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## **TERMS AND CONDITIONS**

By signing this quotation document ("Quotation"), the person signing it and the entity with whom he is affiliated (collectively, the "Purchaser") hereby agrees to the following terms and conditions.

The Quotation constitutes an offer ("Offer") by SKIDATA, Inc. ("SKIDATA") to sell certain equipment more particularly set forth in the description affixed to the Quotation. However, the Purchaser will not be deemed to have accepted the Offer ("Accepted") unless SKIDATA both (a) receives the signed Quotation executed by an individual or an entity by and through an individual who hereby represents that he is duly authorized to bind it to the terms hereof and (b) SKIDATA thereafter, as it determines in its sole discretion, countersigns the Quotation and forwards it back to the Purchaser. Once the Offer is Accepted, the Quotation shall result in a binding agreement ("Agreement") between the parties. This Offer will automatically expire in thirty (30) days unless it is Accepted as set forth above.

**Delivery and Installation.** "Delivery" shall be defined as sending the Equipment purchased by Purchaser in accordance with the terms of this Quotation ("Delivery"). The Delivery shall be deemed accomplished, and risk of loss or damage to the Equipment, shall pass to Purchaser upon either (a) SKIDATA's transfer of same to a common carrier or (b) pick-up of the Equipment by Purchaser or its agent. After Delivery, the Purchaser shall solely bear any and all expenses and risk of loss or damage. After Delivery, Purchaser shall have the obligation to inspect the Equipment ("Inspect") immediately, and in no event, more than ten (10) business days after Delivery. The Purchaser shall inspect the Equipment by testing it fully and exhaustively. In the event that the Equipment does not function according to SKIDATA's specifications, the Purchaser shall provide notice to SKIDATA in writing immediately. SKIDATA shall then have ten (10) days to either attempt to repair or otherwise ameliorate the problem. The Purchaser shall use best efforts to cooperate with SKIDATA in that regard and provide it with access to the Equipment. Thereafter, if SKIDATA determines that the Equipment cannot be brought to the point that it functions within SKIDATA's specifications, SKIDATA shall have the option of (a) replacing the Equipment by providing comparable Equipment to the Purchaser at no charge to Purchaser; (b) rescinding the transaction and refunding the Purchaser's payment once the Equipment is returned by the Purchaser to SKIDATA in the same condition as when it was Delivered; or (c) if the Equipment still functions adequately, providing a reasonable refund to the Purchaser for the fact that the Equipment is compromised in some fashion. Purchaser waives its right to assert any other claim with regard to the Equipment or Delivery other than as set forth in this paragraph.

**Termination or Modification.** This Agreement may be modified or terminated only upon SKIDATA's written consent, which may be unreasonably withheld.

**Change Order.** Should Purchaser request changes to the list of Equipment prior to Delivery but after the Quotation is Accepted, SKIDATA may or may not accept the Change Order, in its sole discretion. It shall not be deemed to have done so, unless it signs a writing to that effect. Once it does so, the changes shall be deemed a part of the original Quotation, and shall be subject to all of the terms hereof.

**Design Modifications.** All products are subject to design and/or appearance modifications which are production standard at the time of shipment. Products shipped prior to a current production standard will be modified to current production standards when returned to SKIDATA only if in the sole discretion of SKIDATA such modifications are necessary.

**Purchaser's Representations.** Purchaser hereby makes the material representation upon which it wishes SKIDATA to reasonably rely that (i) it will obtain all appropriate clearances for installation of the Equipment ("Installation"), including, without limitation, all licenses, permits, zoning variances and/or other documentation necessary to effectuate the intent of this Agreement; (ii) it will obtain all the electrical permits, authorizations and clearances necessary to complete Installation of the Equipment; (iii) SKIDATA will have continuous and unrestricted access to the site at which the Equipment is to be Installed; and (iv) it will cooperate with SKIDATA in obtaining any and all other documents, permits, authorizations, clearances and so forth necessary to effectuate the terms of this Agreement.

**Payment.** Prices are subject to increase to those prices in effect at the time of shipment when specific shipment date is later than one year from date of order. Purchaser agrees to pay SKIDATA, in full, in good and sufficient funds ("Payment"), prior to Delivery. If such Payment is not made prior to Delivery, SKIDATA will not be deemed to have waived any of its rights and such failure to pay shall constitute an incurable breach of this Agreement and, among other remedies, Purchaser shall pay interest on past due amounts and attorneys fees as set forth below.

In the event, in SKIDATA's sole discretion, that the Equipment is purchased without full Payment being made prior to Delivery, the following terms shall apply: By accepting Delivery of any portion of the Equipment, the Purchaser hereby provides to SKIDATA a first priority security interest ("Security Interest") in all of the Equipment. The Purchaser shall not allow any other security interest to be placed upon the Equipment without the written consent of SKIDATA, which may be unreasonably withheld. SKIDATA shall be entitled to file or record any documents it deems necessary to perfect its security interest, and the Purchaser shall fully cooperate in that regard, including without limitation, by promptly executing any documents and providing any information that SKIDATA requests.

**Taxes.** Prices do not include taxes. Prior to Delivery, Purchaser shall pay SKIDATA, in addition to the price of goods, any applicable excise, sales, use or other tax (however designated) imposed upon the sale, production, delivery or use of the goods ordered to the extent required or not forbidden by law to be collected by SKIDATA from Purchaser, whether or not so collected at the time of sale, unless valid exemption certificates acceptable to the taxing authorities are furnished to SKIDATA before the date of invoice.

**Resale of Equipment to Third Parties.** Purchaser agrees to immediately provide SKIDATA with written notice of its intent to re-sell or lease any Equipment subject to the Agreement, and SKIDATA shall have a right of first refusal with regard to the same. Further, Purchaser agrees to provide SKIDATA with copies of any and all contracts for the resale or lease of Equipment before such contracts are executed and to obtain a duly executed contract signed by the new purchaser in SKIDATA's favor (a) holding it harmless from any liability with regard to the Equipment and its use and (b) requiring that any subsequent purchasers sign such a contract as well. All such contracts will be provided to SKIDATA in the original prior to the Equipment being re-sold.

**Remedies and Cure Period.** In the event that Purchaser breaches this Agreement by not remitting any Payment when due, SKIDATA may, but is not required to, declare a default (“Default”). It shall not be required to provide notice or an opportunity to cure prior to declaring a Default. Whether or not it does so, in any event, it shall be entitled to both actual pre-judgment and post-judgment attorney’s fees and costs and attorney’s fees and costs of settlement if no proceeding is instituted. Further, such reimbursement shall also include any such attorney’s fees and costs incurred after the conclusion of such a proceeding in which a judgment or other disposition is rendered in post-judgment or post-disposition representation. It shall also be entitled to interest on any outstanding amounts at the rate of eighteen percent (18%) per annum from the date of Default. In the event that either party breaches this Agreement in any other manner, the non-breaching party shall provide the breaching party with five (5) days written notice detailing the same and providing the opportunity to cure, prior to declaring a default. In the event that after that period it still deems the item to have not been cured, it shall provide an additional five (5) days (or longer in the event that the nature of the activities necessary to cure would reasonably take longer) written notice detailing the reasons for that determination. The breaching party shall have the right to cure during that additional period. The non-breaching party shall inform the breaching party in writing promptly afterward whether the item has been cured and the reason for that conclusion.

**Indemnification.** In the event of a claim against SKIDATA, its members, shareholders, directors, officers, attorneys, employees and/or their successors, assigns, heirs, executors, personal or legal representatives by a third party relating in whole or in part to the act or omission of the Purchaser, its employees, agents or assigns, the Purchaser shall indemnify, defend and hold them harmless with regard to any claim or other liability for any act or omission asserted against any of them that are directly or indirectly related to the purchase, use, re-sale or lease of the Equipment.

**Dispute Resolution.** A party to this Agreement may not institute a suit at law or equity regarding any dispute, whether directly or indirectly related or collateral to this Agreement. All such claims or disputes, whether between or among the parties, shall be submitted to arbitration administered by an arbitrator.

However, notwithstanding the foregoing, either prior to, during or after the arbitration process, any party to this Agreement may institute a suit in equity for a temporary injunction preserving the status quo, to enjoin a breach or threatened breach of this Agreement and/or for other equitable relief (a) to compel the arbitration or further its purposes; and/or (b) to enforce a settlement or award of such arbitration.

A. **Arbitration Demand Procedure.** A claim or dispute by one of the parties to this Agreement may only be submitted to arbitration if the opposing party (“Opposing Party”) is first served with a written demand for same. Such written demand shall be accompanied by a recommendation for a suggested arbitrator (“Suggested Arbitrator”) and a certification setting forth any financial or attorney-client relationship with the Suggested Arbitrator. The fact that the Suggested Arbitrator may have arbitrated other cases for any of the parties need not be disclosed. If the Opposing Party objects to the Suggested Arbitrator, such objection must be set forth in writing and submitted to the party requesting arbitration (“Requesting Party”) within five (5) days, or the objection shall be waived and the

Suggested Arbitrator will be deemed appointed. The objection shall be accompanied by the Opposing Party's recommendation for an arbitrator and his certification of his relationship with same. The Requesting Party shall have five (5) days to submit his objection to the Opposing Party's recommendation. Thereafter, should the parties be unable to agree upon an arbitrator, the arbitrator shall be chosen by a determination of a court of competent jurisdiction.

**B. Conference, Discovery and Motions.** The arbitrator shall conduct an initial telephone or in-person conference, to discuss arbitration procedure, within ten (10) days of the arbitrator's appointment. Both parties shall submit and serve on the other party arbitration statements no later than two (2) days prior to the conference.

The parties shall have the following procedures available to them, in any order or all at once, with regard to the arbitration they may each serve up to: thirty (30) interrogatories; (ii) twenty (20) document requests; (iii) thirty (30) requests for admissions; each of which shall be answered within ten (10) days. Additionally, each party may: (iv) take up to five (5) depositions, which may be scheduled upon ten (10) days notice, as to which all parties shall cooperate in producing and locating witnesses (third-party witness attendance may be compelled by issuance of a subpoena); (v) serve a summary judgment motion(s) or motion(s) to dismiss on the basis that the matter should be disposed of in whole or in part as a matter of law; and (vi) serve a motion(s) to dismiss or suppress based upon a failure to respond to discovery.

**C. Determination, Award and Costs.** The arbitrator shall have the authority to award any remedy or relief that a court of competent jurisdiction could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, or the issuance of injunctive relief. The award rendered by the arbitrator in any arbitration under this Agreement is final and binding on the parties. Judgment upon the award rendered by the arbitrator may be entered in any court having competent jurisdiction thereof. The arbitration award may be appealed to a court of competent jurisdiction solely on the basis that the award was arbitrary or capricious. Each party shall initially bear its own costs, expenses and administrative fees and an equal share of the arbitrator's fees until such time, if at all, a party is awarded its costs, expenses and fees by the arbitrator. If a party or his attorney does not appear at the arbitration hearing the arbitrator shall strike its claims and/or suppress its defenses and conduct a proof hearing.

**Jurisdiction.** The parties agree that this Agreement is made and delivered in, and shall be governed by and construed in accordance with the laws of the State of New Jersey (without giving effect to principles of conflicts of laws of the State of New Jersey or any other state). Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Superior Court of the State of New Jersey or, if jurisdiction exists, at the option of either party, to the jurisdiction of the United States District Court for the District of New Jersey (with regard to the limited matters specifically reserved above for determination by a court), for any action, proceeding or investigation in any court or before any governmental authority (a "Litigation") for actions to compel the arbitration and actions to enforce its award, arising out of or relating to this Agreement and the transactions contemplated hereby (and agrees not to commence any Litigation relating thereto except in such courts).

Each of the parties hereto hereby irrevocably and unconditionally waives any objection to the laying of venue of any Litigation arising out of this Agreement or the transactions contemplated hereby in the Superior Court of New Jersey in Somerset County or, if jurisdiction exists, at the option of either party, to the jurisdiction of the United States District Court for the District of New Jersey, in the Newark Vicinage, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Litigation brought in any such court has been brought in an inconvenient forum.

In addition, the parties submit to the jurisdiction of the arbitrators selected in accordance with the provisions of this Agreement for the conduct in the State of New Jersey of arbitration under this Agreement, with such arbitration to be conducted in Somerset County ("County") or, in the event that there is no office in the County, in either the arbitrator's office or that of either party's counsel, whichever is closest to the County. The arbitration award may be appealed to a court of competent jurisdiction solely on the basis that the award was arbitrary or capricious.

**Miscellaneous.** The obligations of the Purchaser shall apply equally, jointly and severally, to its related entities, agents, successors, assigns, and (as to an individual) heirs. This Agreement supersedes all prior oral or written agreements or representations pertaining to the subject matter hereof. Neither this Agreement, nor its execution, has been induced by any reliance, representation, stipulation, warranty or understanding of any kind other than those expressed herein. No course of dealing or failure by either party to enforce any term hereof shall operate as a waiver. All such rights and remedies shall continue unimpaired, notwithstanding any delay, extension of time, renewal, compromise or any other indulgence granted with respect to this Agreement. In the event any provision of this Agreement is deemed invalid by an Arbitrator or a Court of competent jurisdiction, the balance of it shall remain in full force and effect. The person entering into this Agreement on behalf of an entity hereby makes the material representation upon which he or she requests the other party to reasonably rely that he or she has the authority to bind that entity hereto. **THE PARTIES ACKNOWLEDGE HAVING READ THIS AGREEMENT CAREFULLY, THAT THE PARTIES UNDERSTAND ALL OF ITS TERMS, THAT ALL AGREEMENTS BETWEEN AND AMONG THE PARTIES RELATING TO THE SUBJECTS COVERED IN THIS AGREEMENT ARE CONTAINED IN IT. PURCHASER HAS BEEN URGED TO OBTAIN AN ATTORNEY TO ADVISE IT CONCERNING THIS TRANSACTION. IT HEREBY CERTIFIES THAT IT HAS BEEN ADVISED OF THIS RIGHT TO COUNSEL AND HAVE CONSULTED WITH SUCH COUNSEL, IF IT SO CHOSE AND HAS ENTERED INTO THIS AGREEMENT WITHOUT COERCION AS ITS FREE ACT AND DEED AND THIS IS NOT A CONTRACT OF ADHESION.**

**Warranties.** SKIDATA solely warrants that all Equipment and systems covered by this order will conform with its internal specifications. THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED BETWEEN THE PARTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PUNITIVE, EXEMPLARY, TREBLE AND

ANY OTHER DAMAGES NOT MEASURED BY THE ACTUAL LOSS ARE HEREBY WAIVED. IN NO EVENT SHALL SKIDATA BE LIABLE FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF PROFITS OR FOR ANY OTHER SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF THE FOREGOING LIMITATION SHALL BE FOUND UNENFORCEABLE FOR ANY REASON, LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE PRICE PAID FOR THE DEFECTIVE PRODUCT. IT IS HEREBY STIPULATED BY THE PARTIES HERETO THAT TRIAL BY JURY IS HEREBY SPECIFICALLY WAIVED AS TO ALL CLAIMS OR DEFENSES BETWEEN THE PARTIES.

Accepted by: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_