

## STANDARD TERMS AND CONDITIONS OF SALE

1. **Formation of Contract.** This document is an offer or counter-offer by Skyjack, Inc. ("Seller") to sell the identified goods and/or services, as applicable ("Goods") to the Buyer ("Buyer") in accordance with these Terms and Conditions of Sale ("Terms and Conditions"). It is not an acceptance of any offer made by Buyer. The term "Goods" includes, without limitation, raw materials, new parts, spare parts, refurbished or reconditioned parts, components, assemblies, tooling, equipment, other end products and services. Certain of the Terms and Conditions apply only to particular types of Goods, but only where expressly limited to those type of Goods. All sales by Seller to Buyer are subject to, and are expressly conditioned upon assent to, these Terms and Conditions. Seller hereby objects to any additional or different terms or conditions, and notifies Buyer that Seller is unwilling to sell on any terms or conditions other than these Terms and Conditions. These Terms and Conditions and the additional terms and conditions expressly agreed to in a written contract signed by Seller, or contained in Seller's quotation or order acknowledgement (collectively, the "Agreement"), shall be the entire agreement between Seller and Buyer on the subject matter hereof; and there are no conditions to this Agreement that are not expressed herein.

Seller may modify these Terms and Conditions, at any time, by posting notice of such modified or new Terms and Conditions through links provided on Seller's website at <http://skyjack.com> at least ten (10) days prior to any modified or new Terms and Conditions becoming effective. Buyer agrees to review Seller's website and current Terms and Conditions periodically. Buyer's continued performance under the Agreement without providing written notice to Seller in accordance with the Agreement detailing Buyer's objection to any modified or new Terms and Conditions prior to the effective date of such modified or new Terms and Conditions will be subject to and will constitute Seller's acceptance of such modified or new Terms and Conditions.

No accepted offer and no dealer order may be cancelled or altered by Buyer except upon terms and conditions accepted by Seller in writing. This offer may be revoked by Seller at any time before it is accepted by Buyer, and shall automatically expire 30 calendar days after its date if Buyer has not accepted it before then. Neither Buyer's acceptance of this offer nor any conduct by Seller (including but not limited to shipment of Goods) shall oblige Seller to sell to Buyer any quantity of Goods in excess of the quantity that Buyer has committed to purchase from Seller at the time of such acceptance or conduct.

2. **Price.** Unless otherwise agreed to by Seller in writing, the price for Goods sold hereunder shall be Seller's list price in effect as of the date of Buyer's order, less any agreed upon discounts or credits to Buyer. Notwithstanding the foregoing, Seller may increase the price of the Goods upon notice to Buyer to reflect any additional increases in Seller's cost of producing the Goods. Prices are stated and payable in the currency set forth in the price list.

3. **Credit Approval; Payment Terms.** All payment terms set forth in this document are subject to Seller's approval of Buyer's credit where Seller is extending payment credit to Buyer, in Seller's discretion; and if such approval is withheld, payment shall be due

in advance of Seller's performance. Except as otherwise agreed to by Seller in writing, payment is due upon Buyer's receipt of Seller's invoice following shipment. Buyer shall have no right to set off against the purchase price and amounts Buyer contends Seller may owe to Buyer, irrespective of any alleged warranty claims. Interest will be charged at the lesser of (i) 18% per year, or (ii) the highest rate permitted by applicable law, on accounts more than 30 calendar days past due. If Buyer fails to make any payments in accordance with the terms of this Agreement, Seller may, in addition to its rights and remedies provided hereunder or at law or equity, (a) defer or suspend further shipments or provision of Goods until Buyer reestablishes satisfactory credit, (b) cancel the unshipped or unperformed portion of any order and invoice Buyer for incurred costs and reasonable profit without any liability on the part of Seller for failure to ship or provide Goods, or (c) make shipment of Goods to Buyer on a C.O.D. or cash in advance basis. If production or shipment of completed Goods, or other Seller performance, is delayed by Buyer, Seller may immediately invoice, and Buyer shall pay, the percentage of the purchase price corresponding to the percentage of completion; in addition, Buyer shall compensate Seller for storage of completed Goods or work in process during any such delay, whether stored at Seller's facility or an independent storage company's facilities.

In the event Seller provides Buyer a trade package discount with respect to the price for the Goods, the full discount will not be applied unless Seller receives all traded equipment within 30 days of invoicing. The applicable discount will then be reduced by 25% on the 31<sup>st</sup> day after invoicing, and by an additional 25% for each 30 days thereafter so that, if all of the equipment is not delivered to Seller within 120 days, the discount will be reduced to zero. Buyer represents it holds such trade-ins free and clear of any liens and encumbrances. Buyer shall deliver the equipment, goods, and inventory to Seller and provide any and all documentation establishing title to such goods and equipment it is trading in.

**4. Taxes and Other Charges.** Any cargo insurance, manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, import, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such taxes or other charges, Buyer shall reimburse Seller therefor on demand.

**5. Title and Security Interest.** In the event Buyer obtains possession of the Goods prior to issuing full payment of all amounts owed to Seller as set forth in the Agreement: (a) Buyer acknowledges and agrees that title to the Goods shall be and remain vested in Seller unless and until Seller has received from Buyer payment of the entire purchase price, plus any other amounts due Seller under the Agreement; (b) Buyer hereby grants to Seller a purchase money security interest in all Goods sold hereunder and all accessories and additions thereto, whether presently upon Buyer's premises or hereafter acquired, all spare parts and components thereof, and all proceeds of the sale or other disposition including, without limitation, cash accounts, proceeds, rental proceeds, contract rights, instruments and chattel paper, in an amount equal to all amounts due Seller under this Agreement; and (c) Seller may take any action deemed necessary and/or appropriate to perfect and/or protect its security interest in the Goods, Buyer consenting in all respects thereto and

agree to fully cooperate with Seller in connection therewith (including, without limitation, authorizing Seller and its agents to file any financing statements and other documents necessary to create, perfect, and maintain the security interest granted hereunder); (d) Buyer shall not make any alterations, additions or improvements to the Goods without the prior written consent of Seller and, regardless of consent, alterations, additions or improvements may not place the operation of the Goods outside the manufacturers' operating limits, must meet applicable legal standards and may not hinder the Goods' operation; (e) Buyer shall keep the Goods free and clear of all liens, encumbrances, or security interests, except Seller's security interest, and (f) Buyer shall maintain the Goods in good working order and condition; reasonable wear and tear accepted, and pay the cost of all repairs and replacement parts including labor charges, and shall promptly notify Seller of any defect in or damage or accident to or arising from the, operation, use, repair of the Goods or installation and removal of any attachment.

6. **Delivery, Claims and Force Majeure.** Delivery of the Goods shall, if practicable, take place on the delivery date as indicated on Seller's Invoice ("Delivery Date"), f.o.b. Seller's location. Physical possession, risk of damage or loss and reward to the Goods are deemed to pass to the Buyer at Seller's Location. The Buyer hereby agrees to pay all costs of delivery of the Goods to the Buyer. If Seller is unable to deliver the Goods on or prior to such date, and notifies the Buyer of such fact prior to the Delivery Date, Seller shall not be liable to the Buyer for any damages, including without limitation lost profits, consequential or incidental damages, for delayed delivery or non-delivery of the Goods to the Buyer. In any event, notwithstanding any failure by Seller to give prior notice of inability to make delivery, Seller shall have no liability to Buyer for non-delivery if such delivery is prevented or delayed by act of God, war, civil insurrection, terrorism, fire, flood, storm, strikes, lockouts, total or partial failure of transportation or delivery facilities, interruption of power, any government law, regulation or order, or any other cause beyond Seller's control. All Goods shall be packaged, marked and otherwise prepared in accordance with good commercial practices. All charges for packaging, storage and shipping shall be separately itemized and supported by the carrier's receipted bill or similar documentation. All applicable taxes and other government charges, including federal, state, and local sales taxes, use or excise taxes and any custom duties shall be separately itemized.

7. **Events of Default.** Buyer shall be deemed to have committed a default under the Agreement ("Event of Default") in the event (a) any payment or other amounts due Seller are not made when due or payable and such amount continues unpaid for 10 days; (b) Buyer makes an assignment for the benefit of creditors; (c) Buyer fails to maintain required insurance; (d) Buyer is insolvent or becomes subject to any proceeding under any bankruptcy laws or other similar law for the relief of debtors; (e) a receiver is appointed for a substantial part of Buyer's assets; (f) the Goods becomes subject to seizure or Buyer suffers a material adverse change in its business or financial condition; or (g) Buyer breaches any term or covenant under the Agreement.

8. **Remedies.** In addition to any other rights the Seller may have hereunder or at law or in equity, upon any Event of Default Seller shall have the right to pursue any of the following remedies, which shall be cumulative and not exclusive: (i) termination of this

agreement; (ii) bring an action against Buyer for all amounts due for the Goods and unpaid including the costs, including legal fees; (iii) repossess the Goods or any parts thereof, with or without notice, and dispose of same in a reasonable commercial manner in accordance with applicable law.

9. **Changes.** Seller may at any time make such changes in design and construction of Goods, as Seller deems appropriate, without notice to Buyer. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.

10. **Warranties.** Seller provides express, limited warranties for the Goods, as applicable and as amended from time to time, which are available at <http://skyjack.com/warranty-service>:

Skyjack products <New> – <http://skyjack.com/sites/default/files/specifications/01-Skyjack-Warranty-Policy-New-Machines.pdf>

Skyjack products <Reconditioned> – <http://skyjack.com/sites/default/files/specifications/02-Skyjack-Warranty-Policy-Reconditioned.pdf>

Skyjack products <Refreshed> – <http://skyjack.com/sites/default/files/specifications/03-Skyjack-Warranty-Policy-Refreshed.pdf>

Skyjack products <Used> (disclaimer of warranty) – <http://skyjack.com/sites/default/files/specifications/04-Skyjack-Warranty-Disclaimer-Used-Equipment.pdf>

Skyjack Parts – <http://skyjack.com/sites/default/files/specifications/05-Skyjack-Warranty-Policy-Parts.pdf>

Non-Skyjack products <Reconditioned> – <http://skyjack.com/sites/default/files/specifications/06-Skyjack-Warranty-Policy-Non-Skyjack-Reconditioned.pdf>

Non-Skyjack products <Used> (disclaimer of warranty) – <http://skyjack.com/sites/default/files/specifications/07-Skyjack-Warranty-Disclaimer-Non-Skyjack-Used-Products.pdf>

11. **Goods Operations.** Buyer agrees that all Goods shall be operated at all times in a safe and reasonable manner in accordance with the Seller's written manuals and for the purposes for which the equipment and goods were intended. Buyer: (a) assumes and shall bear all responsibility for providing adequate safeguards, work handling tools and safety devices to protect fully the operator and any other users of the Goods in accordance with the prevailing federal, state, and local laws and regulations and current industry standards, (b) shall establish and use, and require all persons operating the Goods to use, all proper and safe operating procedures, including, but not limited to, those required by all applicable federal,

state and local laws and regulations and current industry standards and procedures set forth in all Seller manuals or instructions sheets relating to the Goods, and (c) Buyer shall not remove, modify or “work around” any devices, warning signs, work handling tools or manuals furnished by Seller or installed upon or attached to the Goods.

12. **Limitation of Liability.** Except as provided below, Seller's liability with respect to the Goods sold hereunder shall be limited to the applicable warranty provided in these Terms and Conditions and, with respect to any other breaches of its contract with Buyer, shall not exceed the net contract price paid by Buyer to Seller for the Goods. Seller shall not be subject to any other obligations or liabilities, whether arising out of breach of contract, warranty, tort (including negligence and strict liability) or under other theories of law or equity, with respect to Goods sold by Seller, or any undertakings, acts or omissions relating thereto. Without limiting the generality of the foregoing, Seller specifically disclaims any liability for property damages, penalties, special or punitive damages, damages for lost profits or revenues, downtime, lost good will, cost of capital, increased overhead, operating inefficiencies, cost of substitute goods or services, or for any other types of economic loss, or for claims of Buyer's Buyers or any third party for any such damages, costs or losses. Without limitation of the foregoing, Seller shall not be liable for and disclaims all special, incidental, and consequential damages whatsoever. In no case will Seller be liable for any claim for personal injury, death, dismemberment and/or property damage (whether arising out of breach of contract, warranty, tort (including negligence and strict liability) or under any other theories of law or equity), where the theory of liability is based on the position that the Goods should have exceeded any standards imposed by applicable law.

In the event Seller is found liable for any amounts under theory of liability, Seller reserves all rights of subrogation against all other parties bearing any degree of responsibility therefor.

13. **Indemnification.** To the fullest extent permitted by law, Buyer agrees to defend, indemnify, release and hold harmless Seller, Seller's affiliates, successors and assigns, from and against any and all claims, demands, damages, loss, liability, suit, actions or causes of action at law or in equity, together with any and all losses, costs, expenses and reasonable attorneys' fees (“Claims”), including but not limited to Claims related to injury or death to any person, or loss or damage to property, arising out of or in any way connected with or caused by the Buyer's negligent installation, operation, use, repair, removal, or return of the Goods, or any part thereof whether such loss or injury shall be to persons employed by the Buyer or to third parties (including but not limited to any penalties, fines, costs, charges or expenses for violations of any statutes, laws, rules or regulations, including any environmental laws). Without limiting the foregoing, Seller shall neither assume nor incur liability for any injury, including economic injury, to the Buyer or a third party, caused by any negligent operation of the Goods.

14. **Insurance.** Buyer represents that it has or shall procure and maintain insurance, in adequate amounts and coverage reasonable in the circumstances and foreseeably acceptable to Seller as to any one occurrence, at Buyer's sole expense, with reputable and financially responsible insurance companies, insuring against any and all public liability and any indemnifications provided to Seller, including injuries or death to persons and damage to

property, arising out of or related to the Goods or Buyer's performance hereunder. All such insurance coverage shall name Seller as loss payee and additional insured.

15. **Installation.** If Buyer purchases any Goods that require installation or erection, Buyer shall, at its expense, make all arrangements necessary to install, erect and operate the Goods. If Buyer is required to install or erect any Goods, Buyer shall install the Goods in accordance with any Seller instructions. Buyer shall indemnify and hold harmless Seller from and against any and all claims, losses, liabilities, damages and expenses (including but not limited to attorneys' fees and other costs of defense) arising from or otherwise connected with Buyer's or its agent's failure to properly install the Goods.

16. **Technical and Proprietary Information.** With respect to the Goods, any designs, patents or trademarks or other intellectual property supplied by the Seller shall be and remain the sole and exclusive property of the Seller and may be used only as expressly authorized by Seller. Any sketches, models or samples submitted by Seller shall remain the property of Seller, and shall be treated as confidential information unless Seller has in writing indicated a contrary intent. No use or disclosure of such sketches, models or samples, or any design or production techniques revealed thereby, shall be made without the express, prior written consent of Seller. Buyer shall not use the Seller's confidential information, or permit it to be accessed or used, for any purpose or otherwise in any manner to the Seller's detriment, including without limitation, to reverse engineer, disassemble, decompile or design around the Seller's confidential information, proprietary services, techniques, designs, products and/or confidential intellectual property.

17. **Assignment.** Seller may, without Buyer's consent, assign this Agreement, or any interest, including without limitation, grant a security interest in the Goods. Any assignee may reassign the agreement, or any of them without notice to you, and shall have all of the rights but none of Seller's obligations under the Agreement. Buyer may not assign any of its rights, duties or obligations under this Agreement without Seller's prior written consent, and any attempted assignment without such consent will be void and of no effect or consequence.

18. **Compliance with Laws.** Buyer shall comply with and conform to all applicable municipal, state, provincial, federal, national, and foreign laws relating to the Agreement and the Goods, and shall pay all costs and expenses of every character occasioned by or involving the ownership and possession of the Goods, including all taxes, assessments, public charges, impositions or fees imposed by any such authorities. Buyer represents, warrants and covenants to Seller that Buyer, any party retained or paid by the Buyer, and any purchaser of the Goods from Buyer, has and will comply with all applicable export control laws, anti-boycott laws, economic and trade sanctions, embargoes, and other applicable laws, regulations and executive orders regarding the export, re-export, transfer, distribution and sale of the Goods, or any component part thereof, including without limitation, the U.S. Export Administration Regulations (15 C.F.R. §§ 730-799), continued in effect under the International Emergency Economic Powers Act (IEEPA), (50 U.S.C. §1701 et seq.), the Arms Export Control Act (22 U.S.C. 2751, et seq.), the International Traffic in Arms Regulations (22 C.F.R. §§ 120-130), as these laws and regulations may be amended or superseded from time to time, and all other applicable laws, regulations and executive orders. Buyer shall be

solely responsible for the exportation of the Goods if applicable. Buyer assumes full responsibility for preparing, submitting and procuring all licenses, permits, approvals, clearances and other documentation required to export the Goods out of the USA and import the Goods into the intended destination. Buyer shall be solely responsible for and shall pay when due all export taxes, import taxes, customs charges and duties, VAT and all other fees, taxes and related charges concerning or otherwise related to the exportation, importation, transportation, possession, and storage of the Goods. Buyer further represents and warrants to Seller that it has complied, and covenants to continue to comply, with the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq. with respect to all transactions, activities, and operations of Buyer relating to the Goods.

19. **Governing Law, Jurisdiction and Venue.** This Agreement will be construed under and subject to the laws of Toronto, ON Canada. All litigation, court actions and other legal proceedings between the parties arising under this Agreement will and must be exclusively held in Toronto, ON Canada, in a court of competent jurisdiction. Both parties and their respective officers, directors, and employees hereby submit to personal jurisdiction in Toronto, ON Canada, for all such litigation and waive any rights they may have to contest personal jurisdiction or venue in Toronto, ON Canada, and any claims that such jurisdiction or venue is invalid. The rights and obligations of the parties hereunder shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods, which is excluded.

20. **No Waiver.** No waiver of this Agreement or any of its provisions is valid unless expressly agreed to in a writing signed by Seller. No waiver by Seller of any default under this Agreement is a waiver of any other or subsequent default. The failure of Seller to insist upon strict and timely performance of any term or condition of this Agreement shall not be deemed a waiver of any right or remedy that Seller may have under this Agreement or at law or equity, and shall not be deemed a waiver of any subsequent default in performance of the terms and conditions of this Agreement.

21. **Cost of Collection.** In the event legal action is necessary to recover monies due from Buyer or to enforce any provision of this Agreement, Buyer shall be liable to Seller for all costs and expenses associated therewith, including, without limitation, Seller's actual attorneys' fees and costs.

22. **Spare Parts.** Seller shall determine in its sole discretion the period of time for which it supplies spare parts manufactured by it; provided however, in no event shall Seller be obligated to supply spare parts manufactured by it more than ten (10) years after the cessation of manufacture of the Goods. The supply of spare parts provided is limited to the availabilities of the Seller.

23. **Survival; Severability.** All provisions that are intended by their context or nature to survive termination or expiration of the Agreement shall do so, including without limitation the Sections covering Taxes and Other Charges, Title and Security Interest, Delivery, Remedies, Warranties, Limitation of Liability, Indemnification, Insurance, Technical and Proprietary Information, Assignment, Compliance with Laws, Governing Law,

Jurisdiction and Venue, and Cost of Collection. Any term or condition that is declared unlawful or unenforceable by a court of competent jurisdiction will not apply. The unenforceability of any such term or condition will not affect the enforceability of any other term or condition.

24. **Notice.** All notices, requests, demands and other communications related to this Agreement shall be in writing and shall be deemed to have been duly given: (a) on the date if personally delivered, (b) on the date of transmission if sent via facsimile or electronic mail, provided receipt of transmission is obtained, (c) one business day after deposit with an overnight courier, or (d) 5 business days after mailing by first class mail, registered or certified, and properly addressed to the parties at the addresses set forth on the face hereof.

25. **Service Terms – Supplemental Terms.** In addition to being governed by these Terms and Conditions, each order for the purchase of training, service or other calls by Seller’s employees, agents or representatives shall be governed by Seller’s Supplemental Service Terms which are attached hereto as Appendix A, and made available through links provided on Seller’s website at <http://skyjack.com> (the “Supplemental Service Terms”); provided that, in the event of an inconsistency between these Terms and Conditions and the Supplemental Service Terms, the Supplemental Service Terms shall control as to all such services.



## APPENDIX -- A

### SUPPLEMENTAL SERVICE TERMS

1. **Applicability.** These Supplemental Service Terms apply to each order for the purchase of training or service calls by Seller's employees, agents or representatives ("Services") and are incorporated by reference in Seller's Standard Terms and Conditions of Sale ("Terms and Conditions"). In the event of any inconsistency between these Supplemental Service Terms and the Terms and Conditions, these Supplemental Service Terms shall control as to all Services. Capitalized terms used in these Supplemental Service Terms, but not defined, shall have the meanings given to such terms in the Terms and Conditions. Although defined separately in these Supplemental Service Terms, Services are included within the definition of "Goods" for all purposes under the Terms and Conditions.

2. **Services, Manner of Performance and Schedule.** The Services will be provided using commercially reasonable and diligent efforts, in accordance with Seller's work order or other written communication to Buyer describing the scope of Services. Seller will determine the method, details and means of performing the Services, and will use reasonably diligent efforts to meet any time schedule provided by Seller in writing.

3. **Customer Duties and Responsibilities.** Buyer will fully cooperate with Seller in terms of providing access to equipment, technical and field data and information, and other information or resources that are required by Seller for the performance of the Services. Buyer assumes full responsibility for, and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all such data, materials, and information. Buyer will provide Seller's representatives with work space, services, and equipment, at no charge, as reasonably requested to assist in performance of the Services.

4. **Warranty Disclaimer – Used Goods.** Seller provides the Services on an "as is" basis and makes no other warranties, express or implied. **SELLER EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES (EXPRESS OR IMPLIED) AS TO THE PRODUCT FURNISHED HEREUNDER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

5. **Acceptance.** All Services shall be inspected and approved by Buyer upon completion. Buyer's failure to provide written notice of any defects in performance as soon as reasonably practicable will constitute acceptance of Seller's performance of the Services, shall relieve Seller of any further obligations under the applicable work order, and shall waive any right or remedy of Buyer with respect to the Services or Seller's performance of the Services.

6. **Independent Contractor Relationship.** The relationship between Buyer and Seller for the performance of Services is that of an independent contract. Nothing shall be construed as creating a relationship of joint venturers, partners, employer-employee, or agent. Neither party has the authority to create any obligations for the other party, or to bind the party to any representation or document. Personnel furnished by Seller shall be and will remain Seller's employees and under no circumstances are they to be considered Buyer's employees or agents. Federal, state, local, income and payroll taxes of any kind shall be withheld or paid by Buyer on behalf of Seller or Seller's employees. No employees of Seller shall participate in any benefit of Buyer, including health insurance, paid vacation or other benefit provided by Buyer to its employees.

7. **Miscellaneous.** Buyer shall have a period of six (6) months after it first should have reasonably discovered a breach of this Agreement in which to institute legal proceedings against Seller with respect to that alleged breach. Without limiting the general applicability of Seller's Terms and Conditions to these Supplemental Service Terms, Buyer acknowledges the Remedies, Indemnification, Limitation of Liability, Equipment Operation, Insurance, Installation, Assignment, Compliance with Laws, Survival, and Notice provisions of the Terms and Conditions are expressly incorporated herein.