



## GENERAL TERMS AND CONDITIONS (GTC)

for all transactions of Sunkid GmbH

Last revised on 18.07.2023

### 1. Scope of application

- 1.1. These General Terms and Conditions (hereinafter referred to as "GTC"), as amended from time to time, are the exclusive basis of each current and future transaction, consultation (also by telephone), delivery, service or declaration referring to a transaction between Sunkid GmbH FN, 154738g (hereinafter referred to as the "Company"), and a third party (hereinafter referred to as the "Contract Partner"), regardless of the location of the third party's headquarters; the GTC are available at <https://www.sunkidworld.com/en/legal-information>.
- 1.2. Thus, the GTC are authoritative and binding for the business relationship as a whole with the Company; the GTC shall apply as general agreement to all future contracts, even if not expressly referenced.
- 1.3. Any other terms and conditions of a Contract Partner are not applicable without the separate written consent of the Company; without such written consent they have no effect.
- 1.4. The Company may, at its discretion, amend or supplement these GTC at any time, even unilaterally and without prior notice. Should individual provisions of the GTC be invalid, the validity of the remaining provisions shall in no way be affected thereby.
- 1.5. It should be noted that these GTC are generally designed for business-to-business transactions; if, in exceptional cases, they are the basis of transactions with consumers as defined by § 1 para 1 subpara 2 KSchG (Austrian Consumer Protection Act), the GTC shall apply to the extent they do not conflict the provisions of the first chapter of the KSchG.

### 2. Quotes

- 2.1. Quotes, price lists and cost estimates submitted by the Company are generally not binding, except where they contain express provisions to the contrary.
- 2.2. Information about the products delivered and/or services provided by the Company (hereinafter referred to as "**products/services provided**") in catalogs, price lists, newspapers, brochures, leaflets, ads, company information or other media does not constitute a quote submitted by the Company, and the Contract Partner cannot make reference to or rely on such information.
- 2.3. The same applies to any and all other information and data, illustrations and drawings, samples and specimens as well as technical data and data relating to dimensions, weight, performance and use; they are only approximate and therefore not binding, regardless of the medium (homepage, leaflets, price lists, ads, etc.) from which they were obtained.
- 2.4. Any and all documents and information provided by the Company such as leaflets, cost estimates, price lists, photos and logos, plans and drawings shall not be passed on to any third party or used for its purposes or exploited, copied, reproduced, disseminated or published without the written consent of the Company. The Company always retains all ownership rights and copyrights.

### 3. Conclusion of contract

- 3.1. A contract between the Company and a Contract Partner is only formed if and when the Company accepts an order in writing - for the purposes of these GTC emails are deemed in compliance with the written form requirement - and the Contract Partner subsequently signs the acknowledgement of order or, at the latest, upon completion of the contract by the Company.
- 3.2. The conclusion of a contract as well as any commitments or side agreements made by employees of the Company, but also any supplements and amendments shall in any case only be binding on the Company if the Company confirms them in writing.
- 3.3. The Company expressly reserves the right to make design-related changes or other changes to the contractual product or service considered reasonable from its perspective.



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- 3.4. Where goods are delivered / services are provided that were not expressly included in the order, the Company may charge the prices stated in its prevailing price list or in line with market prices.
  - 3.5. Where an order is placed at very short notice or in case of changes originating from the sphere of the Contract Partner, the Company is entitled to charge reasonable payments and / or surcharges in addition to the agreed prices.

#### **4. Pricing / Payment terms**

- 4.1. All prices quoted are prices in euro without discount or any other deduction and exclusive of value-added tax. The Company is therefore entitled to charge the Contract Partner, in addition to the agreed net charge, in particular also the full (Austrian and foreign) value-added tax on the products / services the Company needs to pay to the tax authorities. This applies also where the tax assessment notice is sent to the Company retroactively.
- 4.2. The prices quoted do not include packaging and (if agreed) the costs of loading and shipping. These costs are invoiced separately.
- 4.3. The prices are based on the costs incurred by the Company at the time of contract conclusion. Should the costs increase until the time of delivery, the additional cost shall be borne by the Contract Partner. To this extent the Company is entitled to adjust the agreed prices unilaterally and as it reasonably sees fit, it being understood that both parties waive the legal consequences of § 1056 sentence 2 ABGB (Austrian General Civil Code).
- 4.4. Markups added to the agreed prices may result from travel expenses, travel and waiting time as well as night, Sunday and holiday work; these costs are invoiced separately.
- 4.5. Neither the submission of a final invoice nor the acceptance of a payment based on the final invoice exclude subsequent claims by the Company for products and services provided.
- 4.6. Unless otherwise agreed in writing, the price in full and without deduction is due for payment immediately upon contract conclusion.
- 4.7. Any kind of rebate or discounts granted in writing in individual cases may be revoked at any time and shall not give rise to a claim by the Contract Partner for rebates in the future.
- 4.8. Unless expressly otherwise agreed, payment shall be made in euros by transfer to the account to be indicated by the Company. Any charges in connection with bank transfers (for its own bank or for other banks), foreign currency exchange and exchange rate differences shall be borne by the Contract Partner.
- 4.9. If the Contract Partner is in delay with a payment, the Company may, at its discretion, insist on full performance of the contract and demand immediate payment of the total outstanding amount, regardless of the right to suspend further performance, or declare withdrawal from the contract, granting a reasonable grace period
- 4.10. It is understood that in the event of default in payment the Contract Partner – without a separate declaration being required – shall pay default interest at the rate of 9.2% (nine point two percent) p.a. above the base interest rate of the Austrian Central Bank. Any loss suffered exceeding this amount shall be refunded. Moreover, the Contract Partner is obligated to reimburse any and all dunning and collection expenses incurred by the Company, including lawyer's or collection agency's fees, to the extent such expenses are necessary to take adequate legal steps.
- 4.11. The Contract Partner shall not have any right of set-off or retention with respect to any amounts owed to the Company (except claims acknowledged by the Company or legally established claims), irrespective of the specified purpose of the payment.
- 4.12. In case of non-performance of the contract, the Company shall have the right to charge the Contract Partner the agreed price or at least a cancellation fee of 30% (thirty percent) of the agreed price plus VAT, reserving the right to claim further damages. Any cash outlay by the Company, including, but not limited to, travel costs and any other expenses incurred by the Company for the implementation of the contract shall additionally be refunded to the Company. Moreover, the Contract Partner shall, at the request of the Company, return to the Company contractual products already supplied and pay the Company compensation for diminished value.



4.13. Where variations to the product/service ordered are deemed useful or necessary, the Contract Partner shall pay all associated additional costs, even if the variation was proposed by the Company or a lump sum price was agreed.

## **5. Passing of risk**

5.1. Unless otherwise agreed in writing, the object of purchase is deemed to be sold "ex works" (EXW) Bad Goisern (ready for pickup). The Company reserves the right to change the place of pickup, until up to 2 (two) weeks before pickup, into one of the alternative locations mentioned in the next sentence. Possible alternative places of pickup are the Company's branches in (i) Russbach am Pass Gschütt, 5442 Austria, (ii) Fladnitz an der Teichalm, 8163 Austria, (iii) Imst, 6460 Austria, (iv) Bassenheim bei Koblenz, 56220 Germany, and (v) Albano Sant'Alessandro, 24061 Italy. When the Company has made the product ready for pickup, the costs, risk and hazards of transport pass from the Company to the Contract Partner. In other respects the Incoterms 2020 rules apply.

5.2. If the Contract Partner fails to take delivery of the contractual product or service on the agreed date, the costs and risk shall nevertheless pass to the Contract Partner on the agreed handover date.

5.3. If the parties have agreed that the Company shall load and / or ship the product to the Contract Partner, the Company shall choose the means of transport, unless otherwise agreed in writing. Loading and transport are carried out at the expense and exclusive risk of the Contract Partner; the Company shall in no case be liable in that respect.

5.4. The responsibility for obtaining transport or any other insurance lies with the Contract Partner.

5.5. Any obligations of the Company to provide assembly services and / or assembly instructions or any further services provided by the Company after the passing of risk according to paragraph 5.1 do not alter the fact that hazards, accidents and risk have already passed to the Contract Partner. Services provided by the Company afterwards are only ancillary services and do not affect the date of passing of risk.

## **6. Delivery, default**

6.1. Unless otherwise agreed, the delivery period starts at the later of the following dates:

- Date of contract conclusion;
- Date of fulfillment of all technical, commercial and financial requirements for which the Contract Partner is legally responsible;
- Date of receipt by the Company of the agreed down payment and/or a payment guarantee.

6.2. The Company has the right to make partial shipments or shipment ahead of time. The Contract Partner cannot derive any rights from delayed partial shipments.

6.3. If delivery is delayed as a result of a force majeure event by which the Company is affected, delivery will be suspended for the duration of the effects of the event plus appropriate lead time. Force majeure events are events the Company cannot foresee or prevent and for which the Company cannot be held accountable. Force majeure events include in any case all impacts of the elements such as earthquake, lightning, frost, storm, flood, but also pandemic, as well as disruptions of operations, strike, industrial conflict, non-delivery by suppliers, shortage of energy or raw materials, transport disruption, orders by the authorities and other reasons for which neither party can be held accountable. The Company undertakes to inform the Contract Partner of the occurrence of such an event at the earliest time possible. If the duration of the event exceeds four weeks, the parties will seek a solution for handling the technicalities by means of negotiations. If they fail to reach an agreement, the Company and the Contract Partner may withdraw from the contract, in whole or in part, waiving any and all claims. Withdrawal from contract must be declared in writing.

6.4. Where a delay in delivery is caused by the Company, the Contract Partner will have the right to either request performance or withdraw from the contract after granting a reasonable grace period of at least 60 days. The grace period must be granted in writing and such notifications must include the notice of withdrawal from the contract. As to any claims for damages, the provisions in article 11 apply.

6.5. If the Contract Partner does not take delivery of the contractual product or service at the contractually agreed location or at the contractually agreed date, the Company (notwithstanding the arrangement in para 5.2) shall have the right to either request performance or withdraw from the contract, granting a



reasonable grace period. The Company may, at its discretion, store the object of purchase at the expense and risk of the Contract Partner. Should the Company incur additional costs as a result of the delay in take-over (handling etc.), the Contract Partner shall keep the Company indemnified against any liability the Company may incur in that respect.

- 6.6. The Contract Partner has the right to refuse to take over the service / object of purchase only if the service/object of purchase has evident defects that would substantially impair its intended use; it being specified that circumstances that adversely affect the Contract Partner such as bad weather, avalanche risk, disruption of operations, closure of some or all facilities due to adverse weather, closure of ski slopes, overcrowded ski slopes etc. do not give rise to a right to refuse take-over or to assert any claims against the Company, on whatever legal grounds.

## **7. Authorizations / Special obligations of the Contract Partner**

- 7.1. The Contract Partner is responsible for obtaining, on its own account and at its own expense, any and all permits required for the delivery of the services/products as well as all official authorizations and permits (including, but not limited to, building permits and business licenses).
- 7.2. Where import and/or export licenses or foreign exchange authorizations or similar permits and approvals are required for the performance of contract, the Contract Partner is responsible for getting them and undertakes to obtain the required licenses or permits in time.
- 7.3. The Contract Partner must keep the Company immediately indemnified against any liability the Company may incur because of the Contract Partner's failure to obtain any required permits, approvals and licenses.
- 7.4. Irrespective of any lump-sum agreements, the Contract Partner must provide the Company with all the necessary equipment and material (for example lifting and transport equipment) as well as qualified manpower in time and at its own expense.
- 7.5. The Contract Partner will provide training in all work processes but also in the ongoing operation of the contractual product or service as specified by the manufacturer and the assembly instructions for the expert personnel provided by the Contract Partner and name a contact person. The Contract Partner shall promptly submit the certificates requested by the Company, in particular certificates relating to the qualification of the expert personnel provided and the implementation of the relevant training measures. If the Contract Partner fails to meet these obligations, the Company will assume no liability.
- 7.6. The Contract Partner undertakes to submit in time all the information and documents (in particular building data) the Company needs to perform the contract. If the Contract Partner fails to submit the full documents in time, the Company will have no liability whatsoever.
- 7.7. All of the other preliminary measures the Contract Partner is required to take so that the Company can fulfill the contract, including, but not limited to, field and foundation work and proper grounding, connection of supply lines, lightning and fire protection, must be completed in time before the Company starts providing the service/product.
- 7.8. Moreover, the Contract Partner shall provide comprehensive assistance to the Company in the performance of the contract and – if required – grant the Company unimpeded access to the place of performance at any time.
- 7.9. The Contract Partner must take all measures necessary to ensure the security of persons and non-violation of legally protected rights and compliance with all applicable provisions.
- 7.10. It is understood that this list is not exhaustive and the Company has the right at all times to agree to apply detailed and further arrangements relating to the Contract Partner's obligations.

## **8. Sub-contracting**

- 8.1. The Company shall have the right to engage third parties to perform the tasks, in whole or in part, for which the Company is responsible.
- 8.2. The third party shall be paid solely by the Company. There will be no direct contractual relationship of whatever nature arising between the third party and the Contract Partner.



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## 9. Reservation of ownership

- 9.1. All goods and products of the Company remain in its ownership until the agreed prices and all associated costs have been paid in full.
- 9.2. In the case of attachment or if any other claims are raised, the Contract Partner must point out that the items are the Company's property and notify the Company immediately.
- 9.3. It is hereby expressly specified that all products of the Company are movable objects as defined by § 293 ABGB (Austrian General Civil Code).

## 10. Notice of defects

- 10.1. Any item delivered by the Company must be examined by the Contract Partner immediately upon receipt; any identified defects must be reported in writing without delay (hereinafter referred to as "notice"). Defects detected later must be reported in writing immediately after their detection.
- 10.2. If the Contract Partner fails to give notice of defects, it shall no longer be able to assert claims under warranty, damages, claims on grounds of the defect itself or error as to the non-defective nature of the item.
- 10.3. The notice must identify the item delivered / service provided or the defective parts thereof, each individual defect, and the circumstances in which they occurred.

## 11. Warranty / Damages / Disclaimer

- 11.1. The Company gives warranty only for defects that were already present at the time of passing of risk; such presence must in all cases be proved by the Contract Partner. The presumption of § 924 sentence 2 ABGB is waived by common consent. The warranty period is one year from the date of handover, with handover being defined as provision by the Company according to paragraph 5.1. In the case of repair and maintenance works, the warranty applies only to the products/services delivered by the Company.
- 11.2. The warranty given by the Company when a warranty claim exists is limited to free replacement of defective parts ex works - without installation or replacement of parts on site. The replacement of parts does not give rise to any extension of the warranty period for the whole product / service. Any costs resulting from corrective action carried out or attempted by the Contract Partner or a third party will not be refunded by the Company. The Contract Partner must return the defective parts to the Company or to another address provided by the Company immediately after their replacement and pay the cost of return shipping.
- 11.3. The warranty does not apply if the problem results from faulty and improper operation and/or use or natural wear and tear. Warranty claims are also excluded if the Company is requested to alter or modify items already used or to undertake work involving third-party products.
- 11.4. If the contractual partner is a contractor, an updating obligation concerning goods with digital elements and digital services is expressly waived. The customer reserves the right to carry out updates and upgrades concerning goods with digital elements and digital services in coordination with the contractual partner for an appropriate fee. If the updates are reasonable and necessary, the contractual partner will not refuse consent without an important reason.
- 11.5. To avoid exclusion of all warranty or damages claims, the Contract Partner must inform the Company in writing and obtain its prior consent with respect to any intended alterations to the Company's products or their operating method, otherwise all liabilities are excluded.
- 11.6. With respect to damages, the Company is only liable for any damage caused with intent or gross negligence by the Company or by a person for whom the Company is legally responsible. Liability for slight negligence is excluded; the same applies to reimbursement for indirect damage, consequential and financial losses (e.g. due to disruption of operation), loss of interest, lost profit, failure to realize expected savings, and damage resulting from third party claims against the Contract Partner.
- 11.7. With respect to personal injuries of the Contract Partner the Company assumes liability irrespective of the degree of negligence attributed to the Company.
- 11.8. In case of inability to deliver or provide service, all contractual obligations shall cease and the Contract Partner will in no case have a right to damages.



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- 11.9. The amount of any liability of the Company is limited to the sum insured paid by the business liability insurance company in a given case. Any liability of the Company beyond that amount is excluded.
- 11.10. As to information provided by telephone or verbally – without prejudice to the agreed conditions limiting liability –, the Company shall only have liability if the information was confirmed in writing by the Company.
- 11.11. It is hereby specified that the Contract Partner shall use only qualified technical personnel for the commissioning, installation and operation of and any work on the facility (maintenance, upkeep or repair), failing which the Company shall have no liability. Also for telephone inquiries to the Company, the Contract Partner will only use qualified technical personnel.
- 11.12. In any case the Contract Partner will ensure by taking appropriate measures, if necessary, that the operation and all work processes are performed in accordance with the manufacturer's instruction, the assembly instructions, complying with the appropriate original operating instructions and the supplementary notes provided by the Company, taking the local circumstances and features fully into account; failing which the Company will not be liable in any respect whatsoever.
- 11.13. No liability whatsoever is assumed for the supporting staff, equipment and auxiliary material provided by the Contract Partner; the Contract Partner shall keep the Company indemnified against any liability the Company may incur in that respect.
- 11.14. The Contract Partner must comply with all available regulations, technical provisions, installation requirements and operating instructions and manuals preventing hazards when using the product delivered or service provided and/or facilities installed, machines and other items delivered by the Company. Moreover, the Contract Partner undertakes to report any liability case to the Company immediately and provide the Company with the required documents.
- 11.15. Claims for damages shall lapse according to statutory regulations but not later than one year after the date at which the damage occurs.
- 12. Data protection / Data processing**
- 12.1. To the extent the Company is provided with personal data, such data will be used for processing inquiries and/or accounting, for providing other services and for administrative purposes.
- 12.2. The Contract Partner agrees to its personal data being stored and, if necessary, processed. The Contract Partner's personal data will be treated as strictly confidential in compliance with the provisions of the Data Protection Act.
- 12.3. Personal data will neither be sold to third parties nor marketed in any other way. Personal data will only be forwarded or otherwise transmitted to third parties if it is necessary for performance of the contract or if prior consent was given; consent given to the disclosure of personal data to third parties can be revoked at any time. The disclosure of personal data may be required under statutory provisions or in legal proceedings.
- 12.4. Where the Company provides cameras, monitoring systems or the like, the Company has no liability to ensure compliance with data privacy requirements; such compliance is the sole responsibility of the Contract Partner. The Contract Partner shall keep the Company indemnified against any liability the Company may incur in that respect.
- 13. Place of performance, choice of law and place of jurisdiction**
- 13.1. The place of performance is the place where the work/service outlined in the contract shall be provided by the Company; it shall be the location of the registered office of the Company, unless expressly otherwise agreed.
- 13.2. The exclusive place of jurisdiction for any dispute arising in connection with a product / service provided by the Company on the basis of these GTC shall be the competent court at the location of the registered office of the Company. The Company may sue the Contract Partner in another court in Austria or abroad, however.
- 13.3. Any dispute arising in connection with the products / services provided by the Company shall be governed in accordance with the Austrian substantive law, giving no effect to the provisions of the Austrian Private International Law and the UN Convention on Contracts for the International Sale of Goods. The laws of Austria shall apply also where services are used by foreign customers.



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#### 14. Miscellaneous

- 14.1. All amendments and supplements and any subsidiary agreements to these GTC or contracts between the Company and the Contract Partner must be in writing to be effective. The same shall apply to any waiver, modification or cancellation of the written form requirement.
- 14.2. The Contract Partner acknowledges that no person for whom the Company is legally responsible will have authority to make declarations deviating from these GTC or other statements by the Company.
- 14.3. Should any provision of these GTC be invalid, the Company and the Contract Partner hereby expressly undertake to agree on legally valid provisions coming as close as possible to the economic purpose of the invalid provision. The validity of the remaining provisions shall not be affected by the invalid provision. The same shall apply to loopholes in the contract.
- 14.4. Oral statements will only be effective to the extent to which they are confirmed in writing and signed on behalf of the Company by the Company.
- 14.5. The parties waive the remedy of voidability on the ground of error, the initial absence or subsequent ceasing to exist of the basis of the transaction and laesio enormis.
- 14.6. All rights and obligations arising from these GTC shall pass to the legal successors of the Company and the Contract Partner.

Last revised on 18.07.2023, Sunkid GmbH