

General Terms and Conditions of Sale

Introductory article

1. Purpose of service

AirRefund is a company established in Switzerland. Its purpose is to support passengers who have been denied boarding, suffered long delays or flight cancellations, in the process of claiming entitled compensation under current legislation. Such a service is not a substitute for the advice of a legal professional.

2. Definition of terms

- « **AirRefund** » or « Agent »: company entered in the trade register of the canton of Geneva under number CH-660.0.717.014-3, located at 3bis, chemin de la Marbrerie 1227 Carouge, Geneva (Switzerland).
- « **Client** » or « Principal »: the passenger or their legal representative having signed a Letter of Authority authorising an Agent to act upon their behalf, and thereby accept these General Terms and Conditions of Sale.
- « Contract » or « Mandate »: an agreement between the **Client** and **AirRefund** entered into after the **Client** has read and accepted these General Terms and Conditions of Sale and has signed the Letter of Authority.
- « Airline » or « Air carrier »: the air carrier company designated in the transport contract that performs or intends to perform a flight under a contract with a passenger and whose flight is the subject of a Claim.
- « Legal Counsel »: legal officer duly appointed by the **Client** who transfers all powers to defend their interests in legal proceedings.
- « Current Legislation »: all rules (law, regulation, directive, case law) issued by the authority of a federal, European, national or regional state governing the rules relating to the compensation of air passengers who were denied boarding, suffered long delays or flight cancellations.
- « Regulation (EC) »: Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91
- « Claim »: any compensation request made by a passenger to an airline in order to obtain compensation under current legislation.
- « Claim File »: For the purposes of enforcing a passenger's rights, a Claim file is made up of personal identification data of that passenger, relevant documents supporting the admissibility/eligibility of the compensation Claim and written or electronic communications between **AirRefund** and the airline.

- « Commission »: In the event of a successful outcome, AirRefund deducts a Commission calculated depending on the total amount of the compensation obtained on behalf of the Client for the damage suffered. The calculation method of the Commission is expressly described in the Contract signed by the Client.

Article 1: Agreement

The legal agreement between the Client and AirRefund is a Letter of Authority subject to Articles 394 and following of the Swiss Code of Obligations.

The contract is entered into after the Client has accepted the General Terms and Conditions of Sale, signed the Letter of Authority and accepted that AirRefund supports the management of the Claim that it considers to be admissible. AirRefund acts in the name of and on behalf of its Clients who delegate the authority to act through the Mandate.

Under the Contract between the Client and AirRefund, these General Terms and Conditions of Sale constitute all rights and obligations that each party undertakes to observe with loyalty and diligence.

Purpose of the Agreement:

- AirRefund is authorised to represent its Client in all out-of-court actions to secure compensation from the Airline and specifically, but not limited to, sending emails, formal notices etc.;
- AirRefund is authorised to collect compensation in the name of and on behalf of the Client;
- Under the Contract, AirRefund reserves the right to refuse to initiate compensation proceedings or to discontinue compensation proceedings at any time in view of the Client's situation, the documents communicated and/or the information provided by the Airline. In such cases, AirRefund shall notify the Client within a reasonable time frame and the Client shall regain the freedom to proceed with any negotiation or proceedings they deem useful or necessary to enforce their rights before the Airline.

Article 2: AirRefund's commitments

AirRefund undertakes to:

- Review and assess the compensation request made by the Client in light of current legislation;
- Cover all costs incurred and not to invoice any cost other than its commission, except in the event of cancellation by the Client and/or termination of the contract due to a serious breach by the Client of their obligations. (see Article 4.2);
- Perform their duties with care and diligence, abiding by current legislation;

- Report to the **Client** on the progress of the compensation Claim made in their name and on their behalf;
- Pay the **Client** the compensation obtained in the currency of the country of residence of the **Client**, minus the commission of **AirRefund**. The **Client** will choose the payment method among those available;
- Transfer, if necessary and without any cost to the **Client**, the compensation Claim to a legal counsel who will start the pre-litigation and/or litigation stage to obtain compensation for the disruption suffered, provided that the **Client's** Claim has been deemed sufficiently reliable by **AirRefund** to be argued before the relevant courts;

The **Client** remains free to decline the expertise of the legal counsel chosen by **AirRefund**. However, **AirRefund** reserves the right to refuse to pay the fees of the legal counsel chosen by the **Client**, particularly based on the financial terms of their services. In the absence of an agreement on the choice of legal counsel, the contract shall be terminated in accordance with the law.

AirRefund's obligation is an obligation by means whereby the company undertakes to do its utmost to successfully perform the duties assigned. This agreement is entered into with no guarantee of success. **AirRefund** shall not be held liable in the event of an unsuccessful outcome.

Article 3: The Client's commitments

The **Client** undertakes to:

- Be of legal age and not be subject to any legal protection measure which alters their legal capacity to act on the day of conclusion of this agreement, and to inform **AirRefund** if any measure of legal protection is taken during the Mandate;
- Appoint **AirRefund** as sole Agent allowing them to review all information provided by the airline;
- Share with **AirRefund** any correspondence received from the Airline whether by phone, mail or email, prior to or subsequent to entering into this agreement;
- Submit a real and genuine compensation Claim, insofar as any information and document provided by them must not be falsified nor misrepresented and must offer an objective, sincere and truthful view of the situation;
- Provide any document required by **AirRefund** as soon as possible. The **Client** shall check that the information transmitted is authentic and shall notify **AirRefund** of any change that may affect the compensation Claim;
- Work closely with **AirRefund** and together carry out the procedures necessary for a successful outcome. In order to stay in contact with **AirRefund**, the **Client** undertakes to be available, in particular by ensuring their computer equipment is working, their email address is accessible and their internet connection is working effectively;
- Not interfere with the course of action taken by **AirRefund**, particularly by contacting in parallel and/or directly the Airline. The negotiation of a settlement either amicably or in

court which is outside of the scope of this contract and without the express agreement of AirRefund will result in the termination of the aforementioned agreement and all costs unnecessarily incurred by AirRefund will be invoiced (see article 4);

Follow the instructions given by AirRefund or the appointed Legal Counsel.

If the compensation amount is at least the minimum according to Article 7 of the Regulation (EC), the Client authorizes AirRefund to accept on their behalf the proposed amount without their express consent. Otherwise, if the amount proposed is below the mentioned regulatory stipulations, AirRefund requires the agreement of the Client before accepting any compensation.

However, if the Client accepts a non-monetary compensation from the Airline – good(s), service(s), loyalty points (e.g. miles) -, the Client recognises that AirRefund's commission could be calculated depending on the value of the said goods, services or loyalty points received by way of compensation for the suffered disruption.

Article 4: Costs and Expenses

1. Commission « Success fee ».

AirRefund or the duly appointed Legal Counsel shall collect the sums awarded by the Airline in the name of and on behalf of the Client.

Only in the event of a successful outcome, AirRefund will deduct a commission as defined in the letter of authority signed by the Client.

This commission will not vary regardless of the management, the duration or the complexity of the actions undertaken by AirRefund or its correspondents. Such commission is invoiced by AirRefund to the Client as soon as the compensation from the Airline is received in its escrow account.

The Client shall comply with the tax provisions of their country of residence in terms of any tax they may have to pay for the sums received.

In the event that the involvement of Legal Counsel is required, the Client acknowledges that the sums obtained for legal fees, or on the basis of Articles 699 and 700 of the French Civil Procedure Code (or any other equivalent provisions in the signatory countries to the (EC) Regulation), are not included in the calculation of the compensation as they are intended to cover costs incurred by AirRefund and the Legal Counsel appointed in handling the legal proceedings of the Claim.

2. Costs.

The Client may be required to refund any administrative costs incurred in vain by AirRefund should they fail to meet their contractual obligations, including, but not restricted to:

- If the Client has intentionally supplied false information, the knowledge of which appeared to be essential and crucial in the understanding of flight disruption and in entering into the agreement. Answers communicated when completing the form and/or during email exchanges between the Client and AirRefund must be understood as being essential and crucial to the Claim.

- If the **Client** has reached a settlement with the Airline outside of the scope of the agreement with **AirRefund** or the appointed Legal Counsel, without having notified them.
- If the **Client** intentionally fails to provide **AirRefund** with the necessary documents for handling the Claim.
- If, on their own initiative, the **Client** revokes the agreement with **AirRefund** or if they enter into a contract with a competitor company to handle the same dispute.

Bank or exchange fees relating to the payment of the compensation may be charged to the **Client**.

The possible costs that may be charged to the **Client** amount to €50 (VAT included) when **AirRefund** was in charge of the Claim management for less than three (3) months between the day of the signature of the Letter of Authority and the day **AirRefund** acknowledged the breach of the **client** of their obligations. The possible costs will be of €100 (VAT included) if the Claim management period lasted more than three (3) months.

Article 5: Data protection

AirRefund is liable for the protection of collected data which is subject to computer processing under the following provisions:

- Directive No 95/46/EC of 24 October 1995 on the protection of individuals with regards to the processing of personal data and the free movement of such data
- Decision No 2000/518/EC of 26 July 2000 pursuant to Directive No 95/46/EC regarding the recognition of the adequate protection of personal data provided in Switzerland;
- Swiss Federal Data Protection Act (LPD) of 19 June 1992, entered into force on 1 January 2014;
- The recommendations of the Swiss Federal Data Protection Commissioner (PFPDT) regarding data protection and its transparency.

The **Client** authorises **AirRefund** to process their personal data. The aforementioned data is to be used to handle Claims so as to satisfy the compensation Claim and defend the **client**'s interests as effectively as possible.

Personal data shall only be kept for the time strictly necessary for **AirRefund** to perform its duties and no longer than one year after the case is closed, that is when the **Client** is notified of the expiration of their Letter of Authority.

The **Client** is held responsible for the veracity of any information communicated.

To do so, the **Client** has the right to access and rectify data which they may exercise by sending a written request by email to contact@airrefund.com or by mail to:

AirRefund
3bis, chemin de la Marbrerie
1227 Carouge, Geneva (Switzerland)

Article 6: End of Agreement

1. Cooling-off period

The **Client** may withdraw their request for **AirRefund** to handle their Claim within 14 calendar days from the following day the aforementioned agreement is entered into.

Should the **Client** exercise their right to withdraw during the cooling-off period, no withdrawal cost will be charged.

2. Termination

In order to terminate the aforementioned agreement, the **Client** must make the request by registered post with proof of delivery. The termination shall take effect upon the receipt of the letter by **AirRefund**.

The appointment of a new Agent for the same Claim causes termination upon notification.

3. Withdrawal

AirRefund may decide to stop the management of the Claim. In such instances, **AirRefund** will support all costs incurred.

AirRefund shall notify the **Client** of their decision by any means, particularly by email. The withdrawal takes effect on the date the notification is sent.

AirRefund reserves the right to terminate this contract, should circumstances render the Claim submitted by the **Client** inadmissible, particularly, but not limited to, in the following circumstances:

- unfavorable rulings by the relevant court;
- grounds for exemption from liability reported by the Airline;
- overturning of case law.

Termination is automatic in the event of a serious breach of contractual obligations by one of the parties.

4. Expiry of the Agreement

The agreement ends with the success of the Claim, i.e. when the compensation awarded by the Airline is paid to the **Client** and the Commission of **AirRefund** has been deducted.

The **Client** will be notified of the expiration of their Letter of Authority by email when the compensation is paid.

The personal nature of the agreement means that it must be terminated immediately in the event of the death of the **Client**.

Article 7: Applicable law and competent court

In the event that the variations between the different translations of these General Terms and Conditions of Sale vary, the French version will be taken as the reference.

In the event of a legal dispute, especially because of the interpretation or the performance of this agreement or of this General Terms and Conditions of Sale, the **Client** and **AirRefund** shall try to reach an amicable agreement.

Otherwise, and if the case is brought before a court, the dispute resolution shall fall within the jurisdiction of the following courts: the courts of the ordinary residence of the **Client** or the courts of the Canton of Geneva is the legal action is brought by the **Client**; or the place of ordinary residence of the **Client** is the legal action is brought by **AirRefund**.

In accordance with consumer provisions, the applicable law is the one of the usual residence of the **Client**.

If a provision of these General Terms and Conditions of Sale is, or becomes ineffective, illegal or unenforceable, it does not, in any way, affect the validity of all other provisions.

September 2016 Edition