General Conditions

1. General

1.1. These General Conditions (the "Conditions") shall apply to all parts of the contract between Principal and SKIDATA and to all and any additional or subsequent orders (the "Contract").

1.2. Depending on the nature of the subject matter of the Contract, the relevant special terms and conditions of SKIDATA (the "Special Conditions") shall also apply. For example, the "Hardware Conditions" shall apply to the use of SKIDATA-hardware and the "Software Conditions" shall apply to the use of SKIDATA-software. The Special Conditions may be viewed and printed out at any time via SKIDATA's website. In the event of conflict between the General Conditions and the Special Conditions, the Special Conditions shall prevail.

1.3. Principal is either a SKIDATA-authorized distributor or an end customer of SKIDATA. If Principal is an authorized distributor, it is obliged to agree with its customers provisions according to the General Conditions as well as the applicable Special Conditions with the same material legal effect in the respective jurisdiction in favour of SKIDATA.

2. Offer, Conclusion of Contract

2.1. The scope of SKIDATA's delivery and/or service (collectively the "Performance") is set forth in SKIDATA's written offer. If SKIDATA confirms Principal´s order in writing and the order confirmation deviates from Principal´s order the Contract shall be concluded on the basis of SKIDATA´s order confirmation unless Principal objects in writing within 8 (eight) days of receipt.

2.2. SKIDATA reserves the right to make changes to offers due to errors or typographical mistakes, also with regard to prices or technical specifications. SKIDATA's brochures or other advertising materials contain a general and non-binding description of the Performance and do not become part of the Contract.

2.3. Principal shall obtain any necessary permits from public authorities or other third parties required for the conclusion of the Contract and for rendering of the Performance. SKIDATA is not obliged to commence with the Performance until the required permits have been granted with legal effect. Principal undertakes to inform SKIDATA immediately of any permits required. Principal shall indemnify and hold SKIDATA harmless from any respective claims and/or proceedings.

3. Performance, Term of Performance

3.1. Unless expressly agreed in writing, performance periods are non-binding. If the performance is amended or supplemented by mutual agreement after conclusion of the Contract, the performance period shall be automatically extended by a reasonable period.

3.2. SKIDATA renders its Performance in a manner chosen by SKIDATA and customary in the industry within SKIDATA's official working hours. If the Performance is rendered outside normal business hours for reasons for which SKIDATA is not responsible, surcharges will be invoiced in accordance with SKIDATA's local price list valid at the time of the performance.

3.3. SKIDATA may in its sole discretion select the persons rendering the Performance and may also use third parties for this purpose.

3.4. The Performance shall be shipped EXW Salzburg (Incoterms 2010) at the expense and risk of Principal. Upon handing over to the carrier all risk shall pass to Principal. Special packaging shall be at Principal's expense. If agreed specifically, SKIDATA will insure the delivery against breakage, loss in transit, fire and perishing at Principal's expense.

3.5. In case of default in acceptance, Principal shall pay storage costs for ordered goods without prejudice of further claims by SKIDATA. Furthermore, Principal shall pay liquidated damages in the amount of 5 % of the purchase price as a contribution towards processing costs. SKIDATA reserves the right to assert further claims for damages.

3.6. Principal shall be responsible for the fulfilment of necessary technical requirements for the execution of the Performance. Principal guarantees that the technical equipment such as pipes, cables, hardware and networks, are in a technical faultless and operational condition and compatible with the Performance of SKIDATA. SKIDATA is entitled but not obliged to inspect such equipment for compatibility for a separate fee in accordance with SKIDATA's local price list valid at the time of the inspection.

3.7. If travel costs are not already included in the Contract, Principal shall bear SKIDATA's travel costs in connection with the provision of the Performance in accordance with SKIDATA's local price list valid at the time of the Performance.

3.8. If, for reasons for which SKIDATA is not responsible, additional work or services not included in the scope of the Contract are required in order to be able to provide the Performance, SKIDATA shall be deemed to have been commissioned by Principal with the execution of such additional work/services. Principal shall compensate SKIDATA for the respective costs in accordance with SKIDATA's local price list valid at the time of the execution of such additional work/services. Insofar as this is possible with reasonable effort, SKIDATA will consult with Principal prior to the execution of such additional work/services and try to obtain its instructions.

3.9. Principal shall only be entitled to use the Performance after full payment, at the notified place, for the notified purpose and only in accordance with the Contract. Any other use beyond this scope is prohibited and therefore requires a prior written consent of SKIDATA.

4. Fees

4.1. Prices are in Euro (net) and exclusive of any taxes, charges, customs and other charges.

4.2. In case of permanent business relationships, subsequent orders are deemed to be placed at the current prices valid at the time of the order.

4.3. Substantial changes to the basis of calculation after conclusion of the Contract such as but not limited to wages, energy, materials, exchange rates, entitle SKIDATA to adjust prices subsequently.

4.4. Late payment of any kind and the opening of insolvency proceedings or the non-opening of insolvency proceedings for lack of assets shall result in the loss of all discounts and rebates granted to Principal.

4.5. For repair orders outside the warranty, SKIDATA is entitled to charge costs in accordance with SKIDATA's local price list valid at the time of the repair work.

4.6. All fees payable hereunder will be subject to upward adjustment on each anniversary of the date of the conclusion of the Contract by an amount proportionate to inflation for the preceding 12-month period. The adjustment shall be based on the percentage change in the index known as the "Harmonized Index of Consumer Prices (HICP)" as published by the European Central Bank.

5. Payment

5.1. SKIDATA is entitled to invoice 30 % of the total price upon conclusion of the Contract, 40 % upon delivery and 30 % upon provision the Performance.

5.2. All invoices are due immediately upon receipt. Payments are to be made in the agreed currency without any deductions. SKIDATA will only accept cheques or bills of exchange on account of payment and subject to discountability. Payment shall be deemed to have been made as soon as the amount has been credited to SKIDATA's bank account and SKIDATA can freely dispose of it.

5.3. Recurring payments are due in advance on the 5th day of the agreed invoicing period (e.g. month, quarter, year).

5.4. SKIDATA shall be entitled to charge default interest of 1 % per month in the event of default of payment by Principal. Principal shall reimburse SKIDATA all costs of extrajudicial (e.g. dunning process) and judicial debt collection.

5.5. Additionally, if any amounts due and payable under the Contract are not paid on their due date, SKIDATA is entitled to charge an administration fee of 25 € or the local equivalent in respect of that late payment. The administration fee will be invoiced separately for each instance of late payment.

5.6. If SKIDATA withdraws from the Contract due to default in payment, it is entitled to claim or retain 5 % of the agreed price as a contribution to expenses. SKIDATA reserves the right to assert further claims for damages.

5.7. Notwithstanding of any other dedication by Principal, payments shall first be credited against costs then against interest and finally against capital.

6. Software

Principal does not acquire any ownership of software and therefore has no claim to surrender or modify the source code. Principal undertakes to use SKIDATA-software exclusively in accordance with SKIDATA's Software Conditions. The use of third party software supplied is subject to the applicable contractual provisions of the respective manufacturer (see Section "Third Party Components" below).

7. Warranty

7.1. Warranty period is 12 (twelve) months.

7.2. Defects shall be notified in writing to SKIDATA with a detailed description of the defect immediately, but in any case within 14 days from delivery, otherwise all claims resulting from the defect shall be forfeited.

7.3. SKIDATA is entitled to inspect and remedy claimed defects at Principal's premises. Principal shall provide SKIDATA with the necessary resources and assistants free of charge. If the inspection reveals that there is no claim under warranty, Principal shall cover all costs incurred in accordance with SKIDATA's local price list valid at the time of the inspection.

7.4. SKIDATA shall provide warranty within reasonable period of time at its sole discretion either by rectifying or replacing or by granting a price reduction or by rescission. At SKIDATA's request, Principal shall send the defective Performance to SKIDATA at Principal's expense. A claim for replacement delivery shall only arise after the defective Performance has been received by SKIDATA. Replaced parts become the property of SKIDATA. If transport of the defective Performance to SKIDATA is not possible or feasible, Principal shall reimburse SKIDATA for the respective additional costs in accordance with SKIDATA's local price list valid at the time of the Performance.

7.5. The warranty shall expire if Principal:
  a) does not observe conditions for assembly, commissioning or use of the Performance;
  b) or third parties carry out repairs, changes, maintenance or other works to the Performance without SKIDATA's written consent;
  c) uses the Performance in connection with components not certified by SKIDATA;
  d) uses equipment (such as but not limited to networks, supply lines, cabling) that does not function properly;
  e) does not carry out required maintenance works in time;
  f) is in default with its contractual obligations in particular with payment;
  g) violates the applicable Special Conditions; or
  h) if defects or damages are attributable to third party components, internet disruptions, software viruses, chemical influences, Force Majeure Events or acts of Principal or third parties attributable to Principal.

7.6. Principal shall bear the full burden of proof for all prerequisites for warranty claims, in particular but not limited for the defect itself, its existence at the time of delivery, the time of detection of the defect and the timely sending of the notice of defect. Any statutory presumption, in particular that defects occurring in the first six months after handover were already present at the time of handover, shall be excluded.

8. Third Party Components

8.1. SKIDATA's products and systems may require the use of third party hardware, third party software or other third-party products (collectively the "Third Party Components") and/or may be associated with other requirements of Third Party Components. The corresponding requirements are described in the documentation for the respective Performance. SKIDATA may in its sole discretion supplement or modify such Third Party Components. Third Party Components are subject to the respective manufacturer's terms of use, which must be observed by Principal. Principal is responsible for complying with these terms of use. At the latest with the use of the Performance, Principal agrees to the respective terms of use.

8.2. Principal is obliged to keep Third Party Components up to date at all times and to perform provided updates of third-party software (such as but not limited to operating systems) without delay. The use of Third Party Components that is not up to date may result in restrictions on functionality or malfunction of SKIDATA's products and systems. Principal shall ensure that its cooperation partners also keep Third Party Components up to date at all times. Principal is solely responsible for procuring, installing, maintaining and operating Third Party Components.

8.3. The use of Third Party Components is at the Principal's own risk. SKIDATA is not liable for damages or losses caused by the use of Third Party Components. All costs and fees for Third Party Components shall be borne by Principal.

9. Liability

9.1. SKIDATA shall only be liable for direct damage caused by gross negligence or wilful intent. Any liability for slight negligence shall be excluded with the exception of personal injury. The burden of proof for fault on the part of SKIDATA shall be borne by Principal. SKIDATA's aggregate liability shall in any case be limited to the price paid for the Performance causing the damage. In the case of continuing obligations, SKIDATA's liability shall be limited to the remuneration paid to SKIDATA for the past year.

9.2. Principal shall immediately inform SKIDATA in writing of any damage, otherwise Principal shall loos any claim regarding the damage. Claims for damages must be asserted in court within a period of six months from the date of knowledge otherwise they shall lapse.

9.3. SKIDATA's liability for consequential damage, financial loss, loss of profit, loss of data, loss of data carriers, consulting errors, damage resulting from participation in the preparation of the deployment or for software defects shall be excluded to the maximum extent permitted by law.

9.4. Furthermore, SKIDATA's liability shall be excluded if a damage results at least partially from the fact that the Principal

a) does not comply with legal regulations or official requirements;
b) infringes intellectual property rights of third parties;
c) does not observe conditions for assembly, commissioning or use of the Performance;
d) does not perform data backups properly and regularly;
e) or any third party effects repairs, changes or maintenance or other alterations to the Performance without SKIDATA's written consent;
f) uses the Performance in connection with components not certified by SKIDATA;
g) uses equipment that does not function properly (e.g. networks, supply lines, cabling);
h) does not carry out required maintenance works in time;
i) is in default with its contractual obligations, especially in case of default in payment;
j) violates conditions regarding the scope of use of the Performance, such as but not limited to the Software Conditions; or if
k) defects or damages are attributable to Third Party Components, internet disruptions, software viruses, chemical influences, Force Majeure Events or acts of Principal or third parties attributable to Principal.

9.5. In the event of claims by third parties against SKIDATA, its parent, subsidiary or sister companies, other related entities, authorized distributors of SKIDATA and their shareholders, members, directors, officers, employees, contractors, suppliers, customers, manufacturers, representatives, attorneys or agents, for which Principal is directly or indirectly, wholly or partially responsible, Principal shall indemnify and hold SKIDATA and all above mentioned persons and entities harmless.

10. Retention of Title

10.1. SKIDATA retains title to the Performance until full payment of the purchase price and all associated interest and costs. In the event of a default in payment, even if only in part, SKIDATA is entitled to take back possession on the Performance or parts of it. Until full payment of the Performance, Principal is not entitled to resell, burden with third-party rights (such as but not limited to pledging), process or combine the Performance with other items. In case of any acts contrary to the restrictions in the previous sentence (e.g. re-sale), Principal assigns to SKIDATA all of Principal's claims against a third party in an amount corresponding to SKIDATA's claim and SKIDATA expressly accepts such assignment. Principal shall disclose the retention of title to third parties in all dispositions regarding the Performance and inform SKIDATA immediately.

10.2. Movable items remain movable even though they may be connected to immovable items, provided that they can be separated without damages to the substance. This shall also apply in case connecting pieces have to be damaged in order to separate the movable item from an immovable item. In the case of a connection of the Performance with immovable items, only title on the connecting piece (e.g. base plate) shall be transferred to Principal. The Performance itself remains movable.

11. Data Protection

11.1. SKIDATA is entitled to collect, process, forward and use Principal's data (including personal data) to the extent necessary for the establishment and fulfilment of the Contract as well as for billing purposes and customer service. SKIDATA is also entitled to transfer such data to affiliated companies or third parties commissioned to process data for SKIDATA insofar as this is necessary for the provision of the Performance by SKIDATA.

11.2. SKIDATA is entitled to process Principal's non-personal data (e.g. number of long-term and short-term parkers, used payment methods, etc.), subject to SKIDATA's adherence to the confidentiality provisions set out herein.

11.3. When using SKIDATA's Performance, Principal undertakes to adhere to all applicable data protection provisions.

12. Intellectual Property, Confidentiality

12.1. SKIDATA is the owner of intellectual property related to the Performance. SKIDATA and/or its licensors are exclusively entitled to all rights to the Performance derived from patent rights, trademark rights, design protection, copyrights or other intellectual property rights or otherwise from the creation of the Performance. Production documents, specifications, samples, models, drawings, printing plates, photographs, and other material shall remain the tangible and intellectual property of SKIDATA.

12.2. Principal shall treat confidentially and keep secret any information received in connection with the Contract. Information provided by SKIDATA may only be used for the execution of the Contract and must not be disclosed to third parties.

13. Contract Termination

13.1. In case of any material breach of contract by either Party the other Party shall be entitled to terminate the Contract without notice in writing (e.g. by fax or e-mail). Prior to the declaration of termination, the breaching Party shall be required in writing to remedy such material breach within a period of 30 (thirty) days, whereby the breach of contract shall be described in detail. With regard to SKIDATA, this period shall be met if SKIDATA makes a reasonable proposal for the further procedure within this period.

13.2. In case of any material change in Principal's ownership and/or control, SKIDATA is entitled to terminate the Contract within 3 (three) months from the day SKIDATA receives knowledge of such change. The period of notice in this case is 3 (three) months. In any case, the transfer of at least 50 percent of the ownership, of the company shares or of the voting rights to one or more new owners, shareholders or beneficiaries is regarded as a material change.

13.3. If the Contract is terminated by SKIDATA for cause, Principal shall compensate SKIDATA for any resulting disadvantages.

14. Force Majeure

14.1. Neither Party will be responsible for any failure to perform (other than performance of any obligation to make any payment) or delay in performing its obligations under this Contract or for damages or losses resulting therefrom, due to causes which are unavoidable and beyond the reasonable control of a Party to the extent it causes such Party to be unable to comply with any or all its obligations under this Contract.

14.2. Such circumstances may include but are not limited to the following (each a "Force Majeure Event"): natural disasters, epidemics, diseases, acts or threats of terrorism, cyber-attacks, outbreak of viruses, fire, flood, explosion or other similar or dissimilar acts of God, acts of war, hostilities (whether war be declared or undeclared), strikes or other matter beyond the reasonable control of the Party claiming benefit under this Section "Force Majeure", embargo or other acts of governmental or quasi-governmental restrictions or intervention, political instability, public disorder, discontinuity of internet, satellite access or other distribution network access or other similar or dissimilar events (and in the case of SKIDATA, scarcity of personnel and/or raw materials, accidental destruction of substantial goods at SKIDATA's premises, disruption to SKIDATA's manufacturing sourcing and/or delivery process, or any of the foregoing occurring to SKIDATA's suppliers, subcontractors and/or agents).

14.3. Neither Party shall be responsible for any failure or delay to the extent such failure or delay is due to a Force Majeure Event.

14.4. If a Force Majeure Event occurs, then the Party affected will as soon as reasonably practicable notify the other Party in writing of the nature and likely duration of the Force Majeure Event and take all reasonable steps to reduce its effect (but without incurring unreasonable additional costs).

14.5. The Party affected by the Force Majeure Event will notify the other Party in writing as soon as performance of its obligations is no longer prevented by the Force Majeure Event and the affected Party will resume the performance of such obligations as soon as reasonably possible.

14.6. If the Force Majeure Event continues for more than one month, the Parties shall use their reasonable efforts to amend the Contract in such a way that it allows the performance thereof. If despite said reasonable efforts no agreement can be found for the amendment of the Contract and the Force Majeure Event subsists for more than two

additional months, then either Party shall be entitled to terminate the Contract immediately upon written notice to the other Party with no further obligation or liability other than for amounts due and payable hereunder prior to the date of this termination.

15. Offset, Retention, Assignment, Transfer of Contract

15.1. Principal is not entitled to
a) offset claims of any kind against SKIDATA's claims;
b) withhold payments to secure its own claims;
c) assign claims and rights arising from the Contract in whole or in part to third parties;
d) transfer the Contract in whole or in part to third parties.

15.2. SKIDATA is entitled to
a) offset claims of any kind against Principal's claims;
b) withhold the Performance until settlement of all due claims arising from the Contract and from all other legal transactions between SKIDATA and Principal. Furthermore, SKIDATA shall be released from executing all other contractual obligations, in particular from warranty obligations, for the duration of the default;
c) withhold the Performance until Principal has performed all actions necessary for the fulfilment of the Contract;
d) in the event of default of payment by Principal, to declare due for payment all claims arising from the Contract and from all other legal transactions between SKIDATA and Principal;
e) assign claims and rights arising from the Contract in whole or in part to third parties; and
f) transfer the Contract in whole or in part to third parties.

16. Approval of Marketing and Advertising Activities

16.1. Principal agrees that for marketing purposes SKIDATA may use Principal's name and address as well as some general information on joint projects as a reference. For this purpose Principal undertakes to provide SKIDATA with a company logo in the graphic and file format as required by SKIDATA.

16.2. In addition, Principal shall enable SKIDATA to take pictures of Principal's outside facilities as well as of the products provided by SKIDATA in its operational environment. Principal hereby grants SKIDATA all necessary rights to use such pictures for marketing purposes.

17. Place of Performance, Choice of Law, Place of Venue

17.1. The place of performance is the seat of SKIDATA.

17.2. All disputes arising out of or in connection with the Contract including its validity shall be governed by and construed in accordance with the laws of Austria with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and any and all reference of law provisions.

17.3. The court at SKIDATA's seat having subject matter jurisdiction shall be exclusively competent for all disputes arising out of or in connection with the Contract.

18. Severability Clause

Should any provision of the Contract be or become wholly or partly invalid or unenforceable this will not affect the validity or enforceability of the remaining provisions. The invalid or unenforceable provision shall be replaced by a valid or enforceable provision which is most likely to achieve the Parties intended economic purpose and is customary in the industry. The same shall apply to contractual loopholes.

19. Written Form

Collateral agreements, amendments and changes to the Contract must be in writing and duly signed by both Parties in order to be valid. The same shall apply for the waiver of this requirement of written form. There shall be no oral collateral agreements; however, oral collateral agreements shall become ineffective once the Contract becomes effective.