



Sky Power GmbH | Hollerstraße 12 | 61350 Bad Homburg | Germany



UAV Propulsion System Procurement

Terms and Conditions (Rev1.0)

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CEO: Karsten Schudt
USt-ID-Nr.:
DE315924759
HRB-Nr.: 14093



1. Overview

- 1.1. "Company" shall mean Sky Power GmbH, its successors and assigns or any person acting on behalf of and with the authority of Sky Power GmbH.

Sky Power's trading address is – Hollerstraße 12, 61350 Bad Homburg vor der Höhe, Germany and can be contacted by phone +49 6172 2654258 or via email info@skypower.online.

- 1.2. Sky Power's company is registered in Germany number HRB1403 and is registered for VAT number DE 315924759
- 1.3. "Client" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply and shall include any person acting on behalf of and with the authority of such person or entity.
- 1.4. "Goods" shall mean Goods supplied by Sky Power to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Sky Power to the Client. Such Goods include autopilot avionics and ground control software for unmanned aircraft.
- 1.5. "Services" shall mean all services supplied by Sky Power to the Client and includes any consultancy, advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6. "Price" shall mean the cost of the Goods as agreed between Sky Power and the Client subject to clause 4 of this contract.
- 2. Application of these terms and conditions to consumers**
- 2.1. Where the Client buys Goods as a consumer these terms and conditions (in particular clauses relating to Risk, Disclaimer, Defects, Returns, Warranties and Limitation of Liability) shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 3. Acceptance**
- 3.1. Any instructions received by Sky Power from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by Sky Power shall constitute acceptance of the terms and conditions contained herein.
- 3.2. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3. Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of Sky Power.
- 3.4. The Client undertakes to give Sky Power at least fourteen (14) days' notice of any change in the Client's name, address and/or any other change in the Client's details.
- 4. Price And Payment**
- 4.1. At Sky Power's sole discretion, the Price is as indicated on invoices (usually sent with a Purchase Order reference number) provided by Sky Power to the Client in respect of Goods supplied.
- 4.2. Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due ten (10) days following the date of the invoice.
- 4.3. Payment will be made by credit card, or by direct credit, or by online banking or by BACS or by any other method as agreed to between the Client and Sky Power.
- 4.4. VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 5. Delivery of Goods**
- 5.1. Delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's address or other address nominated by the Client (in the event that the Goods are delivered by Sky Power or the Company's nominated carrier).
- 5.2. At Sky Power's sole discretion, the costs of delivery are in addition to the price indicated unless otherwise explicitly stated
- 5.3. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Sky Power shall be entitled to charge a reasonable fee for redelivery.
- 5.4. The failure of Sky Power to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5. Sky Power shall not be liable for any loss or damage whatever due to failure by Sky Power to deliver the Goods (or any of them) promptly or at all.
- 6. Client Responsibility**
- 6.1. Client agrees to ensure that the end user be responsible for the safe and legal operation of the Goods that are incorporated into the Client's flight system or aircraft.
- 6.2. The end user is responsible for the airworthiness of the overall flight system and also for abiding with the operational constraints imposed by the authority or authorities responsible for the safe operation of aircraft.
- 6.3. Specifically, the Client shall ensure that the end user agrees to comply with all local laws, by-laws and safety regulations governing the operation of aircraft by remote means.
- 6.4. The Client acknowledges that the end user will ensure a valid and relevant insurance certificate should be established in the end users name to cover accidental damage to property and injury to persons in case of an accident whilst operating the flight system.
- 6.5. If the Client resells the Goods to third parties either as a standalone product or incorporated into another product including, but not limited to, an unmanned aircraft, the Client agrees to incorporate Sky Power's full operating and safety instructions within the packaging for either the Goods or the manufactured product of which the Goods form a part.
- 6.6. In the case of clause 6.5, The Client will ensure that the end user agrees to indemnify Sky Power against any liability for costs or damages or financial penalties arising from claims made by the Client's customers in the Client's sale of the Goods in whatever form to third parties.
- 7. Risk**
- 7.1. Irrespective of whether title to the Goods remains vested in Sky Power, all risk for the Goods passes to the Client on delivery.
- 7.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Sky Power is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Sky Power is sufficient evidence of Sky Power's rights to receive the insurance proceeds without the need for any person dealing with Sky Power to make further enquiries.
- 8. Title**
- 8.1. It is the intention of Sky Power and agreed by the Client that ownership of the Goods shall not pass until:
- (a) the Client has paid all amounts owing for the particular Goods; and
- (b) the Client has met all other obligations due by the Client to the Company in respect of all contracts between Sky Power and the Client.
- 8.2. Receipt by Sky Power of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honored, cleared or recognized and until then Sky Power's ownership or rights in respect of the Goods shall continue.
- 8.3. It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until Sky Power shall have received payment and all other obligations of the Client are met; and
- (b) until such time as ownership of the Goods shall pass from the Company to the Client Sky Power may give notice in writing to the Client to return the Goods or any of them to Sky Power.
- Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
- (c) Sky Power shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Client fails to return the Goods to Sky Power then Sky Power or Sky Power's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
- (e) the Client is only a bailee of the Goods and until such time as Sky Power has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for Sky Power; and
- (f) the Client shall not deal with the money of Sky Power in any way which may be adverse to Sky Power; and
- (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Sky Power; and
- (h) Sky Power can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Sky Power will be the owner of the end products.
- 9. Defects**
- 9.1. The Client shall inspect the Goods on delivery and shall within ten (10) days notify Sky Power of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Sky Power an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Sky Power has agreed in writing that the Client is entitled to reject, Sky Power's liability is limited to either (at Sky Power's discretion) replacing the Goods or repairing the Goods.
- 9.2. No Goods shall be accepted for return except in accordance with 9.1. above.

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10. Returns

- 10.1. Returns will only be accepted provided that:
- the Client has complied with the provisions of clause 9.1; and
 - Sky Power has agreed in writing to accept the return of the Goods; and
 - the Goods are returned at the Client's cost within fifteen (15) days of the delivery date; and
 - Sky Power will not be liable for Goods which have not been stored or used in a proper manner; and
 - the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

11. Warranty

- 11.1. Subject to the conditions of warranty set out by Sky Power warrants that if any defect in any workmanship of Sky Power becomes apparent and is reported to Sky Power within twenty-four (24) months of the date of delivery (time being of the essence) or TBO operating hours and original receipt then Sky Power will either (at Sky Power's sole discretion) repair the defect or remedy the workmanship.
- 11.2. The conditions applicable to the warranty given by Clause 11.1 are:
- The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - Failure on the part of the Client to properly maintain any Goods; or
 - Failure on the part of the Client to follow any instructions or guidelines provided by Sky Power;
- Or
- Only Sky Power silencers, ignitions or third-party products approved by us may be used.
 - Failure on the part of the Client to correctly install the Goods within the aircraft; or
 - Failure on the part of the Client to operate the ground control software and controller correctly which actions may or may not result in an aircraft crash; or
 - The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator; or
 - Fair wear and tear, any accident or act of God.
- The warranty shall cease, and Sky Power shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled by a third party without Sky Power's consent.
 - In respect of all claims Sky Power shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Client's claim.
- 11.3. To the extent permitted by statute, no warranty is given by Sky Power as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. Sky Power shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

12. Intellectual Property

- 12.1. Sky Power has designed, drawn and created all aspects of the finished Goods. As such the copyright and the intellectual property rights to the Goods including components, hardware and software shall remain vested in Sky Power, and shall only be used by the Client at Sky Power's discretion.

13. Default & Consequences of Default:

- 13.1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of LIBOR +3.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 13.2. Sky Power may charge interest on overdue invoices.
- 13.3. If the Client defaults in payment of any invoice when due, the Client shall indemnify Sky Power from and against all costs and disbursements incurred by Sky Power in pursuing the debt including legal costs on a solicitor and own client basis and Sky Power's collection agency costs.
- 13.4. Without prejudice to any other remedies Sky Power may have, if at any time the Client is in breach of any obligation (including those relating to payment), Sky Power may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Sky Power will not be liable to the Client for any loss or damage the Client suffers because Sky Power exercised its rights under this clause.
- 13.5. If any account remains overdue after ten (10) days then an amount of €250.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable in addition to 13.1.
- 13.6. Without prejudice to Sky Power's other remedies at law Sky Power shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to Sky Power shall, whether or not due for payment, become immediately payable in the event that any money payable to Sky Power becomes overdue, or in Sky Power's opinion the Client will be unable to meet its payments as they fall due.

14. Cancellation

- 14.1. Sky Power may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice Sky Power shall repay to the Client any sums paid in respect of the Price. Sky Power shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2. In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Sky Power (including, but not limited to, any loss of profits) up to the time of cancellation.

15. Limitation of Liability

- 15.1. Sky Power shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Client or any third party arising out of a breach by Sky Power of these terms and conditions.
- 15.2. In the event of any breach of this contract by Sky Power the remedies of the Client shall be limited to damages and Sky Power's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods, or for any breach of these terms and conditions, or of any duty owed to the Client in connection with them shall be limited to the amount of the Price.
- 15.3. The avionics and ground control software comprising the Goods will be under the control of the Client or the Client's operator. Accordingly, Sky Power accepts no liability for any damages or losses arising from either the Client's use of the Goods or use of the Goods by the Client's operator.
- 15.4. For the avoidance of doubt, nothing in these terms and conditions shall exclude or restrict Sky Power's liability to any person for death or personal injury to that person resulting from Sky Power's negligence.

16. Unpaid Seller's Rights

- 16.1. Where the Client has left any item with Sky Power for repair, modification, exchange or for Sky Power to perform any other Service in relation to the item and Sky Power has not received or been tendered the whole of the Price, or the payment has been dishonored, Sky Power shall have:
- a lien on the item;
 - the right to retain the item for the Price while Sky Power is in possession of the item;
 - a right to sell the item.
- 16.2. The lien of Sky Power shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

17. Client's Disclaimer

- 17.1. The Client hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by Sky Power and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

18. General

- 18.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2. These terms and conditions and any contract to which they apply shall be governed by the laws of Germany and are subject to the jurisdiction of the German courts.
- 18.3. The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by Sky Power.
- 18.4. Sky Power may license or sub-contract all or any part of its rights and obligations without the Client's consent. Except for in the case of the clients IP
- 18.5. Sky Power reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Sky Power notifies the Client of such change. Except where Sky Power supplies further Goods to the Client and the Client accepts such Goods, the Client shall be under no obligation to accept such changes.
- 18.6. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either part.
- 18.7. Sky Power GmbH will where applicable ensure all relevant export licenses are in place, however they will not be held responsible for any issues relating to the withdrawal or refusal of such license.

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