

# General Terms and Conditions for the sale and/or delivery of goods, data or services



## 1 Scope

These General Terms and Conditions ("GTC") of skyguide, swiss air navigation services ltd, route de pré-bois 15 -17, case postale 796, CH – 1215 Genève 15 ("skyguide"), apply to all Agreements treating the sale and/or delivery of any goods, data or services (the deliverables) to the Customer, a company or person(s).

Customer's terms and conditions only apply if expressly accepted by skyguide in writing.

Changes and/or Amendments to these GTC must be outlined in the Agreement.

The most current version of these GTC can be downloaded at [www.skyguide.ch](http://www.skyguide.ch).

## 2 Order of Precedence

The Agreement consists of the main body of the Agreement, its Annexes and the GTC. In the event of discrepancies or contradictions between certain contractual documents, the following order of precedence shall apply:

- a. the Agreement
- b. Annex(es)
- c. GTC

In case of contradiction between Annexes, the provisions of the younger Annex shall prevail over the provisions of the older Annex.

## 3 Definitions in alphabetical order

- a. "Agreement" means all documents signed by the Parties, consisting of the articles therein and the Annexes listed in and all documents referenced therein.
- b. "Party" or "Parties" means one or both, the Customer or/and skyguide, as the context requires.

Unless the context otherwise requires, the singular includes the plural and vice versa.

## 4 Order placement

Orders placed by Customer to skyguide are considered as non-binding offer, unless skyguide has issued a duly executed order acknowledgment.

## 5 Charges

The charges for the deliverables set out in the Agreement are firm and without Swiss VAT. Any taxes, levies and duties existing or created outside the Swiss territory are not included in the charges and shall be borne by the Customer. Skyguide may, at any time, require the Customer to pay a deposit, make advance payment or provide any kind of guarantee and or other form of collateral as security for any contractual payment.

Skyguide remains the owner of all deliverables provided and delivered to the Customer in accordance with the Agreement until having received payment in full.

If the Customer is in delay of Payment, late interest rate on any overdue amounts apply without warning. In addition thereto, skyguide may, on written notice to the Customer

- a. In case of providing services, suspend any services with immediate effect. All costs associated with such suspension and, in case of payment in full, the recovery of the provision of the services, shall be borne by the Customer.
- b. In case of delivering of goods and/or data, recover any goods and data delivered until payment is received in full. All costs associated with such or recovery of goods shall be borne by the Customer.

## 6 Customer's infrastructure

The Customer shall provide in good time a reasonable, well-functioning infrastructure and any other necessary equipment in order to benefit from skyguide's goods, data or services. The details hereto shall be defined in the respective Agreement.

## 7 Intellectual Property Rights

All intellectual property rights related to the goods, data or services delivered to the Customer remain exclusively vested in skyguide. Unless not explicitly specified in the Agreement, the Customer shall not acquire any Intellectual Property Rights, use, marketing or license rights of any kind.

## 8 Intellectual Property Rights Indemnity

Skyguide represents and warrants that the Deliverables shall not infringe any Intellectual Property Right of any third Party.

Skyguide shall defend and, within the limits of Section 12 hereafter, hold the Customer harmless for any proven and reasonable cost against third party claims arising out of any Intellectual Property Right infringement provided that

- Customer immediately notifies skyguide of any such claim or alleged claim
- Customer gives skyguide sole control of any defence and/or settlement of such claim
- Customer provides all assistance necessary and reasonably required by skyguide at its own cost
- Customer has used the goods and/or services in full accordance with the specifications
- Customer has not made any changes to the goods which have not been expressly approved by skyguide in advance and in writing
- In case of the delivery of Software, Customer has used the most recent version of it

These provisions stipulate the sole and exclusive remedies available to the Customer.

## 9 Transfer of risk

The point of the transfer of risk for online data-delivery is defined as the WAN-Port of skyguide's firewall, pursuant to the Incoterms® (ICC 2010) EXW.

Goods and media as DVD-ROM, hard disk, magnetic tape, floppy disk or memory sticks are delivered EXW pursuant to the Incoterms® (ICC 2010).

## 10 Acceptance of goods, data or services

Skyguide provides the deliverables in the quality specified in the Agreement. Upon receipt of the goods and/or data, the Customer shall inspect the Deliverables immediately and immediately report to skyguide any faults detected in writing.

If services are not provided according to the terms of the Agreement, the Customer has to provide written notice to skyguide precisely stating the reasons why the services of skyguide do not comply with the Agreement.

## 11 Privacy and security

Any information in any form handed over by skyguide to the Customer together with the goods, data and/or services, regardless of the form such information has been made available to the Customer, must be treated strictly confidential and may not be disclosed in any way to third parties without the prior written consent by skyguide.

The Customer accepts, that skyguide may be required by law to inform the public or competent governmental authorities by ensuring access to documents. In such case the Customer will be informed accordingly.

## 12 Liability of skyguide

Skyguide will be liable to the Customer for damages which arise directly from the performance or non-performance of skyguide's duties and obligations under the Agreement always provided that the aggregate of all damages payable by skyguide hereunder will not exceed 20% (twenty percent) of the total price paid by the contracted Customer to skyguide. The total liability of skyguide will not exceed 5% (five percent) of the contractual price per incident.

Skyguide makes no warranty, express or implied, with respect to the adequacy, accuracy, reliability, safety of any information or data which skyguide obtained from source material created, designed or published by others.

Under no circumstances will skyguide be liable for any indirect, special, incidental or consequential damages and/or losses arising out from alleged negligence, breach of warranty, strict liability or any other theory, including but not limited to loss of anticipated profit, loss resulting from business disruption, claims by third parties or deriving from data loss.

If a court of competent jurisdiction determines that relevant laws in force may imply warranties and liabilities which cannot be excluded or limited or which can only partly be excluded or limited, then the limit on skyguide's liability set forth herein shall apply to the fullest extent permitted by law. If skyguide cannot exclude or limit a warranty or liability implied by law, these general terms and conditions shall be read and construed subject to such provisions of law.

These provisions stipulate the sole and exclusive liability skyguide may have towards the Customer.

## 13 Force majeure

If skyguide expects any delay to occur in its performance of the deliverables, skyguide shall promptly inform the Customer of such delay and its impact.

Skyguide will not be liable for non-delivery, delay in delivery or installation or any other impairment of performance hereunder in whole or in part, if it or any of

its major subcontractors cannot perform their obligations because of Force majeure, defined as war (whether an actual declaration thereof is made or not), sabotage, insurrection, rebellion, riot, act of terrorism or other act of civil disobedience, act of a public enemy, act of any government, judicial action, labour strike, fire, explosion, epidemic, quarantine, restrictions, storm, flood, earthquake, virus attacks on data processing systems or any act of God.

In the event of an excusable delay in any delivery date, that delivery date shall be postponed by the length of the excusable delay.

#### 14 Set-off

The Customer is not entitled to set off any claim against any sums due to skyguide.

#### 15 Waiver

The failure of skyguide to make use of any right and/or remedy it may have under this Agreement shall not constitute a waiver thereof.

#### 16 Governing law and disputes

The Agreement shall be interpreted and any dispute shall be settled in accordance with the federal laws of Switzerland.

If any dispute cannot be resolved by negotiation between the Parties' respective Project Managers, each Party shall designate one or more executives to act on behalf of such Party to negotiate to resolve the matter. At the earliest practicable time, a meeting shall be held to discuss the matter in dispute without prejudice to the interests of either Party. Any resolution so obtained shall be recorded in writing and signed by both Parties. Such a resolution shall be final and binding on the Parties.

If no such resolution can be found within thirty (30) days, calculated from the date either party first noti-

fies the other party of any dispute, disputes arising out of the Agreement, shall be submitted to the jurisdiction of an arbitration court. Each Party shall nominate one arbitrator within thirty (30) days from the day when notice was first given by the other Party of that Party's intention to have the matter submitted to arbitration. Both arbitrators shall then nominate a third arbitrator as Chairman of the arbitration court within an additional thirty (30) days. Failing a nomination of an arbitrator by one or both of the Parties within the time specified, or failing an Agreement on the nomination of the chairman within the time specified, either Party may refer to the president of the Swiss Arbitration Court to make the nomination.

The seat of the arbitration court is the city of Geneva, Switzerland. The arbitration court will determine in accordance with the rules of arbitration of the International Chamber of Commerce. The language will be English, unless otherwise agreed by the Parties. The decision of the arbitration court shall be final.

The Parties agree that, until the terms of this Article have been satisfied, neither Party shall initiate any legal action nor issue any notice of termination with respect to the Agreement. The failure of the Parties to resolve a dispute will not be a breach of this Agreement and not, in any way, change the rights or obligations of the Parties hereto. Pending settlement of any dispute or disagreement under this article, skyguide shall proceed diligently with the performance of the deliverables, unless the Customer sends a notice of suspension or termination in accordance with the Agreement.

#### 17 Authoritative version

The GTC are available in German, French and English. In the event of contradictions, the English version is authoritative.

These GTC are valid from 1.11.2014 and replace all former versions.

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