



General Terms and Conditions for Sale

General TC v. 4.0 May 04

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1 Scope

The present General Terms and Conditions shall govern and control any offer, order or Agreement issued by skyguide.

2 Precedence

In the event of discrepancies or contradictions between documents, their precedence shall be in descending order:

- a) The Agreement
- b) Documents (e.g. Annexes, specifications, Service Level Agreements)
- c) The General Terms and Conditions

3 Definitions in alphabetical order

In the Agreement the following terms shall have the following meaning, unless the context otherwise requires:

- a. "Agreement" means all documents signed by the Parties and consists of the Articles therein and the Annexes listed in and all documents referenced therein.
- b. "Agreement Price" means the price of the Work according to the Agreement.
- c. "Documentation" means any and all documents to be delivered as set out in this Agreement or the Annexes.
- d. "Equipment" means the entity of hardware and software.
- e. "Handling Charge" means unforeseeable cost in the event of unplanned termination of Agreement.
- f. "Letter of Acceptance" means the letter issued by skyguide to the Customer. By signing the Customer declares, that the Equipment has been delivered, the Work has been carried out in accordance with the Agreement and the appropriate System Test has been passed according to the Acceptance Procedure.
- g. "Letter of Clearance for Operation" means the letter to be issued by skyguide to the Customer. By signing the Customer declares that the Work has in accordance with the Agreement successfully passed the long term tests, beginning after acceptance, confirming the reliability and the availability of the Work according to the Acceptance Procedure.

- h. "Life Cycle" means the expected life time of the System and the items relating thereto, starting at the date hereof and ending at the date as outlined in the Agreement.
- i. "Party" or "Parties" means one or both, the Customer or/and skyguide, as the context requires. There are two Parties to this Agreement. All Agreement documents shall therefore be drawn up in duplicate original form.
- j. "Sites" means the locations where the Equipment shall be installed.
- k. "Specifications" means the documents referred to in the Agreement.
- l. "Sub- Contractor" means a person, firm or corporation having an Agreement with skyguide relating to the Work or for the furnishing of materials and/or services to skyguide in relation to the Work.
- m. Unless the context otherwise requires, the singular includes the plural and vice versa.
- n. "Work" means any and all of the materials, hardware, firmware, software, services, matters and things to be done or furnished or required to be done or furnished by the Parties as laid out in this Agreement.
- o. All correspondence and Documentation relating to this Agreement shall be drawn up in the English language.
- p. The headings of the articles do not form part of the Agreement and shall not affect its scope or intent and are solely for reference.

4 Charges

The charges for all the Work are set out in the Agreement and have been computed. All charges quoted to the Customer are exclusive of any VAT, for which the Customer shall be additionally liable.

All taxes, levies and duties existing or created outside the Swiss territory are not included in the charges and shall be borne by the Customer.

If skyguide alters the charges for all services or/and deliverables, it may also alter any applicable discounts accordingly.

skyguide may, at any time, require the Customer to pay a deposit or provide a guarantee as security for payment of future bills.

5 Duration of Agreement

The Agreement starts when the duly authorized representatives of the Parties have signed the Agreement.



The duration and end of the Agreement are outlined in the Agreement, as well as the prolongation and/or renewal terms.

6 Termination for Default

Customer may by notice of default to skyguide terminate the Agreement in whole or with respect to a part of the Work, if skyguide fails to perform the Work within the time or times specified in the Agreement.

If skyguide fails to perform any of the provisions of the Agreement and does not take steps to promptly and diligently cure such failure within a period of thirty (30) days after receipt of written notice, Customer may by notice of default terminate the Agreement in whole or with respect to a part of the Work and a mutually agreed additional period of grace.

If Customer terminates the Agreement, the Customer shall have no claims for any payment.

Whenever, for any reason, payment by the Customer is not made to skyguide as required, the Agreement will be considered as terminated for default provided, however, that skyguide notifies the Customer in writing to that effect.

7 Termination for Convenience

Notwithstanding anything contained in the Agreement, the Customer may terminate the Agreement with period of notice of thirty working days in writing. In the event that a termination notice has been given skyguide shall be entitled to be reimbursed the actual cost of such termination for convenience and an appropriate financial benefit.

Whenever, for any reason, skyguide shall determine that such termination is in the best interest of the Customer stated in writing it being understood that at least thirty (30) working days notice shall be rendered on a termination for convenience.

8 skyguide's commitment

skyguide shall perform the Work defined in the relevant Agreement with the necessary skill and utmost care of a competent provider.

The detailed description and specification of the Work to be performed shall be outlined in the Agreement and further documents as mentioned in the Agreement.

9 Customer's obligations

The Customer shall provide in good time a reasonable, well functioning infrastructure and any other necessary equipment in order to benefit from skyguide's deliverables.

Furthermore the Customer shall be responsible for providing suitable and permanent access to the acquisition and preparation of the site and premises, the provision of labour, electric power and all other additional services, facilities and their up-to-date documentation for the prompt execution of Work.

At least one person shall be placed at skyguide's disposal as assigned decision-maker.

10 Copyright

All rights to the Work, the documents and evaluations developed for the Customer, in machine-readable or written form (documentation, lists and other programming documents included, as well as programs on electronic data media) are the property of skyguide. skyguide may exercise these rights and its powers of disposal over them independently, without restriction and without requiring the express consent of the Customer. skyguide is entitled to attach its copyright mark to all such material, documentation and lists.

The Customer shall be entitled to a non-exclusive, non-transferable and irrevocable right to use and copy all Work, documents and evaluations for the purposes of the use in accordance with this Agreement.

The Customer shall, in addition, have the right to modify the Work or have it modified for the purposes described above; it is understood that any such modification will terminate any warranty with respect to the Work that has been modified.

skyguide gives an assurance that it will not provide the Customer with software material, documents and materials containing the legally protected Work of third parties, whether directly or in a reworked or modified form, or alternatively that it has authorisation to provide the Customer with such software material, documents and materials.

skyguide agrees to defend and hold harmless the Customer from any claim if the Work infringes any intellectual property rights or any claim arising from the failure of skyguide to comply with its obligations.

11 Discoveries, inventions or improvements

All rights relating to discoveries, inventions or improvements by skyguide (including ideas, procedures, methods or concepts relating to information processing developed in the course of this Agreement) shall be skyguide's property.

12 skyguide's liability

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 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.

13 Force Majeure

If skyguide expects any delay to occur in its performance of the Work, 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.

skyguide shall as soon as it knows of any circumstances or events which may reasonably be anticipated to cause or constitute an excusable delay, promptly give notice evidence thereof to the Customer.

14 Transfer of Agreement

Neither of the Parties can transfer this Agreement or any part of it, except that skyguide can transfer all or part of it to a company that is a subsidiary or holding company of skyguide, or a subsidiary of that holding company.



15 Protection of personal data

skyguide complies with all applicable Swiss personal data protection and Swiss privacy laws and impose the same obligations to third parties and Customers.

16 Privacy and Security

skyguide accepts responsibility for protecting the privacy and security of the Customer and gives utmost importance to adopting and implementing measures to ensure this.

17 Giving notice

If either Party gives notice to the other Party under this Agreement this must be done in writing and sent by post at the postal address on the appropriate addressee outlined in the Agreement.

18 Hiring of employees

Neither of the Parties draws away directly any employee or any other person of the Parties outside of the jointly decided-up transition of staff until the expiry of the last Agreement and for a period of twelve (12) months thereafter.

19 Sub-Contracts

skyguide may, with the prior and express consent of the Customer, enter into sub-Agreements concerning the performance of the Work or of a part thereof or allow third parties to replace it de facto to any of these ends.

20 Designation of personnel

skyguide shall designate for the performance of this Agreement the personnel necessary for the proper execution of the tasks devolving upon it. skyguide has the right to replace them by others possessing equivalent qualifications and skills.

21 Access to facilities

The Customer will provide and grant to skyguide access to personnel, facilities, documents, and conferences of its own, and/or third parties, as required for the performance of the Work. If access is not granted and the fulfilment of the Work is jeopardized, skyguide is not responsible and liable for the outcome of the Work. The parties shall decide by joint agreement on the measures to be taken.

22 Information

The Customer has the right to check the status of the Work by arrangement and to make any observations or suggestions which it may deem appropriate.

The Customer shall draw up and make available to skyguide and to persons empowered by skyguide any documents necessary to perform the Work forming the subject matter of the Agreement.

Unforeseeable events and actions shall be reported to the respective party as soon as they occur.

23 Waiver

Neither of the Parties shall be considered to have waived any right under the Agreement because of failure or delay in exercising that right.

24 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 effected shall be recorded in writing and signed by both Parties. Such a resolution shall be final and binding on the Parties.

All disputes arising out of the Agreement, which cannot be resolved by amicable means as described above, 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 Federal Supreme 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. 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 Work, unless the Customer delivers a notice of suspension or termination in accordance with the Agreement.
