

Additional Terms and Conditions for SkyDrive's Purchase (version December 2023)

These terms and conditions set out below are incorporated into and govern any contract for the purchase of goods and/or services by any of SkyDrive Inc., Sky Works Inc. and other affiliates of SkyDrive Inc. in Japan ("SD") as the buyer of goods and/or services from the seller or service provider ("Seller"), including any transaction entered into pursuant to a purchase order issued by SD or other writing that incorporates these terms and conditions.

1. Acceptance.

Written acceptance by Seller of this purchase order ("Order"), or the commencement of any performance of the Order hereunder by Seller, shall constitute the acceptance by Seller of this Order and the terms and conditions printed, typed and/or written on the face and reverse side of this Order as the exclusive terms applicable of this Order. Unless otherwise specified elsewhere in these terms, handwritten provisions prevail over types provisions, and types provisions prevail over the printed provisions, to resolve conflicts.

2. Prices and Payment.

Seller shall treat SD at least as favorably as any other customer of Seller, and hereby represents and warrants to SD that the prices and the terms and conditions set forth herein are at least as favorable to SD as those prices and terms and conditions offered contemporaneously to other customers in the same or similar circumstances. Payment terms shall be measured from date of delivery or receipt of invoice for the shipment, whichever is later. The prices set forth on the face of this Order constitute SD's sole payment obligations hereunder. Seller shall be responsible for and pay all applicable taxes and other governmental charges, including duties, customs, tariffs, imposts and surcharge, imposed on the sale of the products or provisions of services except as otherwise provided herein.

3. Delivery.

Time is of the absolute essence in the delivery of the products or provision of the services hereunder. Seller shall deliver the products and perform the services in accordance with any schedule set forth on the face of this Order. All products shall be delivered in a manner which (i) follows good commercial practice, (ii) is acceptable to common carriers for shipment at the lowest rate, and (iii) is adequate to insure safe arrival. Seller shall mark all containers with necessary lifting, handling and shipping information, purchase order number, and names of SD and Seller. If required by the delivery terms hereunder, SD shall notify Seller of the method of shipment and Seller shall follow such instructions.

4. Cancellation.

SD may, without cause, cancel all or any portion of this Order upon written notice to Seller. In such event, SD's sole liability to Seller shall be for any costs actually incurred by Seller prior to such notice that directly relate to Seller's performance hereunder and which cannot be avoided or otherwise mitigated.

5. Warranty for the products and services.

Seller represents and warrants that for a period of 12 months from the date of the completion of delivery or performance all products and services supplied pursuant to this Order conform to the applicable specifications, including any specifications of any kind provided to SD, any specifications for the same products or services provided to other customers or published by Seller, and all applicable laws, regulations and standards, and that the products are free from defects in materials and workmanship and the services are free from errors and omissions. The foregoing warranties are not exclusive, will survive delivery and payment, and extend to SD and SD's customers.

6. Warranty of non-infringement.

Seller represents and warrants that the products and services supplied pursuant to this Order and their use by SD and SD's customers are free from infringement of lawful intellectual property right of others.

7. Indemnification.

Seller shall defend, indemnify and hold harmless SD and SD's employees, agents, contractors, shareholders, officers, directors and customers and each of the foregoing parties' successors and assigns, from and against any and all claims, demands, suits, actions, judgments, liabilities, damages, costs and expenses (including without limitation, the fees and expenses of attorneys and consultants) asserted against, imposed upon, or incurred or suffered directly or indirectly by, SD or any such other indemnified party, as a result of, arising from or relating to any (i) Seller breach of any provision this Order, including any claim, demand, suit or action brought by a third party asserting matters which, if true, would result in such a breach, (ii) negligent acts, errors or omissions by Seller, its employees, officers, agents, representatives or sub-contractors relating to the products or services or Seller's performance hereunder, (iii) claims asserted by any of Seller's employees, officers, agents, representatives or sub-contractors for damages (including, without limitation, damages for personal injury), incurred at SD's facilities or otherwise relating to Seller's provision of the products or services, or (iv) infringement related to the products or service whether involving patents, trade secrets, copyrights, trademarks, trade names or otherwise, provided, however, that SD shall notify Seller of claims made against SD, endeavor to provide information relevant to the claim, and give SD exclusive control of the defense subject to our right to participate at our own expense.

8. Confidentiality.

A. In connection with this Order, SD may provide to Seller, or Seller may otherwise obtain, confidential information of SD and/or third parties ("Confidential Information"). Confidential Information shall include, without limitation, (i) information concerning SD's operations obtained visually at SD's facilities, and (ii) information concerning SD's technological techniques, inventions or research and development. Confidential Information may be indicated as being "Confidential" at the time of its disclosure, but such identification shall not be a condition to the protection of Confidential Information hereunder. Confidential Information shall not include any information that is in or enters the public domain through no fault of Seller. Seller shall (i) maintain the confidentiality of any Confidential Information, (ii) not disclose or permit the disclosure of any Confidential Information to any third party, (iii) not use Confidential Information except in connection with Seller's performance under this Order, unless a further use is expressly authorized in writing by an authorized SD representative; and (iv) protect Confidential Information from disclosure or other misuse with the same degree of care as Seller uses to protect Seller's own most valuable confidential information (but in no case with any less than reasonable care).

B. Seller shall immediately notify SD of any disclosure of any Confidential Information that is not permitted or other misuse of any Confidential Information.

C. Seller may only disclose Confidential Information to Seller's employees for whom such knowledge is essential for the purposes to perform this Order. Seller shall limit, to the extent reasonably possible to allow Seller to use Confidential Information as permitted herein, the number of any copies made by Seller of physical materials containing any Confidential Information. Any employee, agent or subcontractor who is given access by Seller to any confidential information shall first agree in writing to be bound by confidentiality provisions at least as stringent as those set forth herein, provided that Seller's employees, agents or subcontractors who access SD's facilities may be required to sign a separate SD non-disclosure agreement prior to admittance to SD's facilities. Without limiting the direct liability of any such person, Seller shall be responsible for the disclosure or other misuse of Confidential Information by any of Seller's employees, agents or subcontractors and Seller shall immediately take such steps as may be necessary to terminate any continuing disclosure or misuse by any such person of which Seller becomes aware. If Seller is required by applicable law to disclose any information, Seller shall immediately notify SD of the details of such matter and shall seek to limit such disclosure to the maximum extent permitted by law.

D. Seller shall not, without first notifying SD, disclose to SD any information, which Seller regards as confidential or which is subject to confidentiality restrictions imposed by any third party. SD shall be able to conclusively presume that any information disclosed by Seller to SD without such prior notification is not subject to any confidentiality restrictions and may be used and disclosed freely by SD for any purpose.

E. Neither party may use the other party's name in advertisements nor otherwise disclose the existence or content of this Order without the prior written consent of the other party.

9. Applicable law.

The trade terms used herein shall be interpreted in accordance with INCOTERMS (the latest version) published by the International Chamber of Commerce. In all other respects, this Order and the performance of all obligations hereunder shall be governed by and construed in accordance with the laws of Japan, without application of any choice of law rules. SD and Seller agree that this Order is not governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG).

10. Dispute Resolution.

All disputes, controversies or differences arising out of or in connection with this Order shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of The Japan Commercial Arbitration Association. The place of the arbitration shall be Tokyo, Japan. The number of the arbitrators shall be one. The arbitral proceedings shall be conducted in English.

11. Contingencies.

Neither party shall be liable for any delay in performance or any failure to perform any obligation under this Order that arises from any contingency beyond that party's reasonable control, including, but not limited to, acts of God, governmental orders or restrictions, war, or civil unrest, whether such contingency was known or contemplated to be possible at the time this order is placed. If delivery of the products or performance of services is delayed by such contingencies, Seller shall immediately notify SD in writing and SD may either (i) extend the time of performance, or (ii) terminate the uncompleted portion of this Order with no further liability for either party.

12. Compliance.

Seller shall comply with any and all applicable codes, laws, statutes, ordinances, rules, regulations, standards and orders (including, without limitation, any anti-corruption related regulation, such as latest versions of the US Foreign Corrupt Practices Act 1977, the Japanese Unfair Competition Prevention Act 1993 and the UK Bribery Act 2010, and any competition law and anti-trust law).