

## Terms and Conditions of Sale

### Goods and Services

#### 1 Application of Conditions

- 1.1 These Conditions of Sale ("**Conditions**") apply to all quotations, offers and purchase orders made or accepted by SKIDATA Australasia Pty. Ltd (ABN 14 164 259 750) of 97 Cook Street, Port Melbourne VIC 3207 ("**We**", "**Our**" or "**Us**") and to deliveries of all goods manufactured or supplied by Us ("**Goods**") to any person, firm or company which enters into an agreement with Us ("**You**" or "**Your**").
- 1.2 So far as applicable these Conditions also apply to the provision of any services including advice accompanying the supply of, or provided in relation to, Goods ("**Services**") and, where the context allows, any reference to the supply of Goods includes the provision of such Services.
- 1.3 These Conditions (which can only be waived or varied in writing by Us) will prevail over all conditions You may give to Us.

#### 2 Definitions

- 2.1 In these Conditions:

"**Commissioning Date**" means the date on which the installation and testing of the Goods is complete, except for minor omissions or defects which do not affect the Goods from being reasonably used for its intended purpose.

"**Confidential Information**" means any proprietary or confidential documents, knowledge and information, prices, specifications, business and trade secrets, formulas and know-how, production method, samples, models, drawings, data standard sheets, manuscripts and other technical and business documentation supplied or made known to You, or other information in any form concerning Us and Our related entities worldwide;

**DAP** [Incoterms] means delivered at place ready for unloading by You.

"**Force Majeure Event**" means any cause whatsoever that is beyond Our control including but not limited to Act of God; war; civil disturbance; requisitioning governmental restrictions, prohibitions or enactments of any kind; import or export regulations; strikes; lock-outs or other industrial disputes (whether involving Our own employees or those of any other person); difficulties in obtaining workmen or materials; breakdown of machinery; fires; accident; or pandemics.

"**GST**" means the goods and services tax or similar value added tax levied or imposed in Australia under the GST Act and includes any replacement or subsequent similar tax; "**GST Act**" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and "Taxable Supply" and "**Tax Invoice**" have the same meaning as in the GST Act.

"**Intellectual Property**" means all intellectual property rights (including, without limitation, all copyright, designs, trademarks and patents) of any nature in any samples, cost estimates, sketches, inventions, designs, works,

discoveries, trade secrets, know-how, computer software, Confidential Information (including in electronic form) and subject matter other than works, any application or right to apply for registration of such rights.

"**Practical Completion**" means the handover of the Goods to You upon completion of commissioning.

"**Software**" means any software which We provide to You together with, and for the operation of, the Goods, including any current and future Updates and Upgrades.

"**Software Licence**" means a licence of the Software granted under the terms and conditions set out in these Conditions and in the Contract.

"**Updates**" means small or minor updates to the Software in the form of updates, service packs, hot fixes and patches as become available from time to time to ensure that the Software complies with the applicable laws, regulations and/or compatibility requirements, including but not limited to security-related and operational standards developed by ISO or the PCI Security Standards Council LLC, provided the updates do not require Us to create an Upgrade.

"**Upgrades**" means upgrades of the Software, including new releases or versions.

#### 3 Orders

- 3.1 No order submitted or placed by You ("**Order**") shall be binding on Us unless and until We have given written acknowledgement of its acceptance on terms which include these Conditions ("**Order Confirmation**"). If Goods are supplied without an Order Confirmation, the applicable invoice shall be deemed to constitute the Order Confirmation.
- 3.2 Each supply by Us in response to an Order will be regarded as a separate contract for sale which is subject to these Conditions ("**Contract**").
- 3.3 All quotations are valid for 30 days from the date of the quotation and are subject to change by Us as notified by Us up to the date of the Order Confirmation.
- 3.4 If You place an Order subject to finance, We will not be obliged to procure or supply the Goods and Services until You have provided written evidence to Our reasonable satisfaction that such finance will be provided to You.

#### 4 Specification of Goods

- 4.1 Goods are supplied in accordance with their specifications as confirmed by Us in writing at the time We provide the quotation to You ("**Specifications**"). Any Specifications as shown on the quotation are deemed to be checked and accepted by You. Any additions and alterations made to a Specifications by Your request shall be subject to an additional charge as specified by Us.

#### 5 Services

- 5.1 Where specified in Our quotation we will provide the Services detailed therein;

- (a) In accordance with the relevant Specifications;
- (b) In compliance with all legally applicable standards and laws;
- (c) In a proper and workmanlike manner; and
- (d) Using suitably qualified and experienced personnel experience in providing such Services.

## **6 Prices and Payment**

- 6.1 Subject to clause 6.2, prices of the Goods and Services are the prices as stated in Our quotations ("**Prices**").
- 6.2 If the Goods and Services are for reasons attributable to You delivered more than 6 months after the date of the Order Confirmation, they are subject to price changes and the Price shall be the Price which is current at the time of delivery applies.
- 6.3 Unless otherwise specified by Us in writing, all Prices for Goods are:
  - (a) quoted DAP (INCOTERMS 2010); and
  - (b) exclusive of GST and any costs relating to insurance and installation of the Goods, unless such costs are expressly included in the Order Confirmation.
- 6.4 For any Goods that are ordered under a certain value We reserve the right to charge a small order handling fee to You.
- 6.5 Unless otherwise agreed by Us in writing, payment is due in full within 30 days of the date of the invoice, or, if the purchase price is payable in instalments, on the dates applicable under clause 6.6. ("**Payment Date**").
- 6.6 If We require You to pay the purchase price under the applicable Contract ("**Purchase Price**") in the form of instalments, You must pay the Purchase Price as follows:
  - (a) 30% of the Purchase Price must be paid at the time of the Order, (b) 40% of the Purchase Price must be paid on delivery to the nominated delivery location and (c) the balance must be paid within 30 days of the Commissioning Date or Practical Completion.
- 6.7 In the event that any amounts due and payable under the Contract are not paid on the Payment Date, We will charge You and You agree to pay Us, an administration fee of \$25 in respect of that late payment. The administration fee will be invoiced separately for each instance of late payment. In addition, if You default in the payment of any money due to Us pursuant to these Conditions on the Payment Date, then in addition to any other rights which may be conferred upon Us by law, We will be entitled to be paid interest on such money at the penalty interest rate as fixed by the Attorney General under section 2 of the Penalty Interest Rate Act 1983 (Vic) (accruing daily) from the date of such default until full payment is received.
- 6.8 If payment is not made in accordance with clause 6.5, or if at any time Your credit standing, is at risk or has been impaired, We may refuse delivery of any Goods and Services ordered until alternative arrangements as to payment or credit in terms satisfactory to Us have been agreed.
- 6.9 If GST is imposed on a Taxable Supply made by Us to You under or in connection with these Conditions, the Price of the Taxable Supply shall be equal to the GST-

exclusive consideration that You must pay to Us for the Taxable Supply under these Conditions increased by an amount (the GST Amount) equal to the amount of GST payable on that Taxable Supply and the GST Amount is, subject to Us issuing a Tax Invoice to You, payable at the same time and in the same manner as the consideration to which it relates.

- 6.10 You may not withhold or set off any payment or make deductions from any amount owing to Us without Our prior written consent.

## **7 Security to Performance**

- 7.1 If expressly stated in Our Order Confirmation, We will provide You with security for Our performance of the Contract by allowing You to retain 5% of each of the payment amounts due under clause 6.5 until 5% of the Purchase Price is retained.
- 7.2 Upon the Commissioning Date or the date of Practical Completion You must in addition to Your other obligations under the Contract release to Us 2.5% of the amount retained by You pursuant to clause 7.1 and upon expiration of the Defects Liability Period You must release to us the remaining amount retained by You pursuant to clause 7.1

## **8 Cancellation or variation**

- 8.1 A notice of cancellation or variation of an Order must be submitted by You in writing and is only effective upon the written approval by Us, whereby such approval can be withheld by Us in Our discretion.
- 8.2 In the event of a written request by You for a variation of Goods or Services as agreed in a Contract, We will nominate a date by which You must provide full and final details of the variation ("**Notification Date**") to allow Us to provide You with an adjustment to the Purchase Price under the Contract to which the variation relates. If You fail to provide the details of the variation by the Notification Date or we fail to agree on the Price adjustment for the variation, We will charge You based on Our current standard rates and prices for any additional work performed as a result of the variation.
- 8.3 When You give written notice of cancellation and We approve such a request in accordance with clause 8.1, without prejudice to Our other rights, We reserve the right to charge for all Goods and Services We have performed and shall need to perform in fulfilling the Order or, if the work is substantially complete or the Goods were made to order or are otherwise not immediately available for sale to another customer at an equivalent price, to charge for the full amount set out in the applicable quotation provided by Us, in addition to any other costs We incur on Your behalf.
- 8.4 When an Order is cancelled in accordance with this clause 8, We may charge You for each cancelled Order an administration fee of 10% of the Price of the Product and Services, as well as seek reimbursement from You for any costs which We are charged by third parties as a result of the Order being cancelled.

## **9 Delivery**

- 9.1 Unless We otherwise agree, delivery of Goods shall be made DAP (INCOTERMS 2010).
- 9.2 Stated delivery times are no more than an estimate by Us and shall not be binding upon Us. In the event of a Variation the parties will agree on an adjustment of the delivery date. We will not be liable for any consequential or

other loss resulting partly or wholly from late delivery. We may agree to fixed delivery times in writing ("**Fixed Delivery Times**"), in which case the Fixed Delivery Times are binding on Us only if You have provided Us on time, with anything in Your authority, care or control, necessary to allow Us to effect delivery.

- 9.3 You acknowledge that a significant delay to a specified delivery date ("**Specified Delivery Date**") caused by You, e.g. by failing to collect or accept delivery Ex Works, grant adequate access to the site, obtain any necessary permits, provide sufficient site-specific information or specify the required functionality of the Goods ("**Your Delay**"), will cause Us inconvenience and loss. In the event of Your Delay You must, within 2 weeks of the Specified Delivery Date, make payment to Us so that the total amount paid by You to Us is equal to 80% of the Purchase Price including, if relevant, the Purchase Price for installation costs of the Goods. If You do not make such payment, We may terminate the Contract in writing, sell the Goods to third parties, retain any deposit which You have paid and claim from You any loss, expense and damages which We may have suffered as a result of Your Delay.
- 9.4 Unless a partial delivery is unreasonable in the circumstances, We have the right to make partial delivery of the Goods ("**Partial Delivery**"), in which case You are only obliged to pay the portion of the Price which relates to the Partial Delivery.
- 9.5 If the quantity of Goods delivered does not correspond with the quantity stated in the quotation and Purchase Order Confirmation, You shall only be liable to pay for the quantity delivered in the case of short-delivery and for the price as stated in the quotation and Order Confirmation in the case of over-delivery (subject in the latter case to You permitting Us to collect the surplus Goods), provided that in no event shall such short or over-delivery entitle You to damages or give You a right to rescind the Contract of which these Conditions form part.
- 9.6 Any surplus Goods delivered shall remain Our property of and You shall take all necessary precautions for the safe custody and protection of such surplus Goods until the time of their removal by Us.
- 9.7 Where We are delayed in delivering the Goods by the Fixed Delivery Times due to circumstances that are caused solely by Us and You suffer loss as a result of the delay, You may, for each complete week of delay claim a refund of the price payable to the delayed delivery at the rate of 0.5% per week, but not more in aggregate than a total of 5.0% of the price payable for that portion of the Goods which in consequence of such delay cannot be effectively used. A refund claim pursuant to this clause shall be Your sole remedy for such delay.

## 10 Instalment Deliveries

- 10.1 Deliveries by instalments during an agreed period ("**Delivery Period**") must be agreed by the parties at the time the Order is accepted by Us.
- 10.2 If the parties agree a specific quantity of Goods is to be delivered by way of instalments during the Delivery Period, You must make the individual requests for the delivery of each instalment of the Goods at regular intervals during the term of the Delivery Period on the relevant dates agreed by the parties.
- 10.3 In the event that during a particular Delivery Period You make requests for less than the total amount of the Goods ordered with respect to that Delivery Period, We are no longer obliged to deliver the remaining Goods, however We have the right to invoice You, and You are obliged to pay for, the total amount of the Goods under that Order.
- 10.4 Where You fail to request or accept instalment deliveries in accordance with these Conditions, We may store the Goods at Your risk and cost and You will be deemed to be in default of payment for the delivery.
- 10.5 Where Goods are ordered for delivery by instalments, each instalment is deemed to be a separate order and a separate Contract performed by Us upon delivery of that instalment.
- ## 11 Passing of Risk and Title
- 11.1 Unless otherwise agreed by Us in writing, risk in the Goods shall pass to You when the Goods are delivered in accordance with clause 9.
- 11.2 Notwithstanding that risk passes to You under clause 11.1, legal and beneficial title ("**Ownership**") in the Goods shall remain with Us until the Purchase Price for the Goods as well as any other amounts You may owe to Us have been paid in full.
- 11.3 Until such time as Ownership in the Goods passes to You, You shall:
- (a) be in a fiduciary relationship with Us;
  - (b) store the Goods in a manner which makes them readily identifiable as Our property;
  - (c) hold the Goods as Our bailee; and
  - (d) keep the Goods insured against theft, damage and destruction (and provide to Us upon request a copy of the insurance certificates).
- 11.4 You are not an agent of Us and do not have any rights in, or title to, the Goods and You must not grant or purport to grant right in, or title to, the Goods to customers or any other third party or grant a security interest (as that term is defined in the Personal Property Securities Act 2009 ("**PPSA**")) in the Goods to any other party, or authorise any other party to take a security interest in the Goods.
- 11.5 We are entitled at any time while any debt remains outstanding by You to notify You of Our intention to take possession of the Goods and for this purpose You irrevocably authorise and license Us and Our servants and agents to enter upon Your land and buildings with all necessary equipment to take possession of the Goods. We are not liable for damage or injury to any premises caused by Us exercising Our rights under this clause.
- 11.6 You shall give immediate notice to Us of:
- (a) You becoming insolvent under administration as defined in Section 9 of the Corporations Act 2001;
  - (b) any step is taken (including without limitation, any application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for the winding up or dissolution of You or for the appointment of an administrator, receiver, receiver and manager or liquidator to the party or any of Your assets;



- (c) You resolving to enter into or entering into a scheme of arrangement or composition with, or assignment for the benefit of all or any class of Your creditors or proposing a reorganisation, moratorium or other administration involving any of them;
- (d) You becoming unable to pay Your debts when they fall due, resolving to wind Yourself up or otherwise dissolving Yourself;
- (e) Proceedings that are commenced to make You bankrupt or You becoming bankrupt;
- (f) an event equivalent to any of those set out in clauses 11.6(a) to 11.6(d) occurs.

## **12 PPSA**

- 12.1 You acknowledge and agree that You grant Us a security interest in the Goods and their proceeds by virtue of Our retention of title pursuant to clause 11.
- 12.2 You undertake to:
  - (a) do all things necessary and provide Us on request all information We require to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR"); and
  - (b) not to change Your name in any form or other details on the PPSR without first notifying Us.
- 12.3 You waive Your rights to receive a verification statement in respect of any financing statement or financing change statement in respect of the security interest created by these Conditions.
- 12.4 To the maximum extent permitted by law, You waive any rights You may have pursuant to, and the parties contract out of, the following sections of the PPSA:
  - (a) section 95 (notice of removal of accession);
  - (b) section 123(2) (notice of seizure);
  - (c) section 125 (obligation to dispose of or retain collateral);
  - (d) section 129(2) (notice of disposal by purchase);
  - (e) section 130 (notice of disposal);
  - (f) section 132(3)(d) (contents of statement of account after disposal);
  - (g) section 132(4) (statement of account if no disposal)
  - (h) section 135 (notice of retention);
  - (i) section 142 (redemption of collateral); and
  - (j) section 143 (reinstatement of security agreement).
- 12.5 You appoints Us as Your attorney to sign in Your name all documents which We consider necessary to enforce or protect Our rights and powers under these Conditions and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Conditions and the Security Interest created by these Conditions.
- 12.6 You will reimburse Us for any fees payable by Us in relation to the registration of the Security Interest created

by these Conditions, including registration fees and maintenance fees.

- 12.7 These Conditions create a Security Interest in all Goods which We have supplied to You and all Goods which We supply to You in the future. Initial registration of a financing statement by Us in respect of You under the PPSA covers Security Interests in Goods supplied now or subsequently under these Conditions.

- 12.8 Unless otherwise defined in these Conditions, the terms and expressions used in this clause 12 have the meanings given to them, or by virtue of, the PPSA.

## **13 Force Majeure Event**

- 13.1 We shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of Our obligations under a Contract occasioned by a Force Majeure Event. If a Force Majeure Event occurs, We may vary, cancel or suspend any Order Confirmation or Contract of which these Conditions form part without incurring any liability for any such loss or damage.
- 13.2 Where delivery is delayed as a result of a Force Majeure Event, the agreed delivery times will be extended as appropriate. If delivery is impossible or unreasonable as a result of a Force Majeure Event, We will no longer be obliged to effect delivery. Where the delay in delivery caused by a Force Majeure Event exceeds one (1) month, We and You have the right to terminate the part of the Contract to which the delay relates.

## **14 Software Licence**

- 14.1 Subject the terms of the Contract, We grant You a Software Licence which entitles You to install, load and use the Software on a single device for use in Your business activities in the manner as described by Us, and to create one backup copy to be used solely for the backup. If You create a back-up copy in accordance with this clause 14.1, You shall include all copyright notices and/or proprietary notices that are affixed to or appearing in the original copy of the Software.
- 14.2 We remain at all times the owner of the Software, the source code and any related Intellectual Property. Subject to law, You must not without Our prior written consent :
  - (a) reverse engineer, decompile, disassemble or otherwise reduce the Software to any human perceivable form;
  - (b) modify, adapt, translate or create derivative works based upon the Software, the written materials accompanying the Software, or any part thereof;
  - (c) combine the Software with any kind of open-source software;
  - (d) remove or manipulate copyright notices and other signs on the Software copies;
  - (e) use or permit the Software to be used to perform services for third-parties; or
  - (f) make or use any copies of the Software, even if the Software has been merged or included with other software, or any accompanying materials for any purpose other than as provided in these Conditions. You must use the Software only with compatible Goods.
- 14.3 You must pay to Us the licence fee for the Software as set out in the Contract and as changed by Us from time to time by giving written notice to You. The licence fee is a recurring annual fee.
- 14.4 You are entitled to use the Software, subject to You complying with these Conditions, including payment of the

Licence Fee . You have the right to terminate the Software Licence by giving Us prior written notice of at least six(6) months, whereby such termination becomes effective at the end of the calendar year during which the notice is given. Either party may terminate the Software Licence upon giving written notice to the other party if the other party fails duly and punctually to carry out the obligations on its part to be performed or observed pursuant to the Software Licence and the failure continues and persists for a continuous period of 30 days after service of written notice on that other party specifying the nature of the failure and directing the party to whom the notice is addressed to remedy the failure within such 30 day period. In the event that We terminate under this clause 14.4 based on a default by You, You will not be entitled to a refund of any payments which You have made in respect of the Software Licence for the period after the termination date.

14.5 Upon termination of the Software Licence, You shall (a) immediately cease to use the Software; (b) irretrievably destroy or return to Us all copies of the Software, including all backup copies, in whatever form they exist; and (c) confirm to Us within ten (10) days in writing that all copies have been returned or destroyed. Following termination, You shall permit Us or any person authorised by Us, during normal business hours access to Your premises, and access to any of Your records or accounts relevant to the Software and the compliance by You with this clause 14.5.

14.6 During the term of the Software Licence, You shall permit Us or any person authorised by Us, during normal business hours access to Your premises, and access to any of Your records or accounts relevant to the Software and the compliance by You with the terms of the Software Licence. If such audit discloses that the number of devices using the Software exceeds the number of licences permitted under the Software Licence ("**Excess Devices**"), You shall promptly pay the licence fee for such Excess Devices. You shall also pay the licence fee for the Excess Devices retrospectively for the Contract period preceding the discovery of the Excess Devices., whereby the licence fee for the full contractual year will be payable retrospectively if You are unable to prove the date on which the use of the Software on the Excess Devices commenced.

14.7 If You are permitted under the terms of the Contract to exchange hardware, You must remove the Software from the hardware to be exchanged and provide evidence to Us of such removal.

14.8 Where the functionality of the Software requires third party components and/or other system requirements, such third-party components and/or other system requirements may be supplemented or modified by Us at Our sole discretion. You are responsible for obtaining, installing, maintaining and operating any third party components. For third party components additional agreements may apply, which shall be observed by You. The use of third party components is at Your risk. We shall not be liable for damages or losses caused by third party components. All costs and expenses in relation to third party components shall be borne by You.

14.9 We are not obliged to provide Upgrades and Updates, however We recommend their installation to ensure the

security and operability of the Software and the Goods. Consequences of non-installation of Updates and Upgrades are at Your risk and You release Us from any liability for loss or damages arising from such non-installation. You acknowledge that older versions of the Software may no longer be supported after a certain time. Costs for Upgrades and Updates are not included in the licence fee and will be charged separately. Updates and Upgrades may alter the system requirements of the Goods and it may be necessary to install the respective predecessor Updates/Upgrades, third-party components and additional or altered hardware. You are solely responsible for creating backup files and copies of data before Updates or Upgrades are installed. We are not responsible or liable for any loss or damage arising therefrom and You release Us from any claims in this respect.

14.10 Licensing models for third party software are subject to changes by the providers of the third-party software from time to time, whereas the actual need for the appropriate number and type of licences depend on Your whole IT-environment of, not only the Goods. Therefore, any third party licences provided together with the Goods are by non-binding recommendation only. You must check the number and appropriateness of the type of third party software licenses actually necessary. You accept and acknowledge that We exclude any liability or warranty regarding Our recommendation for and the provision of third party software licences.

## 15 Intellectual Property

15.1 We, Our related bodies corporate and licensors reserve ownership in any Intellectual Property, relating to the quotations, Specifications, technical drawings, price lists, tender documentation and Goods (including any associated Software) ("**Protected Items**"). Nothing in these Conditions operates or is intended to deny Us or Our related bodies corporate, or confer on You, the Intellectual Property or any other intellectual property rights in the Protected Items.

15.2 You must not use or make the Protected Items available to third parties without the prior written consent of Us.

15.3 You must only use the Protected Items and any associated Intellectual Property in accordance with the terms of the Contract.

15.4 If You become aware of any actual, threatened or suspected infringement of the Intellectual Property, You must inform Us promptly of the actual, threatened or suspected infringement.

15.5 You shall indemnify Us for and in respect of claims by any third party in relation to Goods where such claims arise from, or can be attributed to, Your special requirements or specifications.

15.6 You grant to Us a licence to use Your name, images, drawings and photographs from sites and projects which are owned, occupied and/or managed by You and associated with the Services performed by Us, in electronic and/or print formats, free of charge, for internal and/or external marketing activities. You have the right to revoke this licence at any time by giving Us at least 7 days' written notice.

## 16 Australian Consumer Law and Consumer Guarantees

16.1 Some of Our Goods and Services may be subject to the Australian Consumer Laws. Those goods or services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- (a) To cancel your service contract with us, and
- (b) To a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure You are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonable foreseeable loss or damage from a failure in the goods or service.

16.2 For the purposes of these Conditions, a Consumer Guarantee means a right or guarantee that You may have under the Australian Consumer Law or other rights in relation to the supply of goods or services (such terms as implied into a contract) that cannot be lawfully excluded.

16.3 Subject to clause 16.4. Our liability in respect of any breach of or a failure to comply with any Consumer Guarantee is limited to the following:

- (a) In the case of goods, to
  - i. the replacement of the goods or the supply of equivalent goods;
  - ii. the repair of the goods;
  - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - iv. the payment of the cost of having the goods repaired.
- (b) In the case of services, to
  - i. The supplying of the services again; or
  - ii. The payment of the cost of having the services supplied again.

16.4 Our liability in respect of a breach of or a failure to comply with a Consumer Guarantee will not be limited in the way set out in clause 16.3. if:

- (a) the goods or services supplied are goods or services 'of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 64A of the Australian Consumer Law;
- (b) it is not 'fair or reasonable' for us to rely on such limitation in accordance with section 64A(3) of the Australia Consumer Law; or
- (c) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the Australian Consumer Law.

16.5 For any claim under the Consumer Guarantees please notify Us in writing at the following address

noc.au@skidata.com We will pay Your reasonable, direct expenses of claiming under this clause 16.5. You shall submit details and proof of Your expense claim to Us for consideration.

## 17 Defects Warranty

17.1 In addition to the Consumer Guarantees that may apply to certain of Our goods and services and for all Our other goods and services We shall, subject to clause 17.4. rectify any faulty material or workmanship ("Defects") which occur during the Defects Liability Period as defined under clause 17.4. We shall rectify the Defect at Our option, by repair, replacement or supply of equivalent goods (or by payment of the cost of doing so), provided always that: (a) You notify Us of the Defect in writing as soon as You become aware of or should have become aware of the Defect; (b) the Goods have been properly handled, used, operated and maintained in accordance with instructions issued by Us or if no instructions were issued, in accordance with good industry practice; (c) such Defects are not caused by incorrect use of operating material or lubricants, faulty civil or mechanical work, or/and any chemical; (d) the Goods including spares (as applicable), are not consumables, not liable to deterioration or do not have a low rated service life; (e) no unauthorized repair or alteration to the Goods has been made; (f) such Defects are not caused by the use of equipment and/or material supplied by You ; and (g) such Defects are not due to fair wear and tear, improper storage, excessive heating, mechanical vibration, overloading or contravention of the rules established in standard electrical practice.

17.2 Where You have notified Us of an alleged Defect in accordance with clause 17.1, You shall, at Our request: (a) promptly return the part which is subject to the Defect ("Defective Part") to Us for repair; or (b) do anything necessary to enable Us to repair or replace the Defective Part on Your behalf (including giving Us access to any premises where the Defective Part is located). Unless otherwise agreed between the parties or as required by law, under this Defects Warranty, the removal of and return of a Defective part and the installation of any repaired, replacement or equivalent parts shall be performed by You at Your risk and expense. Where any Defective part has been replaced, that Defective Part shall become the property of Us upon its removal. All replacement parts shall become Your property upon installation

17.3 To the extent permitted by law and subject to clause 17.4:

- (a) Our obligation to rectify Defects in accordance with this clause 17 shall be Your sole and exclusive remedy and represents the full extent of Our liability for Defects under this warranty; and
- (b) all representations, other warranties and conditions of any kind, whether express or implied relating to the Work that are not contained in these Conditions are excluded.

17.4 Unless Our quotation provides otherwise, the Defects Liability Periods for Our Goods and Services are:

- (a) for new Goods or parts for those Goods (excluding Software), twelve (12) months from



delivery or Practical Completion, whichever is the earlier date;

- (b) for Software, twelve (12) months from Practical Completion;
- (c) for refurbished Goods or parts thereof, three (3) months from delivery or initial operation, whichever is the earlier date;
- (d) for Services (excluding Software Services) three (3) months from completion of the relevant Service.

17.5 Claims with regard to Software under this Defects Warranty are excluded (a) in case of insignificant deviation of the software from the agreed characteristics, (b) as long as the defect cannot be reproduced by You in the presence of Us, (c) for errors or restrictions of use originating after the transfer of risk to You, in particular resulting from improper operation, usage or handling, (d) for errors or restrictions of use resulting from modifications, performance of maintenance not approved by Us, or improper interconnection with and/or integration into third party equipment unless such modifications, maintenance, or interconnection and integration was performed by Us or Our subcontractors, and (e) for defects in freeware, shareware or open source software.

17.6 For any claims under this Defects Warranty, please notify Us in writing at the following address [noc.au@skidata.com](mailto:noc.au@skidata.com).

## 18 Indemnity

We shall indemnify, defend and hold You harmless from any claim, cause of action or liability incurred by You as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by Our negligent act or negligent omission. We shall have the sole authority to direct the defence of and settle any indemnified claim. Our indemnification is conditional on You (a) promptly, within the Defects Liability Period, notifying Us of any claim, and (b) providing reasonable cooperation in the defence of any claim. Our obligation to indemnify You under this Clause 18 shall be reduced to the extent that: (A) any act or omission of You or Your employees, contractors or agents has contributed to the loss, damage, death or injury; and or (B) You have failed to mitigate Your loss.

## 19 Limitation of Liability

19.1 Subject always to Our liability under Australian Consumer Law and to the extent that liability cannot be legally limited or excluded, Our total aggregate liability arising out of or in connection with the contract of which these Conditions form part, shall be limited to the price paid for the Goods and Services under the Contract per event and in the aggregate; and

19.2 We shall under no circumstances be liable for economic loss; loss of contract; loss of profit or revenue; business interruption; loss of production; production stoppage; loss of information or data; loss of power, replacement power; cost of capital; loss of interest, damages based on Your third party contracts; indirect or consequential loss or damage, whether or not such loss was foreseeable.

19.3 Subject to law, the limitations and exclusions of liability specified in this clause 19 shall apply whether the liability

claim is based on breach of contract, tort (including negligence or strict liability), in equity or otherwise.

## 20 Termination

Either You or Us (the non-defaulting party) may terminate the Contract with immediate effect if:

- (a) the other (defaulting) party is in breach of the Contract and fails to remedy that breach within fourteen (14) days after receipt of written notice thereof from the non-defaulting party; or
- (b) the defaulting party becomes subject to any form of insolvency administration.

## 21 Confidentiality

21.1 All Confidential Information is and will remain Our exclusive property.

21.2 You must not, except as required by law or by Us directly or indirectly communicate any Confidential Information to any person without the prior written consent of Us, and must at all times use Your best endeavours to prevent the use or disclosure of any Confidential Information by third parties.

21.3 You will impose the same obligation as set out under clause 21.2 on Your employees and contractors who are involved in the performance of the Contract.

## 22 Privacy

You acknowledge that Your personal information as defined under the *Privacy Act 1988* ("Act") is likely to be disclosed to recipients located in Austria. You will be disclosing Your personal information to third parties located outside Australia whereby

- (a) We will not be accountable under the Act,
- (b) You will not be able to seek redress under the Act,
- (c) the overseas recipient may not be subject to any privacy obligations or to any principles similar to the Australian Privacy Principles,
- (d) You may not be able to seek redress in the overseas jurisdiction; and
- (e) the overseas recipient may be subject to a foreign law that could compel the disclosure of personal information to a third party, such as an overseas authority.

## 23 Assignment

The Contract of which these Conditions form part is personal to You and may only be assigned by You with Our prior written and informed consent. We may assign these Conditions, and any Contract of which they form part, without Your consent.

## 24 Waiver

No neglect, delay or indulgence on the part of a party in enforcing these Conditions shall prejudice the rights of that party or be construed as a waiver of any such rights.

**25 Severability**

If any, one or part of these Conditions is illegal, invalid or unenforceable it shall be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it shall be severed from these Conditions, but in any event the remaining Conditions and any other provisions of the agreement of which these Conditions form part shall remain in full force and effect.

**26 Whole Agreement**

In relation to the subject matter of these Conditions, these Conditions supersede all oral and written communications by or on behalf of any of the parties.

**27 Governing Law**

The Conditions and any agreement of which they form part are governed by and must be construed in accordance with the laws which apply in the State of Victoria and the parties submit to the non-exclusive jurisdiction of that State.