

## **General terms and conditions (GTC)**

### **§ 1 Scope of application**

1.1 Anemis llc (hereinafter "Provider") is the owner and operator of the cancelled.ch service.

1.2 These GTC govern the business relations between the Provider and persons who enter into a contract with the Provider for the purpose of reimbursement of compensation payments on the basis of EU Regulation 261/2004 (EC) No. 261/2004 and the case law based thereon or the Convention for the Unification of Certain Rules Relating to International Carriage by Air ("Montreal Convention", SR 0.748.411) (hereinafter referred to as the "Customer").

1.3 By placing an order with the Provider, the Customer accepts these terms and conditions.

1.4 Deviating regulations shall only apply if they have been expressly agreed upon in writing between the Provider and the Customer.

1.5 By written agreement with its Customer, the Provider is free to deviate from these provisions and/or to offer services not contained in these provisions.

### **§ 2 Subject matter of the contract**

2.1 The Customer commissions the Provider to enforce any compensation and/or refunds payments it may be entitled to on the basis of Regulation (EC) No. 261/2004 and the case law based thereon as a result of delay, cancellation or denied boarding or on the basis of the Montreal Convention. This claim is directed exclusively against an airline company. The Provider owes the Customer action and careful execution of the order entrusted to it. Success is not owed. For the purpose of enforcement, the Customer authorizes the Provider to enforce the claim in his name.

2.2 The Provider reserves itself the right to decide independently whether the claims are to be enforced out of court or in court and how this should be done in detail. In the event of extrajudicial as well as judicial enforcement, the Provider may forward all necessary information of the Customer to a third party commissioned by the Provider for the exclusive enforcement of the claim. For this purpose, the Provider may commission third parties, both domestically and abroad. A judicial enforcement can take place only with consent of the Customer. The Customer of the Provider shall not incur any costs in the event of judicial enforcement.

2.3 The claim is deemed to have been enforced in court as soon as a court has ruled on the matter or the Airline acknowledges the asserted claim after initiation of a court procedure.

### **§ 3 Conclusion of the contract**

3.1 The contract is concluded with the complete electronic transmission of the data provided by the Customer through the cancelled.ch claim-check tool. By the transmission of the data the Customer instructs the Provider in the sense of an agency contract according to Art. 394 et seq. of the Swiss Code of Obligations.

3.2 The subsequent physical signing of the power of attorney provided to the Customer authorizes the Provider to act on behalf of the customer vis-à-vis third parties.

### **§ 4 Amount of claim**

With regard to a specific flight the cancelled.ch claim-check tool, tells the customer whether a claim for compensation could exist. In addition, the customer receives an estimate of the amount of his claim. This information represents a pure forecast for the future, which is in no way binding for the provider.

### **§ 5 Duties and obligations of customers**

5.1 The customer is obliged to provide the supplier with the information necessary for the execution of the order and to provide. He shall provide the Provider with all documents and information required (e.g. boarding passes, other proofs of flight, correspondence with the airline) and submit new information and documents to the airline without being requested to do so and without delay. The customer is responsible for the completeness and correctness of the documents and information.

5.2 The power of attorney which is made available to the customer after transmission of the data pursuant to Clause 3.1 must be signed by the customer and returned to the provider either by post or electronically. If the customer does not comply with this obligation within 30 days, the provider is entitled to an immediate right of withdrawal with which it is released from any obligations.

5.3 The customer is obliged to inform the provider without delay if he and/or any passengers registered by him receive services from the airlines or if the airlines contact him.

5.4 By submitting his claim via the cancelled.ch claim-check tool of the Provider, the Customer accepts these GTC and confirms that he is the legal owner of the claim and has not already commissioned a third party to enforce it.

5.5 If the customer violates Clause 5.4 and the provider incurs additional costs as a result, the customer undertakes to bear these costs. In any case, the Provider may demand a one-off lump sum payment of CHF 50 excl. VAT from the defaulting customer in the event of a breach of Clause 5.4.

5.6 By commissioning the Provider pursuant to Clause 3.1, the Customer agrees that he shall not commission or independently assert any third party to enforce the claims submitted pursuant to Clause 2.1 until completion or termination of the contract.

5.7 If the customer transfers already submitted claims according to item 2.1 or otherwise legally encumbers these, he is obliged to inform the provider immediately.

### **§ 6 Remuneration**

6.1 In the event of successful enforcement of claims in accordance with Clause 2.1, the provider shall receive a commission of 30% (incl. VAT), which shall be deducted directly from the remuneration paid by the airlines.

6.2 In case of judicial enforcement, the commission is generally 40%. The same applies to the successful judicial or extrajudicial enforcement of claims which are not eligible under Swiss case law. The provider reserves itself the right to round the commission for cent or centime amounts.

6.3 In the event of successful judicial enforcement of the claim pursuant to Clause 2.1, the Provider shall additionally be entitled, in addition to the commission, to the customer's compensation awarded by the court, if any.

6.4 In the event of successful judicial enforcement of a claim pursuant to Clause 2.1, the customer undertakes to pay the judicial compensation awarded to him pursuant to Clause 6.2 to the provider. The customer of the provider receives only the remuneration according to Clause 6.1.

6.5 The commission is calculated on the basis of the amounts paid by the airline, including interest on arrears. If only a part of the claimed amount is enforced by the Provider, the commission is calculated on the enforced part. The same applies if a settlement is reached with the airline.

6.6 If the Airline, with the consent of the Customer, does not settle a claim according to Clause 2.1 by cash payment but by an alternative service (e.g. flight vouchers) the Provider shall be entitled to a commission in cash, which, unless otherwise agreed, shall be calculated based on the value of the alternative service.

6.7 The Provider is also entitled to a commission if the airline made the payment directly to the Provider's customer (e.g., by cheque or credit card remittance). This also applies if the payment was not caused directly by the actions of the Provider. The commission must be transferred to the Provider within 30 days of receipt of the payments.

6.8 If the provider's enforcement efforts are unsuccessful, the customer will not incur any costs. This applies even if a third party has been commissioned by the Provider to enforce the claim.

6.9 If the provider incurs additional costs when receiving the compensation payment made by the airline, these will be charged to the customer of the provider.

6.10 If the customer of the provider is registered with a partner legal protection insurance, the latter will pay the commission of the provider, if the insurance cover is appropriate. In such case, in the event of a successful enforcement, the entire remuneration is passed on to the customer.

6.11 If the customer does not respond without reason after the examination of the facts of the flight irregularity, the provider is entitled to charge a lump sum of CHF 15 excl. VAT for the Examination

### **§ 7 Billing, payment**

7.1 The customer must inform the provider of an account to which the provider can transfer the remuneration received from the airline, less the commission according to Clause 6.1. In the event that the customer does not have a SEPA account, any charges incurred by the Provider for the transfer or payment shall be borne by the customer.

7.2 If the Customer fails to provide the Provider with the data relevant to the receipt of its remuneration, the Provider shall notify the Customer by e-mail or telephone up to three times within a period of two months. If within one month of the third notification the data relevant for the acceptance of the remuneration are not made available, the customer automatically and completely waives his remuneration to the provider and the provider can freely dispose of this.

7.3 If the customer receives payments from the provider which are intended for fellow travellers, he hereby guarantees that he will forward these pro rata to the fellow travellers.

### **§ 8 Commissioning of third parties**

8.1 The customer authorizes the third party commissioned by the provider (e.g. partner lawyer) to perform all legal acts in his name in order to enforce his rights against the airline. The Provider undertakes to bear the costs of the third party commissioned by it.

8.2 The customer permits the provider to grant the third party access to the necessary documents/information. The customer undertakes, if necessary, to answer questions of the third party on the facts directly.

8.3 Should the enforcement of the compensation not be successful even after the assignment of a third party, the provider bears all the costs of the commissioning.

The Provider shall also assume other costs in connection with legal proceedings (including court costs, the costs of the opposing lawyer as well as any additional costs incurred in international legal disputes and arbitration tribunals) if these are not reimbursed by the Airline.

### **§ 9 Data protection**

The data protection declaration is part of these general terms and conditions and can be accessed at any time on cancelled.ch under the heading data protection.

### **§ 10 Legal matters**

#### **10.1 Salvatorian clause**

Should individual provisions of the GTC including these provisions be or become invalid in whole or in part, the validity of the remaining provisions or parts of such provisions shall remain unaffected. Instead of the ineffective or missing regulations the respective legal regulations are applicable.

#### **10.2 Multilingualism**

The present General Terms and Conditions are available in several languages. The German version takes precedence.

#### **10.3 Applicable law and place of jurisdiction**

Swiss law shall apply to the contractual relationships and the resulting legal effects between the Provider and the Customer. The place of jurisdiction for all disputes arising from the contractual relationship between the Provider and the Customer shall be Hünenberg AG (CH).

GTC: 01 January 2023

### **cancelled.ch**

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