach of government

requirements or regulation of NCA, be carried on one air waybill.

#### **23. APPARENT ORDER AND CONDITION OF CARGO**

If the apparent order and condition of the cargo and/or packing is not good, the shipper shall insert in the air waybill what the apparent order and condition are. However, if the shipper fails to do so, or if such statement is inaccurate, NCA may insert in the air waybill a statement of the apparent order and condition or note a correction thereon.

#### **24. PREPARATION, COMPLETION OR CORRECTION BY NCA**

NCA may at the request of the shipper, expressed or implied, make out the air waybill, in which event, subject to proof to the contrary, NCA shall be deemed to have done so on behalf of the shipper. If the air waybill handed over with the cargo does not contain all the required particulars, or if it contains any error, NCA completes or corrects it to the best of NCA's ability without being under any obligation to do so.

#### **25. RESPONSIBILITY FOR PARTICULARS AND STATEMENTS**

The shipper is responsible to NCA and all other persons for the correctness and completeness of the particulars and statements which he inserts in the air waybill, or which NCA inserts on his behalf. The shipper shall be liable for all damages suffered by NCA or any other person by reason of the irregularity, incorrectness or incompleteness of said particulars or statements, where the air waybill was made out by or on behalf of the shipper or by NCA (or completed by NCA) on behalf of the shipper pursuant to Paragraph (C) above.

#### **26. ALTERATION**

NCA will not accept an air waybill, if any part of it is mutilated or if it has been altered or erased by other than NCA.

### **[B. RATES AND CHARGES]**

#### **27. PAYMENT OF FULL CHARGES**

Full applicable charter price as provided in Article 16 and other charges and expenses as provided in Article 17 made or incurred or to be incurred by NCA and any other sums payable to NCA, will be deemed fully earned, whether or not the cargo is lost or damaged, or fails to arrive at the destination specified on the air

waybill or charter agreement. No claim for loss or damage to a shipment will be entertained until all charter price and other charges and expenses thereon have been paid, except that when no part of the consignment is delivered, a claim with respect to such consignment will be entertained even though transportation charges thereon are unpaid. The amount of claims may not be deducted from such charter price and other charges and expenses.

## 28. GUARANTEE OF UNPAID CHARGES

The shipper guarantees payment of all costs, expenditures, fines, penalties, loss of time, damages and other sums which NCA may incur or suffer by reason of:

- (a) inclusion in the shipment of articles, the carriage of which is prohibited by law;
- (b) illegal, incorrect or insufficient marking, numbering, addressing or packing of packages or description of the cargo;
- (c) absence, delay or incorrectness of any export or import license or any required certificate or document;
- (d) improper customs valuation; or
- (e) incorrect statement of weight or volume.

By taking delivery of exercising any other right arising from the contract with shipper for carriage of cargo pursuant to the charter agreement, the consignee agrees to pay all such charges, and sums except prepaid charges; but this shall not discharge the shipper's guarantee to pay the same. NCA shall have a lien on the shipment for each of the foregoing, and in the event of non-payment thereof, shall have the right to dispose of the shipment at public or private sale (provided that prior to such sale, NCA shall have mailed notice thereof to the shipper or to the consignee at the address stated in the air waybill), and to pay itself out of the proceeds of such sale any and all such amounts. No such sale shall, however, discharge any liability to pay any deficiencies, for which the shipper and the consignee shall remain jointly and severally liable. No such line or right of sale, and no right of NCA to collect any of the foregoing shall be in any way affected, lost or prejudiced by reason of the acknowledgement of payment, if not actually paid, or, so far as concerns the right of NCA to collect any of the foregoing, by reason of the delivery of the cargo or the surrender of the possession thereof.

## 29. BASIS OF CHARGES

- (1) The shipper or charterer on behalf of shipper must make a declaration of value for carriage on the air waybill of all shipment. Such declaration of value may be in any amount, provided that "NVD" (No Value Declared) may constitute such

declaration.

- (2) (a) The valuation charge will be assessed in accordance with NCA's Regulations for a shipment having a declared value for carriage in excess of a value as specified thereon.
- (b) The value of the shipment per kilogram or per pound for applying valuation charges will be determined by dividing the shipper's declared value for carriage by the actual gross weight of the shipment.
- (3) If the declared value of cargo exceeds the declared value on which valuation charges for carriage have been previously computed, NCA shall be entitled to require payment of the valuation charges on such excess.

### 30. CHARGES FOR DISBURSEMENT

When requested by the shipper, NCA will collect from the consignee an amount shown on the air waybill as disbursement such as charge for transportation, cartage, storage, loading or unloading not performed by NCA and government duty and customs fees. A service charge as provided in NCA's Regulations will be assessed for collecting and remitting to the shipper the amount of the disbursement. Any amendment of disbursement amounts shall be made by the shipper in writing prior to delivery of the shipment to the consignee or his agent.

## [C. ACCEPTABILITY OF CARGO FOR CARRIAGE]

### 31. VALUATION LIMITS

- (1) No shipment having a declared value for carriage in excess of U.S. \$100,000 (or its equivalent) will be accepted for carriage by charter flight unless advance arrangement therefore has been made.
- (2) The limit of value of one shipment or group of shipments to be carried in any one charter aircraft shall be U.S. \$2,000,000 (or its equivalent). If the declared value of a single shipment exceeds such limit, such single shipment may not be carried in the same chartered aircraft. NCA reserves the right to refuse to transport in any one chartered aircraft, shipments having declared values in the aggregate which violate or lead to the violation of the rule of this Article.

### 32. PACKING AND MARKING OF SHIPMENT

- (1) Shippers responsible for ensuring that the cargo is packed in an appropriate way for air carriage so as to ensure that it can be carried safely with ordinary care in handling and so as not to injure or damage any persons, goods or property. Each

package shall be legibly and durably marked with the name and full street address of the shipper and consignee.

- (2) Packages containing valuables as defined in NCA's Regulations must be sealed in a method approved by NCA.

### 33. CARGO ACCEPTABLE

NCA undertakes to transport, subject to the availability of suitable equipment of the kind and type capable of handling the shipment, general merchandise, goods, wares and products of all kinds, unless otherwise excluded by NCA's Regulations, and provided that:

- (a) the transportation, or the exportation or importation thereof is not prohibited by the laws or regulations of any country to be flown from or to, as well as any country planned to be flown through or over;
- (b) they are packed in a manner suitable for carriage by aircraft;
- (c) they are accompanied by the requisite shipping documents;
- (d) they are not likely to endanger aircraft or persons.

### 34. CARGO ACCEPTABLE ONLY UNDER PRESCRIBED CONDITIONS

- (1) The following goods as defined by NCA will only be accepted for carriage by chartered aircraft subject to the conditions provided in NCA's Regulations:
  - (a) Firearms;
  - (b) Human remains;
  - (c) Live animals, including, but not limited to, livestock, birds, reptiles, fish, shellfish, insects and pets;
  - (d) Perishables; or
  - (e) Dangerous goods including explosives, compressed gases, flammable liquids, flammable solids, oxidizing substances, poisonous substances, radioactive materials, corrosives and other articles or substances which are capable of posing a significant risk to health, safety or property.
- (2) Packages or pieces of unusual weight, shape or size will not be accepted for carriage by chartered aircraft unless advance arrangements therefor have been made. Shipments requiring special devices for safe handling will be accepted for carriage by chartered aircraft only when such special devices are provided and operated by and at the expense of the charterer, shipper or consignee.
- (3) Shipments with a floor-bearing weight per unit square in excess of the floor load limitation specified by NCA must be furnished with a suitable skid or base, for use in available chartered aircraft, which will reduce the floor-bearing weight to such

floor load limitation or less. The weight of such skid or base will be included in the weight of the shipment.

### 35. RESPONSIBILITY FOR NON-OBSERVANCE OF CONDITIONS RELATED TO SPECIAL CARGO

Responsibility for non-observance of the conditions relating to cargo which is not acceptable for carriage by chartered aircraft or is acceptable only under certain conditions, rests upon the charterer and the shipper and the owner of the cargo, who jointly and severally shall indemnify NCA for any loss, damage, delay, liability or penalties because of carriage of any such cargo by chartered aircraft.

### 36. INSPECTION OF SHIPMENT

NCA reserves the right to examine the packaging and contents of all shipments and to enquire into the correctness or sufficiency of information or documents tendered in respect of any shipment but NCA shall be under no obligation to do so.

### 37. UNIT LOAD DEVICES

When shipper undertakes to load a Unit Load Devices (ULD) he must comply with NCA's loading instructions and shall be liable for and indemnify NCA against all consequences of any non-compliance with such instructions.

## [D. SHIPMENTS IN TRANSIT]

### 38. COMPLIANCE WITH GOVERNMENT REQUIREMENTS

- (1) The shipper shall comply with and the charterer shall ensure compliance by shipper all applicable laws, customs and other government regulations, orders, demands or requirements of any country to or from which the cargo may be carried, or any country through or over which the cargo is planned to be carried, including, but not limited to those relating to the packing, carriage or delivery of the cargo, and shall furnish such information and attach such documents to the air waybill as may be necessary to comply with such laws, regulations, orders, demands or requirements. The shipper shall be liable to NCA for any damage occasioned by the failure of the shipper to comply with this provision. NCA will not be obligated to inquire into the correctness or sufficiency of such information or documents. NCA will not be liable to shipper, consignee or any other person for loss or expense due to shipper's failure to comply with this provision.

NCA will not be obligated to inquire into the correctness or sufficiency of such

information or documents. NCA will not be liable to shipper, consignee or any other person for loss or expense due to shipper's failure to comply with this provision. The damage is caused to NCA because of the shipper's.

- (2) NCA shall not be liable for refusing to carry any shipment if NCA reasonably determines in good faith that such refusal is required by any applicable law, government regulation, demand, order or requirement.

#### 39. DISBURSEMENTS AND CUSTOMS FORMALITIES

NCA will, but shall be under no obligation to, advance any duties, taxes or charges and to make any disbursements with respect to the cargo, and the charterer, the shipper, owner and consignee shall be jointly and severally liable for the reimbursement thereof. NCA shall not be under obligation to incur any expense or to make any advance in connection with the forwarding or reforwarding of the cargo except against prepayment by the charterer or the shipper. If it is necessary to make customs entry of the cargo at any place, the cargo shall be considered to be consigned at such place to the person named on the face of the air waybill as customs consignee or, if no such person be named, to NCA or to such customs consignee, if any, as NCA may designate. For any such purpose a copy of the air waybill, certified by NCA, shall be considered an original.

#### 40. CERTAIN RIGHTS OF NCA OVER SHIPMENT IN TRANSIT

If in the opinion of NCA it is necessary to hold the shipment at any place during, before or after transit for any purpose, NCA may, upon giving notice to the shipper or consignee at the address stated in the air waybill, store the shipment for the account of, and at the risk and expense of the shipper, owner and consignee of the shipment or any one of them in any warehouse or other available place, or with the customs authorities; or NCA may deliver the shipment to another transportation service for onward carriage to the consignee. The shipper, owner or consignee of the shipment shall be jointly and severally liable for and indemnify NCA against any expense or risk so incurred.

#### 41. DELAYS AND CANCELLATION OF FLIGHTS

In the event the carriage of any shipment by charter flight is so cancelled, postponed, advanced or terminated pursuant to the provision of Article 9-(2), NCA shall not be under any liability to shipper, consignee and any other persons with respect thereto. In the event carriage by charter flight, of the shipment or any part thereof is so terminated, NCA may place such shipment in storage at

shipper's expense, or may, at the expense of shipper or consignee, forward the shipment for carriage by any other route or forward the shipment as agent for the shipper or the consignee, for onward carriage by any other transportation service on behalf of the shipper or the consignee. In the event the carriage by charter flight, of the shipment or any part thereof is so terminated, delivery thereof by NCA to any transfer agent for transfer or delivery or the placing of such shipment in storage shall be deemed complete delivery under the air waybill, and NCA shall be without any further liability with respect thereto, except to give notice of the disposition of the shipment to the shipper or the consignee, at the address stated in the air waybill.

#### 42. PRIORITY OF CARRIAGE AS BETWEEN SHIPMENTS

Subject to applicable laws, government regulations and orders, NCA may determine, on a reasonable and not unjustly discriminatory basis, the priority of carriage as between shipments and decide which articles shall be carried and which articles shall not be carried or shall be removed at any time or place whatsoever and proceed with any charter flight without all or any part of the goods in one shipment.

#### [E. SHIPPER'S RIGHT OF DISPOSITION OF SHIPMENT]

#### 43. EXERCISE OF RIGHT OF DISPOSITION

Every exercise of the right of disposition of the shipment must be made by the shipper and must be applicable to the whole shipment under a single air waybill. The right of disposition over the cargo may only be exercised if the shipper produces the part of the air waybill which was delivered to him. Instructions as to disposition must be given to NCA in writing in the form prescribed by NCA. In the event that the exercise of the right of disposition results in a change in consignee, such new consignee shall be the consignee as though same had appeared on the air waybill.

#### 44. SHIPPER' S OPTION

Subject to shipper's liability to carry out all his obligations under these Conditions of Carriage and provided that this right of disposition is not exercised in such a way as to prejudice NCA or other shipper, the shipper may dispose of the cargo either:

(a) by withdrawing it at the airport of departure or of destination;



- (b) by stopping it in the course of the journey on any landing;
- (c) by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air waybill; or
- (d) by requiring it to be returned to the airport of departure.

#### 45. PAYMENT OF EXPENSES

The shipper shall be liable for and shall indemnify NCA for all loss or damage suffered or incurred by NCA as a result of the exercise of his right of disposition. The shipper shall reimburse NCA for any expenses occasioned by the exercise of his right of disposition.

#### 46. NCA' S INABILITY TO COMPLY

Notwithstanding the provision of Article 43, NCA reserves the right to refuse such execution of shipper's right of disposition, if in the opinion of NCA it is not practicable to carry out such instructions of the shipper. In such event NCA shall so inform him promptly. The cost of so doing attaches to the cargo.

#### 47. EXTENT OF SHIPPER' S RIGHT

The shipper's right of disposition shall cease at the moment when, after arrival of the cargo at the destination, the consignee takes possession or requests delivery of the cargo or air waybill, or otherwise shows his acceptance of the cargo. Nevertheless, if the consignee declines to accept the air waybill or the cargo, or if he cannot be communicated with, such right of disposition shall continue to vest in the shipper.

#### [F. DELIVERY]

#### 48. DELIVERY TO CONSIGNEE

- (1) Except as otherwise specifically provided in the air waybill, delivery of the shipment will be made only to the consignee named on the face of the air waybill. Delivery to the consignee shall be considered to have been effected when the shipment has been delivered to customs or other government authorities as required by applicable law or customs regulations, and when NCA has delivered to the consignee any authorization required to enable the consignee to obtain release of the shipment and has forwarded the notice of arrival referred to in Article 49.
- (2) Delivery of the shipment shall be made by NCA only upon written receipt of the consignee and upon compliance with all other applicable terms and conditions of

the air waybill and of these Conditions of Carriage.

#### 49. NOTICE OF ARRIVAL

Unless the shipment is to be reforwarded in accordance with Article 54, notice of arrival of the shipment will, in the absence of other instructions, be sent to the consignee, or any other person whom NCA has agreed to notify as evidenced in the air waybill, by ordinary methods; NCA is not liable for non-receipt or delay in receipt of such notice.

#### 50. FAILURE OF CONSIGNEE TO TAKE DELIVERY

- (1) Subject to the provisions of Article 52, if the consignee refuses or fails to take delivery of the shipment after its arrival at the place of delivery, NCA will endeavour to comply with any instructions of the shipper set forth on the face of the air waybill. If such instructions are not so set forth or cannot reasonably be complied with, NCA shall notify the shipper of the consignee's failure to take delivery and request his instructions. If no such instructions are received within 30 days, NCA may sell the shipment in one or more lots at public or private sale, or destroy or abandon such shipment.
- (2) The shipper and owner are liable for all charges and expenses resulting from or in connection with such failure to take delivery of the shipment, including, but not limited to, transportation charges incurred in returning the shipment if so required by the shipper's instruction. If the shipment is returned to the airport of departure and the shipper or owner refuses to make such payments or neglects to make such payments within 15 days after such return, NCA may dispose of the shipment or any part thereof at public or private sale after giving the shipper at the address stated on the air waybill 10 days' notice of its intention to do so.
- (3) In the event of the sale of the shipment as provided for in Sub-paragraphs (1) and (2) above, either at the place of destination or at the place to which the shipment has been returned, NCA is authorized to pay to itself and other transportation services out of the proceeds of such sale all charges, advances and expenses of NCA and other transportation services plus costs of sale, holding any surplus subject to the order of the shipper. The sale of any such shipment shall, however, not discharge the shipper and/or owner of any liability to pay any deficiencies due to NCA.

#### 51. PLACE OF DELIVERY

The consignee must accept delivery of and collect the shipment at the airport of

destination unless otherwise designated by NCA or provided in NCA's Regulations.

#### **52. DISPOSAL OF PERISHABLES**

When a shipment containing perishable articles is delayed in the possession of NCA, is unclaimed or refused at place of delivery, or for other reasons is threatened with deterioration, NCA will immediately take such steps necessary for the protection of itself and other parties in interest, including but not limited to, the destruction or abandonment of all or any part of the shipment, the sending of communications for instructions at the risk and cost of the shipper, the storage of the shipment or any part thereof at the risk and cost of the shipper, or the disposition of the shipment or any part thereof at public or private sale without notice. The sale of any such shipment shall, however, not discharge the shipper of any liability to pay any charges and expenses due to NCA.

#### **53. CARGO ATTENDANTS**

Subject to advance arrangement, NCA will transport cargo attendants on all cargo chartered aircraft without additional charge, for the purpose of accompanying shipments when necessary for the protection of the shipment, other property, the chartered aircraft or its crew. Except as otherwise provided by NCA, the carriage of such cargo attendants is subject to the provisions as described in this Conditions of Carriage.

#### **54. FORWARDING AND REFORWARDING**

The cargo (or packages said to contain the cargo) described on the face of the air waybill, is accepted for carriage by chartered aircraft from their receipt at NCA's cargo terminal or airport office at the place of departure to the airport at the place of destination. If so specifically agreed in the charter agreement or air waybill, the cargo (or packages said to contain the cargo) described on the face of the air waybill, is also accepted for forwarding to the airport of departure and for reforwarding beyond the airport of destination. If such forwarding or reforwarding is by carriage operated by NCA, such carriage shall be upon the same terms as to liability as set forth in Article 74 and Article 78. In any other event, in forwarding or reforwarding the cargo, NCA shall do so only as agent of the charterer, shipper, owner or consignee, as the case may be, and shall not be liable for any damage arising out of such additional carriage, unless proved to have been caused by its own negligence or wilful fault. The charterer, shipper, owner and consignee will authorize NCA to do all things deemed advisable to

effect such forwarding or reforwarding, including, but without limitation, selection of the means of forwarding or reforwarding and the routes thereof (unless these have been specified by the shipper in the air waybill or by the charterer in the charter agreement), execution and acceptance of documents of carriage (which may include provisions exempting from or limiting liability) and consigning of cargo with no declaration of value notwithstanding any declaration of value in the air waybill or the charter agreement.

#### 55. TERMINAL SERVICE CHARGES

Terminal service charges as described in NCA's Regulations will be assessed to the charterer or the shipper or consignee named in the air waybill, as applicable, and will apply whenever such services are performed by NCA.

### IV. CARRIAGE OF PASSENGERS

#### [A. TICKETS]

#### 56. ISSUANCE OF TICKET

NCA's form of ticket currently in effect for the gratuitous carriage shall be issued by NCA for each passenger, which act constitutes the conclusion of contract with passengers for carriage of passengers and baggage by NCA.

#### 57. VALIDITY FOR CARRIAGE

The ticket is good only for carriage by NCA flight from the airport at the place of departure to the airport at the place of destination via the route shown therein. Each flight coupon will be accepted only for the flight designated in such flight coupon.

#### 58. NON-TRANSFERABILITY

A Ticket shall not be transferable. NCA shall not be liable to any person entitled to be carried for honouring a Ticket presented by any person other than the person so entitled. If a Ticket is in fact used by any person other than the person who is entitled to be carried, with or without such person's knowledge and consent, NCA shall not be liable for death of or injury to such unauthorised person or for loss, destruction or delay in arrival of, or damage to, such unauthorised person's Baggage or other personal property arising from or in connection with such unauthorised use.

## 59. CHECK-IN

A Passenger shall arrive at NCA's check-in counter and the boarding gate, respectively by the time indicated by NCA or, if no time is indicated, sufficiently in advance of the flight departure so that there will be enough time for the Passenger to have check-in and departure procedures completed by the departure time of the flight. If a Passenger fails to arrive at NCA's check-in counter or the boarding gate by the time indicated by NCA or is unable to depart because of improper or incomplete exit, entry or other necessary documentation required for his/her departure, NCA may cancel his/her reservation of a seat and will not delay the flight for the Passenger. NCA shall not be liable to the Passenger for any damage due to the Passenger's failure to comply with the provisions of this Article.

## 60. REFUSAL AND LIMITATION OF PASSENGER CARRIAGE

NCA may refuse Carriage of, or remove, any Passenger, and in such case his/her Baggage will be handled in the same way, if NCA determines at its reasonable discretion that:

- (1) such action is necessary for a reason of flight safety;
- (2) such action is necessary in order for NCA to comply with Applicable Laws of any state or country to be flown from, into or over or other states or countries concerned;
- (3) (a) the Passenger falls under Article 69-(1) (b),
  - (b) the Passenger may unlawfully seek to enter a country through which he/she is in transit by means of destroying his/her documentation required for exit, entry or other purposes or other ways, or
  - (c) the Passenger refuses to accept NCA' s request by reason of protecting an unlawful entry to a country that he/she surrenders his/her documentation required for exit, entry or other purposes to be held by a crew member in exchange of NCA' s receipt thereof;
- (4) the Passenger falls under Article 64 (3) or (4);
- (5) the passenger or his/her conduct, age or mental or physical condition;
  - (a) requires special assistance of NCA,
  - (b) may cause discomfort or makes himself/herself objectionable to other Passengers,
  - (c) may cause harm to himself/herself or to other persons or an aircraft or any property;
  - (d) obstructs any crew member in performing his/her duties or fails to comply with any instruction of any crew member,

- (e) uses portable telephones, portable radios, electronic games or other electronic devices in aircraft cabin without NCA' s permission,
- (6) the Ticket presented by the Passenger is:
  - (a) acquired unlawfully or purchased from an entity other than the issuing Carrier or its Authorized Agent,
  - (b) reported to have been lost or stolen,
  - (c) a counterfeit Ticket, or
  - (d) mutilated, or altered willfully by a person other than a Carrier or its Authorized Agent, with respect to any Flight Coupon thereof, in any of which cases NCA reserves the right to retain the Ticket;
- (7) the person presenting a Ticket cannot prove that he/she is the person named in the " Passenger Name" box of the Ticket, in which case NCA reserves the right to retain such Ticket; or

In the case of sub-paragraph (5) (c) or (d) of this paragraph, NCA may take such other measures as NCA deems necessary to prevent the Passenger from continuing such conduct, failure, obstruction or act which measures shall include, but not limited to, restraint of the Passenger.

#### **61. CONDITIONAL ACCEPTANCE FOR CARRIAGE**

If a Passenger whose status, age or mental or physical condition may cause any hazard or risk to himself/herself is carried, NCA shall not be liable for death of, or any injury, illness, wounding or disability suffered by, the Passenger or any aggravation or consequences thereof due to such status, age or mental or physical condition.

#### **62. LIMITATION ON CARRIAGE**

If the total weight of the Passengers boarding, and/or Baggage loaded in, an aircraft may exceed the maximum allowance weight with respect to the aircraft, NCA may, in accordance with NCA's Regulations, decide which Passengers and/or Baggage will be carried.

#### **[B. BAGGAGE]**

#### **63. RESTRICTION OF ACCEPTANCE AS BAGGAGE**

- (1) NCA will refuse to accept the following items as Baggage:
  - (a) items which do not constitute Baggage as defined in Article 1;
  - (b) items which may endanger aircraft or any person or property, such as items

which are specified in the Dangerous Goods Regulations of the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA) and in NCA's Regulations;

- (c) items Carriage of which is prohibited by Applicable Laws of any state or country to be flown from, into or over;
  - (d) items which NCA deems unsuitable for Carriage by reason of their weight, size, shape or character such as being fragile or perishable;
  - (e) live animals
  - (f) firearms, swords and other similar items, except as otherwise provided in NCA' s Regulations.
- (2) NCA may refuse Carriage of, and take any necessary step with respect to, items of which Carriage as Baggage is prohibited by the preceding sub-paragraph (1) and may refuse onward Carriage of any such item upon discovery thereof.
  - (3) NCA will refuse to accept fragile or perishable items, money, jewelry, precious metals, negotiable papers, securities or other valuables, business documents, passports or other identification documents necessary for travel or samples as Checked Baggage
  - (4) NCA may refuse to carry Baggage as Checked Baggage in case it is not properly packed in a suitcase or other suitable container to ensure safe Carriage with ordinary care in handling.
  - (5) If any item referred to in sub-paragraph (1) of this paragraph is carried, whether or not Carriage of such item as Baggage is prohibited, such Carriage shall be subject to the limitations of liability and any other provision of these Conditions of Carriage applicable to Carriage of Baggage.

#### **64. SEARCH OF BAGGAGE, etc.**

- (1) NCA may inspect the contents of passenger' s baggage by opening his/her baggage and/or by using some device in the presence of the passenger concerned or a third person, whenever NCA deems it necessary to do so, for the purpose of security (including but not limited to the prevention of unlawful acts of seizure, exercise of control or destruction of aircraft) and/or for any other reason. Notwithstanding the foregoing, NCA may inspect the Passenger's Baggage in his/her or a third person's absence to see whether he/she is in possession of, or his/her Baggage contains, any item referred to in Article 63-(1).
- (2) NCA may search passenger' s articles by touching the passenger through his/her clothes and personal fittings including wigs or by using such instruments as a metal detector, whenever NCA deems it necessary to do so, for the purpose of

preventing unlawful acts of seizure, exercise of control or destruction of aircraft.

- (3) When a passenger does not agree with NCA's inspection as specified in sub-paragraph (1) of this paragraph, NCA will refuse to carry such a passenger's baggage.
- (4) When a passenger does not agree with NCA's search as specified in sub-paragraph (2) of this paragraph, NCA will refuse to carry such a passenger.
- (5) When such dangerous, perishable or unsuitable articles as specified in Article 63-(1) have been found as a result of such inspection or search as specified in sup-paragraph (1) or (2) of this paragraph, NCA may refuse to carry such baggage, or may make necessary disposal of such baggage.

#### **65. CHECKED BAGGAGE**

Nothing contained in these Conditions of Carriage shall entitle a Passenger to have his/her Baggage checked on a flight for which NCA does not accept checking of Baggage.

#### **66. COLLECTION AND DELIVERY OF BAGGAGE**

- (1) A Passenger shall claim and receive his/her Baggage as soon as reasonably possible after it becomes receivable at the Destination or Stopover point.
- (2) The bearer of the Baggage Check and the Baggage Identification Tag(s) issued to a Passenger when his/her Baggage is checked shall be exclusively entitled to accept delivery of the Baggage; provided that a Passenger who fails to present a Baggage Identification Tag(s) may accept delivery of the Baggage if he/she presents to NCA the Baggage Check and if the Baggage is identified by other means. NCA shall not be obligated to ascertain that the bearer of a Baggage Check and a Baggage Identification Tag(s) is truly entitled to accept delivery of the Baggage. NCA shall not be liable for any damage arising out of or in connection with its failure to so ascertain.
- (3) If a person claiming Baggage is unable to receive Baggage pursuant to the preceding sub-paragraph (2), NCA will deliver the Baggage to such person only if he/she establishes to NCA's satisfaction that he/she is duly entitled to receive the Baggage and if such person shall, upon NCA's request, provide NCA with adequate security to indemnify NCA from any loss and damage incurred by NCA in connection with such delivery.
- (4) NCA may, unless precluded by Applicable Laws and if time and other circumstances permit, deliver Checked Baggage to the bearer of a Baggage Check and a Baggage Identification Tag(s) at the place of departure or unscheduled



stopping place if he/she requests such delivery. In delivering Baggage at the place of departure or unscheduled stopping place, NCA will not refund any charges paid for such Baggage.

- (5) Acceptance of delivery of Baggage by the bearer of a Baggage Check and a Baggage Identification Tag(s) without his/her written complaint at the time of the delivery shall constitute *prima facie* evidence that the Baggage has been delivered in good condition and in accordance with the contract with Passenger Carriage.

#### 67. DECLARATION OF BAGGAGE THE VALUE OF WHICH EXCEEDS THE LIMIT OF LIABILITY AND VALUATION CHARGE

A Passenger may declare a value of Baggage in excess of the liability limitation of NCA pursuant to Article 76-(4).

In the event that such declaration is made, Carriage of the Baggage to be performed by NCA shall be subject to a charge at the rate of U.S\$0.50 for each U.S\$100 or any fraction thereof as valuation charge with respect to such excess value; provided that the value of Baggage to be declared by one Passenger shall not exceed U.S\$2,500.

#### [C.ADMINISTRATIVE FORMALITIES]

#### 68. COMPLIANCE WITH APPLICABLE LAWS

Such as countries to be flown from, into or over, NCA's Regulations and instructions to be given by NCA. NCA shall be liable neither for any aid, assistance, guidance or otherwise given by a representative, officer, employee or agent of NCA to the Passenger, whether given orally, in writing or otherwise, in connection with his/her obtaining exit, entry and other necessary documents or complying with or observing such Applicable Laws nor for the Passenger's failure to obtain such documents or to comply with or observe such Applicable Laws as a result of such aid, assistance, guidance or otherwise.

#### 69. PASSPORTS AND VISAS

- (1) (a) A Passenger shall present to NCA all exit, entry or other necessary documents enquired by Applicable Laws of country concerned such as countries to be flown from, into or over, and shall permit NCA, if NCA at its reasonable discretion deems it necessary, to make and retain copies thereof; provided that, even if a Passenger presents exit, entry or other necessary documents to NCA and NCA carry the Passenger, NCA shall not be deemed to

guarantee that such documents comply with Applicable Laws.

(b) NCA reserves the right to refuse Carriage of any Passenger who does not comply in any respect with any of such Applicable Laws or whose exit, entry or other necessary documents are not complete in any respect.

(2) NCA shall not be responsible for any loss or damage incurred by a Passenger, and the Passenger shall indemnify NCA for any loss or damage incurred by NCA, in connection with the Passenger' s failure to comply with this Article.

#### 70. CUSTOMS INSPECTION

Whenever required, a Passenger's Baggage shall, whether checked or unchecked, be subject to any inspection to be conducted by customs or other government officials. NCA shall not be responsible in any respect to a Passenger for his/her failure to comply with this paragraph. A Passenger shall indemnify NCA for any loss or damage incurred by NCA in connection with the Passenger's failure to comply with this paragraph.

#### 71. GOVERNMENT REGULATIONS

NCA shall not be responsible to a Passenger in any respect for its refusal of Carriage of the Passenger if NCA at its reasonable discretion determines, or any Applicable Laws require, such refusal.

#### 72. SECURITY INSPECTION

A Passenger shall submit to any security check required by government or airport officials or by NCA.

### V. LIABILITY OF CARRIERS

#### [A. LIABILITY ON CARGO]

#### 73. DECLARATION OF VALUE

The shipper acknowledges that he has been given an opportunity to make a special declaration of the value of the cargo at delivery and that the sum entered on the face of the air waybill as " shipper' s declared value for carriage" , if in excess of 19 SDR per kilogram, constitutes such declaration of value.

#### 74. LIMITATION OF LIABILITY

NCA' s liability for Cargo is as described in the following provisions, unless the Convention or applicable law may otherwise provide and, under such Convention

or applicable law, any of those provisions shall be null and void for the reason that they relieve the carrier of liability or fix a lower limit than that which is laid down in such Convention or applicable law.

**(Responsibility to Prove)**

- (1) Except as provided in the provisions of Sub-paragraph (2) and (3) below, NCA is liable to the shipper, consignee or any other person for damage sustained in the event of the destruction or loss of, damage to or delay in arrival of any cargo, arising out of or in connection with the carriage of the cargo or other service performed by NCA, upon condition that the occurrence which caused the damage so sustained took place during the carriage by air, provided, however, that NCA is not so liable if NCA proves that any of the following provision of (a), (b) and (c) is applicable or that such damage has not at all been caused by negligence or willful fault of NCA.
  - (a) NCA is not liable for any destruction or loss of, damage to or delay in arrival of cargo directly or indirectly arising out of NCA' s compliance with any applicable laws, or failure of the shipper, consignee or any other person to comply with the same, or any cause beyond NCA' s control.
  - (b) NCA is not liable if the destruction or loss of, or damage to cargo is proved to have resulted solely from the inherent defect, quality, nature or vice of that cargo, (which also means that NCA is not liable under any circumstances for damage to, or destruction of a shipment caused solely by, or as a result of property contained therein). NCA will accept carriage of any shipments, the contents of which are liable to deteriorate or perish due to change in climate, temperature or altitude or other ordinary exposure, or because of length of time in transit, without any responsibility on the part of NCA for loss or damage caused by such deterioration or perishability.
  - (c) NCA will accept carriage of an animal subject to the condition that a shipper or consignee shall observe NCA' s Regulations and shall be fully responsible for such animal. NCA shall not be liable for injury to, or loss, delay in arrival, sickness or death of, such animal caused by any reason whatsoever.
- (2) In the case of the carriage subject to " Warsaw Convention as amended at Montreal" , NCA is liable to the shipper, consignee or any other person for damage sustained in the event of the destruction or loss of, or damage to, cargo, (which means that the damage in connection with delay in arrival of cargo is excluded), arising out of or in connection with the carriage of the cargo or other service performed by NCA incidental thereto, upon condition only that the occurrence which caused the damage so sustained took place during the carriage

by air; provided, however, that NCA is not so liable if NCA proves that the destruction or loss of, or damage to, the cargo resulted solely from one or more of the following:

- a) inherent defect, quality or vice of that cargo;
  - b) defective packing of that cargo performed by a person other than NCA or NCA' s servants or agents;
  - c) an act of war or an armed conflict;
  - d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.
- (3) In the case of the carriage subject to “ Montreal Convention” , NCA is liable to the shipper, consignee or any other person for damage sustained in the event of the destruction or loss of, or damage to, cargo, (which means that the damage in connection with delay in arrival of cargo is excluded), arising out of or in connection with the carriage of the cargo or other service performed by NCA incidental thereto, upon condition only that the occurrence which caused the damage so sustained took place during the carriage by air; provided, however, that NCA is not so liable if and to the extent NCA proves that the destruction or loss of, or damage to, the cargo resulted from one or more of the above (2) a) to d).

**(Limitation of Liability in Value)**

- (4) (a) NCA will calculate the charges for carriage based upon the value declared by the shipper, and, except as provided in the provisions below, any liability of NCA shall in no event exceed the shipper' s declared value for carriage stated on the face of the air waybill, and, in the absence of such declaration by the shipper, the liability of NCA shall be limited to a sum of 19 SDR per kilogram of the cargo destroyed, lost, damaged or delayed.

However, in the case of the carriage subject to “ Warsaw Convention” or “ Warsaw Convention as amended at The Hague” , such limit of liability specified above shall not apply if it is proved that such damage resulted from an act or omission of NCA, NCA' s servants or agents (who was proved to be acting within the scope of NCA's employment), done with intent to cause damage or recklessly and with knowledge that damage would probably result.

- (b) All claims shall be subject to proof of actual value of damage.

**(Other Limitation of Liability)**

- (5) In the event of delivery to consignee, or any other person entitled to delivery, of part but not all of the shipment, or in the event of destruction or loss of, damage to or delay in arrival of part but not all of the shipment, the liability of NCA with respect to the undelivered or damaged portion shall be reduced proportionately on

the basis of weight, notwithstanding the value of any part of the shipment or contents thereof.

- (6) The shipper and consignee, whose property shall cause damage to or destruction of another shipment or of the property of NCA, shall indemnify NCA for all losses and expenses incurred by NCA as a result thereof. Cargo which is likely to endanger chartered aircraft, persons or property may be abandoned or destroyed by NCA at any time without any notice and without any liability therefore attaching to NCA, only if such danger have resulted solely from the property contained in the consignee' s cargo.
- (7) NCA shall not be liable in any event for any consequential or special damage or punitive damages arising from carriage of cargo by charter flight complying with these Conditions of Carriage and NCA' s Regulations, whether or not NCA had knowledge that such damage might arise.
- (8) If the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he derives his rights, NCA shall be wholly or partly exonerated from liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

#### 75. TIME LIMITATIONS ON CLAIMS AND ACTIONS FOR CARGO

- (1) (a) Receipt by the person entitled to delivery of the cargo without complaint shall be prima facie evidence that the same has been delivered in good condition and in accordance with the contract of carriage.
- (b) No action shall be maintained in the case of destruction of or damage to the cargo (including shortage of inner contents of the cargo) unless a written notice, sufficiently describing the cargo concerned, the approximate date of the destruction or damage, and the details of the claim, is presented to an office of NCA within 14 days from the date of receipt thereof; in the case of delay unless presented within 21 days from the date the cargo is placed at the disposal of the person entitled to delivery of the shipment, and in the case of loss (including non-delivery) unless presented within 120 days from the date of issuance of the air waybill, or if an air waybill has not been issued, within 120 days from the date of receipt of the cargo for transportation by the Carrier.
- (c) All claims other than provided in (b) above except any claims relating to personal injury or death, must be made in writing within 270 days from the date of issuance of the air waybill.

- (2) Any right to damages of cargo against NCA shall be extinguished unless an action is brought within 2 years from the date of arrival at the destination, or from the date on which the chartered aircraft ought to have arrived, or from the date on which the carriage by charter flight stopped.

[B. LIABILITY ON PASSENGERS AND BAGGAGE]

76. LIMITATION OF LIABILITY ON PASSENGERS AND BAGGAGE

Except as otherwise provided by the Convention or Applicable Laws, NCA' s liability for death of, or wounding or other bodily injury to, a Passenger, delay in arrival of a Passenger and/or his/her Baggage, or any loss of or damage to any Baggage of a Passenger (hereinafter collectively referred to as "Damage") arising out of or in connection with Carriage or other services incidental thereto performed or provided by NCA shall be as described hereinafter. If there has been contributory negligence on the part of the Passenger, NCA' s liability shall be subject to the applicable law relating to contributory negligence.

- (1) NCA shall not be liable for any damage in respect of Unchecked Baggage not attributable to negligence of NCA. Assistance rendered to a Passenger by a representative, officer, employee or agent of NCA in loading, unloading or transshipping Unchecked Baggage shall be considered as gratuitous service to the Passenger.
- (2) NCA shall not be liable for any damage of passengers and baggage directly or indirectly arising out of its compliance with any Applicable Laws, failure of a Passenger to comply with the same or any cause beyond NCA's control.
- (3) (a) NCA agrees in accordance with Article 22 (1) of the Convention that, as to all International Carriage performed by NCA and as defined in the Convention:
- i) NCA shall not apply the applicable limit of liability based on Article 22 (1) of the Convention in defense of any claim arising out of death of or, wounding or other bodily injury to, a Passenger within the meaning of Article 17 of the Convention. Except as provided in (ii) below, NCA will not waive any defense to such claim which is available under Article 20 (1) of the Convention or any other Applicable Laws.
  - ii) NCA will not, with respect to any claim arising out of death of, or wounding or other bodily injury to, a Passenger within the meaning of Article 17 of the Convention, avail itself of any defense under Article 20 (1) of the Convention up to the sum of 113,100 SDR exclusive of the costs of the claim including attorney's fees which the court finds

reasonable.

- (b) Nothing herein shall be deemed to affect the right of NCA with regard to any claim brought by, on behalf of, or in respect of any person who has willfully caused Damage which resulted in death of, or wounding or other bodily injury to, a Passenger.
- (4) (a) In the case of Carriage subject to the Montreal Convention, NCA' s liability for Baggage shall be limited to 1,131 SDR for each Passenger.
- (b) Except as provided in the provisions of (a) above, NCA' s liability shall be limited to 19SDR (250 French Gold Francs) per kilogram in the case of Checked Baggage and 380SDR (5,000 French Gold Francs) for each Passenger in the case of Unchecked Baggage.
- (c) The limitation referred in (a) and (b) above does not apply if the Passenger shall have declared a higher value in advance and paid additional charges pursuant to paragraph Article 67. In that event, NCA' s liability shall be limited to such higher declared value. In no case shall NCA' s liability exceed the actual amount of Damage suffered by the Passenger. All claims shall be subject to proof by the Passenger of the amount of Damage.
- (5) In the case of Carriage of Checked Baggage from or to a point or points in the United States of America, Canada or any other country provided in NCA' s Regulations, NCA' s liability shall also be subject to the preceding sub-paragraph (4). In the case of such Carriage, the weight of each item of Checked Baggage shall be deemed not to exceed 32 kilograms (70 pounds) and, in case the sub-paragraph (4)(b) applies, NCA' s liability shall, accordingly, be limited to 608SDR (8,000 French Gold Francs).
- (6) In case the sub-paragraph (4)(b) applies, In the event of delivery to a Passenger of a part but not all of his/her Checked Baggage or in the event of Damage with respect to a part but not all of such Baggage, NCA' s liability with respect to the undelivered or the Damage portion shall be reduced proportionately on the basis of the weight of the Baggage, notwithstanding the value of any part of the Baggage or the contents thereof.
- (7) NCA shall not be liable for any damage with respect to a Passenger's Baggage caused by the contents thereof. A Passenger whose property causes damage to another Passenger's Baggage or the property of NCA shall indemnify NCA for all loss and expenses incurred by NCA as a result thereof.
- (8) NCA shall not be liable for any damage to fragile or perishable items, money, jewelry, precious metals, negotiable papers, securities or other valuables,

business documents, passports and other documents necessary for travel or samples which are included in a Passenger's Checked Baggage, irrespective of NCA's knowledge thereof.

- (9) NCA may refuse to accept any article which shall not constitute Baggage under these Conditions of Carriage; provided that, if the article is delivered to and received by NCA, it shall be subject to the Baggage valuation and limitation of liability set forth in these Conditions of Carriage and shall be subject to the rates and charges published by NCA.
- (10) NCA shall not be liable in any event for any consequential or special damage or punitive damages arising from Carriage of passengers and baggage by charter flight complying with these Conditions of Carriage and NCA's Regulations, whether or not NCA had knowledge that such damage might arise.
- (11) Unless otherwise provided in these Conditions of Carriage, NCA reserves any and all right of defense available under the Convention. NCA also reserves a right to make a subrogation claim against a third party which shall have contributed to Damage, with respect to a portion or all of any payment made by NCA in connection with the Damage.

#### **77. TIME LIMITATIONS ON CLAIMS AND ACTIONS FOR PASSENGERS AND/OR BAGGAGE**

- (1) No claim for damage may be made in the case of damage to Baggage, unless the person entitled to delivery complains to an office of NCA forthwith after the discovery thereof and no later than 7 Days from the date of receipt; and, in the case of delay or loss, unless the complaint is made no later than 21 Days from the date on which the Baggage has been (in the case of delay) or should have been (in the case of loss) placed at his/her disposal. Every complaint must be in writing and dispatched within the time aforesaid. In case Carriage is not "International Carriage" as defined in the Convention, failure to give such notice of complaint shall not prevent a claimant's filing a suit if the claimant proves that:
  - (a) it was not reasonably possible for him/her to give such notice;
  - (b) such notice was not given due to fraud on the part of NCA; or
  - (c) NCA had knowledge of the damage to the Passenger's Baggage.
- (2) Any right to damages of passengers and baggage against NCA shall be extinguished unless an action is brought within 2 years reckoned from the date of arrival at the destination, or from the date on which the chartered aircraft ought to have arrived, or from the date on which the carriage by charter flight stopped.



## 78. APPLICABLE LAWS AND REGULATIONS

- (1) Carriage performed by NCA shall be subject to the rules and limitations relating to liability established by the Convention as applicable to the Carriage unless such Carriage is International Carriage to which the Convention does not apply.
- (2) To the extent not in conflict with the provisions of Paragraph (1) above, all carriage by charter flight and other services incidental thereto performed by NCA are subject to:
  - (a) applicable laws (including national laws implementing the Convention or extending the rules of the Convention or extending the rules of the Convention to carriage which is not "international carriage" as defined in the Convention), government regulations, orders and requirements; and
  - (b) these Conditions of Carriage and other NCA's Regulations which may be inspected at any of its downtown offices and its offices at any airports from which it operates regular services.
  - (c) For the purpose of the Convention, the agreed stopping places (which may be altered by NCA in case of necessity) are those places, except the place of departure and the place of destination, set forth in the air waybill or ticket as scheduled stopping places on the route.

## 79. APPLICATION TO AGENT

Any exclusion or limitation of liability of NCA under these Conditions of Carriage and NCA' s Regulations shall also apply to any NCA' s agents, servants or representatives performing their respective duties and to any person or entity whose aircraft is used by NCA for carriage and any of its agents, servants or representatives performing their respective duties. The aggregate amount of the damage payable by NCA, or its agents, servants or representatives shall not exceed the amount of NCA' s limitation of liability under these Conditions of Carriage.

## 80. OVERRIDING LAW

Insofar as any provision contained or referred to in the air waybill or ticket or in the charter agreement or in these Conditions of Carriage or other NCA's Regulations may be contrary to mandatory law, government regulations, orders or requirements, such provision shall remain applicable to the extent that it is not overridden thereby. The invalidity of any provision shall not affect any other part.

**81. MODIFICATION AND WAIVER**

No agent, servant or representative of NCA has authority to alter, modify or waive any provision of the contract of carriage or of these Conditions of Carriage or NCA's Regulations.

**SUPPLEMENTARY PROVISION**

**S-1. EFFECTIVE DATE**

These Conditions of Carriage is effective from December 30, 2009.