

General Terms and Conditions

SkyCell SkyMind

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" or "Software") by means of the SkyMind 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 an order placed/an account (hereinafter referred to as the "Account") created by Customer and accepted by SkyCell via the website and/or the application developed, operated and maintained by SkyCell through which the Service is offered (hereinafter referred to as the "Website").

1.3. The acceptance of the GTC by Customer and its continuous compliance herewith is a necessary precondition to place any order and/or create an Account with SkyCell and a necessary condition for the performance of the Agreement by SkyCell.

1.4. By placing an order and/or creating an Account, Customer declares to have read the GTC and to accept them unconditionally in all their provisions.

1.5. 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.

1.6. 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. Account

2.1. In order to use the Service, Customer must register and create an account (hereafter "Account").

2.2. Customer can choose between a free Account (hereinafter referred to as the "Free Account") and different types of paid Accounts, offered at different price points (hereinafter referred to as "Paid Account Types"). Paid Account Types differ from the Free Account and from each other in the functionalities offered, the usage limits imposed and the Term. The commercial names of and the exact distinctions in functionalities and usage limits between the various Account types are further detailed on the Website.

2.3. Customer undertakes not to disclose its Account information to any third party and to only use it within the framework of the Agreement. Customer is solely responsible for maintaining the confidentiality and security of the Account and for all activities that take place on or through the Account. Customer agrees to inform SkyCell immediately of any breach of the confidentiality or security of his Account. SkyCell is not responsible for any damage resulting from unauthorized use of the Account of Customer by Customer or any third party as a consequence of a breach hereof by Customer.

When registering for and using the Service, Customer must provide SkyCell with correct and complete information and undertakes to update his registration details in order to keep them correct and complete.

3. Fees and payment

3.1. No fees are due for the use of a Free Account.

3.2. All fees for Paid Account Types (hereinafter referred to as "the Fees") are payable monthly or (multi-)yearly, and upfront. Customer shall provide valid credit card or billing information as the means of payment, to which SkyCell shall charge or invoice the Fees up to 10 business days before the start of the time period the Fees will cover (hereinafter referred to as "the Paid Period").

3.3. All prices are in Euro or US Dollar, and net of any statutory value-added tax and other taxes or fees. These are payable by Customer.

3.4. If Customer upgrades a Paid Account Type to a higher-priced Paid Account Type, or by purchasing an increase in his usage limits, the associated additional Fees will be charged on a pro-rata basis for the remaining number of calendar days until the start of the next Paid Period. The Fees of this next and all subsequent Paid Periods will then be increased to reflect the upgrade.

3.5. The Parties may deviate from these payment conditions by mutual agreement in writing.

3.6. If Customer has signed up for a Free Account using the Website, SkyCell will automatically give Customer access to a set of functionalities and usage limits normally reserved for Paid Account Types, as a free trial (hereinafter referred to as "the Free Trial"). This Free Trial will expire three (3) weeks after the day on which Customer created the Account (hereinafter referred to as "the Sign-up Date"). From the expiration of the Free Trial onwards, the Free Account will be restricted to the functionalities and usage limits of a Free Account published on the Website at that time.

3.7. If Customer wishes to retain access to the functionalities and usage limits reserved for Paid Account Types, he can upgrade his Account to the relevant Paid Account Type when the Free Trial ends.

4. Delivery

The Service is made available online. During the Account creation process, Customer will receive a login and password to access the Service.

5. License and restrictions

5.1. 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.

5.2. 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.

5.3. 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.

5.4. 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.

5.5. 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.

5.6. 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.

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

6. Customer's obligations regarding the Service

6.1. 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.

6.2. 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.

6.3. 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.

6.4. Customer agrees that data in connection with a shipment and collected by SkyCell during a shipment (e.g. sensor 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 to the latest SkyMind GTCs (General Terms and Conditions SkyCell SkyMind Software).

6.5. 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.

7. Users

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

7.2. "User" means an individual who is authorized by Customer to use the Services, for whom Customer has purchased an account or obtained a free account, and to whom Customer (or, when applicable, SkyCell at Customer's request) has supplied a login and password (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.

7.3. Customer shall prevent any unauthorized access to or use of the Service, the Service results, the Account, the password or log-in details and shall promptly notify SkyCell of such use as well as of any other breach of security known to or suspected by Customer.

7.4. Customer shall be responsible and liable for all activity occurring under the Account. Customer represents that his Users, and in particular his Account administrator, 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.

8. SkyCell's obligations in relation to the Services

8.1. 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.

8.2. 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.

8.3. 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.

8.4. 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).

8.5. 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.

9 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.

10 Data Protection and References

10.1 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.

10.2 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.

11 Release and Indemnification

11.1. 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.

11.2. 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.

11.3. 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.

12 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.

13 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.

14 Term and Termination

14.1 Term

The license is granted for a particular term depending on Customer's account subscription and shall automatically terminate upon the expiry of such term.

14.2 Termination

SkyCell may extraordinarily terminate the contractual relationship for good cause at any time and with immediate effect. Good cause entitling SkyCell to extraordinary termination shall include, in particular:

- if the Customer violates its contractual obligations insofar as this defect was not or cannot be remedied by the Customer within 10 days despite prior written warning by SkyCell;
- if the Customer defaults on the payment of fees;
- if insolvency proceedings are instituted against the Customer.

14.3 Consequences of termination, cancellation or expiry

Upon the termination, cancellation or expiration of the Agreement for any reason whatsoever, the License shall be immediately and automatically revoked and Customer will cease all use of the Service. Customer shall be responsible for retrieving Service results or any other data stored via the Service before the end of the Agreement. Data of Customer, if any, stored via the Service shall be deleted by SkyCell thirty (30) days after the termination date of the Agreement. Customer acknowledges that he is solely and fully liable for any claims or damages as a result of the deletion of the data.

If a Free Account has not been used by Customer for over ninety (90) calendar days, SkyCell has the right to terminate the Agreement, and to delete that Free Account and all data stored on this Account, without the obligation to give written notice to Customer.

15 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.

16 Final Provisions

16.1 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.

16.2 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.

16.3 Place of performance

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

16.4 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.

16.5 Effective Date

The contract is deemed binding, valid and effective upon Customer's creation of an Account.

17 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.

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