

# Terms and Conditions

## 1. General Information

**1.1.** These Terms & Conditions (hereinafter "Terms") apply to the use of the SKIDATA solution between Principal and SKIDATA as well as to all additional and subsequent orders. The Terms, as amended from time to time, shall also apply to all current and future updates, upgrades, supplements and support Services.

**1.2.** Depending on the type of the subject matter of the contract, the relevant Special Provisions of SKIDATA (hereinafter "Special Provisions") shall also apply. For example, the "Hardware Provisions" apply to the use of SKIDATA Hardware and the "Software Provisions" apply to the use of SKIDATA software. The Special Provisions can be viewed and printed out at any time on SKIDATA's website. In the event of contradictions between the General Terms and Conditions and the Special Terms and Conditions, the Special Terms and Conditions shall take precedence.

**1.3.** The rights and obligations contained in these Terms apply exclusively between Principal and SKIDATA and are not transferable to third parties, unless expressly agreed otherwise.

## 2. Offer, conclusion of contract

**2.1.** The scope of SKIDATA's delivery and/or Service (collectively the "Service") is set out in SKIDATA's written offer. If SKIDATA confirms the order in writing, and the order confirmation deviates from the offer, the contract shall be concluded on the basis of the order confirmation, unless Principal objects in writing within eight (8) days of receipt. In particular, the delivery of modules not expressly agreed, add-ons, the initial installation, individual adjustments, training courses, settings of the operating parameters (application), the configuration of the SKIDATA solution, or data backup measures are expressly excluded in the Service, unless otherwise agreed.

**2.2.** SKIDATA reserves the right to make changes to offers due to errors and misprints, including with regard to prices and technical specifications. SKIDATA's brochures and other advertising material contain a general and non-binding description of the products and do not become part of the contract.

**2.3.** Any permits required from authorities or other third parties for the conclusion of the contract and the performance of the Services shall be obtained by Principal. SKIDATA shall not be obliged to provide the Services before the necessary permits have been granted with legal effect. Principal shall inform SKIDATA immediately of any approval requirements and shall indemnify and hold SKIDATA harmless in this respect.

## 3. Scope of Services

**3.1.** Performance deadlines are non-binding unless expressly agreed otherwise in writing. If an amendment or addition to the Service is made by mutual agreement after conclusion of the contract, the performance period shall be automatically extended by a reasonable period.

**3.2.** The Services shall be provided in a manner chosen by SKIDATA that is customary in the industry within SKIDATA's normal business hours. If, for reasons for which SKIDATA is not responsible, the Services are provided outside normal business hours, surcharges shall be invoiced separately in accordance with SKIDATA's local price list applicable at the time the Services are provided.

**3.3.** SKIDATA may select the persons providing the Service at its own discretion and may also engage third parties to provide the Service.

**3.4.** The Service shall be shipped EXW of relevant SKIDATA Subsidiary (Incoterms 2020) at the expense and risk of the Principal. The risk shall pass to the Principal upon handover of the subject matter of the contract to the carrier. Special packaging shall be borne by the Principal, as shall the insurance of the consignment against breakage, transportation, fire damage and destruction. Duly ordered and delivered goods will not be taken back. If, in exceptional cases, a return has been agreed, SKIDATA expressly reserve the right to charge a return fee. If the item or object remains in SKIDATA's inventory despite the transfer of risk, SKIDATA reserves the right to insure the item or object at Principal's expense.

**3.5.** In the event of default of acceptance, Principal shall be liable to pay storage fees, costs, expenses, and interest, without prejudice to further claims of SKIDATA. In the event of default of acceptance, SKIDATA shall also be entitled to demand or retain 5% of the purchase price as a contribution to expenses for processing. SKIDATA reserves the right to claim further damages.

**3.6.** The client shall ensure and be liable for ensuring that

- a) all necessary requirements for the commissioning and installation of the purchased items are met, insofar as these Services are not the subject of this agreement. These requirements include but are not limited to foundation work including provision of the necessary installation tools, pipe and cable work between the individual devices in accordance with SKIDATA's specification and documentation, installation and maintenance of the power and voltage supply in accordance with the applicable technical standards and a broadband internet connection, proper installation of the devices at the intended locations.
- b) that all relevant technical equipment - in particular internet connections, supply lines, cabling, hardware, and networks - are in a technically flawless and operational condition and are compatible with SKIDATA's Services. SKIDATA is entitled, but not obliged, to check these systems for compatibility for a separate fee in accordance with the local price list applicable at the time of the provision of the Service.

**3.7.** SKIDATA shall ensure the commissioning of the Service on the agreed date(s), provided that Principal meets the deadlines for the fulfillment of the commissioning and installation requirements and makes all agreed partial payments in full and on time. The commissioning of the Service by SKIDATA on behalf of Principal or, in any case, the commissioning of the Service for the intended purpose by Principal (commercial use) shall be deemed a de facto and formal handover/acceptance of the delivery and Service by SKIDATA. Minor defects shall not entitle Principal to refuse acceptance. Any warranty obligations of SKIDATA shall remain unaffected thereby.

**3.8.** Principal shall also be obliged to bear SKIDATA's travel expenses in connection with the provision of the Services in accordance with SKIDATA's local price list applicable at the time of the provision of the Services and according to actual expenses, if such expenses are not already included in the offer.

**3.9.** If, for reasons for which SKIDATA is not responsible, additional work or Services not included in the scope of the contract are required for SKIDATA to perform its contractual Services, SKIDATA shall be deemed to have been commissioned by Principal to perform such work or Services. Principal shall pay SKIDATA the resulting costs in accordance with SKIDATA's local price list applicable at the time of performance, and to reimburse SKIDATA for all related expenses. Insofar as this is possible with reasonable effort, SKIDATA shall consult with Principal before carrying out the additional work and obtain Principals instructions.

**3.10.** Principal shall be granted the right to use the Service after full payment of the agreed fee, at the specified location, for the specified purpose and in accordance with the contract. Any use beyond this is prohibited to Principal and therefore requires the prior written consent of SKIDATA.

#### 4. Software

**4.1.** Principal shall be granted a non-exclusive, non-transferable, non-sublicensable and revocable right to use the software package limited to the term of the contract. The software package may only be used in the contractually agreed scope and in connection with the contractually agreed SKIDATA solution. Principal shall acquire a sufficient number of software licenses in accordance with the number of devices specified in the contract.

**4.2.** Principal does not acquire ownership of software and therefore has no claim to modification or release of the source code.

**4.3.** SKIDATA may provide Principal with software updates and software upgrades. The conditions for software use are set out in the "Special Provisions Software".

#### 5. Hardware

**5.1.** Principal shall receive the right, to use the hardware after full payment of the agreed fee for the purpose and at the location specified in the contract. Any use of the hardware beyond the scope provided for in the contract is prohibited to Principal and requires the prior written consent of SKIDATA.

**5.2.** During the term of this agreement and after its expiry, all equipment supplied to Principal under an XaaS model shall remain the property of SKIDATA. The conditions for the provision of hardware are set out in the "Special Provisions Hardware".

#### 6. Cloud based Services

**6.1.** The Cloud-based Services shall be provided to Principal either by SKIDATA itself or by a service provider authorized by SKIDATA commissioned service provider (hereinafter referred to as "Service Provider"). The Cloud-based Services are provided to Principal exclusively via internet network.

**6.2.** The conditions for the provision of Services are set out in the "Special Provisions Hosted Services".

#### 7. Remuneration

**7.1.** The prices are in CHF exclusive of statutory taxes, duties, customs duties or other fees.

**7.2.** In the case of an ongoing business relationship, subsequent orders shall be placed at the current prices applicable at the time of the order.

**7.3.** Material changes to the calculation basis after conclusion of the contract (in particular with regard to wages, energy, materials, exchange rates, etc.) shall entitle SKIDATA to adjust the prices retrospectively.

**7.4.** Default in payment of any kind and the opening of insolvency proceedings, or the non-opening of insolvency proceedings due to lack of assets, shall result in the loss of all discounts and rebates granted to the Principal.

**7.5.** For repair orders outside the warranty, costs shall be charged in accordance with the SKIDATA price list applicable locally at the time the repair is carried out.

#### 8. Payment

**8.1.** Unless otherwise agreed in writing, SKIDATA is entitled to invoice the total amount as follows: 30 % of the total amount after conclusion of the contract, 40 % on delivery, 30 % after performance of the Service.

**8.2.** All invoices are due immediately and without deduction upon receipt of the invoice. Payments are to be made free of costs and charges in the agreed currency. Checks or bills of exchange shall only be accepted on account of payment and subject to discountability. Payment shall only be deemed to have been made when the amount has been credited to SKIDATA's account and SKIDATA can freely dispose of it.

**8.3.** Recurring fees are due for payment in advance on the 5th (fifth) working day of the agreed billing period (e.g. monthly, quarterly, annually).

**8.4.** Unless otherwise stated, all amounts are invoiced exclusive of statutory VAT.

**8.5.** If Principal is in default of payment, SKIDATA shall be entitled to: (i) demand immediate payment of all claims arising from this agreement and from other legal transactions with Principal, (ii) to charge default interest in the amount of 1% per month; and (iii) to demand compensation from Principal for all costs of extrajudicial and judicial debt collection, including reminder fees. In addition, SKIDATA is entitled to charge a flat administrative fee of 25.00 CHF for each late payment. This administrative fee shall apply to each individual late payment event and shall be invoiced separately.

**8.6.** Failure to pay the license fee shall constitute a material breach of this contract. Upon written notice to Principal, SKIDATA shall be entitled to suspend the functionality of the SKIDATA Solution in whole or in part at its sole discretion.

**8.7.** If SKIDATA withdraws from the contract due to Principal's default in payment, SKIDATA shall be entitled to demand or retain a lump-sum processing fee in the amount of 5% of the agreed purchase price. SKIDATA reserves the right to claim further damages.

**8.8.** Incoming payments from the Principal shall be settled in the following order, irrespective of any dedication to the contrary: first on the costs incurred, then on the interest due and finally on the principal claim (capital).

## 9. Warranty

**9.1.** The warranty period for:

- a) Hardware 12 (twelve) months from the date of provision; and
- b) Software 6 (six) months from the date of delivery.

**9.2.** SKIDATA warrants that the Software Package has the functions and features described in the Documentation. The Principal acknowledges and accepts that it is technically impossible to develop software that is completely free of defects. The Software shall be provided by SKIDATA - either stand-alone or embedded in the Hardware - in the respective current version "as-is" and "with all faults". SKIDATA makes no representations or warranties of any kind, express or implied, as to the freedom from defects, security, or fitness for a particular purpose of the software package.

**9.3.** SKIDATA warrants and represents that all installation Services will be performed in a workmanlike and professional manner in accordance with generally accepted industry standards. All hardware shall be free from material defects under normal use and maintenance, except for wear and tear, at the time of delivery and shall substantially conform to the documentation. SKIDATA does not warrant the ability of programs to run on third party computers unless this feature has been expressly warranted. No warranty is given for software versions not licensed by SKIDATA due to software applications installed by third parties which could influence the SKIDATA software. Any further warranty or liability for a specific suitability beyond that which is expressly agreed, is excluded.

**9.4.** SKIDATA shall be entitled to inspect and remedy any defects claimed on Principal's premises. Principal shall provide SKIDATA with the necessary auxiliary staff, as well as technical and organizational aids free of charge. If there is no warranty case, Principal shall be charged all costs incurred for the inspection in accordance with the SKIDATA price list valid at the time of the inspection.

**9.5.** SKIDATA disclaims any and all warranties for defects, damages or losses not directly attributable to SKIDATA, including, but not limited to: (i) defects caused by, or in connection with, materials or software provided by Principal; (ii) if modifications or combinations of the end-user or Principal to the SKIDATA Solution are combined with materials or systems not supplied or expressly approved by SKIDATA; (iii) malfunctions due to improper use, or use of unapproved materials by Principal or third parties; (iv) lack of proper maintenance, or faulty operation; and (v) for natural wear and tear, wearing parts, and consumables. Malfunctions and defects due to unstable power supply and networks are not covered by the warranty.

**9.6.** SKIDATA EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS OR WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY WARRANTY RELATING TO PRODUCTS AND COMPONENTS MANUFACTURED BY THIRD PARTIES.

**9.7.** The Principal shall bear the full burden of proof for all claim requirements, in particular proof of the defect itself, its existence at the time of handover, the time of discovery of this defect, and the timely filing of the notice of defects. Any legal presumption, in particular the presumption that defects which occur within the first six months after handover were already present at the time of handover, is excluded. Defects must be reported in writing immediately, but at the latest within fourteen (14) days of delivery, with a detailed description of the defect, otherwise all resulting claims shall be forfeited.

**9.8.** SKIDATA shall provide warranty within a reasonable period of time at its own discretion by: improvement (rectification) or replacement of the defective product/service or by price reduction or conversion of the defective product/service. At SKIDATA's request, Principal shall be obliged to send the defective product to SKIDATA at its own expense. A claim for replacement delivery shall only arise after the defective product has been received by SKIDATA. Replaced parts shall become the property of SKIDATA. If transportation of the defective product to SKIDATA is not possible or unreasonable, Principal shall reimburse SKIDATA for the additional costs incurred thereby in accordance with SKIDATA's local price list applicable at the time of performance of the service. With regard to software, SKIDATA will use commercially reasonable efforts to correct any reported defects, provide a workaround or grant a price reduction to fulfill its warranty obligation, whereby further and other claims are excluded. For warranty repairs at Principal's premises, Principal must provide SKIDATA with the necessary resources and employees free of charge. These are the only remedies available to Principal in connection with warranty claims. The warranty period for repaired/replaced goods shall be at least ninety (90) days or the remaining original warranty period, whichever is greater.

**9.9.** The warranty expires if defects are caused by improper use, modifications, or unauthorized interventions by the Principal or third parties including but not limited to: (i) where assembly, commissioning, installation, or usage instructions are not observed; (ii) third parties carry out repairs, modifications, maintenance work, or other work on the Service without SKIDATA's prior written consent; (iii) the Service is used with components not certified by SKIDATA; (iv) technically faulty systems (such as networks, supply lines, cabling); (v) Principal does not carry out necessary maintenance work on time; (vi) Principal is in default with its contractual obligations, in particular with payment; or (vii) the defect or damage is due to third party components, Internet malfunctions, software viruses, chemical influences, force majeure events or actions of the Principal or third parties attributable to the Principal. Any warranty claims due to the actions or omissions of third parties must be asserted directly against the respective third-party provider.

## 10. Third Party Components

**10.1.** SKIDATA products and systems may require the use of hardware, software or other third-party products (collectively, the "Third Party Components") and/or be subject to certain system requirements. The respective requirements are described in the documentation for the respective product. SKIDATA is entitled to add or modify Third Party Components itself or through third parties at its own discretion. Principal shall be solely responsible for the maintenance and operation of the Third Party Components. The respective terms of use and license terms of the respective manufacturer shall apply exclusively and must be complied with by Principal. The use of Third Party Components shall be at Principal's own risk. SKIDATA assumes no liability for damages or losses caused by Third Party Components. All costs and fees in connection with the use of Third Party components shall be borne by Principal.

**10.2.** Principal is responsible for proper licensing and compliance with the license terms of third-party software. Principal shall indemnify SKIDATA against all claims, damages, costs and expenses (including reasonable legal costs) resulting from a violation of license terms or terms of use of Third Party components by Principal or its vicarious agents.

**10.3.** Principal is obliged to keep Third Party components up to date at all times and to install any updates provided, in particular for third-party software and operating systems, without delay. The use of outdated third-party software may lead to restrictions in the functionality or malfunctions of SKIDATA products and systems. Principal must also ensure that its cooperation partners also regularly update all relevant Third Party components and keep them up to date. If Principal fails to carry out a necessary update of Third Party Components, SKIDATA shall be entitled to restrict or discontinue support for the affected product or system. SKIDATA shall not be liable for any resulting damages or restrictions.

## 11. Liability

**11.1.** SKIDATA shall only be liable for direct damage caused intentionally or by gross negligence. Liability for damage caused by slight negligence is excluded, with the exception of personal injury. The burden of proof for the existence of fault on the part of SKIDATA shall be borne by Principal. SKIDATA's liability is limited to the amount of the remuneration paid for the Service from which the damage results. In the case of continuing obligations, SKIDATA's liability shall be limited to the remuneration paid for the last contractual year.

**11.2.** Principal shall immediately notify SKIDATA in writing of any damage or loss of any claims. Claims for damages must be asserted in court within six (6) months of knowledge of the damage, otherwise they shall lapse and be waived.

**11.3.** SKIDATA's liability for consequential damages, financial losses, loss of profit, loss of data, loss of data storage media, consulting errors, damages resulting from the Principal's involvement in the preparation for use and for software defects shall be excluded to the maximum extent permitted by law.

**11.4.** SKIDATA shall not be liable for any damage caused in whole or in part by the following conduct of Principal:

- a) Non-compliance with legal regulations or official requirements;
- b) Infringements of intellectual property rights of third parties;
- c) Failure to observe the conditions for installation, commissioning or use of the Service;
- d) Failure to carry out regular and proper data backups;
- e) Carrying out repairs, modifications, maintenance or other changes (including damage) by Principal or third parties without the written consent of SKIDATA;
- f) Use of the Service in conjunction with components not certified by SKIDATA;
- g) Use of systems that are not functioning properly (e.g. networks, supply lines or cabling);
- h) Omission or untimely performance of necessary maintenance work;
- i) Disregard of contractual obligations, in particular default of payment by the Principal;
- j) Failure to comply with provisions relating to the scope of use of the Service (including the Software Provisions);
- k) Damage attributable to defects or damage to third-party components, internet malfunctions, software viruses, chemical influences, force majeure events (see section 17.1) or actions of the Principal or third parties attributable to the Principal.

**11.5.** In the event of any third party claims against SKIDATA, its parent, subsidiaries or affiliates, other related entities and authorized distributors of SKIDATA and their shareholders, members, directors, officers, employees, contractors, suppliers, principals, manufacturers, representatives, attorneys or agents (collectively, the "SKIDATA Indemnitees") for which Principal is directly or indirectly responsible, in whole or in part, Principal agrees to indemnify and hold SKIDATA and all of the foregoing harmless from and against such claims.

**11.6.** The use of third-party components is at Principal's own risk. SKIDATA shall not be liable for any damage or loss caused by the use of Third Party Components by Principal or its cooperation partners. All costs and fees incurred in connection with the use of Third Party Components shall be borne by Principal.

## 12. Ownership

**12.1.** SKIDATA is the sole owner of all intellectual property rights in relation to the SKIDATA Solution, all Services provided by SKIDATA and the working documents provided as part of trainings. This includes in particular all modifications, or improvements, or further developments made during the provision of Services. All rights derived from patent, trademark, design protection, copyrights, or other intellectual property rights to the Services rendered shall belong exclusively to SKIDATA or its licensors. This shall also apply if Principal is in possession of a physical medium on which the software is stored or fixed. Production documents, specifications, samples, models, drawings, clichés, photographs, and other aids shall remain the material and intellectual property of SKIDATA. The source code is also not part of the contract and at no point shall Principal have any rights, interest, or claim to the source code. Third Party Components (paragraph 10) are excluded from this paragraph.

**12.2.** SKIDATA retains title to all delivered hardware and consumables (including Consumable Products) until full payment of the agreed fee and all related interest and costs, even if Principal is already in possession of the hardware and consumables.

**12.3.** Principal is not entitled to resell hardware and/or consumables, to encumber them with third party rights (e.g. pledging or transfer by way of security) or to combine them with other items until full payment has been made. In the event of any infringement of the restrictions in the preceding sentence (e.g. resale of the Service by Principal), Principal hereby assigns to SKIDATA its claims against third parties up to the amount of SKIDATA's outstanding claim. SKIDATA hereby accepts this assignment. Principal shall disclose the retention of title to third parties when disposing of the goods or services and to inform SKIDATA immediately. Movable items that are connected to immovable items shall retain their status as movable items if their separation is possible without damaging their substance. This shall also apply if connecting parts have to be damaged in order to separate the movable item from the immovable item. In the case of a connection of the Service with immovable property, only the connecting piece (e.g. a floor slab) therefore becomes the property of the Principal, the remaining Service remains movable and thus remains the property of SKIDATA.

**12.4.** All materials provided during Trainings, including but not limited to handouts, presentations, software, videos and other documents, remain the sole intellectual property of SKIDATA or its licensors.

## 13. Data protection

**13.1.** Principal is obliged to comply with all applicable data protection regulations when using SKIDATA's Services.

**13.2.** Whether personal data within the meaning of the Swiss Federal Act on Data Protection (FADP) is processed depends on the goods and services purchased by Principal. In cases where personal data within the meaning of the FADP is processed, Principal is the controller and in cases where SKIDATA processes such data on behalf of Principal, SKIDATA is the processor of such data. In the latter case, the parties shall enter into a Data Processing Agreement that governs the processing of personal data by SKIDATA on behalf of Principal.

**13.3.** Principal acknowledges and accepts that SKIDATA uses software ("Connected Asset Management" or "CAM") for the purpose of improving Service quality, which collects system data - such as topology, hardware and software version and serial numbers, status of the software, time of installation - of Principal. No personal data within the meaning of Article 5 of the FADP is processed.

## 14. Responsibilities of the Principal

**14.1.** Principal is obliged to ensure and permanently maintain all necessary technical requirements for the installation, operation and maintenance of the SKIDATA Solution. Principal shall ensure that the SKIDATA Solution and its entire IT infrastructure are always state of the art and free of malware (e.g. viruses). This includes regular updates, protection against viruses and malware as well as the provision of a stable network infrastructure and hardware.

**14.2.** Principal is prohibited from carrying out or arranging for the following actions itself or through third parties without the prior written consent of SKIDATA: (i) reverse engineering, decompiling, disassembling or other actions aimed at converting SKIDATA software, computer systems, servers or other SKIDATA products into a human readable/perceivable form, (ii) copying, publishing, transferring and/or distributing the SKIDATA solution or related content, (iii) making copies of the software package, object or source code or any part thereof, (iv) modifying, adapting, translating or creating derivative works based on the software package, related documentation or other SKIDATA deliverables or any part thereof, (v) combining the SKIDATA solution or other SKIDATA products with open source software of any kind, (vi) providing access and thus access to other SKIDATA systems, programs, features or data beyond the rights granted under the contract, (vii) disclosure and/or transfer of the passwords or access data provided to unauthorized third parties, (viii) removal or manipulation of copyright notices or other protective notices (ix) direct or indirect use or transfer of the software for the provision and performance of Services for third parties; and (x) making or using copies of the software for purposes not expressly provided for in these terms and conditions, even if the software or accompanying materials have been combined with or integrated into other software. If the Principal makes a backup copy of the software in accordance with these Terms & Conditions, it shall be obliged to affix all copyright and/or proprietary notices affixed or printed on the original copy unchanged on the copy.

**14.3.** The provision of the SKIDATA Solution and compliance with the agreed performance dates require the Principal's timely and complete cooperation. Principal therefore shall provide SKIDATA with all necessary support for the provision of the contractual services. This includes in particular, but is not limited to: (i) timely and unrestricted access to networks, databases, programs, equipment and services of Principal and third parties and, if applicable, third parties, to the extent necessary for the provision of the Services; and (ii) active cooperation in testing, system configuration and

identification and verification of potential errors in the SKIDATA Solution. If Principal does not, or only partially, fulfill its obligations to cooperate, the agreed performance dates shall be extended accordingly. SKIDATA shall not be liable for any delay or other impairment of the provision of the Services which is directly or indirectly attributable to a breach of the Principal's obligations to cooperate. All costs incurred as a result, including additional expenses, waiting times, or necessary renewed provision, shall be borne by Principal.

**14.4.** The combination of SKIDATA software or other SKIDATA products with open source software of any kind is expressly prohibited if this could result in open source license terms becoming applicable to SKIDATA software or SKIDATA products. Principal shall be liable for all damages resulting therefrom and shall indemnify SKIDATA against any claims of third parties.

**14.5.** If Principal is permitted to exchange hardware, Principal shall verifiably remove the SKIDATA software as well as all associated files, licenses and configuration files completely and irretrievably from the exchanged devices. Any transfer, reuse, or storage of the software on other devices that have not been expressly authorized by SKIDATA is not permitted. Principal shall confirm the complete deletion of the software to SKIDATA in writing upon request. If Principal breaches this obligation, SKIDATA shall be entitled to claim damages and to revoke the licenses concerned, without notice.

**14.6.** Principal acknowledges that parts of the equipment used by it which are not included in the SKIDATA Solution may not function or only function to a limited extent without the SKIDATA Solution. SKIDATA shall be released from all contractual obligations, in particular from the warranty obligation (section 9), for the duration of a delay for which Principal is responsible.

**14.7.** Any breach of the provisions of this section shall entitle SKIDATA to terminate the agreement without notice and to claim damages. This includes in particular violations of the prohibitions to modify, reproduce or decompile the SKIDATA software. Principal shall compensate SKIDATA for all damages, including loss of profit and legal costs.

## 15. Commencement and termination of contract

**15.1.** Unless otherwise agreed, the contract shall enter into force on the effective date for the initial period specified in the offer.

**15.2.** After the initial period or the expiry of the minimum contract term, the contract term shall be automatically extended by 1 (one) year. It can be terminated in writing by one of the parties with a notice period of at least 6 (six) months to the end of the year.

**15.3.** In the event of a material breach of the agreement by either party, the non-breaching party shall be entitled to terminate the agreement by providing (i) written notice of breach and the intent to terminate, and (ii) an opportunity to cure the breach of at least thirty (30) days from the notice of breach.

**15.4.** If the agreement is terminated for cause by Principal due to a material breach, any license fees already paid shall be refunded pro rata from the first day of the occurrence of the material breach; and the Hardware shall be returned to SKIDATA at SKIDATA's expense. In all other cases, a refund of license fees already paid or an adjustment of the license fees due is excluded.

**15.5.** If the contract is terminated by SKIDATA without notice for good cause, Principal shall compensate SKIDATA for all disadvantages arising therefrom.

**15.6.** SKIDATA shall further be entitled to terminate the contract in the event of a material change in the Principal's ownership and/or control structure within three (3) months of becoming aware of such change by giving three (3) months' notice. In any event, a material change shall be deemed to be the transfer of at least 50% of the ownership, shares or voting rights to one or more new owners or beneficiaries.

**15.7.** Upon any termination of the contract, Principal shall (i) immediately cease using the Software Package, (ii) destroy or return to SKIDATA all copies of the Software Package, in whatever form they exist, including all backup copies, and (iii) confirm in writing to SKIDATA within ten (10) days that all copies have been returned or destroyed. SKIDATA and SKIDATA's authorized representatives shall be entitled to verify compliance with this obligation on site after termination of the contract within normal working hours.

## 16. Export control and sanctions

**16.1.** "Military End Use": use of the SKIDATA Solution, in whole or in part, for military end use or by military end users, including for purposes related to chemical, biological or nuclear weapons, military goods or by national armed forces (army, navy, marine, air force or coast guard), national guard and national police, government intelligence or reconnaissance organizations.

**16.2.** "Listed Person" means individuals and entities listed in economic sanctions and export control laws, or parties owned or controlled by one or more listed individuals or entities.

**16.3.** "Economic Sanctions and Export Control Laws" means any economic sanctions and export control laws, regulations, rules or restrictive measures, including but not limited to import and export restrictions on materials and items, issued and enforced by EU, UK, UN or US governmental authorities or any other relevant governmental or regulatory authority and applicable to SKIDATA or the Principal.

**16.4.** Principal represents and warrants to SKIDATA that it will at all times act in compliance with economic sanctions and export control laws and that neither Principal, its affiliates or any of their respective directors, officers or employees nor, to Principal's knowledge, any agent or other person acting on behalf of any of the foregoing:

- a) is or was a listed person;

- b) has been involved in transactions or activities that could reasonably be expected to result in becoming a listed person;
- c) has directly or indirectly conducted or is conducting business transactions or activities with or for the benefit of a listed person or is otherwise involved in a transaction with a listed person or otherwise violates economic sanctions and export control laws;
- d) was or is involved in a transaction that circumvents, evades or avoids, or the purpose or effect of which is to circumvent, evade or avoid, or attempts to violate, economic sanctions and export control laws; or
- e) violates or has violated economic sanctions and export control laws or is or has been the subject of an investigation or inquiry by or on behalf of a governmental or other regulatory authority in connection with economic sanctions and export control laws.

**16.5.** The Principal shall:

- a) comply with economic sanctions and export control laws and not sell or re-export the product without all required licenses and permits under economic sanctions and export control laws;
- b) Principal agrees that it shall not sell, export or re-export the SKIDATA Solution or any part thereof, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus (regardless of whether or not this is permitted under the economic sanctions and export control laws applicable to Principal);
- c) the Principal must use its best endeavors to ensure that the purpose of this point is not frustrated by third parties in the commercial chain, including potential resellers;
- d) the Principal shall (i) cascade the contractual obligations set out in this clause in contracts with third parties, including potential resellers, operators, and contractors further down the commercial chain; and (ii) establish and maintain an appropriate monitoring mechanism to detect conduct by third parties further down the commercial chain, including potential resellers, which would frustrate the purpose of this clause;
- e) the representations and warranties set out in section 16.4. above remain true and correct at all times;
- f) the Principal notifies SKIDATA in writing as soon as possible, but in any event within five working days, if (i) any of the representations or warranties set out in clause 16.4. above cease to apply at any time or (ii) the Principal encounters any problems in the application of clauses 16.5. a) to d) above, including relevant third party activities which may frustrate the purpose of that clause; and
- g) Principal will not perform any transaction for military end use unless expressly authorized by SKIDATA.

**16.6.** Principal agrees to maintain complete and accurate records of all actions taken by, on behalf of or at the direction of SKIDATA pursuant to this agreement. Principal shall provide all information related to requests for the SKIDATA Solution that Principal suspects may violate or circumvent economic sanctions and export control laws, including requests made by or on behalf of a listed person, and other attempts to acquire the SKIDATA Solution in violation of economic sanctions and export control laws. Principal shall use its best efforts to cooperate with SKIDATA to facilitate compliance with the Economic Sanctions and Export Control Laws and, upon SKIDATA's request, provide SKIDATA with true, complete and accurate copies of all documentation related to any business transactions involving the SKIDATA Solution, including but not limited to end-user certifications, information on compliance with the obligations under clause 16.5. a) - d), and such other information as SKIDATA may request within two (2) weeks of the written request for such information.

**16.7.** Notwithstanding anything to the contrary in this contract, SKIDATA shall not be obligated to make any payment or take any other action under this contract if SKIDATA believes in good faith that such action may constitute or contribute to a violation or constitute a circumvention of economic sanctions and export control laws.

**16.8.** The contract may be terminated by SKIDATA with immediate effect by written notice to Principal if:

- a) any of the representations or warranties set out in clauses 16.4. and 16.5. above cease to apply at any time;
- b) the Principal is in breach of its representations, agreements and obligations set out in Clauses 16.4 to 16.6 above, which shall in any event be deemed a material breach of a material term of this agreement;
- c) Principal has misrepresented or failed to properly disclose material facts or provide documentation, certifications or information requested by SKIDATA, including but not limited to the intended end use/end user or destination of the Product;
- d) the Principal, its Affiliates or any of their respective directors, officers or employees becomes a Listed Person; or
- e) the ability of either party to perform any obligation under this agreement is otherwise materially impaired by the imposition of restrictions under economic sanctions and export control laws.

**16.9.** Upon such termination, this contract and all rights and obligations hereunder shall terminate immediately and Principal shall remain liable to SKIDATA for any breach of its obligations under the contract. SKIDATA shall not be liable to Principal for any claims, losses or damages arising from the exercise of SKIDATA's rights under 16.8. a) to e) above or under 16.7. above.

**16.10.** Any breach by Principal of Section 16.5. shall constitute a material breach of a material term of this agreement and SKIDATA shall be entitled to seek appropriate remedies, including but not limited to: (i) termination of this agreement; (ii) liquidated damages in the amount of 80 % of the total value of this agreement or the price of the exported Goods, whichever is higher; and (iii) damages in accordance with 16.11. below

**16.11.** Principal shall indemnify and hold harmless SKIDATA and its affiliates, directors, officers, employees, consultants, agents, and holders of its equity interests (collectively, "Indemnitees") from and against all third party claims, damages and liabilities, including reasonable fees, costs and expenses for legal Services, incurred by or asserted against an Indemnitee arising out of, in connection with or as a result of the following:

- a) misrepresentation or breach of the warranty set out in point 16.4. above;
- b) a breach of any of the Principal's obligations in Clauses 16.5 to 16.6 above; and

c) a claim, dispute, investigation or proceeding relating to any of the foregoing, whether based in contract, tort or any other theory.

## 17. Other provisions

**17.1. Force majeure.** Neither party shall be liable for any failure to perform (other than the performance of payment obligations) or delay in performance of its obligations under this agreement or for any resulting damage or loss due to unavoidable causes beyond the reasonable control of a party to the extent that they result in that party being unable to perform any or all of its obligations under this agreement. Such circumstances may include, but are not limited to, the following (each a "Force Majeure Event"): Natural disasters, epidemics, disease, acts or threats of terrorism, cyber-attacks, viral outbreaks, fire, flood, explosion or other similar or dissimilar acts of nature, acts of war, hostilities (whether or not war has been declared), strikes or other matters beyond the reasonable control of the party invoking this Force Majeure section, embargo or other governmental or quasi-governmental restrictions or interference, political instability, public disorder, interruption of internet access, satellite access or access to other distribution networks or other similar or dissimilar events (and in the case of SKIDATA, shortage of personnel and/or raw materials, accidental destruction of essential goods at SKIDATA's premises, interruption of SKIDATA's production procurement and/or delivery process or any of the foregoing events at SKIDATA's suppliers, subcontractors and/or agents). Neither party shall be responsible for any non-performance or delayed performance to the extent such non-performance or delayed performance is due to a Force Majeure Event. If a Force Majeure Event occurs, the affected party shall notify the other party in writing as soon as reasonably practicable of the nature and likely duration of the Force Majeure Event and shall take all reasonable steps to mitigate its effects (but without unreasonable additional cost). The party affected by the Force Majeure Event shall notify the other party in writing as soon as the Force Majeure Event no longer prevents the performance of its obligations and the affected party shall resume performance of those obligations as soon as reasonably practicable. If the Force Majeure Event lasts longer than one month, the Parties shall use their best efforts to amend the contract so that it can be performed. If, despite such reasonable efforts, no agreement can be reached on the amendment of the contract and the Force Majeure Event continues for more than two months, either party shall be entitled to terminate the contract with immediate effect by notice in writing to the other party without incurring any further obligation or liability except for amounts due and payable up to the date of termination.

**17.2. Set-off, retention, assignment, transfer of contract.** Principal shall not be entitled (i) to set off counterclaims of any kind whatsoever against claims of SKIDATA, (ii) to withhold payments to secure its own claims, (iii) to assign claims and rights arising from the contractual relationship in whole or in part to third parties and (iv) to assign the contract in whole or in part to third parties. SKIDATA shall be entitled (i) to set off counterclaims of any kind whatsoever against claims of Principal; (ii) to withhold performance until all due claims under the contract and all other legal transactions between SKIDATA and Principal have been satisfied; (iii) to assign claims and rights arising from the contractual relationship in whole or in part to third parties; and (iv) to assign the contract in whole or in part to third parties.

**17.3. Confidentiality.** All information that the Principal receives in connection with the contract must be treated confidentially and kept secret. All information provided may only be used for the execution of the contract and may not be disclosed to third parties.

**17.4. Consent to marketing and advertising measures.** Principal agrees that SKIDATA may use Principal's name and address as well as general information about joint projects as a reference for marketing purposes. For this purpose, Principal shall provide a logo of its company in the graphic format and file format most suitable and granting SKIDATA the corresponding rights of use. Principal further allows SKIDATA to take pictures of Principal's outdoor facilities and of the products provided by SKIDATA in their environment and to use them for marketing purposes and grants SKIDATA all rights necessary for this purpose.

**17.5. Place of performance, choice of law, place of jurisdiction.** The place of performance for the provision of the Service is the registered office of SKIDATA (Switzerland) GmbH in Adliswil/ZH. The contract shall be governed by the Swiss law, excluding all conflict of law rules and the United Nations Convention on contracts for the International Sale of Goods (CISG). All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the Swiss Arbitration Center by one arbitrator appointed in accordance with the said Rules. The arbitration proceedings shall take place in Horgen, Switzerland. The language of the arbitration shall be German. Notwithstanding the foregoing, (i) a party may apply for an interim injunction before, during or after the arbitration proceedings to maintain the status quo; and/or (ii) to prevent a breach or threatened breach of this Agreement; and/or (iii) to obtain a specific Service; and/or (iv) to compel arbitration or further the purposes of arbitration and/or to enforce any settlement or award or such arbitration; and/or (v) for any other equitable remedy.

**17.6. Severability clause.** Should any provision of the contract be or become invalid or unenforceable, the remainder of the contract shall not be affected thereby. Invalid or unenforceable provisions shall be replaced by the contracting parties with valid and enforceable provisions that best achieve the intended economic purpose and are customary in the industry. The same provision shall apply regardless of any loopholes.

**17.7. Written form.** Collateral agreements, extensions and amendments to the contract, as well as deviations from the contract, must be in writing and signed by both parties in order to be valid. This also applies to any deviation from this written form requirement. Verbal ancillary agreements do not exist or lose their validity upon conclusion of the contract.