

# Software Conditions

These Software Conditions (the "Conditions") shall apply in addition to SKIDATA's General Conditions. In case of any conflict between these Conditions and the General Conditions, these Conditions shall prevail.

## 1. Subject Matter of the Contract

- 1.1.** Subject matter of these Conditions is the granting of licenses for software. The software is specified in detail in SKIDATA's information sheet describing the software functions and system requirements (the "Factsheet").
- 1.2.** These Conditions in their current version at the time of supply also apply to current and future Updates, Upgrades, supplements and support services.
- 1.3.** The scope of the Contract does not include delivery of modules, add-ons, training sessions, individual further development of the software, adjustment of applications, installation of software, configuration of software or data backup measures unless expressly agreed upon.
- 1.4.** If third-party software is included in the scope of the Contract, the license terms of the third-party supplier shall also be Contract components and shall be adhered to by the Principal.

## 2. License

- 2.1.** There are two license types: **license purchase** and **license lease** (each of the license types commonly referred to as the "license"). The applicable license granted to the Principal is specified in the Contract. Unless otherwise agreed, the special provisions for the license purchase shall apply.
- 2.2. License purchase:** The Principal is granted a non-exclusive, non-transferable, non-sublicensable, limited right to use the software unlimited in time.
- 2.3. License lease:** The Principal is granted a non-exclusive, non-transferable, non-sublicensable, right to use the software limited to the term of the Contract.
- 2.4.** The software may only be used in the scope of the contract and in connection with the contractually specified solution. All other use of the software, in particular in connection with third-party products, requires the explicit consent of SKIDATA.
- 2.5.** The license entitles the Principal to install, load and use the software on a single device for its current business activities in the manner as described to SKIDATA, and to secure a backup copy intended solely for backup and archiving purposes. The Principal shall purchase a sufficient number of licenses corresponding to the number of devices. Software may only be used with compatible SKIDATA products and systems.
- 2.6.** Even if software is made available to the Principal on a CD or any other physical data carrier, SKIDATA shall remain the owner of the software and all trademarks, copyrights, patents, trade secrets and other intellectual property rights relating thereto. The source code shall not be part of the Contract.

## 3. License Fee

- 3.1.** For the grant of the license SKIDATA receives from the Principal a one-time license fee (**license purchase**) or a recurring license fee (**license lease**). The amount of the license fee is agreed in the Contract.
- 3.2. License purchase:** The license fee is due upon conclusion of the Contract.
- 3.3. License lease:** Unless otherwise agreed in writing, a recurring license fee shall mean an annual fee to be paid in advance. If the Initial Period (according to 8.2.) is shorter than six (6) months, the license fee for the Initial Period is reduced by 50 percent. The license fee for the Initial Period is due upon conclusion of the Contract. The license fee for the following contractual years is due on the fifth working day of each new contractual year. In addition to an index adjustment, SKIDATA shall also be entitled to make an appropriate annual adjustment of the recurring license fee.

## 4. Responsibilities of the Principal

- 4.1.** SKIDATA and persons authorized by SKIDATA shall be entitled to execute an audit by examining the systems, computers, books, records and accounting records of the Principal during normal business hours as far as they are connected to software provided under the Contract. If such audit discloses that the number of devices exceeds the number of the licenses, the Principal shall promptly pay the license fee for all additional devices. In case of **license lease**, the Principal shall also pay the license fee for the use of the software in the past. If the Principal cannot prove a beginning of actual use in the current contractual year, the license fee for a contractual year in the past as well as for the current contractual year shall be due.
- 4.2.** To the extent the Principal is allowed to exchange hardware, the Principal undertakes to fully and irretrievably remove software from the exchanged equipment and provide evidence for such removal.
- 4.3.** Without the written consent of SKIDATA the Principal must not himself or allow any third party to: (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. If the Principal

creates a back-up copy in accordance with these Conditions, the Principal shall include all copyright notices and/or proprietary notices that are affixed to or appearing in the original copy.

**4.4.** The use of the software may require third-party components and/or other system requirements in order to work properly. The corresponding requirements are described in the documentation for the respective product. These third-party components may be supplemented or modified by SKIDATA at its sole discretion. Generally, the Principal is responsible for obtaining, installing, maintaining and operating any third-party components. For third-party components additional agreements may apply, which shall be observed by the Principal. The use of third-party components is at the risk of the Principal. SKIDATA shall not be liable for damages or losses caused by third-party components. All costs and fees for third-party components shall be borne by the Principal in addition.

## 5. Maintenance, Updates and Upgrades

**5.1.** Software updates, service packs, hot fixes and patches (collectively, "**Updates**") may be provided to the Principal, as such are available to comply 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.

**5.2.** In addition, software upgrades including new releases or versions of software (collectively, "**Upgrades**") may be provided to the Principal, as such are available.

**5.3.** The Principal acknowledges and accepts that SKIDATA, using software for automated software download ("Automatic Software Deployment" or "ASD"), may download software for improving system quality from a central SKIDATA server to Principal's system via a secure connection and pre-install it locally. To complete the software installation, the client has the choice to complete the installation automatically or manually.

**5.4.** The Principal acknowledges that, according to the respective release planning, older versions of software may no longer be supported after the expiry of a certain period.

**5.5.** SKIDATA is not obliged to provide Updates and/or Upgrades. Costs for installation of Updates and Upgrades shall be borne by the Principal and are not included in the license fee. Updates and Upgrades may alter the system requirements and it may be necessary to install the respective predecessor Updates/Upgrades, third-party components and additional or altered hardware. Respective costs shall be borne by the Principal and are not included in the license fee. No provision of these Conditions obliges the Principal to install Updates or Upgrades but SKIDATA recommends their immediate installation. In case of non-installation of offered Updates or Upgrades, this could possibly endanger the security and operability of software and related systems and even infringe third-party licenses or laws; all consequences of non-installation are at the sole risk of the Principal. Guaranty / warranty claims regarding systems related to the software will automatically become void. The Principal acknowledges and agrees that SKIDATA shall never be liable for damages resulting from the non-installation of Updates and Upgrades.

**5.6.** The Principal is solely responsible for performing a backup of files and data before installing Updates and Upgrades. Therefore, SKIDATA is not liable for lost files, information or data and related damages. This also applies to losses or damages caused by negligence on the part of SKIDATA. The Principal waives all claims and rights in this regard.

**5.7.** The 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, but not limited to, topology, hardware and software version and serial numbers, status of the software, time of installation – from the Principal. In doing so, no personal data within the meaning of Art 4 para 1 of Regulation 2016/679/EU (GDPR) will be processed.

**5.8. License purchase:** Updates are included in the scope of the Contract. Upgrades are not included in the scope of the Contract and may be purchased by the Principal under a separate contract.

**5.9. License leasing:** Updates and Upgrades are included in the scope of the Contract.

## 6. Warranty

**6.1.** Software is provided "as is". Any suitability for a purpose other than the one expressly agreed upon and a warranty which may be associated with it, is excluded.

**6.2.** The warranty applies solely to the fact that the software has the functionalities and characteristics described in the product description provided that the system requirements are fulfilled. The warranty period shall be 6 (six) months and shall commence upon the time of delivery.

**6.3.** It is technically impossible to produce software that is absolutely free of any defect. The Principal knows and accepts this risk. Minor defects not impairing essential functions of the software therefore do not have to be corrected under the warranty.

**6.4.** SKIDATA fulfils its warranty obligation within a reasonable period of time in its sole discretion either by rectification or a substitute delivery of the defective software or by granting a price reduction, excluding thereby further and other claims. For warranty repairs at the Principal's premises, the Principal shall make available free of charge to SKIDATA resources and employees as required by SKIDATA.

**6.5.** Defects which are not within the responsibility of SKIDATA are excluded from warranty. This shall especially apply to defects from materials or software provided by the Principal. The warranty shall lapse if the Principal or any third-party effects any changes to the software that are not authorized by SKIDATA in writing. The Principal shall only be entitled to make warranty claims after full payment of the agreed price. In addition, any warranty shall be excluded in

case of damage caused by third-party acts, atmospheric discharge, instable networks and chemical influences or force majeure.

## 7. Limitation of Liability

**7.1.** To the fullest extent permitted by law, the following applies: In the event that SKIDATA (a) breaches these Conditions; (b) breaches any warranty condition; (c) otherwise fails to perform in accordance with these Conditions; or (d) otherwise commits wrongdoing, whether directly or indirectly related to these Conditions, the sole liability of SKIDATA shall be limited to the amount of the license fee paid within the framework of the Contract within the last contractual year. The Principal is obliged to mitigate damages that are under its direct or indirect control. If software was delivered to the Principal within the European Union the aforementioned limitations of liability shall not apply to damages caused by gross negligence or willful misconduct or damages caused to body, life or health. Insofar as such limitation of liability is permitted by applicable law, SKIDATA shall in no event be liable for any indirect damages (including, but not limited to, lost profits).

**7.2.** 3<sup>rd</sup> Party Software: Licensing models for 3<sup>rd</sup> party software are subject to changes by 3<sup>rd</sup> party software manufacturers from time to time whereas the actual need for the appropriate number and type of licenses depend on the whole IT-environment, not only the SKIDATA system. Therefore, such 3<sup>rd</sup> party licenses provided together with SKIDATA products are by non-binding recommendation only. Distributor shall inform its customer to check the number and appropriateness of the type of 3<sup>rd</sup> party software licenses actually necessary. Principal accepts and confirms that SKIDATA excludes any liability or warranty regarding its recommendation for and the provision of 3<sup>rd</sup> party software licenses. Generally, Principal accepts and confirms that SKIDATA's liability in regards 3<sup>rd</sup> party software shall always be limited by the amount and/or action the respective software supplier has paid and/or provided to SKIDATA.

## 8. Term of the License

**8.1. License purchase:** The right to use is unlimited in time and shall commence after full payment of the license fee and delivery of the software.

**8.2. License leasing:**

- a. The right to use is limited in time with an Initial Period starting with execution of the Contract until the next 31<sup>st</sup> December ("Initial Period"). After the Initial Period, the Contract is automatically extended by further one-year periods (January-December), provided that the license fee is paid in due time.
- b. The following applies exclusively to software used in connection with the business segment "Mountain" (seasonal business): The right to use is limited in time with an Initial Period from completion of the Contract until the next 31<sup>st</sup> July ("Initial Period"). After the Initial Period, the Contract is automatically extended by further one-year periods (August-July), provided that the license fee is paid in due time.
- c. After the Initial Period the contracting parties have the right to terminate the Contract in writing observing a notice period of six (6) months to the end of a contractual year (end of December or, for software used in the business segment "Mountain", end of July).
- d. Upon termination of the Contract, the Principal shall (a) immediately cease to use the software; (b) irretrievably destroy or return to SKIDATA all copies of the software, including all backup copies, in whatever form they exist; and (c) confirm towards SKIDATA within ten (10) days in writing that all copies have been returned or destroyed. After ending of the Contract SKIDATA and persons authorized by SKIDATA shall be entitled to check compliance with this obligation during normal business hours.

**8.3.** In case of any material breach of the Contract by a party, the other party is entitled to terminate the Contract with immediate effect by means of a written declaration, provided that the breaching party was requested in writing to remedy the breach within a period of 30 (thirty) days, whereby the breach of the Contract must be specifically described, and provided that the breaching party fails to remedy such material breach. The non-payment of the license fee is considered a material breach of Contract.

**8.4.** Any reimbursement of already paid license fees or any adjustment of due license fees in case of termination is excluded.