

## General Terms and Conditions

**Skadi**<sup>®</sup> Europe

**Version 2.0**  
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## **A AGREEMENTS ABOUT SALE AND DELIVERY**

### **1 General**

Definitions:

- Conditions (written with a capital C): the General Terms and Conditions in question;
- Distributor (written with a capital D): each natural person, legal body, partnership, limited partnership or other entity that enters into or has entered into an agreement with Skadi Europe (including customers and end-users), or to who an offer or proposal is or has been made or extended by or on behalf of Skadi Europe, or to who or by order of who a delivery is or has been made by or on behalf of Skadi Europe, or by order of or for the benefit of who one or more services is or has been performed by or on behalf of Skadi Europe.

These Conditions cover offers made, quotations produced, agreements entered into and the execution thereof, and deliveries and services performed by or on behalf of Skadi Europe. Departures from these Conditions will only be of force if agreed in writing by Skadi Europe and by the Distributor.

The application of general terms and conditions other than these Conditions is expressly forbidden, regardless of how such alternative general terms and conditions might be called and whatever form they might have, including the purchasing conditions and other general terms and conditions of the Distributor or those that might be employed by the Distributor and the suitability of any such alternative general terms and conditions is expressly rejected by the Skadi Europe. The acceptance of an offer or quotation made by or on behalf of Skadi Europe, entering into an agreement with Skadi Europe, the acceptance of a delivery from or on behalf of Skadi Europe, or the acceptance of services performed by or on behalf of Skadi Europe means that the Distributor accepts unconditionally that these Conditions are of application and that the application of other general terms and conditions referred to in this Clause is out of the question, and for so far as is relevant the Distributor distances itself from the application of other general terms and conditions.

### **2 Offers**

Each offer or quotation made by or on behalf of Skadi Europe is made without obligation and does not bind Skadi Europe except when and for so far as Skadi Europe has explicitly stated otherwise in writing or when the parties might have agreed otherwise in writing.

Price lists, brochures, folders and other information provided by or on behalf of Skadi Europe are prepared as carefully as possible but they nevertheless bind Skadi Europe only when and for so far as they have been explicitly confirmed by Skadi Europe in writing. Skadi Europe is not obliged to provide detailed information unless this has been agreed otherwise in writing.

All brochures, catalogues, price lists and folders provided in connection with an offer or quotation and all associated (technical) information provided in the form of designs, drawings or other illustrations, models, samples, tables, schedules, etc, and all other data and information provided remains explicitly the industrial and intellectual property of Skadi Europe.

The Distributor is expressly forbidden without Skadi Europe's permission previously given in writing from copying any material, data or information as meant in the previous sentence either wholly or partially and/or from making it known to third parties in whatever way and/or from allowing it to be used by third parties and/or from selling it or from placing it at anybody's disposal. The use of this material, data and information remains strictly limited to use by the Distributor within the framework of the order given to Skadi Europe. All the material, data and information meant here must be returned immediately to Skadi Europe at the first request from Skadi Europe or if, within the time limit of the offer, the Distributor does not enter into an agreement or if the Distributor cancels this agreement.

If no agreement is entered into then Skadi Europe is entitled to pass on the costs made when preparing an offer or quotation to the Distributor.

Standard documentation such as factory drawings, descriptions, instructions and test certificates will be provided free of charge unless Skadi Europe indicates otherwise. The Distributor will be charged for extra copies of such standard documents and for other documents, which are not standard.

Any prices specified are only valid for the quantities offered.

### **3 Realisation and content of an agreement**

An agreement between Skadi Europe and the Distributor is realised at the moment that Skadi Europe confirms in writing the acceptance of an assignment or order from the Distributor; the scope and content of the agreement follows on from the written confirmation of Skadi Europe.

If an offer or quotation, in the light of the provisions of Clause 1, is not without obligation and a binding time period for the offer has been set then the agreement is realised at the moment that the offer or quotation is accepted within the time limit by the Distributor; in such a case the confirmation of the assignment, order or binding offer is deemed to correctly and completely represent the agreement.

An agreement binds Skadi Europe only when it has been entered into and when the written confirmation meant in Clause 2 above has been signed by one or more persons who are authorised to commit Skadi Europe in such a manner and any agreements or additions and/or changes to them or in them and agreements, promises, etc., drawn-up or made by an employee or employees of Skadi Europe or by a representative, agent or other intermediary or by one or more other people who are not authorised to commit Skadi Europe in such a manner, whether or not these are made in writing, are not binding on Skadi Europe.

Any changes and/or partial cancellation or complete cancellation of an assignment or order by or on the request of the Distributor can only take place with the permission of Skadi Europe previously given in writing and on condition that activities already performed by Skadi Europe will be paid for, in full, by the Distributor; in the case of a change and/or partial cancellation requested by the Distributor, Skadi Europe is entitled to pass on any related (extra) costs to the Distributor and to re-determine the delivery time.

For activities or assignments where, because of their nature and size, no quotation or order confirmation is sent, the agreement will be realised at the moment Skadi Europe or someone on behalf of Skadi Europe actually begins to carry out the agreement and, in such cases, the invoice will be considered as the order confirmation and at the same time is deemed to correctly and completely represent the agreement.

An agreement with Skadi Europe is entered into under the condition that Skadi Europe and other contract partners of Skadi Europe fulfil their obligations on time and in the correct manner.

When entering into an agreement or after that and before beginning with the execution of the agreement on his part or continuing with the execution of the agreement Skadi Europe is entitled to demand the provision of sufficient certainty from the Distributor regarding timely settlement by the Distributor of his payment obligations and other obligations.

Skadi Europe is authorised to make use of third parties for the execution of the agreement; the costs involved will be passed on to the Distributor in line with the quotations provided.

## 4 Prices

Except when and for so far as binding prices apply all price quotations are without obligation.

Except when otherwise explicitly notified in writing prices are:

- based on purchase prices, wage rates, wage costs, social security and government costs, transport costs, insurance premiums and other costs prevailing on the date of offer or quotation or (if no offer or quotation is made) the date of the order;
- based on ex-works or ex-warehouse delivery from Skadi Europe;
- exclusive of VAT, import duties and other taxes, levies and duties;
- exclusive of the costs of packaging, loading and unloading, transport and insurance;
- and exclusive of the costs of assembly, installation and commissioning unless otherwise explicitly stated, in which case the costs named here will be separately specified.

Unless specifically expressed otherwise prices stated or agreed upon will be in Euros (EUR).

In every case prices are stated or agreed upon under the condition that changes in exchange rates will be passed on if the official exchange rate at the moment of delivery deviates by more than 2 % from the exchange rate on the date when the offer or quotation was made, the latter exchange rate parity being considered as 100.

If there is an increase in one or more of the factors determining the cost price then Skadi Europe is entitled to increase the order price accordingly, with due observance of existing applicable legal requirements, on the understanding that any future price increases which Skadi Europe is aware of on the date of the order confirmation should be specified on this order confirmation.

## 5 Risk

The risk with regard to the goods sold and/or delivered by or in the name of Skadi Europe to the Distributor is transferred to the Distributor: for goods supplied out of stock, this occurs at the moment these goods are segregated for the benefit of the Distributor; and for other goods, this occurs at the moment the goods are loaded for transportation to the Distributor or to a place indicated by the Distributor, except when and for so far as it might be otherwise agreed in writing.

Irrespective of what might otherwise be agreed with regard to the risk, any loading and unloading, transport, assembly, installation and commissioning of the goods will at all times be at the risk of the Distributor.

## 6 Delivery and delivery time

Except when and for so far as it has otherwise been agreed in writing and without prejudice to the provisions in Clause 3 of these Conditions, deliveries are made on an ex works basis to the Distributor or to another place specified timely by the Distributor. For orders or deliveries under a specified amount (2007: €100,00), Skadi Europe is entitled to pass on an amount covering the administrative costs (2007: € 20,00) to the Distributor.

Except when and for so far as it has otherwise been agreed in writing and without prejudice to the provisions in Clause 4 about the transfer of risk, the moment of delivery is the moment that the goods are unloaded or discharged at the place where they must be delivered (the actual transfer); this also holds good if Skadi Europe must assemble, install and/or commission the goods.

The Distributor must report any shortages, defects and damage, in writing, directly to Skadi Europe within 24 hours of the delivery and if nothing is reported then the goods will be regarded as having reached the Distributor in good condition, complete and without damage.

Skadi Europe is entitled to make partial deliveries, which can be invoiced separately, and when this occurs, the Distributor is obliged to pay these separate invoices in accordance with the provisions specified in Clause 16 of these Conditions.

Except when and for so far as it has otherwise been agreed in writing, the delivery times specified by Skadi Europe in an offer or quotation are not intended to have a fatal effect, which means, amongst other things, that when a delivery is late the Distributor must explicitly notify Skadi Europe in writing before Skadi Europe can be held in default.

Skadi Europe is obliged to observe the specified delivery time or delivery period as much as possible, yet will never be liable if they are exceeded and when they are exceeded Skadi Europe is not obliged to provide any compensation for damages. Exceeding a delivery time or delivery term does not give the Distributor the right to terminate or to dissolve the agreement or to refuse to purchase goods. In cases where a delivery time or term is exceeded excessively the parties must consult with each other.

If goods are not purchased by the Distributor within the delivery time or period, or if the Distributor does not observe an agreed call off period then Skadi Europe is entitled to invoice the Distributor for the goods in question and, furthermore, Skadi Europe is entitled to store these goods at its own discretion but wholly at the cost and risk of the Distributor. In the case where the Distributor does not purchase or call off within the agreed period Skadi Europe, according to his own choice, can demand fulfilment by the Distributor or can dissolve the agreement, without prejudice to the right of Skadi Europe, in either case, to claim damages.

## **7 Transport and packing**

Unless indicated in writing by the Distributor to Skadi Europe, the manner of packing, transport, shipment etc, of goods is a matter completely at the discretion of Skadi Europe and will be determined with the care which reasonably can be expected from Skadi Europe, this without prejudice to what is specified about the transport risk in Clause 4 of these Conditions.

Any specific wishes the Distributor may have with regard to packing and/or transport, including relocation within the company or company terrain, will only be performed if the Distributor pays the costs involved. Furthermore, Skadi Europe is entitled not to honour specific wishes from the Distributor with respect to packing and/or transport which have not previously been explicitly agreed.

If the invoiced value of the goods delivered is less than an amount to be specified by Skadi Europe, then Skadi Europe is entitled to pass on any administrative costs.

## **8 Force majeure (non-liable failing/forces beyond control)**

If Skadi Europe, as a result of force majeure, is prevented from fulfilling any of his obligations to the Distributor and in the judgement of Skadi Europe the force majeure is of a permanent or long-lasting nature, then the parties can come to a settlement regarding the dissolution of the agreement in accordance with the rule of law and any consequences thereof.

If Skadi Europe, as a result of force majeure, is prevented from fulfilling any of his obligations to the Distributor and in the judgement of Skadi Europe the force majeure will be of a temporary or transitory nature, then Skadi Europe is entitled to postpone the execution of the agreement until the circumstance, cause or event causing the force majeure situation no longer arises.

Considered as "force majeure" are each circumstance, cause or event, wherever it is occurring, appearing or arising which temporarily or permanently prevents the correct, complete and timely fulfilment of any obligation of Skadi Europe or makes it impossible or unreasonably problematic, and each circumstance, cause or event which Skadi Europe, in all fairness, cannot be expected to prevent or which wholly or partially falls outside the sphere of influence of Skadi Europe or on which Skadi Europe can exercise no influence. The following, amongst other factors, are considered as circumstances, causes or events resulting in force majeure: fire, explosion, lightning strike, ice break-up, low water, high water, tidal wave, spring tide, flood, earthquake, natural disasters; storm, tornado, cyclone, snow, frost and other weather conditions; strikes, work stoppages, excessive (sickness) absenteeism of personnel, labour unrest, lock-outs, boycotts; war (declared or not), mobilisation, siege, besieging, blockade, molestation; riots, revolution, social unrest; governmental actions and/or regulations which prevent, delay or otherwise hinder the fulfilment of obligations; lack of transport resources; un-navigability or un-usability of any eligible transportation routes or means of transport; disturbances or interruptions in the provision, delivery or availability of energy; disturbances or interruptions in or of the functioning of any public utility; disturbances or interruptions or ending of the supply of raw materials, semi-finished and/or finished; disturbances or delay in or of, or interruptions or ending of the supply of parts, spare-parts and other articles; each circumstance, cause or event that is the result of or is associated with the so-called millennium problem; non-fulfilment of obligations by a debtor or contract partner of Skadi Europe (including the non-fulfilment of obligations by one or more third parties); technical disturbances and/or faults, delays, disturbances or interruptions to or with the repair of machines, material, equipment, tools and/or instruments; serious illness and illnesses of an epidemic character.

If Skadi Europe, as a result of force majeure, is prevented from fulfilling his obligations with regard to one or more of his customers or buyers but not his obligations with respect to all his customers or buyers then Skadi Europe is entitled to decide himself which of the obligations will be fulfilled and for which customers or buyers as well as the order in which they will be fulfilled.

Skadi Europe is entitled to demand payment for all activities performed by or on behalf of Skadi Europe in the execution of the agreement with the Distributor before the force majeure circumstance, cause or event appeared or emerged.

## **9 Warranty/Service**

The warranty period starts the moment the unit leaves the production facility. After this date 5 years warranty on the DFxx series is valid. During these first 5 years component parts proven to be defective can be send to Skadi Europe and will be covered by this 5 years warranty on parts only. The compressors in the system are covered also by a 5 year warranty. All other equipment (e.g. Ice Flake Machine, Freeze Dryers, Slimline series) than the DFxx series have a warranty period of 2 years. Labour and transport are not included in the warranty. Skadi Europe will not be liable for any indirect or consequential damages including, without limitation, damages relating to lost profits or loss of products. Hardware of Wireless Lab has a warranty period of 1 year.

When spare parts are broken or not functioning properly, inform Skadi Europe and the parts will be send. Broken parts should be send back to Skadi Europe for examination.

Transport costs (of sending warranty spare parts) are not covered by warranty and will be charged to the dealer.

Without a *warranty report* there can be no claim for compensation. This report should include at least model number, serial number and description of problem. *Warranty procedure:*

1. Inform Skadi Europe by filling out a warranty report (please always inform serial number!)
2. Fill out a warranty report per serial number and send this to [info@skadi-europe.com](mailto:info@skadi-europe.com) or fax it to +31 318 64 60 34;
3. We will inform you within 24 hours which action will be taken;
4. Return all warranty parts;
5. Skadi Europe will send replacement parts.

When in hind side Skadi Europe concludes the warranty claim was no warranty, all costs will be charged to the dealer. Faults caused by users are not covered by warranty.

Faults caused by no or bad maintenance are not covered by warranty, such as cleaning filter and de-icing the unit regularly.

From experience can be concluded that the building of ice inside a unit can lead to problems opening and closing the door. Ice will cause tremendous pressure on the door handle (chrome and robust blue lock). This will lead to the ball bearing breaking off/door handles breaking/hinges go loose, doors not closing properly. This can not be claimed as warranty.

*WarmMark:* In case the room temperature climbs above +33 °C for a long period of time, a red colour gradually moves through the window of the WarmMark Indicator. With the new clear Instructions on the Quick Installation Guide attached to the freezers, we train end users to use our freezers within the right room conditions. Every WarmMark window which is indicated red will decrease the warranty period with 1 year. WarmMark completely red, means no warranty. For more information regarding the Warm Mark, contact Skadi Europe.

Faults in any goods supplied which fall under warranty will, exclusively at the discretion of Skadi Europe, be rectified or the goods will be replaced if the faults, in the opinion of Skadi Europe and/or manufacturer, are attributable to construction faults or faults in or any shortcomings of the materials used as a result of which the goods are unusable by the Distributor for the purpose for which they are can reasonably be thought of as intended.

In principle, warranty work will be performed within the business of Skadi Europe (for example, by the service department) and during normal working hours or by a service company appointed by Skadi Europe. Activities associated with warranty will only be performed outside normal working hours if a separate service contract has been entered into and only when and for so far as this is specified in this service contract.

Skadi Europe is entitled to allow warranty activities to be performed outside his own business if this, in the opinion of Skadi Europe, is in the best interest of these activities or if the performance of such activities at the business of Skadi Europe in all reasonableness is not possible nor desirable.

Goods eligible for warranty work must be sent carriage-paid to Skadi Europe. If the warranty work is to be performed outside his own company then Skadi Europe is entitled to pass on the connected travel costs and expenses to the Distributor as well as any (special) costs of transport, packing and insurance and the costs of any testing equipment and materials used.

If, in the opinion of Skadi Europe, the goods tendered for rectification or repair exhibit no faults then all costs made will be passed on to the Distributor, also during the period under warranty.

All warranty agreements lapse if the Distributor itself makes changes and/or repairs to the product supplied or allows them to be made, or if the product supplied has not been or is not being used or treated exactly according to the supplied or applicable (manufacturers) directives or the user instructions, or is being used or treated injudiciously in any other way, or if a software change has been made in or with regard to the product supplied by a party other than Skadi Europe, or if the product supplied has been or is being used or applied for purposes other than for which it is intended, or if the product supplied has been or is being used in a way which Skadi Europe in all reasonableness could not have expected.

No warranty is provided for consumables. Expendable items are not covered by warranty. Expandable items are for instance: filter, door seals, glass, lights, batteries, keys, relays.

If the Distributor does not fulfil one or more of his obligations then Skadi Europe is released from his warranty obligations.

Satisfying the warranty obligation is regarded as the only and complete compensation.

## **10 Right of retention**

If and for so long as the Distributor has not satisfied his obligations towards Skadi Europe then Skadi Europe has the right to retain all goods in his possession which have come from the Distributor or have come on behalf of the Distributor, no matter the origin or reason.

Skadi Europe is obliged to administer the goods meant in Clause 10 above or to allow them to be administered in accordance with commercial practice but the Distributor has no right to press for damages or compensation in the case when the goods have completely or partially perished or been lost and/or been damaged when this is not the fault of the Supplier, and, furthermore, the risk associated with these goods remains with the Distributor.

## **11 Liability**

Except when and in as far as something else might otherwise ensue from the provisions of imperative law concerning (product) liability, Skadi Europe is not obliged to compensate for damage, of whatever nature, to any movable or immovable good or to any person, including any loss of profits, at the Distributor or any third party, this damage being caused directly or indirectly by or connected with any object or good supplied by or on behalf of Skadi Europe or being caused directly or indirectly by or being connected with any use or any application or operation of such an object or good or with the storage or keeping thereof, or with the assembly, installation or commissioning of such an object or good, and the Distributor explicitly indemnifies Skadi Europe against claims and demands which are based on such damage or are connected with it.

Bearing in mind what is specified elsewhere in this Clause, Skadi Europe, in every case, is not liable for damage or loss directly or indirectly caused by:

- injudicious use of the product supplied or its use for a purpose other than what it reasonably could be considered suitable for or its use for a purpose other than what, to objective standards, it is suitable for or its use for any other purpose than what Skadi Europe reasonably could have imagined that it should be used for;
- careless conduct by the Distributor, of the personnel of the Distributor or anybody brought in the Distributor, or any other person on the part of the Distributor;
- infringement of any patent, usage model, brand, origin indication, model right, copyright or neighbouring right, right on a semiconductor product or the topography thereof, right on a database or other collection of data, or any other industrial or intellectual ownership rights or any other exclusive right, or infringement or violation of a licence under any such a right, which is the direct or indirect result of the use and/or application and/or publication or replication of data provided by or on behalf of the Distributor such as descriptions, drawings, models, designs, etc.

If Skadi Europe provides a helping hand during the assembly and/or commissioning and/or installation of the goods without this being explicitly mentioned in the assignment then this occurs wholly for the risk of the Distributor.

Except in the case of intentional or flagrant damage on the part of Skadi Europe, Skadi Europe is not liable for any damage as meant in Clause 11 above which is caused by or is the result of any service performed by or on behalf of Skadi Europe.

Any liability on the part of Skadi Europe is at all times limited to directly caused damage and is at all times limited to the amount, in each case, made good by the liability insurer of Skadi Europe; if necessary, and at the request of the Distributor, Skadi Europe will provide information about the amount insured. If Skadi Europe has no liability insurance then any liability on the part of Skadi Europe is at all times limited to the net amount invoiced for the task or circumstance in question.

Settlement of the prevailing warranty obligations and/or the pay out by Skadi Europe's insurer or payment by Skadi Europe (with due observance of the maximum amount meant in Clause above) of the assessed damage is to be regarded as the only and complete compensation. For the rest the Distributor indemnifies Skadi Europe explicitly and completely.

Without prejudice to the provisions otherwise specified in this Clause, every claim for damages lapses one year after the damage has manifested itself or has been discovered or has been recognised or reasonably could have been expected to have been discovered or recognised, and, in all cases, three years after delivery.

With respect to goods for which Skadi Europe has involved third parties, the applicable (contract and/or warranty) provisions applying to the respective transaction are also valid for the Distributor if and in so far as Skadi Europe wants to make use of them.

## **12 Claims**

Without prejudice to the provisions in Clause 5 of these Conditions, any claims can only be handled if they are received in writing by Skadi Europe within eight (8) days of the delivery. For hidden faults, claims are only possible within the warranty period.

Contrary to the provisions in Clause 12 above any claims with regard to goods for which a testing or inspection takes place must be made immediately on the date of testing or inspection and at the place where this testing or inspection occurs and, after that, confirmed at once to Skadi Europe in writing.

Claims can only be handled when the nature and grounds for the complaints are accurately stated.

Claims regarding invoices must be lodged in writing with Skadi Europe within eight (8) days of the date of the invoice.

If within the applicable time period no claim is made or no claim is made in the required manner then the delivery will be considered as completely satisfying the agreement and to be unconditionally accepted and approved by the Distributor; an invoice against which no claim has been lodged in the required manner within the period of eight days specified in Clause 12 above will be regarded as having been unconditionally accepted and approved by the Distributor.

If a claim with regard to goods supplied by Skadi Europe is found to be legitimate then Skadi Europe is only obliged to replace or repair the unsound goods, the Distributor having no additional right to any other compensation.

Lodging a claim never discharges the Distributor from his payment obligations towards Skadi Europe.

Returning the product supplied or any part thereof, for whatever reason, can only take place after the previous explicit written approval and with the sending instructions of Skadi Europe.

### **13 Permits etc.**

The Distributor is responsible for ensuring that all permits, concessions, licences, consents and so forth that might be necessary for the delivery by Skadi Europe of the goods sold or for Skadi Europe to fulfil his obligations, are obtained on time and in the correct form; the costs associated with obtaining such permits, concessions, licences, consents and so forth are to be born by the Distributor.

The absence of any permits, concessions, licences, consents and so forth as meant in Clause 13 above will be considered as an accountable failing (failure) on the part of the Distributor and the Distributor will not be released from any of his commitments towards Skadi Europe nor can it be a reason for the postponement of the fulfilment of any obligation the Distributor has towards Skadi Europe.

The Distributor is liable for all damage which directly or indirectly may be caused by the absence of any permits, concessions, licences, consents and so forth as meant in Clause 14 above and the Distributor indemnifies Skadi Europe against claims and demands connected with such damage.

### **14 Intellectual ownership rights**

The Distributor will employ the software (in its widest sense), peripheral equipment, technical data, wiring and/or work plans, user and/or operating instructions, drawings and all other essential documentation and other data and information supplied by or on behalf of Skadi Europe only for its own (internal) use and will not in any way pass it on or sell or make it available to third parties nor allow any third party to use it.

If in the unforeseen for event that a good sold by Skadi Europe to the Distributor in The Netherlands infringes an industrial or intellectual ownership right of a third party and the Distributor is held liable then the Distributor is obliged at once to inform Skadi Europe in writing of the situation and Skadi Europe can then choose either to procure the right to be able to use the good, or to provide a replacement good which does not infringe the right, or, once the Distributor has returned the good, refund the purchase price to the Distributor after subtraction of reasonable compensation to cover the period when the good was available to the Distributor. With regard to infringements of industrial and intellectual property rights outside The Netherlands the Distributor can make no claim or demand whatsoever against Skadi Europe.

Skadi Europe cannot be held liable in any way with regard to the infringement of any industrial or intellectual property right or any other exclusive right which is the result of any change in or to a good sold or supplied by or on behalf of Skadi Europe or in the use or application of such a good which is different to that which Skadi Europe could have expected or assumed, or which is the result of its integration, use or application in combination with other goods not sold or supplied by or on behalf of Skadi Europe, or which is the result of a software amendment not made by Skadi Europe.

### **15 Ownership reservation**

Without prejudice to the provisions in Clause 4 of these Conditions regarding the risk and the transfer thereof, all the goods supplied by or on behalf of Skadi Europe remain the property of

Skadi Europe until the moment that the debt owed by the Distributor to Skadi Europe has been settled in full, this debt being the amount that the Distributor has owed Skadi Europe since the realisation of the agreement inclusive of all interest and costs. (In the case of an account relationship the ownership of the goods supplied remains with Skadi Europe until the moment that the Distributor settles his account).

For so long as the ownership of the goods supplied by or on behalf of Skadi Europe remains, according to the provisions in Clause 15, with Skadi Europe, the Distributor is obliged to hold these goods separately from other goods in such a way that they can easily and clearly be identified as the goods of Skadi Europe.

In case of non-payment by the Distributor of any amount due to Skadi Europe and, furthermore, when the agreement is ended, Skadi Europe will be entitled to demand the return of any goods for which ownership reservation applies and to take the measures associated with this, taking into account any payments already made for the goods, this without prejudice to the right of Skadi Europe to demand compensation for possible loss or damage. In the case of non-payment or termination of an agreement each claim which Skadi Europe has against the Distributor becomes immediately due.

At the first demand from Skadi Europe the Distributor must authorise the immediate return of the goods which have not yet been fully paid for where ever these may be.

The Distributor is entitled to sell or to use goods on which there is an ownership reservation in favour of Skadi Europe within the framework of normal business operations; however, no right of security can be bestowed on these goods, while, with regard to these goods, the Distributor must not perform any actions or allow any actions to be performed which result in these goods becoming a part or element of one or more other goods. When goods with an ownership reservation still in favour of Skadi Europe are sold on, the Distributor is obliged to reserve ownership for himself and at the first request from Skadi Europe to cede to Skadi Europe all demands against the debtor of the Distributor, up to the amount that the Distributor owes.

## **16 Payment**

Unless agreed otherwise payment, Pre Payment, must be made before shipment or within thirty (30) days of the invoice date via a deposit or funds transfer into the bank account indicated by Skadi Europe. Skadi Europe is entitled to grant a discount or payment reduction, which will be notified in advance. The date on Skadi Europe's bank or giro statement when the payment is recorded as received applies as the date on which the payment has occurred.

Each payment by the Distributor will be used first for the settlement of any interest due and for any collection and administration costs and, after that, for the settlement of any open claims in order of age beginning with the oldest.

## **17 Delay; interest and costs**

The Distributor will be liable for ensuring that a payment or the settlement of any other obligation occurs on time without the need for a reminder, summons or in default declaration.

If Skadi Europe does not receive a payment due from the Distributor on time then, beginning from the day on which the payment should have been made, Skadi Europe will automatically charge the Distributor interest at a rate of one and a half (1,5 %) per month, without prejudice to any further rights Skadi Europe has; when calculating the interest owed, months started but not completed will count as whole months. This so called delay interest rate of 1,5 % per month is a minimum rate and if this rate, when calculated on a yearly basis, is at any time less than 5% more than the officially applicable interest rate in The Netherlands then it will be automatically increased, so that, on a yearly basis, it is 5% higher than the official interest rate.

All the legal and extra-judicial costs incurred by Skadi Europe including the costs incurred by Skadi Europe for legal aid and legal advice are to be borne by the Distributor. The extra-judicial collection costs amount to 15% of the amount to which the Distributor is indebted inclusive of any interest due, without prejudice to the right of Skadi Europe to claim damages from the Distributor for the actual collection costs made if these are more than the 15% specified.

## **18 Ending an agreement**

In the case of non-observance by the Distributor Skadi Europe will be entitled to terminate and/or dissolve the agreement without judicial intervention and without prejudice to the right of Skadi Europe to claim damages, to make use of the rights resulting from ownership retention and to take other (legal) steps, and without prejudice to the right of Skadi Europe to demand fulfilment (with compensation) of the agreement instead of its termination.

Skadi Europe will terminate the agreement with the Distributor with immediate effect if:

- a. the Distributor is declared bankrupt, goes into administration, presents a request for suspension of payment, or if the Distributor (temporarily or definitely) is granted a suspension of payment or if there is a seizure of the total assets of the Distributor or a part thereof;
- b. the Distributor, when this is a natural person, dies or is made a ward or if the merchandise of the Distributor is put under administration;
- c. if the Distributor, when this is a legal person, goes into liquidation or if a claim for the dissolution of the Distributor is made or a dissolution decision with respect to the Distributor has been or is taken.

If an agreement according to the provisions of this Clause is terminated or dissolved then the amount that the Distributor owes to Skadi Europe at the moment of termination or dissolution remains as the full debt and the Distributor will be liable to pay interest and costs according to the provisions of these Conditions, without prejudice to the right of Skadi Europe to demand damages or any other rights due to Skadi Europe.

## **19 Cancellation by Distributor**

The Distributor has the right to annul the order or agreement in the following cases:

- if Skadi Europe after exceeding the delivery time again exceeds a new delivery time agreed by both parties without any justifiable grounds, provided that the Distributor has declared in writing before agreeing to the new term of delivery that he will refuse acceptance if the new delivery term is exceeded; and
- if Skadi Europe within a reasonable period of time cannot fulfil his delivery obligations and has made this known to the Distributor.
- Cancellation as meant in this Clause will never result in the Distributor being compensated for any damages.

## **20 Changes in an agreement**

Changes to an agreement are only valid if they are made in writing and where both parties have consented to the change(s).

## **21 Titles of the Clauses**

The titles of the Clauses of these Conditions are intended exclusively to simplify the construction and organisation of these Conditions and they have no other significance; in particular these titles cannot be used for any interpretation of these Conditions.

## 22 Appropriate law; disputes

All offers, agreements, deliveries and services produced or brought out, entered into, performed or executed by or on behalf of Skadi Europe shall be governed in all respects, including all matters of construction, validity and performance, by and construed and enforced in accordance with, the laws of the Netherlands.

The united Nations convention on the international Sale of Goods shall not apply to this agreement.

The parties consent and agree to the exclusive jurisdiction of the court in Arnhem, Netherlands with respect to any action tha any party desires to commence arising out of or in connection with this agreement or any breach or alleged breach of any provision hereof.

## 23 Validity

If any provision in these Conditions is not completely valid or only partially valid and/or not enforceable as a result of any legal directive, judicial judgement or any directive, decision, recommendation or measure from any local, regional, national or supranational authority or body or otherwise then this will have no effect on the validity of the other provisions in these Conditions. If a provision in these Conditions might not be valid for one or other reason indicated in the previous sentence but would be valid if it had a more limited range or scope then this provision will be automatically valid with the most far reaching or extensive range or scope with which or within which it is valid.

## **B SPECIAL CONDITIONS RELATING TO SOFTWARE**

### **24 General**

The following provisions of these Conditions are valid next to and in addition to the provisions specified in Clauses 1 to 23 unless explicitly identified as departures from the previous provisions.

"Software" (written with a capital S) is defined as; computer programme(s) recorded on media or material that can be read by a computer together with any associated documentation irrespective of the form of this documentation.

"Standard Package" (written with a capital S and P) is defined as; generally available Software not developed specifically for the Distributor or specially adapted, modified or extended for the Distributor.

The Distributor is responsible for ensuring that all relevant or useful data and information necessary for the carrying out of the agreement is made available to Skadi Europe on time and in an understandable and usable form; any costs associated with obtaining such data and information and making and keeping it available in an understandable and usable form for Skadi Europe are to be borne by the Distributor.

The Distributor is responsible for the use and the correct application of the Software, the hardware and any services provided or to be provided by or on behalf of Skadi Europe. Furthermore, the Distributor is responsible for the use and the correct application of the administration and calculation methods employed and the Distributor is responsible for the protection of the data.

If, in the pursuance of the agreement, the Distributor has to make material, equipment and /or data (data and information on information carriers) available then the Distributor is responsible that these meet the specifications required for the execution of the agreement.

In the case where the data and information necessary for the execution of the agreement is not made available to Skadi Europe or the information made available is not complete or is not made available on time or in the correct form or if the Distributor does not otherwise meet his commitments, then Skadi Europe is entitled to suspend or discontinue the agreement; in such a case the Distributor, without prejudice to the rights of Skadi Europe with regard to compensation for damages, will be liable to Skadi Europe for the costs of the activities which have already carried out in pursuance of the execution of the agreement and, moreover, Skadi Europe is entitled to pass on any extra costs incurred calculated using the tariffs which are in effect.

### **25 Standard Package**

If Skadi Europe grants the Distributor the right to use a Standard Package developed by Skadi Europe then this comprises only the non-exclusive right to use the Standard Package in the way described below.

The Standard Package may be used by the Distributor exclusively on one processing unit, with the understanding that, if there is a temporary disturbance to this processing unit and only for so long as the disturbance lasts, the Software of the Standard Package may be used on another processing unit.

When and for so far as no other conditions have been set by Skadi Europe, the Distributor is entitled, for security reasons, to make a maximum of two back-up copies of the Standard package; these copies will only be used for the replacement of original material which has been

rendered unusable. The copies must have the same labels and indications as the original material.

Without the prior written permission of Skadi Europe the right to use the Standard Package may not be transferred to third parties. Furthermore, the Distributor is not permitted to sell, rent or transfer a Standard Package or a copy thereof or to give it or to make it available to third parties or to use it or allow it to be used for the benefit of third parties or to use it as security.

The source code of the Software contained in a Standard Package will not be made available to the Distributor.

The ownership of the Standard Package and the rights relating to industrial and intellectual ownership with respect to the Standard Package remain with Skadi Europe and will be respected by the Distributor. Markings relating to rights of industrial or intellectual ownership such as author's right markings will not be removed or made unreadable or unrecognisable by the Distributor.

By entering into an agreement concerning or relating to a Standard Package developed by Skadi Europe, the Distributor declares that he knows that the Standard Package contains confidential information and business secrets of Skadi Europe. The Distributor is obliged to keep the Standard Package secret and not to make it known to third parties.

Contrary to the period specified in Clause 9 of these Conditions the warranty period in the case of a Standard Package is three months from the date of delivery; during this period Skadi Europe will do his best to rectify any faults resulting from the failure of the Software of the Standard Package to conform to the user-manual of the Standard Package. Such rectification will only be free of charge if a maintenance contract has been signed or when a usage fee has been agreed which includes maintenance and where the faults are not caused by or related to usage faults on the part of the Distributor or other reasons not attributable to Skadi Europe. In other cases the costs of rectification will always be passed on to the Distributor. The warranty does not cover the recovery of any lost data. The warranty lapses if the Standard Package is amended or changed by anyone other than Skadi Europe. Furthermore, the warranty does not apply with regard to faults resulting from or connected with the so-called millennium problem.

Skadi Europe does not warranty that the Standard Package will function without interruption or without faults or that all faults will be rectified or corrected.

When a maintenance agreement for the Standard Package has been made with Skadi Europe or when a usage fee has been agreed which includes maintenance then the Distributor is obliged to notify Skadi Europe immediately and clearly in writing about any faults detected in the Software of the Standard Package. After receipt of this notification Skadi Europe will do his best to rectify the faults if the Software of the Standard Package does conform to the user-manual of the Standard Package. Recovery of any lost data is not covered by the maintenance agreement. If the faults are caused by or relate to usage faults on the part of the Distributor or other reasons not attributable to Skadi Europe then Skadi Europe is entitled to pass on the rectification costs to the Distributor. If the faults are caused by or relate to any change or amendment in the Software of the Standard package made by anyone other than Skadi Europe then Skadi Europe is entitled to pass on all rectification costs to the Distributor.

When a maintenance agreement has been made with regard to a Standard Package developed by Skadi Europe and when an improved version of the Standard Package becomes available for the market Skadi Europe will then make such a version available for the Distributor. Without prejudice to the provisions in Clause 25 and three months after the release of the new version, Skadi Europe will no longer be obliged to rectify faults in older versions. If a new version of the Standard Package offers more possibilities and/or functionality than older versions then Skadi Europe is entitled to charge a fee for making the new version available.

When Skadi Europe provides only the right to use a Standard Package from a third party in accordance with the conditions of use or licensing agreement of or with the third party or if maintenance with regard to a Standard Package is performed on the basis of the conditions of an agreement between Skadi Europe and a third party, then the provisions of Clauses 25 of these Conditions do not apply and they are replaced by the provisions of the relevant agreement or agreements that Skadi Europe has with the third party or parties. Skadi Europe, at the request of the Distributor, will provide information about the provisions that are applicable.