

SKYQUEST LIMITED – TERMS & CONDITIONS

1. Interpretation

1.1 In these Conditions:

‘CUSTOMER’ means the person who accepts a quotation of Skyquest for the sale of the Goods or whose order for the Goods is accepted by Skyquest

‘GOODS’ means the goods (including any instalment of the goods or any parts for them) manufactured by the Manufacturer which Skyquest is to supply in accordance with these Conditions and as are set out on the order form

‘CONDITIONS’ means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and Skyquest

‘CONTRACT’ means the contract for the purchase and sale of the Goods

‘MANUFACTURER’ means the company, firm or organisation which manufactures makes assemblies or designs the Goods

‘SKYQUEST’ means Skyquest Limited of Units 19/20, Woodlands Farm, Spring Lane, Cookham Dean, Berkshire SL6 9PN (registered in England and Wales no. 3943053)

Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re enacted or extended at the relevant time.

The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Basis of the sale

Skyquest shall sell and the Customer shall purchase the Goods in accordance with any written quotation of Skyquest which is accepted by the Customer, or any written order of the Customer which is accepted by Skyquest, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

No variation to these Conditions shall be binding unless agreed in Writing by an authorised representative (being a director or officer) of Skyquest

Skyquest’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Skyquest in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed.

Any advice or recommendation given by Skyquest or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by Skyquest is followed or acted upon entirely at the Customer’s own risk, and accordingly Skyquest shall not be liable for any such advice or recommendation which is not so confirmed.

Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Skyquest shall be subject to correction without any liability on the part of Skyquest.

3 Orders and specifications

No order submitted by the Customer shall be deemed to be accepted by Skyquest unless and until confirmed in Writing by Skyquest’s authorised representative.

The Customer shall be responsible to Skyquest for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving Skyquest any necessary information relating to the Goods within a sufficient time to enable Skyquest to perform the Contract in accordance with its terms.

The quantity, quality and description of and any specification for the Goods shall be those set out in Skyquest’s quotation (if accepted by the Customer) or the Customer’s order (if accepted by Skyquest).

A part payment of 30% of the price of the Goods is payable when the order is made unless previously agreed in writing. The part payment will be deductible from the final invoice.

If the Goods are to be manufactured or any process is to be applied to the Goods by Skyquest in accordance with a specification submitted by the Customer, the Customer shall indemnify Skyquest against all loss, damages, costs and expenses awarded against or incurred by Skyquest in connection with or paid or agreed to be paid by Skyquest in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from Skyquest’s use of the Customer’s specification.

Skyquest reserves the right to supply Goods in which any changes in the specification of the Goods are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to Skyquest’s specification, which do not materially affect their quality or performance.

No order which has been accepted by Skyquest may be cancelled by the Customer except with the agreement in Writing of Skyquest and on terms that the Customer shall indemnify Skyquest in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Skyquest as a result of cancellation. The Customer agrees that the part payment may be used in full or in part to set off any of the expenses incurred by Skyquest if an order is cancelled.

4 Price of the goods

The price of the Goods shall be Skyquest’s quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Skyquest’s published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by Skyquest without giving notice to the Customer.

Skyquest reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Skyquest which is due to any factor beyond the control of Skyquest (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Skyquest adequate information or instructions.

Except as otherwise stated under the terms of any quotation or in any price list of Skyquest, and unless otherwise agreed in Writing between the Customer and Skyquest, all prices are given by Skyquest on an ex works basis, and where Skyquest agrees to deliver the Goods otherwise than at Skyquest’s premises, the Customer shall be liable to pay Skyquest’s charges for transport, packaging and insurance.

The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to Skyquest.

5 Terms of payment

Subject to any special terms agreed in Writing between the Customer and Skyquest, Skyquest shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event Skyquest shall be entitled to invoice the Customer for the price at any time after Skyquest has notified the Customer that the Goods are ready for collection or (as the case may be) Skyquest has tendered delivery of the Goods.

The Customer shall pay the price of the Goods (less any part payment paid in accordance with clause 3.4 when the order was made, but without any other deduction) within 30 days of the date of Skyquest’s invoice, and Skyquest shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Skyquest, Skyquest shall be entitled to:

- 5.3.1 cancel the Contract or suspend any further deliveries to the Customer;
- 5.3.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and Skyquest) as Skyquest may think fit (notwithstanding any purported appropriation by the Customer); and
- 5.3.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above Barclays Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6 Delivery

Delivery of the Goods shall be made by the Customer collecting the Goods at Skyquest’s premises at any time after Skyquest has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by Skyquest, by Skyquest delivering the Goods to that place.

Any dates quoted for delivery of the Goods are approximate only and Skyquest shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by Skyquest in writing. The Goods may be delivered by Skyquest in advance of the quoted delivery date upon giving reasonable notice to the Customer.

Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Skyquest to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

If Skyquest fails to deliver the Goods (or any instalment) for any reason other than any cause beyond Skyquest’s reasonable control or the Customer’s fault, and Skyquest is accordingly liable to the Customer, Skyquest’s liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

If the Customer fails to take delivery of the Goods or fails to give Skyquest adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer’s reasonable control or by reason of Skyquest’s fault) then, without prejudice to any other right or remedy available to Skyquest, Skyquest may:

6.5.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

7 Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Customer:

- 7.1.1 in the case of Goods to be delivered at Skyquest’s premises, at the time when Skyquest notifies the Customer that the Goods are available for collection; or
- 7.1.2 in the case of Goods to be delivered otherwise than at Skyquest’s premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when Skyquest has tendered delivery of the Goods.

Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until Skyquest has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by Skyquest to the Customer for which payment is then due.

Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as Skyquest’s fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as Skyquest’s property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), Skyquest shall be entitled at any time to require the Customer to deliver up the Goods to Skyquest and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Skyquest, but if the Customer does so all moneys owing by the Customer to Skyquest shall (without prejudice to any other right or remedy of Skyquest) forthwith become due and payable.

8 Warranties and liability

Subject to the conditions set out below Skyquest warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of delivery.

The above warranty is given by Skyquest subject to the following conditions:

8.1 Skyquest does not manufacture the Goods and therefore cannot warrant that the Goods will be free from defects in material and workmanship. The Manufacturer provides certain warranties directly to the Customer and details of these will be provided to the Customer on request.

8.3.1 Skyquest shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer; Skyquest shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions,

8.3.2 failure to follow Skyquest’s or the Manufacturer’s instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Skyquest’s or the Manufacturer’s approval; Skyquest shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.3.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions.

Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall fall under the Manufacturer’s warranties and shall be dealt with in accordance with/under those warranties

8.7 Except in respect of death or personal injury caused by Skyquest’s negligence, Skyquest shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Skyquest, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer, and the entire liability of Skyquest under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

8.8 Skyquest shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Skyquest’s obligations in relation to the Goods, if the delay or failure was due to any cause beyond Skyquest’s reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Skyquest’s reasonable control:

- 8.8.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.8.3 acts, restrictions, regulations, bye laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.8.4 import or export regulations or embargoes;
- 8.8.5 strikes, lock outs or other industrial actions or trade disputes (whether involving employees of Skyquest or of a third party);
- 8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.8.7 power failure or breakdown in machinery.

9 Indemnity

9.1 If any claim is made against the Customer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design, map or specification supplied by the Customer, Skyquest shall indemnify the Customer against all loss, damages, costs and expenses awarded against or incurred by the Customer in connection with the claim, or paid or agreed to be paid by the Customer in settlement of the claim, provided that:

- 9.1.1 Skyquest is given full control of any proceedings or negotiations in connection with any such claim;
- 9.1.2 the Customer shall give Skyquest all reasonable and prompt assistance for the purposes of any such proceedings or negotiations;
- 9.1.3 except pursuant to a final award, the Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent of Skyquest (which shall not be unreasonably withheld);
- 9.1.4 the Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);
- 9.1.5 Skyquest shall be entitled to the benefit of, and the Customer shall accordingly account to Skyquest for, all damages and costs (if any) awarded in favour of the Customer which are payable by, or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- 9.1.6 without prejudice to any duty of the Customer at common law, Skyquest shall be entitled to require the Customer to take such steps as Skyquest may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which Skyquest is liable to indemnify the Customer under this clause.

10 Insolvency of Customer

10.1 This clause applies if:

- 10.1.1 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- 10.1.3 the Customer ceases, or threatens to cease, to carry on business; or
- 10.1.4 Skyquest reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

10.2 If this clause applies then, without prejudice to any other right or remedy available to Skyquest, Skyquest shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

11 General

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 No waiver by Skyquest of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

11.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators in England and Wales.

11.5 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the non exclusive jurisdiction of the English courts.

11.6 Export of Skyquest equipment may be restricted due to UK Government Export Control Regulations. The equipment may not be exported to those countries noted on the UK Schedule of Embargoed Destinations. It is the responsibility of the Customer to notify Skyquest of the intended end-user destination and any subsequent change if this occurs.