
TERMS AND CONDITIONS

1) Introduction

These Terms and Conditions apply to the Falcon 360 Aircraft Tracking System (hereinafter called “Falcon”) provided by Apex Flight Operations Pty Ltd (“Apex Flight Operations”) (ABN 73160242302), and cover the sale and ongoing usage of the Falcon to and by the entity named on the invoice (the “Customer”).

Nothing in these Terms and Conditions affects any statutory rights of consumers that cannot be waived or limited by contract.

2) Customer Acknowledgement.

The Customer acknowledges agreement with these Terms and Conditions by the activation of a Falcon unit on the Apex Flight Operations website (www.apexflightops.com).

All goods are supplied on these Terms and Conditions only and no person in the employment or otherwise as agent for Apex Flight Operations has any authority to supply goods on any other terms and conditions or to vary these terms and conditions in any way whatsoever. Previous dealings shall not vary or negate these terms and conditions in any respect.

3) Return or Exchange of Goods.

Apex Flight Operations will gladly refund or credit goods returned within 30 days of activation on our website, provided the goods are in original condition and original packaging. Otherwise, we will make our best effort to arrange exchange with the manufacturer or accept the goods back for resale. In this case, if the return is authorized by Apex Flight Operations, a restocking fee of up to 25% may apply.

4) Warranty Information.

Apex Flight Operations warrants, subject to the terms and conditions included in this document, that the Falcon is in good condition, in full working order and free from defects in material and workmanship for a period of [1] year from the date of activation of the system through the Apex Flight Operations website www.apexflightops.com.

This warranty only covers the hardware component packaged with the Falcon. It does not cover any software or media that may be contained in or included alongside the hardware component. It does not cover “suitability of use” or other such warranties. It also excludes damage or failure due to external factors such as power fluctuations, overload, excessive heat or humidity. It does not cover damage or failure due to unauthorized modifications, improper installation, operating testing, repair or attempted repair.

Products found to be faulty can be returned for repair or replacement as evaluated by Apex Flight Operations or its authorized agent. The Customer will return the defective goods, transportation and insurance prepaid to Apex Flight Operations.

There are no warranties for value added services, services bundled with the product, or other services provided by Apex Flight Operations.

Apex Flight Operations makes no other warranties and any and all implied warranties of merchantability or fitness for a particular purpose are hereby disclaimed.

The Customer is responsible for installation and use in accordance with the manufacturers' instructions. No warranty will apply if the product is in any way altered or modified after delivery by Apex Flight Operations.

5) Delivery of Goods.

Unless by prior agreement, all shipment of goods requires payment in full prior to shipment, and delivery is done on an FCA basis. We place great importance on the fast and reliable delivery of Customer orders, however please note that delivery times are estimates only and Apex Flight Operations shall not be liable for delays.

If the Customer fails or refuses to take delivery of the goods, then in addition to all other rights and remedies of Apex Flight Operations, the Customer shall be liable for all loss and damage (including consequential loss and damage) suffered or incurred by Apex Flight Operations as a result thereof and Apex Flight Operations, at its discretion may charge a restocking fee of up to 25% of the purchase price.

The goods shall be at the Customers risk at the point of delivery. The Customer, upon taking delivery of the goods, shall immediately examine the goods and give written notice to Apex Flight Operations of any defect within five (5) days of such date, failing which the goods shall be deemed to have been delivered in good order and condition and accepted by the Customer.

6) Title of Goods.

The goods shall remain the sole and absolute property of Apex Flight Operations as legal and equitable owner and the Customer shall hold such goods as bailee only until such time as the Customer shall have paid the full price. The Customer shall be liable to Apex Flight Operations in respect of any loss or damage to the goods during such bailment.

7) Payment.

The price shall be paid by the Customer in full without any deduction in respect of any claimed set-off or counterclaim (including any such set-off or counterclaim on account of any delay on the part of Apex Flight Operations in delivering any part of the goods) on or before the payment date, and prior to goods being released for shipment.

In addition to any other rights or remedies of Apex Flight Operations in the event of the Customer's default hereunder, Apex Flight Operations shall be entitled to charge and recover costs incurred for the collection of payment (such as but not limited to collection agency fees and legal costs), cheque dishonour fees, interest at the current bank overdraft rate plus two percent per annum from the due date for payment until payment in full.

At their sole discretion, Apex Flight Operations may put the Customer account credit on hold and suspend the supply of goods and services.

8) Airtime Usage

The Customer acknowledges that they will need to maintain a positive airtime balance with Apex Flight Operations in order to receive any communication to and from the Falcon tracking system. If the airtime balance is in arrears, access to IndigoTrack and associated functionality may be restricted by Apex Flight Operations at its sole discretion. Whilst in arrears and not Deactivated, the Falcon will continue to report, and therefore continue to use Airtime; once the Customer's airtime balance is brought out of arrears, all communication missed whilst the Customer's account was suspended will be available. The Customer agrees that they remain liable for airtime used by the Falcon whilst their airtime balance is in arrears.

9) IndigoTrack Licenses

The Customer acknowledges that a current software license is required in order to access functionality within the IndigoTrack software suite provided by Apex Flight Operations. If the software license for the Falcon is allowed to expire by the Customer, they acknowledge that access to IndigoTrack functionality (including forwarding of data to authorized third-parties) may be suspended by Apex Flight Operations at their sole discretion.

10) Deactivation of Falcon Units

If either the Customer's airtime balance is in arrears, or there is no current IndigoTrack license for the Falcon unit, and the Customer has failed to remedy the situation after due notice has been given to the Customer, Apex Flight Operations reserves the right, at its sole discretion, to deactivate the Falcon on the Customer's account. Reactivation of Falcon systems carries a charge of \$50 per Falcon system, and will only be done when both the associated airtime and IndigoTrack license is brought out of arrears by the Customer.

11) Satellite Coverage

The Falcon uses Inmarsat satellite services for communication between the aircraft and the ground station. Statements made by Apex Flight Operations in relation to the availability, coverage or performance of these services are based on the best information available to Apex Flight Operations, but as the availability, coverage and performance of these services is out of the control of Apex Flight Operations, the Customer acknowledges that Apex Flight Operations cannot guarantee service availability, coverage or performance.

12) Errors and Omissions.

At Apex Flight Operations, we work hard to offer you the most competitive pricing and accurate product information. Because of the dynamic nature of this industry (e.g. vendor price changes and other variables beyond our control), prices, promotions, versions and availability advertised are subject to change without prior notice. Please be assured of our every effort to ensure the accuracy; however the documents and graphics published may contain technical inaccuracies or typographical errors. Apex Flight Operations makes no representations about the suitability of this information; it is provided "as is" without warranty of any kind. If an error is made or a product is listed at an incorrect price, Apex Flight Operations shall maintain the right to refuse or cancel any orders placed. If the order has been confirmed and charged to your credit card, Apex Flight Operations shall immediately issue a refund.

13) Limitation of Liability.

Apex Flight Operations, shall under no circumstances be liable for special, incidental, or (not reasonably foreseeable) consequential damages including loss of profit or opportunity, even if it has been advised of the possibility of such damages: the maximum liability for all direct damages, if any, arising out of any action shall be limited to an amount not to exceed the purchase price of the product and services.

Subject to any applicable Commonwealth or State Legislation, Apex Flight Operations' liability for any such breach shall be limited, at its sole discretion, to any of the following:

- a) Replacement of the goods or any part thereof;
- b) Supply of equivalent goods or any part thereof;
- c) Repair of the goods or any part thereof;
- d) Payment of the cost of replacing the goods or acquiring equivalent goods or any part thereof;
- e) The payment of the cost of having the goods or any part thereof repaired; or
- f) Refund of the goods upon return.

To the extent Apex Flight Operations' liability is excluded or limited, such exclusion or limitation shall equally extend to the personal liability of its directors, officers, employees and agents.

14) All Sales Made in New South Wales, AUSTRALIA.

All sales shall be deemed made in the state of New South Wales of Australia regardless of the location of the Customer. The Customer agrees that any dispute with Apex Flight Operations shall be brought by the Customer exclusively in the state or federal courts situated in the State of New South Wales, AUSTRALIA.

15) General.

Apex Flight Operations warrants that it has good title to all products it sells.

In the event any section or portion of a section of these Terms and Conditions of Sale are deemed unlawful or unenforceable, that section or portion of a section shall be stricken from the Terms and Conditions of Sale, and the remaining terms shall continue in full force and effect.