



General Terms and Conditions SkyMind Mobile Gateway

1. Scope of Application

1.1. These General Terms and Conditions ("GTC") govern the contractual relationship (hereinafter the "Agreement") between SkyCell AG ("SkyCell") and a contractual partner of SkyCell ("Customer") hereinafter jointly referred to as the "Parties", in relation to the data simulation and data capture software provided by SkyCell (hereinafter referred to as the "SkyMind Mobile Gateway" or "Software") by means of the SkyMind Mobile Gateway platform (hereinafter referred to as the "Platform"). The Platform and the Software are hereinafter jointly referred to as the "Service".

1.2. The Agreement can be made either in the form of a written contract made between the Parties or through the Customer starting to use the app.

1.3. The acceptance of the GTC by Customer and its continuous compliance herewith is a necessary precondition and a necessary condition for the performance of the Agreement by SkyCell.

1.4. The GTC shall be binding upon Customer regardless of any stipulations to the contrary in a document issued by Customer. In case of conflict between the GTC and an order, Customer's terms and conditions or any other document passed between the Parties in relation to the Service, the GTC shall prevail unless otherwise agreed upon between Parties in writing.

1.5. SkyCell reserves the right to modify the GTC in its reasonable discretion from time to time and shall notify Customer of such modifications. If Customer does not agree with the modification, he shall be entitled to terminate the Agreement in writing within 1 (one) month after the notification. Continued use of the Service by Customer 1 (one) month after such notification shall constitute Customer's acceptance of the modification.

2. Delivery

The Service is made available online.

3. License and restrictions

3.1. By the Agreement SkyCell grants to Customer, and Customer accepts, the following license (hereinafter referred to as the "License"): (a) a non-exclusive, restricted, personal, non-transferable and a non-assignable license to use the Service during the term of the Agreement (hereinafter referred to as "Term") and in accordance with the Agreement and (b) a perpetual, non-exclusive, and restricted license to use the Service results (i.e. captured temperature data) delivered in accordance with the Agreement. This License is granted only for the purpose of Customers' usual activities related to the management of its own business, including corporate and personnel matters and for use in accordance with the intended use of the Service.

3.2. The License is granted to Customer only and shall not be considered or construed to be granted to any subsidiary or holding company of Customer, unless otherwise agreed upon by SkyCell. Customer shall not assign, transfer or sublicense the License to any person without the prior written consent of SkyCell.

3.3. The Agreement does not grant and shall not be construed to grant to Customer any other right than the rights expressly granted by the Agreement. Any right that is not expressly granted to Customer hereunder is reserved by SkyCell.

3.4. The License is granted subject to Customer's continuous compliance with the Agreement, including timely payment of the Fees, where applicable, failing which SkyCell reserves the right to fully or partially terminate, deny or limit Customer's access to the Service and/or to refuse, suspend, interrupt or terminate the License granted to Customer, without detriment to SkyCell's rights hereunder and its right to claim compensation for losses, damages and costs it incurred.

3.5. Customer will only have access to the latest released version of the Service. Each new version or update of the Service will replace the previous version thereof and be subject to all rights and obligations as mentioned in the Agreement.

3.6. With respect to the Service, and unless upon explicit prior written approval by SkyCell or explicitly permitted by applicable and compulsory law, Customer shall not (attempt to) do the following and shall not assist any third party in doing the same by any means: (i) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, translate, adapt, alter or distribute all or any portion of the Service in any form or media; or (ii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, display, or otherwise commercially exploit, or otherwise make available the Service to any party; or (iii) access the Service or any part thereof for purposes of monitoring the availability, the performance or the functionality of the Service, nor for any benchmarking or competitive purposes; or (iv) translate, modify, adapt, alter, reverse compile or reverse engineer, decompile, disassemble or otherwise reduce to human-perceivable form all or any part of the Service; or (v) reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Service or disclose any of the foregoing; or (vi) create internet "links" to the Service or any part thereof or "frame" or "mirror" the Service or any part thereof on any server or wireless or Internet-based device; or (vii) access or use the Service or any part thereof to build a competitive product or service or a product or service using similar ideas, features, functions or graphics as the Service or any part thereof or to copy any ideas, features, functions or graphics of the Service or of any part thereof; or (viii) take any action that would cause the Service to fall in the public domain.

3.7. SkyCell reserves the right to use all technical means to verify that Customer complies with these restrictions.

4. Customer's obligations regarding the Service

4.1. Customer shall provide SkyCell with all necessary cooperation and with access to all information as may be required by SkyCell for the performance of the Agreement, shall maintain all necessary consents and permissions necessary for SkyCell to perform the Agreement and shall perform its obligations under the Agreement in a timely and efficient manner, failing which SkyCell may adjust any agreed timetable or delivery schedule as reasonably necessary.

4.2. Customer shall ensure that its network, file and web transfer protocols and message structures and any other systems, as may be used in relation to the Service, comply with the required specifications as they may be provided by SkyCell from time to time and shall be solely responsible for procuring and maintaining the network and telecommunications connections between its IT-environment and the Platform and for all loss or damage due to events such as delays and delivery failures related to the said connections.

4.3. Customer shall abide by all applicable local, state, national and foreign laws, treaties and regulations with respect to its activities under the Agreement, including those related to data privacy, international communications and the transmission of technical or personal data.

4.4. Customer agrees that data collected by a SkyCell Logger will be stored by SkyCell and used for Asset Tracking or Pharma Monitoring (this includes temperature and location data), may be shared with the shipper (e.g. pharma company) and other service providers or stakeholders that are involved in the handling of that shipment. All parties that receive access to the data must accept the latest SkyMind Mobile Gateway GTCs (General Terms and Conditions SkyMind Mobile Gateway).

4.5. Customer is aware that the performance and development of the Software requires training with data. SkyCell is thus entitled to use the collected data in order to improve the Software. This right continues even after the termination of the Agreement.

5. Users

5.1. Customer shall be responsible for Users' compliance with this Agreement.

5.2. "User" means an individual who is authorized by Customer to use the Services (or, when applicable, SkyCell at Customer's request) has granted access (for Services utilizing authentication). Users may include Customers employees, consultants, contractors and agents, and third parties with which Customer transact business, each of whom is acting solely on or for Customers behalf.

5.3. Customer shall prevent any unauthorized access to or use of the Service, the Service results and shall promptly notify SkyCell of such use as well as of any other breach of security known to or suspected by Customer.

5.4. Customer represents that his Users shall at all time fully comply with the Agreement and shall indemnify, defend and hold SkyCell, harmless from and against any damage, cost, claim, demand, lawsuit, cause of action or loss of any nature whatsoever, suffered or incurred by any of them, arising out of or in connection with the infringement of this representation.

6. SkyCell's obligations in relation to the Services

6.1. Subject to the terms and conditions of the Agreement, SkyCell shall provide the Service to Customer with reasonable skill and care and substantially in accordance with the Agreement. However, Customer recognizes that SkyCell may interrupt the Service (in whole or in part) for maintenance work purposes, including both scheduled maintenance work and unscheduled work in the event of an emergency. Where possible, SkyCell undertakes to inform Customer in advance of any suspension or discontinuation of the Service. In the event of an unforeseen unavailability of the Service, SkyCell shall make reasonable efforts to remedy such unavailability within a commercially reasonable delay.

6.2. SkyCell shall not have the obligation to (continue to) provide the Service in case of any (suspected) use of the Service by Customer contrary to the Agreement or SkyCell's instructions, of modification or alteration of the Service by any party other than SkyCell and shall be relieved of its obligations to perform the Agreement for the time that it is prevented from performing the Agreement as a result of any failure or delay by Customer to perform its obligations under the Agreement.

6.3. If the Service does not comply with the Agreement, Customer's sole and exclusive remedy shall be that, at SkyCell's discretion, SkyCell shall either (i) repair or replace any software subject to the breach, (ii) provide Customer with an alternative means of accomplishing the desired performance, or (iii) refund to Customer that portion of the Fees actually paid under this Agreement by Customer for the defective (part of the) Service.

6.4. The Service is a constantly evolving software product, which SkyCell is continually seeking to improve and align with the needs of its broader customer base. Customer accepts that, as a result of this process, all elements, functions and any other content of the Service are subject to modifications (including the addition of new or the removal or replacement of existing elements and functions).

6.5. SkyCell may provide communication channels in the Service where Customer can ask for support, but unless otherwise agreed in writing, this additional support channel is offered as a courtesy, and should not be construed as an obligation on SkyCell's part to provide support for any support requests submitted.

7 Involvement of Third Parties

SkyCell is entitled to involve third parties for the purpose of meeting its contractual obligations. This shall, in particular, apply to hosting services.

SkyCell shall not accept any liability for the services of third parties involved to the extent legally permissible.

8 Data Protection and References

8.1. Data protection

Customer is aware that the use and processing of personal data within the meaning of the applicable domestic and/or foreign data protection legislation, in particular and as far as applicable the EU General Data Protection Regulation ("EU-GDPR") and the Swiss Data Protection Act (Schweizerisches Datenschutzgesetz ("DSG")) may require the prior consent of the affected persons and/or the registration of the relevant database with a domestic or foreign authority. SkyCell is, as far as applicable, fully compliant with the regulations of the EU-GDPR and the DSG.

SkyCell shall process data provided by the customer solely on behalf of and/or according to the instructions of the Customer. The processed data is used to provide the Software and is handled in accordance with SkyCell's Data Protection Policy (<https://www.skycell.ch/privacy-notice/>). The Customer remains responsible for the lawfulness of the collection, processing and use of Customer data in accordance with the applicable legal regulations, in particular pursuant to EU-GDPR and DSG and among others, related to location data.

8.2. References

In the context of its marketing activities and in the preparation of its offers for projects of other customers, SkyCell is entitled to refer to the projects realized by it for the Customer and to document same, subject to the justified confidentiality interests and consent of the Customer.

In particular, SkyCell is entitled, subject to the consent of Customer, to publish the orders placed with same in the context of marketing activities, in particular refer to the business relationship on SkyCell's website with the name and corporate logo of the Customer.

9 Release and Indemnification

9.1. The Customer shall release SkyCell and involved third parties of all third-party claims that may arise from (a) unlawful use of the Software by Customer and/or, with the consent of Customer, by third parties, (b) disputes arising from data protection laws, copyright laws or other legal disputes associated with the use of the Software by the Customer.

9.2. Customer hereby agrees to indemnify and hold harmless SkyCell against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services.

9.3. In the assertion of relevant claims, Customer is obligated to notify SkyCell thereof in writing without delay. In this case, SkyCell is entitled to block the Service for the Customer without delay and without providing a grace period. Any compensation claim asserted by the Customer based on the blocking of the Service is excluded.

10 Liability

SkyCell shall not accept any liability whatsoever to the extent legally permissible, in particular for

a) Damages,

- arising from the Customer's violation of the contractual obligations;
- caused by SkyCell's involved third parties or support persons;
- due to viruses;
- as a result of malicious code;
- subsequent to a hacker attack;
- subsequent to a software error;
- subsequent to an error in the operating system, disruptions to operations as a result of fault remedy, maintenance, infrastructure modifications, introduction of new technologies.
- subsequent to a faulty service pack from another manufacturer;
- as a result of data losses.

b) indirect or subsequent damages such as profits foregone, savings not realized or third-party claims.

11 No Warranties

Except as represented in this agreement, the Software and the Service of SkyCell is provided "as is". Other than as provided in this agreement, SkyCell makes no other warranties, express or implied, and hereby disclaims all implied warranties, including any warranty of merchantability and warranty of fitness for a particular purpose.

12 Confidentiality

The contractual partners obligate themselves and their employees and involved support persons reciprocally to maintain the confidentiality of all documents and information not generally known that relate to the business sphere of the other contractual party and, which become accessible in the preparations for and execution of this contractual relationship.

The confidentiality obligation shall continue to endure even after termination of the contractual relationship to the extent there is justified interest therein.

13 Final Provisions

13.1. Amendments to these GTC

SkyCell shall notify the Customer of any amendments to these GTC. Any amendments to the GTC shall enter into force for the contractual relationship between SkyCell and the Customer insofar as the Customer does not object to the amended GTC within a period of 10 days in writing.

13.2. Offsetting and assignment of claims

The offsetting of any claims of SkyCell against counterclaims of the Customer shall require the prior written consent of SkyCell.

The Customer is not entitled to assign any claims from the contractual relationship with SkyCell to third parties, in whole or in part, including not to any Group or subsidiary companies.

13.3. Place of performance

The place of performance shall be the registered offices of SkyCell.

13.4. Severability clause

Should individual provisions of these GTC be invalid or incomplete or should performance be impossible, this shall not negatively affect the validity of the remaining provisions of these GTC. Invalid provisions shall be replaced by an admissible, valid provision that is as close as possible to the content of the original in terms of its intent.

13.5. Effective Date

The contract is deemed binding, valid and effective upon Customer's start of usage of the app and stay in effect for time of the usage. Applicable terms as para. 14 among others will survive this time and are to be complied with after the Customer ceased to use the app.

14 Applicable Law and Place of Jurisdiction

The contractual relationship between SkyCell and Customer are subject to Swiss law, under exclusion of any national or international treaties or agreements legally valid at the time of entry into force or a dispute (e.g. United Nations Convention on Contracts for the International Sale of Goods (CISG) or the Hague Convention on Purchases).

In the event of any differences of opinion in connection with the contractual relationship, the contractual parties undertake to attempt to agree to a mutually agreed regulation in good faith. If, despite the efforts of the contractual parties, no agreement can be made by amicable means, the place of jurisdiction for all disputes, differences of opinion or claims arising from or in connection with the contractual relationship between SkyCell and Customer including their validity, invalidity, violation or dissolution, shall be Zug, Switzerland. Irrespective thereof, SkyCell is entitled to sue the Customer at its general place of jurisdiction.