



The Aircraft Charter Contract – What You Need to Know in the Era of Covid-19

By Kathleen H. Breckenridge

Aircraft charter is an excellent way to experience the advantages of business or personal jet travel and in this time of social distancing charter may be the safest way to avoid the possibility of infection. Charter flights also usually utilize smaller airports and fixed base operators within larger airports allowing the charter passengers to avoid crowded airports and TSA inspections. Whether you are an experienced or a first-time charter customer you should be aware of some important issues before you sign on the dotted line for your next charter.

Aircraft charter companies range from large (75 or more aircraft) to very small (one or two aircraft) and their fleets can range from ultra long range large aircraft to small propeller aircraft. Many smaller charter operators work through the various charter brokers, who are not themselves charter certificate holders (and consequently do not operate the charter flights) but who broker the flights, arrange for catering, ground transportation, billing and other amenities and interface directly with the charter customer. The larger charter providers act as their own broker and provide full service from initial contact with the charter customer throughout the flight experience. Charter companies today are generally taking precautions to appeal to the charter customer who may be concerned about the safety of commercial air travel during the Covid-19 pandemic.

Types of Charter Agreements

Charter contracts may be for one flight, a series of flights, and/or for multiple flights on a single aircraft or multiple flights on multiple aircraft.

Single flight charter agreements are typically negotiated with a charter broker and not with the actual charter operator. The customer is presented with a quote from the charter broker containing some terms of payment and a “General Terms and Conditions” document (“T & C’s”) from the charter certificate holder, similar to a T & C’s Statement that the airlines post on their websites.

This is mostly a “take it or leave it” type of situation. Ask to see the charter operator’s general terms and conditions as many operators have updated their Covid-19 related assurances. If there are none, you can request that the operator provide assurances of cleaning protocols and regular testing of employees and third-party service providers, such as catering services, fixed base operators or ground transportation services. These can be memorialized in a side letter or amendment to the T & C’s.

In a Block Charter Agreement, a charter customer purchases a set number of hours per year in a certain type of aircraft, usually directly from the charter operator. Because this may represent a significant amount of business, especially to a small charter operator, a charter customer may have substantially more leverage to negotiate the terms of an agreement. Again, these types of charter operators will likely have T&C’s either posted on their website or they will provide with the Block Charter Agreement, and they should be reviewed for assurances on Covid-19 protocols. If there are none request a side letter or amendment to the T & C’s that includes such procedures.

A more recent type of charter program (similar to Block Charter) is a Jet Card Program in which a charter customer deposits a set amount of money and the charter company draws down that amount over a set term. These programs are usually provided by one of the larger charter companies and allow the charter of any fleet aircraft with variable rates depending on the size of the aircraft. Some Jet Card Programs have a set term and others allow draw downs to continue until the balance reaches zero and with replenishment of the balance the term continues. Although Jet Card companies are not as willing to negotiate business terms in their card agreements, they will often agree to amend insurance or default provisions by means of a separate amendment. If their T & C’s do not contain any Covid-19 assurances this would be the place to address them.

Jet Card companies and Block Charter providers are charter operators but also often use third-party charter operators for additional lift during their busiest times. Make sure that any third-party operators provided under these agreements adhere to the same standards as the primary charter operator.

Below are some other some key issues that should be considered by a potential charter customer when negotiating with a charter company.

Aviation Safety

All charter operators must be licensed by the FAA which requires that they hold a Part 135 Air Carrier Certificate. In addition, there are several organizations that review Part 135 air carriers and qualify their safety practices and records. Wyvern and ARGUS are two such companies and their websites allow searches to check the safety rating of any particular operator in their program. It is important for the customer to request the name of the operator, even in the case where the customer has a contract directly with a charter operator, to make sure that that particular charter company is operating the charter and not hiring a third-party operator to conduct the flight. If the customer has engaged a charter broker the customer will also need to request the name of the

operator. Customers can also request that charter companies or brokers only engage Wyvern registered or ARGUS rated (a Gold Plus or Platinum ARGUS rating indicates the operator participates in the ISBAO safety management system) charter operators for the customer's flights.

Insurance Provisions

Charter customers should request that the charter company name them as an additional insured with respect to liability coverage for the customer and any officers, directors, shareholders, members, managers, employees, agents or guests of customer. The customer, although not operating the aircraft, could still have liability risk in the case of an accident, since everyone that is in any way involved is usually named in a lawsuit. The additional insured status should also include a waiver of subrogation by the insurance company in favor of the charter customer with respect to aircraft physical damage and liability coverage, should be primary without recourse to any other insurance available to customer and contain an invalidation clause to protect the customer should the charter operator or any other insured invalidates the policy .

Customer should request a clause stating the insurance provided by the charter company is primary to any other insurance available to the charter customer (more about additional insurance below) and advance written notice of deletion, cancellation or material changes in coverage for the charter company's insurance policy be provided to the charter customer.

Additionally, customer should request that the charter company provide customer with a Certificate of Insurance from the insurer verifying the above coverages and any policy endorsements before any flight or flights. Care should also be taken to make sure there is adequate insurance coverage for the size of the aircraft and the type of mission. Small aircraft insurance coverages vary from \$50-100 million and large aircraft could be \$300 million or more. International flights may require certain minimum coverages or special types of policies.

If the customer's request for additional insured status is denied or the charter operator is hiring third-party operators to complete the customer's flights there is the option of purchasing a Non-Owned Aircraft Liability policy, which will provide coverage for all aircraft chartered or leased by the customer.

Default Provisions

Charter customers, especially those who are making a large deposit in advance for charter hours, should make sure any agreement contains provisions describing default of the charter company, including bankruptcy, lateness or cancellations not caused by force majeure and also surrender, suspension or revocation of the company's FAA Air Charter Certificate. The charter company should also be required to return any unused deposit funds in the case of a charter company default.

Confidentiality

Charter companies are usually able to accommodate customer requests for confidentiality provisions including requiring its personnel to sign individual Confidentiality Agreements, although if crew is required to sign this may have to be done at the very last minute, while boarding the flight.

Conclusion

If chartering an aircraft is part of your business or personal plan for any reason, but especially now to avoid Covid-19, it is a wise decision to have both experienced aviation counsel and your risk management department or insurance broker review the charter agreements to maximize your protection from infection as well as other risks associated with chartering an aircraft.



Kathleen H. Breckenridge has represented private and corporate aircraft owners and operators for over fourteen years. She concentrates her practice in the areas of business and tax planning, U.S. aircraft export and import, acquisitions and sales, leasing, fractional ownership, and chartering and management of corporate aircraft. Ms. Breckenridge's world-wide clients have benefited from her invaluable experience with complex international transactions. Ms. Breckenridge has authored articles for Business Aviation Advisors, World Aircraft Sales Management, China Daily, and Asia Weekly and she is registered to the Bar Association in Missouri, Kansas and Illinois. For more information please visit www.coolinglaw.com.