

# CONDITIONS OF CARRIAGE

## 国際運送約款

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# Conditions of Carriage / Nippon Cargo Airlines

effective from December 30, 2009

## CONTENTS

### I. GENERAL RULES

1. DEFINITIONS	p. 1
2. APPLICATION OF CONDITIONS	p. 4
3. GRATUITOUS CARRIAGE	p. 4
4. CHARTER AGREEMENT	p. 4
5. CHANGE WITHOUT AGREEMENT	p. 4
6. EFFECTIVE RULES	p. 5

### II. CARRIAGE OF CARGO

#### [A. AIR WAYBILL]

7. PREPARATION BY SHIPPER	p. 5
8. APPARENT ORDER AND CONDITION OF CARGO	p. 5
9. PRERARATION, COMPLETION OR CORRECTION BY CARRIER	p. 5
10. RESPONSIBILITY FOR PARTICULARS AND STATEMENTS	p. 6
11. ALTERATION	p. 6

#### [B. RATES AND CHARGES]

12. APPLICABLE RATES AND CHARGES	p. 6
13. AIRPORT TO AIRPORT	p. 6
14. PRECEDENCE OF RATES AND CHARGES	p. 6
15. QUANTITY REDUCTIONS	p. 6
16. SERVICES NOT INCLUDED IN RATES AND CHARGES	p. 7
17. PAYMENT OF CHARGES	p. 7
18. DISPOSITION OF FRACTIONS	p. 9
19. BASIS OF CHARGES	p. 10
20. MINIMUM CHARGES	p. 10
21. CHARGES FOR DISBURSEMENT	p. 11
22. CHARGES COLLECT FEE	p. 11
23. CHARGES FOR PREPARATION OF AIR WAYBILL	p. 11

24. CONSTRUCTION OF UNPUBLISHED RATES AND CHARGES .....	p. 11
---	-------

**[C. ACCEPTABILITY OF CARGO FOR CARRIAGE]**

25. VALUATION LIMITS .....	p. 11
26. PACKING AND MARKING OF SHIPMENT .....	p. 12
27. CARGO ACCEPTABLE .....	p. 12
28. CARGO ACCEPTABLE ONLY UNDER PRESCRIBED CONDITIONS .....	p. 12
29. RESPONSIBILITY FOR NON-OBSERVANCE OF CONDITIONS RELATED TO SPECIAL CARGO .....	p. 13
30. INSPECTION OF SHIPMENT .....	p. 14
31. UNIT LOAD DEVICES .....	p. 14

**[D. SHIPMENTS IN TRANSIT]**

32. COMPLIANCE WITH GOVERNMENT REQUIREMENTS .....	p. 14
33. DISBURSEMENTS AND VUSTOMS FORMALITIES .....	p. 14
34. CERTAIN RIGHTS OF CARRIER OVER SHIPMENT IN TRANSIT .....	p. 15
35. SCHEDULES, ROUTINGS AND CANCELLATIONS .....	p. 15

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

36. EXERCISE OF RIGHT OF DISPOSITION .....	p. 16
37. SHIPPER'S OPTION .....	p. 17
38. PAYMENT OF EXPENSES .....	p. 17
39. CARRIER'S INABILITY TO COMPLY .....	p. 17
40. EXTENT OF SHIPPER'S RIGHT .....	p. 17

**[F. DELIVERY]**

41. DELIVERY TO CONSIGNEE .....	p. 18
42. NOTICE OF ARRIVAL .....	p. 18
43. FAILURE OF CONSIGNEE TO TAKE DELIVERY .....	p. 18
44. PLACE OF DELIVERY .....	p. 19
45. DISPOSAL OF PERISHABLES .....	p. 19
46. CARGO ATTENDANTS .....	p. 19
47. FORWARDING AND REFORWARDING .....	p. 19

48. TERMINAL SERVICE CHARGES .....	p. 20
------------------------------------	-------

### **III. CARRIAGE OF PASSENGERS**

#### **[A. TICKET]**

49. ISSUANCE OF TICKET .....	p. 20
50. VALIDITY FOR CARRIAGE .....	p. 20
51. NON-TRANSFERABILITY .....	p. 21
52. CHECK-IN .....	p. 21
53. RIGHT TO REFUSE CARRIAGE, etc. ....	p. 21
54. CONDITIONAL ACCEPTANCE FOR CARRIAGE .....	p. 22
55. LIMITATION ON CARRIAGE .....	p. 22

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

56. RESTRICTION OF ACCEPTANCE AS BAGGAGE .....	p. 23
57. SEARCH OF BAGGAGE, etc. ....	p. 23
58. CHECKED BAGGAGE .....	p. 24
59. COLLECTION AND DELIVERY OF BAGGAGE .....	p. 24
60. DECLARATION OF BAGGAGE THE VALUE OF WHICH EXCEEDS THE LIMIT OF LIABILITY AND VALUATION CHARGE .....	p. 25
61. COMPLIANCE WITH APPLICABLE LAWS .....	p. 25
62. PASSPORT AND VISAS .....	p. 26

### **IV. LIABILITY OF CARRIERS**

#### **[A. LIABILITY ON CARGO]**

63. SUCCESSION OF CARRIERS .....	p. 26
64. APPLICABLE LAWS AND REGULATIONS .....	p. 27
65. DECLARATION OF VALUE .....	p. 27
66. LIMITATION OF LIABILITY .....	p. 27
67. TIME LIMITATIONS ON CLAIMS FOR CARGO .....	p. 30
68. TIME LIMITATIONS ON ACTIONS FOR CARGO .....	p. 31

#### **[B. LIABILITY ON PASSENGERS AND BAGGAGE]**

69. LIMITATION OF LIABILITY ON PASSENGERS AND BAGGAGE .....	p. 31
---	-------

70. TIME LIMITATIONS ON CLAIMS FOR PASSENGERS AND/OR BAGGAGE p. 33

71. TIME LIMITATIONS ON ACTIONS FOR PASSENGERS AND/OR BAGGAGE p. 33

72. APPLICATION TO AGENT ..... p. 33

73. OVERRIDING LAW ..... p. 34

74. MODIFICATION AND WAIVER ..... p. 34

## **I. GENERAL RULES**

### **1. DEFINITIONS**

**Advance Arrangement** means any special arrangement between the shipper and carrier, 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 or on behalf of the shipper which evidences the contract between the shipper and carrier for carriage of cargo over the routes of carrier.

**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 an 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 such portion of the ticket which provides for the carriage of passenger's Checked Baggage and which is issued by NCA as a receipt of passenger's Checked Baggage.

**Cargo**, (1) which is equivalent to the term goods, is anything carried or to be carried in an aircraft, other than mail or baggage; provided that unaccompanied baggage moving under an air waybill is cargo.

(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**, which is equivalent to transportation, means the carriage of cargo by air, gratuitous or for reward and the gratuitous carriage of passenger and/or baggage by air.

**Carrier** means air carrier and includes the air carrier issuing the air waybill and ticket and all air carriers that carry or undertake to carry the cargo, passenger and/or his baggage under such air waybill and ticket, or perform or undertake to perform any other services related to such air carriage.

**Charge** means an amount to be paid for carriage of cargo based on the applicable rates for such

carriage, or an amount to be paid for a special or incidental service in connection with the carriage of the cargo.

**Charges Collect** means the charges entered on the air waybill for collection from consignees.

**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 carrier's 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 carrier.

**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 12<sup>th</sup> October, 1929 (hereinafter referred to as the “Warsaw Convention”);

“Warsaw Convention as amended at The Hague in 1955” signed at The Hague on 28<sup>th</sup> September, 1955”;

“Warsaw Convention as amended at The Hague 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 28<sup>th</sup> 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** mean full calendar day, including Sundays and legal holidays; provided that for the purpose of notification the balance of the day upon which notice is dispatched will not be counted, and when the last day falls on Sunday or a legal holiday, such Sunday or legal holiday will 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 according to the contract of carriage.

**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 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** mean NCA’s rules and regulations, other than these Conditions of Carriage, for International Carriage of Cargo, Passenger and Baggage including, but not limited to, NCA’s tables of rates and charges.

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

**Passenger Coupon** means the portion of the passenger ticket constituting the passenger’s written evidence of the contract of carriage.

**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 carrier 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 is in Article 65 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 66-(4), Article 69-(3) and (4) in 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.

**Shipments**, 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 carrier for the carriage of cargo.

**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/her 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 and NCA's Regulations modifies or waives any provision of the Convention.
- (2) To the extent not in conflict with the Convention these Conditions of Carriage shall apply to all carriage of cargo, passenger and/or baggage including all services incidental thereto, performed by NCA at rates and charges published in connection with these Conditions of Carriage.
- (3) In case special agreement is made with regard to a part of these Conditions of Carriage, such agreement is applied notwithstanding any of the articles of the Conditions of Carriage.

## **3. GRATUITOUS CARRIAGE**

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

## **4. CHARTER AGREEMENT**

With respect to carriage of cargo performed pursuant to a charter agreement with NCA, such carriage shall be subject to NCA's conditions in relation to carriage by charter flight.

## **5. CHANGE WITHOUT NOTICE**

Except as may be required by applicable laws, governmental regulations, orders or requirements,

these Conditions of Carriage or NCA's Regulations is subject to change without notice; provided, however, that no such change shall apply to a contract of carriage after the date of issuance of the air waybill and ticket.

## **6. EFFECTIVE RULES**

All carriage of cargo, passenger and/or baggage shall be subject to these Conditions of Carriage and NCA's Regulations in effect on the date of issuance of the air waybill and ticket by NCA.

## **II. CARRIAGE OF CARGO**

### **[A. AIR WAYBILL]**

#### **7. PREPARATION 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. However charges for carriage and other charges, insofar as they have been ascertained, will be inserted in the air waybill by NCA.

(2) NCA may require the shipper to make out, or have made out on his behalf, separate air waybills when there is more than one package or when all of the shipment cannot be carried in one aircraft or cannot, without breach of government requirements or regulations of NCA, be carried on one air waybill.

#### **8. 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 conditions is. 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.

#### **9. PRERARATION, COMPLETION OR CORRECTION BY CARRIER**

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.

## **10. 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, whether 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 Article 9 above.

## **11. 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 carrier.

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

### **12. APPLICABLE RATES AND CHARGES**

Except as otherwise provided in NCA's Regulations, applicable rates and charges for carriage governed by these Conditions of Carriage and NCA's Regulations are those duly published by NCA, and shall be those in effect on the date of issuance of the air waybill. When the rates or charges collected are not the applicable rates or charges, the difference will be refunded to or collected from the shipper or consignee, as may be appropriate.

### **13. AIRPORT TO AIRPORT**

Except as otherwise provided in NCA's Regulations, rates and charges apply only for carriage from airport of departure to airport of destination.

### **14. PRECEDENCE OF RATES AND CHARGES**

Except as otherwise provided in NCA's Regulations, a through rate or charges published in NCA's Regulations takes precedence over the combination of intermediate rates or charges applicable between the same points via the same routings.

### **15. QUANTITY REDUCTIONS**

When two or more rates subject to different minimum quantities are provided on the same commodity in the same shipping form from and to the same point over the same route, the lowest

of the charges specified below will apply:

- (1) The charges computed on the quantity shipped at the rate applicable to such quantity.
- (2) The charges computed on the next greater quantity, for which a lower rate is provided at the rate applicable to such greater quantity.
- (3) The charge applicable to planeload shipments.

## **16. SERVICES NOT INCLUDED IN RATES AND CHARGES**

Published rates and charges cover the carriage of shipments by air between airports or other landing places at or near the points shown in the published rates and charges. Except as otherwise specifically provided in NCA's Regulations, such published rates and charges do not include the following services and charges:

- (1) Pick-up, delivery and city terminal service to and from the airport from which NCA operates;
- (2) Storage and warehouse services and facilities;
- (3) Insurance charges;
- (4) Advanced charges;
- (5) Expenses incurred by NCA in clearing the cargo through customs, or incurred by any other person whether acting as agent for the shipper, the consignee, the owner of the cargo, or carrier;
- (6) Charges or penalties imposed or collected by government authority, including duties and taxes;
- (7) Expenses incurred by NCA in repairing faulty packing;
- (8) Charges for carriage of cargo forwarded, transshipped or reforwarded by any other transportation service, or returned to the point of origin or beyond the point of destination;
- (9) Any other similar services or charges.

## **17. PAYMENT OF CHARGES**

(1) Subject to currency exchange laws, government regulations and acceptability to NCA, payment of charges may be in a currency other than the currency in which the rates or charges are published. The rate of exchange established by NCA will be used to convert the published rate or charge into the selling currency at the rate of exchange as follows:

- a) In the case of a charges prepaid shipment (that is, a shipment on which the charges are to be paid by the shipper at the time of acceptance of shipment for carriage), the rate of exchange is effect on the date of issuance of the air waybill.

- b) In the case of a charges collect shipment (that is, a shipment on which the charges are to be paid by the consignee at the time of delivery of shipment), the rate of exchange in effect on the date on which notification of the arrival of the shipment has been dispatched to the consignee.
- (2) Full applicable charges, whether prepaid or collect, fees, duties, taxes, charges advances and payments, 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. No claim for loss or damage to a shipment will be entertained until all transportation charges 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 transportation charges.
- (3) With respect to any charges, expenses or disbursements which cannot be determined at the time when the cargo is handed over for carriage, NCA may require the shipper to deposit with NCA a sum estimated by NCA to be sufficient to cover such charges, expenses and disbursements. Any balance due from NCA to the shipper or from the shipper to NCA in connection with such deposit shall be paid after completion of the contract of carriage and determination of the exact amount of such charges, expenses and disbursements.
- (4) Except when NCA agrees in advance to extend credit, all charges applicable to a shipment are payable in cash or other means of payment acceptable to NCA at the time of acceptance of the shipment by NCA, in the case of a charges prepaid shipment (that is, a shipment on which the charges are to be paid by the shipper at the time of acceptance of shipment for carriage), or at the time of delivery thereof by NCA, in the case of a charges collect shipment (that is, a shipment on which the charges are to be paid by the consignee at the time of delivery of shipment).
- (5) The shipper guarantees payment of all unpaid charges, advances and disbursements of NCA, and 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 making, 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;
- e) incorrect statement of weight or volume;

By taking delivery or exercising any other right arising from the contract of carriage, the consignee agrees to pay all such charges, sums and advances, 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 so 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 lien 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 concern 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.

- (6) If the gross weight, measurement, quantity or declared value of the cargo exceeds the gross weight, measurement, quantity or declared value on which charges for carriage have been previously computed, NCA shall be entitled to require payment of the charge on such excess.
- (7) Changes from charges prepaid to charges collect or vice versa may be permitted; provided that the request is made by the shipper in writing prior to delivery of the shipment to the consignee or his agent.

## **18. DISPOSITION OF FRACTIONS**

- (1) When the computation of rates or charges results in an amount ending in a fraction, such fraction will be rounded to the nearest rounding-off unit in accordance with NCA's Regulations.
- (2) In computing cubic dimensions, fractions of less than one half centimeter or one half inch will be dropped and fractions of one half centimeter or one half inch or more will be considered as one centimeter or one inch.
- (3) Fractions of one half kilogram or less will be charged for as a half kilogram and fractions over the half kilogram will be charged for as the next higher whole kilogram.
- (4) Fractions of a pound will be assessed at the charge for the next higher pound.
- (5) Cubic measurements will be based on the greatest rectangular dimensions of the package, or

where the packages are tied together, on the greatest rectangular dimensions of the tied group of the packages. Greatest rectangular dimensions will be based on the greatest height times greatest width times greatest length of the package.

## **19. BASIS OF CHARGES**

Except as otherwise provided in NCA's Regulations, rates and charges for carriage will consist of the total of the weight or volume charge, whichever is greater, and, if applicable, the valuation charges as specified below:

- (1) Charges will be computed on the basis of weight or volume as follows determined at the airport of departure and the computation resulting in the higher charge will be assessed:
  - a) When applicable rates and charges are published per kilogram, charges will be assessed on the gross weight of the shipment and charges for shipments with cubic measurement exceeding 6,000 cubic centimeters per kilogram will be assessed on the basis of one kilogram for each 6,000 cubic centimeters, and measurements of 3,000 cubic centimeters or less will be charged for as a one half kilogram; and measurements over 3,000 cubic centimeters will be charged for as a next higher whole kilogram.
  - b) When applicable rates and charges are published per pound, charges will be assessed on the gross weight of the shipment and charges for shipments with cubic measurements exceeding 166 cubic inches per pound will be assessed on the basis of one pound for each 166 cubic inches or fraction thereof.
- (2)
  - a) The shipper must make a declaration of value for carriage on the air waybill of all shipments regardless of whether or not charges based on value are applicable.
  - b) Such declaration of value may be in any amount, provided that "NVD" (No Value Declared) may constitute such declaration.
- (3)
  - 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.

## **20. MINIMUM CHARGES**

Except as otherwise provided in NCA's Regulations, a minimum charge per shipment as specified in NCA's Regulations will be assessed whenever a lower total charge (excluding valuation charge)

is computed on the basis of the applicable rate and actual weight (or volume) of the shipment.

## **21. 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.

## **22. CHARGES COLLECT FEE**

A fee for charges collect service shall be assessed at the airport of destination as provided in NCA's Regulations.

## **23. CHARGES FOR PREPARATION OF AIR WAYBILL**

A documentation charge as provided in NCA's Regulations shall be assessed when NCA makes out or completes the Air Waybill.

## **24. CONSTRUCTION OF UNPUBLISHED RATES AND CHARGES**

When the rate or charge between any two points is not specifically published, such rate or charge will be constructed as provided in NCA's Regulations.

## **[C. ACCEPTABILITY OF CARGO FOR CARRIAGE]**

### **25. 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 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 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 aircraft, but may be divided between two or more aircraft at the sole discretion of NCA. NCA reserves the right to refuse to transport in any one aircraft, shipments having declared values in the aggregate



which violate or lead to the violation of the rule of this Article.

## **26. PACKING AND MARKING OF SHIPMENT**

- (1) Shipper is responsible for ensuring that the cargo is packed in an appropriate way for air carriage so as to ensure it can be carried safely with ordinary care in handling and so as not to injure or damage any person, goods or property. Each package shall be legible and durably marked with the name and full street address of the shipper and consignee.
- (2) Package containing valuables as defined in NCA's Regulations must be sealed in a method approved by NCA.

## **27. CARGO ACCEPTABLE**

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

- (1) 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;
- (2) they are packed in a manner suitable for carriage by aircraft;
- (3) they are accompanied by the requisite shipping documents;
- (4) they are not likely to endanger aircraft, persons or property, or cause annoyance to passengers.

## **28. CARGO ACCEPTABLE ONLY UNDER PRESCRIBED CONDITIONS**

- (1) The following goods as defined by NCA will only be accepted for carriage 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) Shipments will be accepted for carriage by NCA either on a charges prepaid shipment basis or a charges collect shipment basis, except that NCA will decline to transport the following on a charges collect shipment basis unless advance arrangement therefore has been made:
  - a) Shipments to persons restrained of their liberty;
  - b) Shipments addressed to government agencies, except when shipped by government agents presenting proper credentials;
  - c) Shipments not equal in resale value to transportation charges thereon;
  - d) Shipments of perishable commodities;
  - e) Shipments to countries where currency regulations or NCA's Regulations do not permit shipments to be delivered upon a charges collect shipment basis;
  - f) Live animals, including, but not limited to, livestock, birds, reptiles, fish, shellfish, insects, and pets;
  - g) Shipments of human remains; or
  - h) Unaccompanied baggage.
- (3) Packages or pieces of unusual weight shape or size will not be accepted for carriage unless advance arrangements have been made. Shipments requiring special devices for safe handling will be accepted for carriage only when such special devices are provided and operated by and at the expenses of the shipper or consignee.
- (4) Shipments with a floor-bearing weight per unit square in excess of the floor load limitation specified in NCA's Regulations must be furnished with a suitable skid or base, for use in available 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.

## **29. 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 or is acceptable for carriage or is acceptable only under certain conditions, rests upon 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.

### **30. 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.

### **31. 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]**

### **32. COMPLIANCE WITH GOVERNMENT REQUIREMENTS**

- (1) The shipper shall comply with all applicable laws, customs and other government regulations 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 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 and regulations. 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 the shipper, consignee or any other person for loss or expense due to shipper's failure to comply with this provision.
- (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.

### **33. 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 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 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 and original.

#### **34. CERTAIN RIGHTS OF CARRIER 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.

#### **35. SCHEDULES, ROUTINGS AND CANCELLATIONS**

- (1) Times shown in timetables or elsewhere are approximate and not guaranteed and form no part of the contract of carriage. No time is fixed for the commencement or completion of carriage or delivery of cargo and NCA may without notice substitute alternate carriers or aircraft. Except as otherwise provided in NCA's Regulations NCA assumes no obligation to carry the cargo by any specified aircraft or over any particular route or routes or to make connection at any point according to any particular schedule, and NCA may select or deviate from the route or routes of shipment notwithstanding that the same may be stated on the face of the air waybill. In such case that shipper guarantees payment of all charges and advance.
- (2) NCA will not be responsible for errors or omissions either in timetables or other representations of schedules. No employee, agent or representative of NCA is authorized to bind NCA by any statements or representations as to the dates or times of departure or arrival, or of the operation of any flight.
- (3) NCA may, without notice, cancel, terminate, divert, postpone, delay or advance, any flight, or the further right of carriage, or proceed with any flight without all or any part of the cargo, if it considers that it would be advisable to do so,
  - a) because of any fact beyond its control (including, but without limitation, meteorological conditions, acts of God, force majeure, strikes, riots, civil commotion, embargoes, wars, hostilities, disturbances, or unsettled international conditions) actual, threatened or reported, or because of any delay, demand, condition, circumstance, or requirement due,

- directly or indirectly, to such facts; or
- b) because of any fact not 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.
- (4) NCA may cancel the carriage of cargo upon refusal of the shipper, after demand by NCA to pay the charges or portion thereof so demanded, without being subject to any liability therefore.
- (5) In the event any flight or any other transportation is so cancelled, terminated, diverted, postponed delayed or advanced at a place other than the place of destination, or the carriage of any shipment is so cancelled, terminated, diverted, postponed, delayed or advanced, NCA shall not be under any liability with respect thereto. In the event carriage 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 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.
- (6) 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 as between shipments and other cargo, mail and passengers, 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 flight without all or any part of the goods in one shipment.

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

##### **36. 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.

### **37. SHIPPER'S OPTION**

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

- (1) by withdrawing it at the airport of departure or of destination;
- (2) by stopping it in the course of the journey on any landing;
- (3) 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
- (4) by requiring it to be returned to the airport of departure.

### **38. 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 exercises of his right of disposition. The shipper shall reimburse NCA for any expenses occasioned by the exercise of his right of disposition.

### **39. CARRIER'S INABILITY TO COMPLY**

Notwithstanding the provision of Article 36, 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 instruction of the shipper. In such event NCA shall so inform him promptly. The cost of so doing attaches to the cargo.

### **40. 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 shown 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]**

### **41. 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, unless such consignee is one of the carriers participating in the carriage, in which event delivery shall be made to the person indicated on the face of the air waybill as the person to be notified. 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 regulation, 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 42 below.
- (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.

### **42. NOTICE OF ARRIVAL**

Unless the shipment is to be reforwarded in accordance with Article 47, 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.

### **43. FAILURE OF CONSIGNEE TO TAKE DELIVERY**

- (1) Subject to the provisions of Article 45 below, if the consignee refuses or fails to take delivery of the shipment after its arrival at the place of delivery, NCA will endeavor to comply with any instructions of the shipper set forth on the face of the air waybill. If such instructions are not 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.

#### **44. 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.

#### **45. 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.

#### **46. CARGO ATTENDANTS**

Subject to advance arrangement, NCA will transport cargo attendants for the purpose of accompanying shipments when necessary for the protection of shipment, other property, the aircraft or its crew. Except as otherwise provided in NCA's Regulations, such transportation of attendants will be subject to NCA's Conditions of Carriage.

#### **47. FORWARDING AND REFORWARDING**

The cargo (or packages said to contain the cargo) described on the face of the air waybill, is



accepted for carriage 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, 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 Chapter IV. [A]. In any other event, when NCA is the issuing carrier or last carrier under the agreement to carry, respectively, in forwarding or reforwarding the cargo, NCA shall do so only as agent of the 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 willful fault. The 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 air waybill), 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.

#### **48. TERMINAL SERVICE CHARGES**

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

### **III. CARRIAGE OF PASSENGERS**

#### **[A. TICKET]**

#### **49. 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.

#### **50. 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.

## **51. NON-TRANSFERABILITY**

A Ticket shall not be transferable. NCA shall not be liable to any person entitled to be carried for honoring 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 unauthorized person or for loss, destruction or delay in arrival of, or damage to, such unauthorized person's Baggage or other personal property arising from or in connection with such unauthorized use.

## **52. CHECK-IN**

A Passenger shall arrival 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 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 provision of this Article.

## **53. RIGHT TO REFUSE CARRIAGE, etc.**

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 62 (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 of 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 NCA's receipt thereof;

- (4) the Passenger falls under Article 57;
- (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, electric games or other electric 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.

#### **54. 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.

#### **55. LIMITATION ON CARRIAGE**

If the total weight of the Passengers boarding, and/or Baggage loaded in, and 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]**

**56. RESTRICTION OF ACCEPTANCE AS BAGGAGE**

- (1) NCA will refuse to accept 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 and 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.

**57. 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 56 (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 56 (1) have been found as a result of such inspection or search as specified in sub-paragraph (1) or (2) of this paragraph, NCA may refuse to carry such Baggage, or may make necessary disposal of such baggage.

#### **58. 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.

#### **59. 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.

#### **60. 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 69 (4) and (5). 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.

#### **61. COMPLIANCE WITH APPLICABLE LAWS**

A Passenger shall comply with and observe all Applicable Laws of countries concerned 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 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.

## **62. PASSPORT AND VISAS**

- (1) a) A Passenger shall present to NCA all exit, entry or other necessary documents required 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.
- (3) 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 the paragraph.
- (4) 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.
- (5) A Passenger shall submit to any security check required by government or airport officials or by NCA.

## **IV. LIABILITY OF CARRIERS**

### **[A. LIABILITY ON CARGO]**

## **63. SUCCESSIONAL CARRIERS**

Carriage to be performed under one air waybill by several successive carriers is regarded as a single operation.

## **64. APPLICABLE LAWS AND REGULATIONS**

- (1) Carriage, performed by NCA shall be subject to the rule 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, whether or not there be a break in the carriage or transshipment.
- (2) To the extent not in conflict with the provisions above, all carriage 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 NCA’s Regulations which may be inspected at any of its downtown offices and its offices in any airports from which it operates regular services.
- (3) 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, or shown in carrier’s timetable as scheduled stopping places on the route.

#### **65. 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.

#### **66. LIMITATION OF LIABILITY**

NCA’s liability 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 or 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 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 cause 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 or 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.

(5) In the event of delivery to the 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 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) When NCA issues an air waybill for carriage over the lines of another carrier, NCA does so only as agent of such carrier. NCA shall not be liable for the destruction, loss, damage or delay of cargo not occurring on its own line, except that the consignor shall have a right of action for such destruction, loss, damage or delay on the terms herein provided against NCA when NCA is the first carrier under the agreement to carry, and the consignee who is entitled to delivery shall have such a right of action against NCA when NCA is the last carrier under the agreement to carry.
- (8) NCA shall not be liable in any event for any consequential or special damage or punitive damages arising from carriage complying with these Conditions of Carriage and NCA's Regulations, whether or not NCA had knowledge that such damage might arise.
- (9) 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 derived 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.

#### **67. TIME LIMITATIONS ON CLAIMS FOR CARGO**

- (1) 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.
- (2) 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 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.
- (3) All claims other than provided in (2) 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.

## **68. TIME LIMITATIONS ON ACTIONS FOR CARGO**

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 aircraft ought to have arrived or from the date on which the carriage by flight stopped.

## **[B. LIABILITY ON PASSENGERS AND BAGGAGE]**

### **69. 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 of passengers and baggage 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) Where the Convention other than the Montreal Convention applies;
  - 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, 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 Article 60. 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 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.
- (8) 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.

(9) NCA shall not be liable in any event for any consequential or special damage or punitive damages arising from Carriage of Passengers and Baggage complying with these Conditions of Carriage and NCA's Regulations, whether or not NCA had knowledge that such damage might arise.

(10) 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.

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

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.

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

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 aircraft ought to have arrived, or from the date on which the carriage by flight stopped.

#### **72. 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.

### **73. OVERRIDING LAW**

Insofar as any provision contained or referred to in the air waybill or in these Conditions of Carriage or 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.

### **74. 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.