

Happy Delay | General Terms and Conditions

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Article 1 - Definitions

Within the context of these General Terms and Conditions, the terms defined in this provision shall have the meaning as described in this provision.

1. Airline: The Airline against whom Client holds the Claim
2. Happy Delay: The limited liability company Happy Delay B.V., with its statutory seat in Utrecht, the Netherlands and registered with the Dutch Chamber of Commerce (Kamer van Koophandel) under 71518835 being the owner and user of the Website.
3. Client: Any visitor of the Website and any person that has concluded a Claim Sale Agreement or on whose behalf a Claim Sale Agreement was concluded, regardless of whether a Deed of Assignment has been concluded.
4. Deed of Assignment: A deed indicated as Deed of Assignment, by which the Client assigns a Claim to Happy Delay.
5. Regulation: Regulation (EC) 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.
6. Ambassador: A Client that makes use of Happy Delay's Ambassador Program as described in article 15.
7. Claim: Any Claim existing under article 7 of the Regulation.
8. Notice of Final Acceptance: A notice by Happy Delay to Client indicating that Happy Delay wishes to acquire the Claim from Client by way of a Deed of Assignment.
9. Claim Sale Agreement: An agreement binding the Client to sell a Claim to Happy Delay upon the issuance of a Notice of Final Acceptance by Happy Delay.
10. Claim Submission Process: The screens visible on the Website directly connected with the submission of the Claim resulting in the Claim Sale Agreement that either resulted in a Preliminary Acceptance or a Final Acceptance.
11. Unique Claim ID: A unique number stated on each Deed of Assignment.
12. Purchase Price: The price paid by or payable by Happy Delay to Client to purchase the Claim according to the Claim Sale Agreement and/or Deed of Assignment.
13. Website:
www.happydelay.com, www.happydelay.eu, www.happydelay.nl, www.happydelay.de,
www.happydelay.fr, www.happydelay.es, www.happydelay.uk, www.happydelay.co.uk,
www.happydelay.it, www.happydelay.be

Article 2 - Scope of application

1. These General Terms and Conditions apply on every offer, sale, transaction or any other agreement or relationship between Happy Delay and Client.
2. These General Terms and Conditions are permanently available on the website of Happy Delay, are explicitly approved in the Claim Submission Process and are referred to in the Deed of Assignment. Therefore, during the Claim Submission Process and by signing the Deed of Assignment, Client explicitly confirms to have read, understood and to accept these General Terms and Conditions and to agree that the General Terms and Conditions are inextricably linked and are fully part of the contractual relationship between the Client and Happy Delay.
3. If besides these General Terms and Conditions, special conditions apply between Happy Delay and the Client, these General Terms and Conditions shall equally apply to these special conditions. In case of a conflict between these General Terms and Conditions and these special conditions, the special conditions shall apply.
4. If the Client has its own general terms and conditions and/or a similar document providing for contractual terms, the Client explicitly confirms by contracting with Happy Delay that only these General Terms and Conditions shall apply and that its own general terms and conditions and/or similar documents providing for contractual terms shall not apply.
5. Should any provision of these General Terms and Conditions be or become illegal, invalid or unenforceable under the law of any jurisdiction, the legality, validity or enforceability in that jurisdiction of the other provisions of these General Terms and Conditions shall not be affected thereby. The invalid or unenforceable provision shall be deemed to be substituted by a suitable and equitable provision which, to the extent legally permissible, comes as close as possible to the intent and purpose of the invalid or unenforceable provision.
6. A failure to exercise, or delay in exercising, a right or remedy under these General Terms and Conditions or by law does not impair or constitute a waiver of the right or remedy or an impairment of or a waiver of any other rights or remedies. No single or partial exercise of a right or remedy under these General Terms and Conditions or by Law shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

Article 3 - Offer by Happy Delay

1. Client acknowledges that the offer by Happy Delay contains a comprehensive and accurate description of that offer by Happy Delay that enables Client to evaluate that offer.
2. Happy Delay offers its services to passengers of airlines who have encountered a delay of three hours or more, a cancellation or who have involuntarily been denied boarding and that appear to satisfy the other criteria determined in the Regulation to entitle the passenger to a compensation under the Regulation.
3. During the Claim Submission Process, Client first enters the flight details and certain information regarding the delay, cancellation or boarding denial. Based on such information, Happy Delay makes a preliminary assessment of whether Client may be eligible for compensation under the Regulation and whether the Claim falls within Happy

Delay's claim acceptance policy. If the preliminary assessment is positive, Client is requested to provide certain personal data.

4. Upon completion of the Claim Submission Process, Client and Happy Delay shall either
 - a) enter into a Claim Sale Agreement as provided in Article 4 if Happy Delay believes it requires further information to determine the validity of the Claim; or
 - b) conclude a Deed of Assignment, by which Client transfers the Claim to Happy Delay and obliging Happy Delay to pay the Purchase Price to Client.

Article 4 - Claim Sale Agreement

1. If Happy Delay cannot immediately accept the Claim and requires further time to assess the validity of the Claim upon finalization of the Claim Submission Process, Happy Delay will offer Client a Claim Sale Agreement.
2. The Claim Sale Agreement provides that Happy Delay shall assess the validity of the Claim and that upon receiving a Notice of Final Acceptance from Happy Delay, Client shall assign the Claim to Happy Delay by signing a Deed of Assignment and to provide Happy Delay with further information as stipulated in the Claim Sale Agreement.

Article 5 - General representations by Client

Client represents that:

1. All information and/or documents provided to Happy Delay to be accurate, authentic, valid and complete, including but not limited to the information and/or documents provided in the Claim Submission Process;
2. Client has not contacted the airline with the aim of collecting the Claim;
3. With respect to the Claim, Client has not contacted any (other) organization that handles flight delay claims pursuant to Regulation EC 261/2004 on behalf of passengers or that purchases such claims from passengers;
4. Client has not accepted forms of compensation with regard to the Claim, such as, but not limited to cash or vouchers from the airline or any other party with respect to the Claim. Such compensation does not include regular hotel accommodation, regular telecommunication services and regular food and beverages up to the time at which Client arrived at its final destination;
5. Client is at least 18 years old at the time of the conclusion of any contracts with Happy Delay;
6. Client is authorized to conclude the contracts that it enters into with Happy Delay and in case Client also concludes such contracts on behalf of other persons, Client is authorized to represent such persons;
7. Client is the owner of the Claim and no third parties have any rights with respect to the Claim;
8. Client represents that it is not bankrupt, in receivership, in moratorium and that no custodian has any authority with regard to the assignment of the Claim.

Article 6 - Representations regarding the cause of a delay, cancellation or boarding denial

Client represents that the Claim is the result of:

1. A delay of a flight as a result of which Client arrived at its place of destination with a delay of at least three hours; or
2. A cancellation as a result of which Client arrived at its place of destination with a delay of at least two hours (if the Flight was not longer than 1,500km), three hours (if the flight had a distance of 1,500 to 3,500km or had a distance of longer than 1,500 and was within the EU), or four hours (all other flights); or
3. An involuntary boarding denial that was not caused by Client.

If the Claim relates to a delay or cancellation, Client hereby declares that this delay or cancellation was not caused by any of the following:

1. natural phenomena rendering impossible the safe operation of the flight and/or causing congestions at the airport of departure or destination;
2. security risks, acts of sabotage or terrorism rendering impossible the safe operation of the flight;
3. life-threatening health risks or medical emergencies necessitating the interruption or deviation of the flight concerned;
4. air traffic management restrictions or closure of airspace or an airport;
5. labour disputes at the operating air carrier announced less than 24 hours before departure;
6. labour disputes at essential service providers such as airports and Air Navigation Service Providers;
7. a collision with objects in the air, such as "bird strikes";

Article 7 - Incorrect representations or fraud

In case any of the representations in this General Terms and Conditions or any representations made during the Claim Submission Process are considered by Happy Delay to be incorrect, such as to the sole discretion of Happy Delay, Happy Delay shall have the right to annul the Deed of Assignment that was concluded with Client and collect the Purchase Price from the bank account of Client, plus a compensation of the actual expenses incurred by Happy Delay, which expenses shall be considered to amount to at least EUR 200. To direct debit this amount from Client's bank account, Client has granted a SEPA authorization to Happy Delay. If Client has insufficient funds on its bank account or revokes the SEPA authorization, Happy Delay shall commence further collection processes at the expense of Client, which expenses shall amount to at least EUR 200 and Client shall be due an interest rate of 10% per annum.

In the event of willful fraud by Client, Happy Delay will always press criminal charges against Client. Furthermore, Client shall compensate Happy Delay for any and all costs incurred by Happy Delay associated with this fraud, which costs shall amount to at least EUR 2,000 per claim. Furthermore, Client shall in that case pay an interest to Happy Delay of 20% per annum.

Article 8 - Power of Attorney

If for whatever reason the assignment of a Claim has not taken place validly through the Deed of Assignment (implying that Client is still the legal owner of the Claim):

1. Client grants an irrevocable Power of Attorney to Happy Delay, which Power of Attorney is hereby accepted by Happy Delay, to collect the Claim from the Airline and to conduct any and all activities at Happy Delay's own expense that may be helpful in the collection of that claim;
2. Client grants an irrevocable Power of Attorney to Happy Delay, which Power of Attorney is hereby accepted by Happy Delay, to collect the Claim on the bank account of Happy Delay or any bank account designated by Happy Delay;
3. Client grants an irrevocable Power of Attorney to Happy Delay, which Power of Attorney is hereby accepted by Happy Delay, to wholly or partly offset any amounts that Client may owe to Happy Delay (if any) against the amount of the Claim paid by the Airline to the bank account designated by Happy Delay.

Article 9 - Right of withdrawal

1. Client may withdraw from the Claim Sale Agreement within 14 days after the conclusion thereof without obligation to pay any compensation and without stating reasons. Happy Delay shall confirm such withdrawal within 10 business days after such withdrawal.
2. However, Client shall no longer have a right of withdrawal if Happy Delay has already paid the entire Purchase Price of the Claim to the Client. If and to the extent the previous sentence is or becomes illegal or unenforceable, Happy Delay shall remain the owner of the Claim until Client has repaid the Purchase Price to Happy Delay.
3. To correctly and quickly complete the withdrawal process, Client shall complete the withdrawal form available via Client's Happy Delay account. If Client does not have a Happy Delay account, client may also validly withdraw from the Claim Sale Agreement by sending an email titled "Withdrawal Notice" to info@happydelay.com stating the Unique Claim ID of the Claim.

Article 10 - Price and payment

1. The Purchase Price of any Claim is determined in the Deed of Assignment.
2. Happy Delay shall remit the Purchase Price to the bank account designated by Client within 10 business days after the conclusion of a Deed of Assignment. Happy Delay is not responsible for delays in the receipt of any payment from Happy Delay caused by third parties.
3. Client shall be responsible for the accuracy of the bank account information provided to Happy Delay. Happy Delay is not required to verify the accuracy of such information and is not responsible for any payments to an incorrect bank account caused by incorrect information provided by Client. Happy Delay shall be deemed to have fulfilled its payment obligations to Client if the payment is made to the bank account designated by Client.
4. If for whatever reason the amount of the Claim is paid by the Airline to a bank account of Client or a third party acting on behalf of Client after Client has concluded a Deed of Assignment with Happy Delay, Client shall inform Happy Delay thereof within a period of ten business days upon the receipt of such payment and shall pay such amount to a

- bank account designated by Happy Delay within a period of five business days after receiving payment instructions from Happy Delay regarding the foregoing payment.
5. If due to any error a Purchase Price is stated in the Claim Sale Agreement or in the Deed of Assignment that exceeds 70% less VAT of the nominal value of the Claim, Happy Delay shall have the right to (A) ask Client to adjust the Purchase Price, or (B) terminate and/or nullify the Claim Sale Agreement or Deed of Assignment.

Article 11 - Client contact with airline

1. Upon conclusion of a Claim Sale Agreement, client shall not be allowed to have any contact with the airline in relation to the Claim. If the airline approaches Client in relation to the Claim, Client shall direct the airline to Happy Delay and decline any other comments.
2. Client shall inform Happy Delay of any contact sought by the airline in relation to the Claim within a period of 5 business days after being approached by the airline.
3. Client shall pro-actively inform Happy Delay of any information, statements or offers provided by the airline in relation to the Claim and shall forward any correspondence from the airline to Happy Delay in relation to the Claim within a period of 5 business days of receiving such correspondence.
4. If Client has not complied with the terms of this provision and Happy Delay fails to collect at least 143% of the Purchase Price from the airline, Client shall pay to Happy Delay an amount equal to the difference between the amount received by Happy Delay from the Airline and 143% of the Purchase Price.

Article 12 - Authorizations and assistance

1. Client authorizes Happy Delay to inform the Airline of the conclusion of a Deed of Assignment between Client and Happy Delay, to collect payment from the Airline and if required enter into legal proceedings against the Airline.
2. Client authorizes Happy Delay to, at the choice of Happy Delay, inform the Airline of the assignment of the Claim by way of providing the Letter of Direction contained in Annex 1 to the Deed of Assignment.
3. After conclusion of a Claim Sale Agreement or Deed of Assignment, Client shall provide any reasonable assistance to Happy Delay with regard to obtaining information regarding the Claim or the collection of the Claim from the airline. Such assistance shall be provided free of charge, although Happy Delay shall reimburse any expenses Client may incur that relate to the aforementioned assistance, provided such expenses have been pre-approved by Happy Delay and Client is able to present third party invoices for such expenses.

Article 13 - Limitation of liability

1. In no event shall Happy Delay be responsible for any damages caused by the unavailability of its website or services caused by external factors to which Happy Delay has no influence, such as force majeure.
2. Happy Delay invests significant resources in the security of its website, network, systems and to comply with all applicable regulations. If despite the foregoing any damage is caused to Client or to third parties as a result of any breach of Happy Delay's cyber

security, Happy Delay shall not be liable for such damages unless in case of gross negligence or willful misconduct by Happy Delay.

3. The liability of Happy Delay towards Client shall in no event exceed the Purchase Price

Article 14 - Happy Delay Account

1. A Client has the option of creating a Happy Delay Account, which serves to make website and Claim Submission Process more user friendly, gain access to the Ambassador Program or receive other additional benefits or discounts from Happy Delay that are not available to unregistered users.
2. If a Client chooses to create a Happy Delay Account, Client is recommended to use a secure password that is preferably not used for many other purposes. Client is responsible for any activity occurring via its Happy Delay Account.
3. The Happy Delay Account shall be used only for the purposes designated in paragraph 1 of this article or other purposes approved by Happy Delay. Happy Delay reserves the right to terminate or restrict access to the Client's Happy Delay Account if it suspects that the Happy Delay Account is being used for purposes other than the purposes designated in paragraph 1 of this article, in particular if it is being used for purposes that conflict with the interests of Happy Delay or its business partners.
4. By creating a Happy Delay Account, Client authorizes Happy Delay to store the data provided by Client to Happy Delay as part of its Client Account with the aim of improving Client's user experience of the Happy Delay Website.

Article 15 - Ambassador Program

A Client that (a) is currently experiencing a delay, cancellation or boarding denial and (b) is physically present in or near the airport of departure or arrival or on a flight, and (c) is happy about the services of Happy Delay, may decide to take part of Happy Delay's Ambassador Program. The Ambassador Program offers unique advantages not available to regular Clients. Clients subscribed to the Ambassador Program shall be referred to as Ambassador. The terms of the Ambassador Program are as follows:

1. Ambassadors shall receive the following advantages:
 - a) Direct cash at an amount pre-agreed between Happy Delay and Client for each additional passenger that uses the unique Ambassadors Code provided by Happy Delay to Ambassador for the designated flight;
 - b) Real time advice and assistance by Happy Delay's professionals in dealing with the practical difficulties of a delay, cancellation or boarding denial (you are helping us, so we help you);
 - c) Other advantages that Happy Delay may offer to Ambassador.
2. Ambassador shall be asked to perform the following:
 - a) Providing further background information to Happy Delay about the cause of the delay or cancellation and all relevant circumstances;
 - b) If Happy Delay believes that the delay, cancellation or boarding denial should entitle Ambassador to compensation under Regulation EC 261/2004, Ambassador is encouraged to inform other travelers on the same flight of their rights and the possibility of selling their claim to Happy Delay. Ambassadors are encouraged to share the Ambassadors Code with other travelers on the same flight. By using the Ambassadors Code, such other travelers will receive additional benefits.

3. Ambassador is free to perform the activities under 2 or not and, if Ambassador decides to perform such activities, he or she shall be free to do so in a manner and at a time he or she desires and shall not be subject to detailed supervision or instructions from Happy Delay.
4. Notwithstanding the foregoing, Ambassador is expected to perform the activities mentioned under 2 in a manner that does not conflict with the interests of Happy Delay. Happy Delay shall be able to disallow any Ambassador or Client access to the Ambassador Program if, at the sole discretion of Happy Delay, the Ambassador has not met, does not meet and/or is unlikely to meet the aforementioned requirement or if Happy Delay sees an increased risk that Client (if it were to become an Ambassador) does not meet this requirement.
5. Ambassador shall not present itself as an employee or representative of Happy Delay but merely as a satisfied customer. Ambassador may provide general information about the services of Happy Delay and how Happy Delay has helped him (by giving the Ambassador "cash right away" in exchange for a certain low margin), but shall refrain from making an offer on behalf of Happy Delay or relaying an offer from Happy Delay.
6. Happy Delay shall be able to amend and/or terminate and/or suspend the Ambassador Program at any time without prior notice and without stating reasons. Such termination or suspension shall not have retroactive effect and shall (therefore) not release Happy Delay from any pre-existing obligations under the Ambassador Program.

Article 16 - Partial invalidity

If, at any time, any provision of the General Terms and Conditions is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

Article 17 - Entire Agreement

Unless specifically indicated otherwise, this Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. This Agreement may not be modified or amended other than by an agreement in writing.

Article 18 - Website

Happy Delay deserves the right to restrict access to its website if it suspects that any Client is using the website for purposes that are illegal or conflict with the interests of Happy Delay or its business partners.

Article 19 - Intellectual property

All contents of the website of Happy Delay, including but not limited to logos, texts, trademarks, domain names corporate names, slogans, designs and other indicia of origin, together with all translations, adaptations, derivations and combinations thereof, all applications, registrations and renewals for the foregoing are the intellectual property of Happy Delay and may not be used by any other person or entity without the prior written approval by Happy Delay.

Article 20 - Force Majeure

1. Happy Delay shall not be bound to any obligations to Client and shall not be liable for any delays or failures in performance resulting directly or indirectly from events beyond its reasonable control including, without limitation, terrorist acts, unavailability of sufficient funds due to actions by third parties beyond the control of Happy Delay, inability by subcontractors or other third parties to timely perform certain activities that are essential in the business processes of Happy Delay, government interference, breakdowns or malfunctions, interruptions or malfunctions of computer facilities including cyber attacks, power failures, loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.
2. The foregoing shall apply not only if the performance of Happy Delay becomes impossible, but also if such performance becomes unreasonably more difficult or expensive (which is in any case if the costs associated with the performance by Happy Delay would exceed the 43% of the Purchase Price)
3. Happy Delay shall provide Client prompt notice as soon as practicable in the event that any such delay or failure in performance occurs and shall keep Client apprised of developments and mitigation effort with respect thereto.

Article 21 - Privacy

Happy Delay collects, stores and uses certain personal data from Client for the purpose of purchasing the Claim from Client and collecting the payment of the Claim from the Airline. Further, Happy Delay may collect, store and use personal data from Client as part of its Ambassador Program or via the Happy Delay Account. In collecting, storing and using such personal data, Happy Delay shall comply with all applicable laws and regulations. Client accepts that the nature of Happy Delay's business (purchasing and collecting claims) may involve sharing personal data from Client with airlines, government authorities, courts or third parties engaged by Happy Delay for purposes of the collection of the Claim. Happy Delay refers to its Privacy Statement available on the Website, which is an intrinsic part of these General Terms and Conditions.

Article 22 - Complaints

1. Should Client be of the view that Happy Delay has not satisfied one or more of its contractual obligations, Client shall inform Happy Delay thereof by way of a written notification (for example by email). Such complaints can be addressed to complaints@happydelay.com.

2. As from that point, Happy Delay shall have 15 working days as from the receipt of the aforementioned written notification to solve the problem and/or explain why Happy Delay has acted the way it did.
3. When sending the written notification as referred to in paragraph 1 and 2 of this article, Client shall explain its views and share any relevant correspondence it has received from Happy Delay.
4. Client shall not start any legal procedures, including but not limited to an appeal with a court, mediation or arbitration and shall not terminate, withdraw from or nullify any agreements with Happy Delay before having sent the written notification referred to in this article and the lapsing of the period referred to in paragraph 2 of this article.

Article 23 - Interpretation

1. The titles of the articles in these General Terms and Conditions only serve to improve the ease of reference and will not be of relevance for the interpretation of the various articles included in these General Terms and Conditions.
2. Any masculine pronoun includes the feminine, and the singular number includes the plural and the plural the singular, whenever applicable.
3. Unless indicated otherwise, any prices and values are expressed in Euro.

Article 24 - Choice of law and forum

1. This Agreement, and all rights, remedies, liabilities, powers and duties of the parties to this Agreement, shall be governed by and construed in accordance with the laws of the Netherlands without regard to principles of conflicts of laws.
2. Any and all disputes that may arise between parties fall under the exclusive jurisdiction of the competent courts in the Netherlands.

Article 25 - Governing language

1. These General Terms and Conditions are drawn up in the English language. If these General Terms and Conditions are translated into another language, the English language shall prevail.
2. All correspondence between Happy Delay and Client shall take place in English. Client and Happy Delay may however agree to use another language in their correspondence. This shall however not affect the applicability of any translated versions of these General Terms and Conditions.