

# Sales Terms for Products and SaaS

Ver. 16-Jul-2021

Subject to the terms of any other applicable written agreement you as a representative of your company (“**you**”) have with Seebird, Seebird's sale of Products and provision of SaaS are governed by these Sales Terms (“**Terms**”). These Terms include the Basic Order Terms (defined below) specified on an order accepted by us. “**Seebird**”, “**we**”, “**our**” or “**us**” means Seebird Solutions AS or its affiliate identified on our order acknowledgment.

The Products and SaaS shall be purchased strictly for business and professional use, and shall not be purchased or operated for personal or private purposes. SaaS, unless expressly specified, is for the exclusive use of one person within one business and shall not be shared. Prior to utilization of the SaaS, any user must confirm their acceptance of the [End-User License Agreement \(“EULA”\)](#).

Every order you place with Seebird is conditioned upon and confirms your acceptance of these Terms. Any contrary terms or conditions appearing on your orders or associated purchase documentation will be of no effect. No waiver, modification, or addition to these Terms, or any assignment of your rights or obligations under them is valid or binding on us unless in writing and signed by an authorized Seebird representative. These Terms and the other applicable agreements you enter into with Seebird constitute the entire agreement between you and Seebird for your purchase and use of Products and SaaS. Each accepted order will be interpreted as a single set of Terms, independent of other orders.

## 1. Definitions

"**Products**" means hardware products provided hereunder.

"**SaaS**" (Software-as-a-Service) means any software, license, library, utility, tool, or other computer or program code, in object (binary) or source-code form, as well as the related documentation, provided by Seebird to you. SaaS includes Product firmware, software locally installed on your systems and software accessed by you through internet or other remote means (such as websites, portals, software, "cloud-based" solutions, and services).

"**Services**" means any services provided by Seebird as described in one or more Service Agreements.

"**Service Agreements**" are service contracts such as for support and maintenance or professional services, statements of work, and any other such mutually agreed upon documents. These Terms do not apply to Service Agreements which have their own terms and conditions.

## 2. General

### 2.1 Quotes, Validity of Orders

Our quotations are non-binding unless otherwise expressly stipulated in writing. Orders are accepted as valid and binding only when confirmed by us in writing. Orders cannot be canceled for any reason without our prior written consent.

### 2.2 Basic Order Terms

All orders must include the following information: (i) the Products and SaaS ordered and quantities, (ii) Seebird part number(s), (iii) prices, and (iv) delivery instructions, (collectively, "**Basic Order Terms**"). All Basic Order Terms are fixed and final upon our acceptance of the order.

### 2.3 SaaS Licenses

All SaaS is licensed or provided as a service and is not sold. SaaS is subject to the separate agreements provided by Seebird in connection with the SaaS, including but not limited to any licenses, product guides, operating manuals or other documentation, such as the EULA, or other terms or policies for use or service – collectively; "**User Agreements**".

You agree that you will be bound by such User Agreements. If there is a conflict or inconsistency between these Terms and those of a User Agreement, the terms of the User Agreement will control. Nothing in these Terms shall be construed to grant any rights or license to use the SaaS in any manner or for any purpose not expressly permitted by the applicable User Agreements.

Any SaaS, herein license, must be activated by you, or a person assigned by you, prior to conclusion of the specified validity time. If failing to activate within the given timeframe, the license will become invalid.

## 3. Delivery

### 3.1 Delivery time

Delivery times are established when Seebird accepts your order in writing. We will use commercially reasonable efforts to meet your requested delivery dates, unless you are in default under these Terms or our performance is otherwise excused. We are not liable for late or delayed delivery. Late delivery is not a basis for your cancellation of any order.

### 3.2 Delivery terms

Title and risk of loss or damage to Products passes to you when we deliver the Products to the shipping carrier ("**Delivery**"), under Incoterms® 2020 Ex Works (EXW). Unless otherwise agreed, we will deliver the Product freight prepaid, provided that you pay or reimburse us for all applicable costs of carriage, freight, insurance (if applicable), taxes, duty and other related shipping charges. We have the right to make partial deliveries. SaaS will be delivered electronically at Seebird's option. Title to the SaaS will remain with Seebird or its licensors.

#### **4. Acceptance, Inspection, Notice of Nonconformance**

**4.1** Your acceptance of ordered Products is deemed to occur upon our Delivery of the Products to the shipping carrier. Your acceptance of ordered SaaS is deemed to occur when the SaaS is made available for your access or use. You are responsible for giving prompt written notice of identified damage or nonconformance of Products. You must inspect the condition of the packaging and the Products upon receipt and indicate any evident damage to the carrier on the delivery note, have the carrier's agent sign the document and, within two (2) days of receipt of the damaged or non-conforming Products, send all documents by email to our facility from which shipment took place, together with the carrier's references. Concealed Product damage claims must be made by you to the carrier directly and you must also provide us with written notice and a copy of any such claim within 10 days of receipt of the affected Products. Likewise, you must notify us within 10 days of receipt of incorrect Products. If you retain the Product without giving notice within the designated notice period, you will be deemed to have waived your right to reject the Product.

**4.2** If you cancel an accepted Product order within 10 days prior to shipment or reject conforming Products received under an accepted order, Seebird are entitled to claim reasonable compensation for restocking and other expenses actually incurred.

#### **5. Return of Product and SaaS**

**5.1** All Product returns are subject to our prior written consent and must comply with our product return procedures then in effect. Before returning or exchanging a Product, you must contact us directly to obtain a written authorization to include with your return. You must return Products to Seebird in their original or equivalent packaging, and you are responsible for risk of loss, as well as shipping fees back to Seebird. Products received but not eligible for return will be sent back to you freight collect. For approved returns you will receive credit equal to the lesser of the Product's invoice price or its current replacement value, less any applicable charges or fees.

**5.2** Any SaaS (herein licenses) purchased and paid cannot be returned if utilized or activated. SaaS can only be returned if an assigned user, other than the paying customer, refuses to comply with relevant User Agreements. Before returning SaaS, you must contact Seebird directly to obtain a written authorization to include with your return. SaaS cannot be returned if passed its specified validity time or expiry date.

## **6. Pricing, Taxes, and Payment Terms**

**6.1** Our stated prices for Products and SaaS do not include applicable sales taxes, value added tax (VAT), export or import charges, transportation or insurance charges, customs and duty fees, personal property taxes or similar charges, all of which are your responsibility to pay. Unless you provide us with direct payment authority or an exemption certificate valid in the jurisdiction to which the Product will be delivered, you shall pay us all taxes and governmental fees we are required to collect or pay upon sale or delivery of the Product.

**6.2** If granted special discounts or complimentary Trial Versions, the detail of such arrangements, including but not limited to prices and quantities, shall be kept confidential and not revealed to other parties.

**6.3** If paid via invoice, unless otherwise stated in writing by Seebird, payment terms are net 14 days from our invoice date. You will make payment in the currency indicated on the invoice. We are entitled to offset payments against prior debt balances in your account. If a deviation to these payment terms are imposed by you, Seebird can rightfully claim an additional fee of 3 % of the total invoice sum per started four-week period, presented as a separate line on the invoice.

**6.4** If paid via invoice, unless otherwise stated in writing by Seebird, payment currency will be NOK (Norwegian kroner). If signed quote or purchase order is in another currency, the conversion to NOK will happen based on the exchange rate specified, or if no exchange rate specified, the exchange conversion shall be the applicable rate from XE.com on the day of invoicing.

**6.5** We have the continuing right to review your credit and change your payment terms, and may at any time demand advance payment, satisfactory security (such as, but not limited to, a confirmed, irrevocable letter of credit acceptable to us), or a guarantee of prompt payment prior to shipment or service activation.

**6.6** We reserve the right to charge interest on all overdue sums owing to us under these Terms at the rate of settled every six month by Norwegian Ministry of Finance (9.5 % per 01-Jan-2020) per month (or the highest legal limit if lower than said amount), measured from the date the sums in question became payable to the date on which we receive full payment.

**6.7** You grant us a purchase money security interest in each Product delivered to you until payment is made in full to us for such Products. Upon request, you will cooperate with us in perfecting any such security interest.

**6.8** You are liable for any costs incurred by us if you change or cancel any order, and for all costs of collection of past due amounts (including lawyers' fees).

## **7. Limited Warranty**

### **7.1 Products and SaaS**

Unless (i) the limited warranty included with a Product or (ii) the User Agreement accompanying any SaaS grants you different rights or disclaims all warranties, we warrant to you, and only to you, as applicable, (a) that our Products are designed and manufactured to conform to our specifications and will be free from defects in material and workmanship for a period of 12 months from date of Delivery, and (b) that our SaaS will substantially conform to the functional specifications and current documentation provided by Seebird for a period of 90 days. During the warranty period, our liability and your exclusive remedy is limited, at Seebird's option, to replacing, repairing, correcting, or issuing credit for any Product or SaaS subject to the warranty in this Section 7.1, which upon inspection we determine is non-conforming.

### **7.2 Warranty Exclusions**

The foregoing limited warranty only applies if and to the extent that (a) the Product or SaaS is properly and correctly installed, configured, interfaced, maintained, stored, and operated in accordance with our applicable documentation and specifications, and (b) the Product or SaaS is not modified or misused. This limited warranty does not apply to, and we are not responsible for defects or performance problems resulting from (i) the combination or use of the Product or SaaS with hardware or software products, information, data, systems, interfaces or devices not made, supplied or specified by us; (ii) operating the Product or SaaS under any specification other than, or in addition to, our standard specifications for them; (iii) the unauthorized installation, modification, repair or use of the Product or SaaS; (iv) damage caused by accident, lightning or other electrical discharge, fresh or salt water immersion or spray (outside Product specifications); or exposure to environmental conditions for which the Product or SaaS is not intended; (v) normal wear and tear on consumable parts (e.g., batteries) or (vi) cosmetic damage. We do not warrant or guarantee the results obtained through the use of the Product or SaaS. We make no warranties under these Terms with respect to Services, which if provided hereunder are provided "as-is".

Notice regarding Products equipped with satellite or wireless technology: Your use of certain Products and SaaS is dependent on the availability and coverage of wireless networks, telecommunications networks, satellite positioning systems and internet, which involve facilities owned and operated by any third-party. We are not responsible for the operation, availability or failure of such third-party systems or facilities.

### **7.3 Warranty Disclaimer**

The foregoing limited warranty terms are in lieu of all obligations or liabilities on our part arising out of, or in connection with, our Products and SaaS and state our entire liability and your exclusive remedies relating to them. Except as otherwise expressly provided in these terms, the Products and SaaS and any accompanying documentation are provided "as-is" and without express or implied warranty or condition of any kind, either by us or anyone who has been involved in its creation, production, installation, or distribution, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose, satisfactory quality, title, and noninfringement. Additionally, we make no express or implied warranty that the SaaS provided to you in connection with these Terms, is or will be secure, accurate, complete, uninterrupted, free of errors, or free of viruses, or other malware or program limitations. Some jurisdictions do not allow limitations on duration or the exclusion of an implied warranty, so the above limitation may not apply or fully apply to you. If you are a reseller of the Products or SaaS you shall not make or pass on to your own customers any warranty, condition or representation on behalf of Seebird other than, or inconsistent with, the applicable limited warranty in the Products and SaaS provided to you.

Notice: The above limited warranty provisions will not apply to Products you purchase in those jurisdictions in which product warranties are the responsibility of the local distributor from whom the Products are acquired. In such case, please contact your Seebird product dealer for applicable warranty information.

## **8. Warranty Procedures**

### **8.1 Warranty Repair Procedure**

If any Product fails during the warranty period for reasons covered by our limited warranty and you notify us of such failure during the warranty period, we will at our option repair or replace a nonconforming Product with new, equivalent to new, or reconditioned parts or Product or, if either of the foregoing is commercially impractical in Seebird's determination, refund the Product purchase price you paid (excluding separate costs of installation, if any) upon your return of the Product in accordance with our product return procedures as referenced in Section 5 above. Any repaired or replaced Product will be warranted for a period of 30 days or the remainder of the original warranty period, whichever is longer. We may, in our sole discretion, arrange for fulfillment of our warranty obligations through an Seebird affiliate, authorized distributor or an authorized warranty service center.

### **8.2 Determination of Warranty Applicability**

We reserve the right to refuse warranty services if the Product or SaaS date of purchase cannot be proven, if a claim is made outside the warranty period or if a claim is excluded under Section 7.2 above. Following our examination of your claim, we will notify you of warranty status and the repair cost of any out-of-warranty Product. At such time you must issue a valid purchase order to cover cost of the non-warranted Product repair and return freight, or authorize return shipment of the Product at your expense as-is.

### **8.3 Not Responsible for Lost Data**

We are not responsible for any modification or damage to, or loss of any programs, data, or other information stored on any media or any part of any Product serviced by us, or stored or hosted by us in connection with a SaaS we provide, or for the consequence of such damage or loss (such as business loss in the event of system, program or data failure). You are solely responsible for backing up data and removing all features, parts, alterations, and attachments not covered by warranty prior to releasing the Product to Seebird for service or seeking SaaS support. Any Product or SaaS sent to Seebird for support may be returned to you configured as originally provided to you by Seebird.

## **9. Limitation of Liability**

Our entire liability for any and all claims arising out of or in connection with these Terms is limited to the amounts you actually paid to us under the Terms. Further, neither we nor our suppliers are liable for any incidental, consequential, punitive damages or other damages, or loss of profits, loss of revenue, loss of data, loss of use of the Products or SaaS or any associated equipment, costs of cover, downtime and user time or for breach of any express or implied warranty or conditions, breach of contract, negligence, strict liability or any other legal theory related to the Products or SaaS. Except to the extent prohibited by applicable law, any implied warranty of satisfactory quality or fitness for a particular purpose applying to the Products or SaaS is limited in duration to the duration of the warranty specified in Section 7. You and we agree that these limitations of liability are agreed allocations of risk constituting in part the consideration for Seebird's sale of Products to you, and such limitations will apply notwithstanding the failure of essential purpose of any limited remedy. Some jurisdictions do not allow the exclusion or limitation of incidental, consequential or specified other damages, or allow limitations on how long an implied warranty lasts, so the above limitations or exclusions may not apply, or may not fully apply to you.

## **10. Intellectual Property Ownership**

You agree that Seebird owns all right, title and interest to all intellectual property and other proprietary rights to documents and materials, calculations, drawings, models, plans, sets of tools, technology, software, designs, engineering details, schematics and similar data relating to or incorporated in the Products and SaaS and any accompanying documentation or information derived from the foregoing. You shall take reasonable precautions to prevent unauthorized access and use of the SaaS and documentation by any third-party. To the extent permitted by relevant law, you shall not, nor allow any third-party to copy, decompile, disassemble or otherwise reverse engineer the Products or SaaS, or attempt to do so. You are prohibited from, and shall prevent any third-party from, removing, covering or altering any of our patent, copyright or trademark notices placed upon, embedded in or displayed by the Products or SaaS or their packaging and related materials. We reserve all rights in the Products and SaaS not specifically granted to you under these Terms.

## **11. Export Control**

You may not use or otherwise export or re-export the Products or SaaS except as authorized by the laws of the jurisdiction in which they were obtained. In particular, but without limitation, the Products and SaaS may not be exported or re-exported in violation of export laws, including if applicable export or re-export (i) into (or the national resident of) any country to which Norway has embargoed goods, or (ii) to anyone on the Norwegian Ministry of Foreign Affairs list of embargoed countries. By using the Products or SaaS, you are agreeing to the foregoing and are representing and warranting that you are not located in or under the control of, a national resident of any such country or on any such list.

You also represent that you are not located in any country or on any list where the provision of Products or SaaS to you would violate applicable law. You agree not to use or enable use of them for any purposes prohibited by applicable law or export or re-export any Product or SaaS with knowledge that it will be used in the design, development, production or use of chemical, biological, or nuclear weapons. Laws and regulations change frequently, and you acknowledge that it is your responsibility to know the law pertaining to export/import procedures in the country of destination of the Product and SaaS. You shall defend, indemnify and hold Seebird harmless against any liability (including lawyers' fees) arising out of your failure to comply with the terms of this paragraph.

## **12. Default**

We reserve the right by written notice of default to cancel or indefinitely suspend an accepted order and to refuse additional orders if: (i) you default in performing your obligations under these Terms, (ii) you cease business operations or enter into any bankruptcy, insolvency, receivership or like proceeding not dismissed within 30 days, or assign your assets for the benefit of creditors, or (iii) when obtaining third-party financing in connection with your Product purchase(s) you fail to do so in a timely manner on terms satisfactory to us.

### **13. Applicable law - Settlement of Disputes**

These Terms are governed by the laws of the Kingdom of Norway. You agree to the exclusive jurisdiction of the Courts of the Kingdom of Norway. These Terms are prepared in the English language and such version shall be controlling in all respects and any non-English version of these Terms are solely for accommodation purposes. You waive any objection based on inconvenient forum and any objection to venue of any action instituted under these Terms by Seebird in any jurisdiction.

These Terms shall not be governed by the United Nations' Convention on Contracts for the International sale of Goods, the application of which is expressly excluded. If you are a federal, state, or local government entity in the Kingdom of Norway using the Products or SaaS in your official capacity and legally unable to accept the controlling law, jurisdiction or venue clauses above, then those clauses do not apply to you. For such Norwegian federal government entities, these Terms and any action related thereto will be governed by the laws of Norway.

### **14. Severability**

If any provision of these Terms becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, these Terms shall continue in full force and effect without said provision; provided, however, that no such severability shall be effective if it materially changes the economic benefit of the Terms to the other party.

### **15. Force Majeure**

Neither party will be liable for non-performance (except for payment obligations) due to causes beyond its reasonable control, provided that such party promptly notifies the other in writing of such occurrence and makes its best efforts to promptly eliminate the effect thereof.

### **16. Online Privacy**

Our Privacy Statement is published at [www.ezptz.no/privacy-policy](http://www.ezptz.no/privacy-policy) and incorporated herein by this reference. For specifics on web camera usage and privacy, visit [www.ezptz.no/camera-usage](http://www.ezptz.no/camera-usage).

### **17. Notices**

Any notice or other communication given by either party to the other regarding these Terms will be deemed given and served when personally delivered, delivered by reputable international courier requiring signature for receipt, or five (5) business days after mailing (postage prepaid), addressed to the party at its notice address. Either party may change its notice address by written notice to the other. Your notice address will be the address appearing on the accepted purchase order. Our notice address is [post@seebird.no](mailto:post@seebird.no).

### **18. Waste Electrical & Electronic Equipment (WEEE)**

If the Products are furnished to you as component products on an OEM basis, or for import, resale or distribution to any third-party, then you agree that you qualify as, and are deemed the "producer" of all such Products under any laws, regulations or other statutory scheme providing for the marking, collection, recycling, take-back, and/or disposal of electrical and electronic equipment ("**WEEE Regulations**") in any jurisdiction whatsoever (e.g. national laws implementing EU Directive 2012/19 on waste electrical and electronic equipment, recast), and are solely responsible for complying with all such applicable WEEE Regulations in connection with those Products and for all associated costs.