

# General Conditions

## 1. Scope

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

## 2. Offer, Conclusion of Contract

**2.1.** The scope of SKIDATA's delivery and/or service (both together or alone referred to as 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 change offers resulting from errors or typographical mistakes, including such regarding prices or technical specifications. SKIDATA's brochures or other advertising materials do not constitute obligations of SKIDATA; such do not become part of the Contract.

**2.3.** The Principal is responsible for obtaining permits from public authorities or third parties required for the conclusion of the Contract and rendering of the Performance. SKIDATA is not obliged to commence with the Performance for as long as required permits are not yet granted and in full force and effect. Principal undertakes to inform SKIDATA immediately of any permits required and to indemnify and hold SKIDATA harmless from any respective claims and/or proceedings.

## 3. Performance, Term of Performance

**3.1.** Term of performance shall be without binding effect unless expressly agreed in writing about a term or date as being binding. If changes or additions to the Performance are made by mutual agreement after conclusion of the Contract the term of performance shall be automatically extended by an appropriate period of time.

**3.2.** SKIDATA shall render its Performance in the manner to chosen by SKIDATA and customary in the industry within SKIDATA's official working hours. If the Performance is provided outside normal business hours for reasons outside SKIDATA control surcharges will be added in the invoice in accordance with SKIDATA's local price list valid at the time of the Performance.

**3.3.** SKIDATA shall in its sole discretion be entitled to choose the persons who are to actually render the Performance. SKIDATA may also use third parties in executing the Contract.

**3.4.** Deliveries are EXW Salzburg (Incoterms 2010); all shipping and transport is 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 also insure the delivery against breakage, loss in transit, fire and perishing at Principal's expense.

**3.5.** In case of any delay by the Principal in accepting the Performance Principal shall - regardless of further claims by SKIDATA - pay storage costs for ordered goods. Furthermore, Principal shall pay liquidated damages in the amount of 15 (fifteen) percent of the purchase price. Claiming further damages remains reserved to SKIDATA whereby liquidated damages paid by Principal shall be offset.

**3.6.** Principal shall be responsible for the fulfilment of necessary technical preconditions for the execution of the Performance. Principal guarantees that all technical equipment provided by Principal or its suppliers, such as for example pipes, cables, hardware and networks, are in excellent condition and ready to be operated and compatible with the Performance of SKIDATA. SKIDATA shall be entitled, but not obliged, to inspect such equipment at the additional cost of Principal in accordance with SKIDATA's local price list valid at the time of the Performance.

**3.7.** Principal shall also bear SKIDATA's travel costs in connection with the Performance in accordance with SKIDATA's local price list valid at the time of the Performance and at actual expenditures if not already included in SKIDATA's price list.

**3.8.** If for reasons not attributable to SKIDATA additional work outside the scope of the Contract is required in order to be able to provide the Performance Principal hereby commissions SKIDATA with the execution of such additional work. Principal shall compensate SKIDATA for the respective costs in accordance with SKIDATA's local price list valid at the time of the Performance and shall pay SKIDATA's expenses. If feasible, SKIDATA shall consult with Principal prior to the execution of such additional work and try to obtain instructions.

**3.9.** SKIDATA shall be entitled to separately invoice partial or advance performances and deliveries if so required by the development or production process.

## 4. Prices

**4.1.** All prices are in Euro (net) and exclusive of any applicable taxes, charges, customs and other fees.

**4.2.** In case of continuous business relationships prices valid at the time of the order shall be applicable.

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

**4.4.** All discounts and rebates granted to Principal shall be void in all case of default in payment and if insolvency proceedings are initiated or insolvency proceedings were refused due to lack of assets.

**4.5.** Repair orders not covered by warranty shall be invoiced in accordance with SKIDATA's local price list valid at the time of performance.

**4.6.** In case of periodically invoiced Performance the price is agreed as value guaranteed according to the EU Harmonised Index of Consumer Prices (HICP). The month in which the Contract was concluded shall be the starting basis.

## 5. Payment

**5.1.** Principal shall pay one third of the total price upon conclusion of the Contract, another third upon expiration of half of the agreed Performance period and the remainder upon rendering the Performance.

**5.2.** All payments shall be due immediately upon receipt of the invoice. All payments are to be made in full without any deductions and in the agreed currency. SKIDATA will only accept cheques or bills of exchange on account of payment and only if they are eligible for bankability. Payment shall be deemed effected once the amount is credited to SKIDATA's bank account and is at SKIDATA's free disposal.

**5.3.** Recurring payments are due in advance on the 5<sup>th</sup> day of the billing period (e.g. month, quarter, year).

**5.4.** In case of a default in payment by Principal, SKIDATA shall be entitled to charge default interest at 1 % per month. In addition, Principal shall reimburse SKIDATA all costs of extrajudicial (e.g. dunning process) and judicial debt collection. Irrespective of any other dedication by Principal payments shall first be credited against costs then against interest and finally against capital.

## 6. Specific Conditions

**6.1.** For SKIDATA's Software, Hardware, Consumable Products, Services, Hosted Services, and Consultancy Services the SKIDATA Software Conditions, Hardware Conditions, Consumable Products Conditions, Service Conditions, Hosted Service Conditions and Consultancy Service Conditions shall apply. These Conditions can be viewed and printed at any time via SKIDATA's local website.

**6.2.** Principal does not receive ownership on any software and therefore is not entitled to change the source code or to claim the source code. Principal is solely entitled on a right to use software and in accordance with SKIDATA's Software Conditions.

## 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(s) without delay, but no longer than within 14 days from delivery, otherwise all claims resulting from the defect shall be forfeited.

**7.3.** SKIDATA is entitled to investigate and rectify any defects at Principal's premises. Principal shall provide SKIDATA with the required resources and employees free of charge. Principal shall cover all costs incurred in accordance with SKIDATA's local price list valid at the time of the repair work should the inspection reveal that SKIDATA is not responsible for the defect.

**7.4.** SKIDATA shall fulfil its warranty obligation within reasonable period of time - at SKIDATA's sole discretion either by rectification or replacement or by granting a price reduction or by rescission. Upon request of SKIDATA the Principal shall send the defective Performance to SKIDATA at its own expense. Principal may ask for replacement only once the defective Performance arrived at SKIDATA. Replaced goods shall 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.** All warranty shall expire if Principal:

- a) does not observe conditions for assembly, commissioning or use of the Performance;
- b) uses third parties executing repairs, changes or 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 especially with payment;
- g) violates conditions regarding the scope of use of the Performance, such as but not limited to Software Conditions; or if
- h) defects or damages are attributable to third party components, internet disruptions, software viruses, chemical influences, force majeure or acts of Principal or third parties attributable to him.

**7.6.** The Principal shall bear the burden of proof for all prerequisites for claims, in particular for the defect itself, its existence at the time of handover, the time of detection of the defect and the timely sending of the notice of defect. Any presumption of defectiveness in case of defects occurring within a certain period from handover (e.g. in the first six months) is excluded.

## 8. Third Party Components

**8.1.** SKIDATA's products may require the use of third party hardware, third party software or other third-party products (collectively referred to as "Third Party Components") and/or may be associated with other system requirements. 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. Additional agreements that apply to Third Party Components must be observed by the Principal.

**8.2.** The 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 software that is not up to date may lead to restrictions on the functionality or malfunction of SKIDATA's products. The Principal must ensure that its cooperation partners also keep Third Party Components up to date at all times. The 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 by the Principal or its cooperation partners. All costs and fees for Third Party Components shall be borne by the Principal.

## 9. Liability

**9.1.** SKIDATA's liability shall be limited to direct damage due to gross negligence or wilful intent and only to diligence one usually employs in one's own affairs. Any liability for slight negligence shall be excluded with the exception of personal injury. The Principal shall be obliged to provide evidence for SKIDATA's fault. SKIDATA's liability shall in any case be limited to the amount of the agreed price for the Performance that caused 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.** The Principal shall inform SKIDATA immediately in writing of any damages otherwise the Principal shall not be entitled to assert any claims. Claims for damages must be asserted in court within a period of six months from the date of knowledge otherwise they shall forfeit.

**9.3.** Any liability of SKIDATA for consequential damage, financial loss, loss of profit, software defects, loss of data and/or data carriers, consultancy mistakes or for participation in preparation work shall be excluded.

**9.4.** Furthermore, SKIDATA's liability shall be excluded if 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 or acts of the Principal or third parties attributable to him.

**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 the Principal is directly or indirectly, wholly or partially responsible, the Principal shall be obliged to indemnify and hold harmless SKIDATA and all above mentioned persons and entities against such claims of third parties.

## 10. Retention of Title

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

## 11. Data Protection

**11.1.** SKIDATA shall be entitled to collect, process, forward and use the Principal's data (including personal data) to the extent necessary for the establishment and fulfilment of the Contract as well as for invoicing and service purposes. SKIDATA shall also be entitled to transfer such data to affiliated companies or third parties commissioned to process data for SKIDATA to the extent such transfer is necessary to enable SKIDATA to render the Performance.

**11.2.** When using SKIDATA's Performance the Principal shall be obliged to adhere to all applicable data protection provisions.

## 12. Industrial Property Rights, Copyrights, Confidentiality

**12.1.** SKIDATA is the owner of industrial property rights and/or know-how concerning 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.** The 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.

**12.3.** The 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 from SKIDATA.

## 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 with immediate effect 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's respective obligation, this period shall be met if SKIDATA makes a proposal for the further procedure within this period to resolve the matter.

**13.2.** In case of any material change of the distribution of ownership and/or of control of the Principal SKIDATA shall be entitled to terminate the Contract upon 3 (three) months' notice. Such termination shall be declared within 3 months from the day SKIDATA receives knowledge of such change. In any case such material change shall be fulfilled if at least 50 percent of the ownership, of the shares or of the voting rights are transferred to one or more new owners, shareholders or beneficiaries.

**13.3.** If the Contract is terminated by SKIDATA for cause with immediate effect the Principal shall compensate SKIDATA for any disadvantages and for the loss of profit suffered.

## 14. Offset, Retention, Assignment, Transfer of the Contract

**14.1.** The Principal is not entitled to

- a) offset claims of any kind against SKIDATA's claims;
- b) retain payments as security for its own claims;
- c) assign claims and rights from Contract in whole or in part to third parties;
- d) transfer the Contract in whole or in part to third parties.

**14.2.** SKIDATA is entitled to

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

## 15. Consent to Marketing and Advertising Activities

**15.1.** The Principal agrees that SKIDATA may state the Principal's name and address as well as some general information about joint projects as a reference for public relation purposes. For this purpose the Principal undertakes to provide SKIDATA with a company logo in the graphic and file format as required by SKIDATA.

**15.2.** In addition, the Principal shall enable SKIDATA to take pictures of the Principal's outside facilities as well as of the products provided by SKIDATA in the environment in which they are used. The Principal hereby grants SKIDATA all necessary rights to use such pictures for public relation purposes.

## 16. Place of Performance, Choice of Law, Place of Venue

**16.1.** The place of performance is the seat of SKIDATA.

**16.2.** 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.

**16.3.** 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.

## 17. 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

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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.

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**18. Written Form**

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