

WAMAS[®] END USER LICENSE AGREEMENT, US

Version 2016-12-07

1 Application of the General Terms and Conditions for License Agreements

1.1 Scope of Application

Licensor's general terms and conditions for license agreements shall apply to the license of WAMAS standard software (hereinafter "Standard Software") to customers (hereinafter "Licensee"). Software of third parties provided with the Standard Software is additionally subject to terms and conditions of third parties and special terms and conditions (see section 4.4).

1.2 Entire Agreement

These terms and conditions (these "terms and conditions"), and any Annex(es) set out the entire understanding between the parties and supersede any and all prior agreements, written or oral, between the parties regarding the subject matter herein. No changes to these terms and conditions are binding unless in writing and signed by the parties hereto. The parties will be bound by any Annex(es), except to the extent that they may conflict with the terms and conditions contained herein, in which case these terms and conditions will govern.

If any provisions (or portions thereof) contained in these terms and conditions are found to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability (even to the extent that either party has knowledge of such invalidity, illegality or unenforceability) will not affect the other provisions herein, and these terms and conditions will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

2 Definitions

2.1 Confidential Information

Confidential Information means the specific terms and conditions set forth herein and information relating to the source code and development documentation, and any information, which is disclosed by one party to the other party, provided that tangible materials are clearly marked as "Confidential" and any information provided orally or visually is identified as confidential at the time of disclosure, and for certainty Confidential Information of Licensor shall include the Standard Software, its documentation, performance, functions and comparison benchmarks therefor, but Confidential Information shall not include information that:

- (a) is or becomes generally available to the public other than as a result of any act by a receiving party to these terms and conditions;
- (b) is rightfully received from a third party without similar restriction or without breach of these terms and conditions;
- (c) a receiving party is able to demonstrate, in writing, was known to it on a non-confidential basis; or
- (d) was independently developed by a receiving party without the use of any of the Confidential Information.

2.2 Developments

Developments mean inventions, discoveries, designs, developments, methods, modifications, improvements, processes, derivative notes, algorithms, databases, computer programs, formulae, techniques, designs, trade secrets, graphics or images, audio or visual works, and other works of authorship.

2.3 Disaster Recovery Environment

Disaster Recovery Environment means Licensee's technical environment designed solely to allow Licensee to respond to an interruption in service due to an event beyond Licensee's control that creates an inability on Licensee's part to provide critical business functions for a material period of time.

2.4 Licensee

Licensee means the individual or entity, including Licensee's heirs, executors, administrators, legal representatives, successors and permitted assigns, who receives a license for the Standard Software according to the terms and conditions set forth herein.

2.5 Licensor

Licensor means the respective company of the SSI Schäfer-Group that delivers and licenses the Standard Software to Licensee.

2.6 Standard Software

The Standard Software means the WAMAS standard software together with the standard documentation.

For certainty, the Standard Software shall not include any customization software which is created by adapting and/or configuring the WAMAS Standard Software, and which is not subject to these terms and conditions.

3 Documentation

Along with delivery of the Standard Software, Licensor may also provide accompanying documentation.

Illustrations in the manual, test programs, product and project descriptions are not guaranteed characteristics. Guaranteed characteristics require Licensor's explicit and written confirmation. The Standard Software is delivered in its current version at the time of delivery.

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For certainty, updates and/or upgrades of the Standard Software, helpdesk services/support and any service relating to the installation, configuration of and introduction to the Standard Software (collectively, the “Additional Services”) are not included in these terms and conditions. If Licensee wishes to receive any Additional Services, Licensee must enter into a separate agreement with Licensor for the provision thereof.

4 Rights Granted

4.1 License

Licensor grants to Licensee the non-exclusive, perpetual, non-assignable right to use the Standard Software solely for Licensee's internal business operations, subject to these terms and conditions, restricted to the location set forth in the offer and individually restricted to the amount of licenses acquired. Licensed users to the Standard Software may be Licensee's representatives, employees and contractors and Licensee is responsible for their compliance with these terms and conditions in such use.

Licensee undertakes to purchase a license for the WAMAS Standard Software for each location (a “WAMAS site license”) and/or for each user (meaning there will be one license per person), as applicable.

The use of WAMAS in the scope of WAMAS Non – productive license is solely allowed for the non-productive operation and must not be commercially used.

4.2 Types of Licenses

The following licenses can be acquired: (i) the WAMAS license for a location (WAMAS site license), (ii) WAMAS add-on modules to provide additional functionalities to a customer installation (iii) the WAMAS full-use license and (iv) the WAMAS worker license and (v) the license for the non-productive operation (WAMAS non-productive license).

WAMAS site license: a WAMAS site license is required for each productive site. A site is considered to be a warehouse or several joint buildings, consisting of any number of storage areas or storage locations.

WAMAS non-productive license: The WAMAS non-productive license includes for each warehouse location a further WAMAS site license and ten WAMAS full use licenses.

WAMAS full-use license: the WAMAS full-use license is a named user license providing full functionality e.g. for administrators and control center users. One license per named user is required to access full WAMAS functionality.

WAMAS worker license: the WAMAS worker license provides limited functionality for various manual warehouse processes (e.g. GI caddy, packing station, picker, mobile terminal, info terminal). One license per named user is required.

WAMAS add-on modules: WAMAS add-on modules provide additional functionalities to a customer installation. The WAMAS add-on modules are not available independently but have to be always combined with a WAMAS site license.

For certainty, any costs for third-party hardware and software which may be necessary for the operation of Standard Software are not included in the WAMAS license fee(s).

4.3 Termination of Right of Use

Licensor may terminate Licensee's license(s) relating to the Standard Software if Licensee breaches a material term of these terms and conditions. In such a case, Licensee shall be obliged within 30 days from such termination to (i) pay all amounts which have accrued under these terms and conditions plus related taxes and expenses, (ii) delete all copies of the Standard Software in Licensee's possession, including any copies made for back-up, archival or disaster recovery purposes pursuant to Section 4.7, (iii) return all data carriers and documents and (iv) declare in writing the end of the license and confirm that all copies of the Standard Software have been deleted.

The WAMAS non-productive license can be revoked at any time and without giving reason with immediate effect by the licensor.

4.4 Third-Party Licenses / Third-Party Software

WAMAS Standard Software includes third-party licenses for which special provisions apply. The third-party licenses used by WAMAS as well as the link to licensing provisions to be applied are published at <http://www.ssi-schaefer.com/wamas-eula.html>.

The respective supplier retains all ownership and intellectual property rights relating to product parts/software produced by a third-party as supplier. Licensor generally only procures the rights or grants such rights to Licensee that are necessary for the use of programs together with the Standard Software.

4.5 Intellectual Property Rights / Developments

The Standard Software and any copies that Licensee is authorized by Licensor to make are the intellectual property of and are owned by Licensor and/or the SSI Schäfer-Group and its suppliers. The structure, organization and code of the Standard

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Software are the valuable trade secrets and confidential information of Licensor and/or the SSI Schäfer-Group and its suppliers. The Standard Software is protected by copyright, including without limitation by copyright law, international treaty provisions and applicable laws in the country in which it is being used. Except as expressly stated herein, these terms and conditions do not grant Licensee any intellectual property rights in the Standard Software and all rights not expressly granted are reserved by Licensor and/or the SSI Schäfer-Group.

In the event that any Developments are created, developed, made, conceived or reduced to practice (collectively, "conceived") as a result of these terms and conditions and the license granted hereunder or as derivations from or resulting from the use of the Standard Software, Licensee agrees that Licensor and/or the SSI Schäfer-Group are the owners of such Developments and agrees that Licensor and/or the SSI Schäfer-Group have the right to use and/or modify such Developments, now or in the future. Licensee hereby assigns and transfers and, to the extent any such assignment cannot be made at present, will assign and transfer, to Licensor and/or the SSI Schäfer-Group and their successors and assigns, all Licensee's right, title and interest in and to all Developments that conceived during the period of these terms and conditions that result from the use of the Standard Software, and on behalf of itself and its personnel, waive all moral rights therein. Licensee will make full and prompt disclosure to Licensor of any Developments.

This section shall survive expiration or termination of these terms and conditions indefinitely.

4.6 Restrictions of License

Licensee may use and duplicate the Standard Software including the documentation only for Licensee's licensed use and may not make it available to unauthorized third parties.

The license relates only to the use of the Standard Software by Licensee for its own data processing.

The WAMAS non-productive license, which use is exclusive for training and testing, can be made available by the licensor free of charge for a term which must be agreed separately. The use of WAMAS in the scope of these licenses is allowed only for the non-productive operation and must not be commercially used. Decompiling and / or processing from WAMAS are not permitted. All intellectual property rights and other industrial property rights, which the licensor owns regarding WAMAS, remain his property.

Licensee is not entitled to:

- a) make the Standard Software or materials resulting from the Standard Software available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific license or materials from the services acquired by Licensee);
- b) lease the Standard Software or undertake any other form of transfer of the Standard Software;
- c) remove or modify any program markings or any notice of Licensor's (or another member of the SSI Schäfer-Group's) proprietary rights;
- d) modify, port, adapt or translate the Standard Software;
- e) cause or permit reverse engineering, disassembly or decompilation of the Standard Software, or otherwise attempt to discover the source code for the Standard Software;
- f) disclose results of any program benchmark tests or other evaluations of the Standard Software without Licensor's prior written consent;
- g) use any unlicensed module or function of the Standard Software, even if Licensee has technical access to such module or function through their installation of the Standard Software; or
- h) develop similar software by using the Standard Software as guidance.

Except as expressly provided otherwise in these terms and conditions, Licensee does not acquire any further entitlements to the Standard Software. Licensee agrees to use the Standard Software in compliance with all applicable laws and regulations, including, without limitation, applicable export control laws and regulations of the United States, Canada and other jurisdictions

4.7 Back-Up and Disaster Recovery

Licensee may make and install a reasonable number of copies of the Standard Software for back-up and archival purposes and use such copies solely in the event that the primary copy has failed or is destroyed. A back-up copy on a mobile data carrier must be identified as such and must be provided with a notice of copyright. The user documentation may be copied onto paper for internal purposes only.

Licensee may also install copies of the Standard Software in a Disaster Recovery Environment for use solely in disaster recovery and not for production, development, evaluation or testing purposes other than to ensure that the Standard Software is capable of replacing usage of the primary copy of the Standard Software in case of a disaster preventing use of the primary copy.

4.8 Adding of Functions

Licensee has the right to add new functions to the program by using Licensor's defined development tools only. This also applies to the introduction of external functions which are supported by the program. Please note that even minor changes may lead to considerable, unforeseeable disturbances in the functioning of the Standard Software and other programs. Licensor is not responsible for Licensee's developments and modifications, and Licensor may not be able to or agree to support such

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developments and modifications. Therefore, Licensee is strongly warned not to undertake unauthorised changes to the Standard Software; and Licensee shall solely bear the risk therefor.

4.9 Beginning of the License

Subject to payment of applicable license fees, Licensee's license commences upon delivery of the Standard Software to Licensee.

4.10 Extension of License and Consequences following the Violation of the License

Any use of the Standard Software which exceeds the provisions in these terms and conditions requires Licensor's written approval. Licensee shall notify Licensor in writing prior to making any change of its license or fees and shall obtain Licensor's written approval. Licensor is entitled to withdraw Licensee's license at any time in the event that any extended use occurs without Licensor's approval.

Furthermore and irrespective of the withdrawal of the license, and in addition to any other remedies of Licensor, Licensor is entitled to charge, and Licensee shall within fourteen (14) days pay, the then current charges applicable to any excess use of the Standard Software, along with interest of 12% per annum applicable from the start of Licensee's excess use.

4.11 Confidentiality

Each party shall (i) hold in strict confidence the other party's Confidential Information; (ii) protect such Confidential Information with the same degree of care as the receiving party treats its own Confidential Information, which shall in no event be less than a standard of reasonable care; (iii) not disclose or permit such Confidential Information to be disclosed to anyone other than the receiving party's employees or representatives as permitted hereunder to use the Standard Software; (iv) not use and not permit its employees or representatives to use the disclosing party's Confidential Information for any reason other than in the connection with these terms and conditions; and (v) not, directly or indirectly, copy, reproduce, use, publish, disseminate, misuse, misappropriate, sell, assign or otherwise transfer or disclose to any person the Confidential Information, other than as permitted pursuant to these terms and conditions, unless prior written consent of Licensor is obtained or such disclosure is necessary for effecting and enforcing the provisions of these terms and conditions and only to the limited extent so required. Licensor shall comply with data protection laws and is entitled to process Licensee's data automatically.

Notwithstanding any provision herein to the contrary, nothing herein shall prevent or prohibit any disclosure of any information concerning these terms and conditions to the extent, and only to the extent, required under applicable laws, including applicable securities laws, as well as the rules and regulations of any stock exchange or market system on which any party's securities are or may be traded.

Licensee shall inform any of its employees or representatives with access to the Confidential Information in writing of their confidentiality obligations hereunder and shall cause such employees or representatives to comply therewith. Without limiting the foregoing, Licensee shall store the Confidential Information, in particular the source code received, carefully in order to prevent any abuse.

5 Involvement of Licensee

5.1 Working Environment

Licensee shall provide a working environment for the software (e.g. hardware and operating system) according to Licensor's guidelines. Licensee shall observe the guidelines set forth in the user documentation.

5.2 Protection Measures

Licensee shall, without any further consideration, support Licensor in fulfilling these terms and conditions by providing information to employees, work space, hard- and software, data and telecommunication facilities. Licensee shall grant Licensor or one of its associated companies direct access or remote access to the hard- and software. In this context, Licensor will respect the interests of Licensee, in particular data protection. Licensee shall be responsible to Licensor for any negative consequences (e.g. Licensor's increased costs resulting therefrom) in the event that easy access by means of telecommunication facilities is not possible or not permitted.

5.3 Contact Person with Power of Decision

Licensee shall appoint a contact person who is entitled to take the necessary decisions or effect such decisions without delay. The contact person shall ensure cooperation between Licensee and Licensor.

5.4 Obligation to Test prior to Operational Use

Prior to commencing operational use of the Standard Software, Licensee shall test the Standard Software to satisfy itself that it is free of defects and fit for its use.

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5.5 Licensee's Precautionary Obligation

Licensee shall take all precautionary steps in the event that the Standard Software does not operate properly (in whole or in part), e.g. by use of data back-ups, analysis of disruption, periodic reviews of the results. Except as set out in Section 7.1, Licensor is not responsible for any damage or loss, including loss of data, of Licensee or third party from use of the Standard Software.

5.6 Compliance with Licenses

Following Licensor's written request Licensee shall, no more than once every twelve (12) months, submit a written confirmation stating that Licensee's use of the Standard Software is in accordance with these terms and conditions.

Licensor may, at its expense, and no more than once every twelve (12) months, appoint an independent third party or Licensor's internal auditor to verify the usage and number of copies and installations of the Standard Software in use by Licensee. Any such verification shall be conducted upon no less than seven (7) business days' notice, during regular business hours at Licensee's offices and shall not unreasonably interfere with Licensee's business activities. If such verification shows that Licensee is using a greater number of copies of the Standard Software than that legitimately licensed or is deploying or using the Standard Software in any way not permitted under these terms and conditions and which would require additional license fees, in addition to the provisions of Section 4.10, Licensee shall pay the applicable fees for such additional usage rights or copies within fourteen (14) days of the invoice date, with such underpaid fees being the license fees as per Licensor's then-current, country-specific, license fee list. This section shall survive expiration or termination of these terms and conditions indefinitely.

6 Delivery, Time of Delivery and Performance

6.1 Delivery

Upon delivery of the Standard Software, Licensee shall be provided either with an invoice or a special license certificate containing the specification of the acquired types of software and the number of licenses. Upon payment of applicable fees, Licensee may request receipt of the Standard Software and documentation stored on a data carrier.

6.2 Force Majeure

Neither party will be liable to the other party for the non-performance or delay in performance of its obligations under these terms and conditions if the non-performance or delay is due to an act of God or any other cause (including, without limitation, war, natural disasters, labour disputes, strikes, lock-outs, governmental interventions, or fire) which is beyond the reasonable control of a party. In the event that the performance of these terms and conditions is impeded or made impossible by a force majeure event, Licensor is entitled by written notice to postpone the date of delivery and, following a postponement of more than three (3) months, is entitled to rescind these terms and conditions entirely by written notice. Both parties shall use reasonable efforts to mitigate the effect of a force majeure event.

6.3 Extension of Time in the Event of Disturbances

In the event that Licensor is awaiting the involvement of or information from Licensee to take a particular action, or Licensor is otherwise constrained from fulfilling these terms and conditions through no fault of its own, then the delivery and performance periods shall be extended by the duration of disturbance together with a reasonable start-up time following the end of the disturbance. Licensor shall inform Licensee of any disturbance.

7 Liability and Warranty

7.1 Limitation of Liability

Licensor shall have no liability hereunder, except for liability arising from Licensor's wilful misconduct or gross negligence. LICENSOR WILL NOT BE LIABLE TO LICENSEE FOR ANY CONSEQUENTIAL DAMAGES, DAMAGES ARISING FROM THIRD PARTY CLAIMS, LOST PROFITS, LOST DATA, LOST USE, LOST SAVINGS, LOSS OF ANTICIPATED REVENUE OR ANY EXEMPLARY, PUNITIVE, SPECIAL OR INDIRECT DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 Liability Cap and Statute of Limitations

Licensor's maximum liability under these terms and conditions, and that of SSI Schäfer-Group, shall in all cases be limited to an amount of EURO 125,000.00. No action, regardless of form, arising out of the transactions occurring or contemplated hereunder may be brought by Licensee more than one year after the cause of action has occurred.

7.3 Support Warranty

Licensor has made the Standard Software to be generally viable in accordance with the specification of services and the documentation, but cannot guarantee that it will operate error free. To obtain assistance, Licensee must notify Licensor of any program deficiency within one year after delivery.

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LICENSOR DOES NOT GUARANTEE THAT THE STANDARD SOFTWARE WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT LICENSOR WILL CORRECT ANY OR ALL PROGRAM ERRORS. TO THE EXTENT PERMITTED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR ASSUMES NO WARRANTY THAT THE STANDARD SOFTWARE CONFORMS TO LICENSEE'S REQUIREMENTS.

IN THE EVENT THAT A PROGRAM DEFICIENCY IS REPORTED AS ABOVE, LICENSEE'S EXCLUSIVE REMEDY, AND LICENSOR'S ENTIRE LIABILITY, SHALL BE THE CORRECTION/REPLACEMENT OF RE-PRODUCIBLE PROGRAM ERRORS THAT CAUSE A MATERIAL FAILURE OF THE SOFTWARE, OR IF LICENSOR CANNOT SUBSTANTIALLY CORRECT SUCH FAILURE DESPITE A GRACE PERIOD GRANTED IN WRITING WITH THREE (3) ATTEMPTS TO CORRECT THE FAILURE, LICENSEE MAY BY NOTICE END ITS LICENSE HEREUNDER AND RECOVER THE UNUSED PORTION OF THE FEES PAID TO LICENSOR FOR THE LICENSE OF THE NON-FUNCTIONING PORTION(S) OF THE SOFTWARE. CORRECTION, WHERE AVAILABLE, WILL BE EFFECTED BY FAULT CLEARANCE, BY PROVIDING A NEW PROGRAM VERSION OR BY LICENSOR DEMONSTRATING REASONABLE POSSIBILITIES OF AVOIDING THE EFFECTS OF DEFECTS.

Licensee shall not be entitled to any reimbursement of costs incurred in connection with the clearance of defects by Licensee or a third party.

All warranty claims shall be excluded in the event of unauthorized changes or adaptations of the Standard Software, unless Licensee is able to prove that the unauthorized changes and adaptations have no influence on the fault of the Standard Software subject to the warranty claim.

7.4 Exclusion of warranty and liability for WAMAS non-productive Licenses

The right of warranty, support and software updating (new WAMAS releases and bug-fixes) or compensation as well as any other liability (to the extent permitted by law) is expressly excluded for these licenses.

7.5 Defects

During the license term, Licensor will use its reasonable efforts to correct any reproducible error in the Standard Software. Licensor will have no obligation to correct all errors in the Standard Software. Upon identification of any error, Licensee will notify Licensor of such error and provide Licensor with enough information for Licensor to reproduce the error. Licensor will not be responsible for correcting any errors that are not reproducible by Licensor on the unmodified Standard Software or errors caused by: (a) Licensee's failure to implement all updates provided by Licensor to it; (b) changes to the operating system or environment which adversely affect the Standard Software; (c) any alterations of or additions to the Standard Software not authorized by Licensor; (d) use of the Standard Software in a manner for which it was not designed; or (e) accident, negligence, or misuse of the Standard Software; and furthermore, in respect of any Licensee reported error that is determined to be an error due to the foregoing, Licensee will be responsible for all costs and fees associated with the diagnosis and/or correction of such errors, at Licensor's then current fee rates.

8 Obligation to Examine and Notify of Non-Conformity

8.1 Immediate Examination and Notice

Licensee shall examine all Licensor's deliveries and services for any non-conformity within a reasonable period and give notice of any defects within a period of one week following receipt thereof.

8.2 Written Form

The notice shall be rendered in writing with a precise description of the problem. Only the contact person (appointed according section 5.3 of these terms and conditions) and the management shall be entitled to give notice of non-conformity.

9 Third Party Claims

9.1 Licensor Defence Against Third Party Claims

If someone makes a claim against Licensee that use of the unmodified Standard Software or its documentation (collectively, the "Material") infringes its intellectual property rights, Licensor will indemnify Licensee against the claim if Licensee does the following:

- a) notifies Licensor promptly in writing, not later than thirty (30) days after Licensee receives notice of the claim (or sooner if required by applicable law);
- b) gives Licensor sole control of the defence and any settlement negotiations; and
- c) gives Licensor the information, authority, and assistance Licensor needs to defend against or settle the claim.

If Licensor believes or it is determined that any of the Material may have violated someone else's intellectual property rights, Licensor may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Licensor may by notice terminate the license and the Materials and reimburse Licensee for the unused portion of the fees paid for the loss of License.

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Licensor will not indemnify Licensee if Licensee has altered the Material or added functionality or modifications, or if Licensee uses the Materials outside the scope of use identified in Licensor's user documentation or if Licensee uses a version of the Materials which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to Licensee. This section provides the parties' exclusive remedy for any infringement claims or damages.

9.2 Licensee Defence Against Third Party Claims

If someone makes a claim against Licensor that use of a modification to the Standard Software or its documentation made by Licensee infringes its intellectual property rights, Licensee will indemnify Licensor against the claim if Licensor does the following:

- a) notifies Licensee promptly in writing, not later than thirty (30) days after Licensor receives notice of the claim (or sooner if required by applicable law);
- b) gives Licensee sole control of the defence and any settlement negotiations; and
- c) gives Licensee the information, authority, and assistance Licensee needs to defend against or settle the claim.

10 Assignment

Licensor is entitled to use the services of a third party, in particular of its associated companies, in order to fulfil its duties under these terms and conditions. Licensor may assign all or a portion of these terms and conditions to its affiliates or associated companies without the prior consent of Licensee. Licensee may not assign these terms and conditions, assign claims or grant sub-licenses without the prior written consent of Licensor.

11 Fees

All fees, dues and taxes (including, without limitation, value added tax, sales tax, withholding and similar taxes) as well as customs duties relating to the software license or service agreement subject to these terms shall be exclusively borne by Licensee.

12 Price, Payment, Reservations

12.1 Price

The price for a license of the Standard Software is negotiated and agreed upon on an individual basis in the respective agreement. The prices for the WAMAS licenses include transport and packaging.

12.2 Payment Date

Licenses: 100% of all fees are due upon delivery.

Licensor's invoices including VAT must be settled no later than 30 days following the invoicing without any deductions or set-offs, unless individual payment conditions have been agreed upon. Trade discounts are not granted.

12.3 Interest

Any fees overdue are subject to an interest of 12% per annum. If any fees are unpaid after 90 days after the due date for payment, Licensor may at its option suspend or terminate the license granted to Licensee.

12.4 Set-off and Retention

Licensee may only set-off with respect to undisputed claims or with respect to claims recognized by final court decision. Licensee may not set-off by withholding payments or for any other reason, including due to an incomplete full delivery, warranty claims and claim defects.

13 Miscellaneous

13.1 Governing Law / Jurisdiction and Forum / Waiver of Jury Trial

THESE TERMS AND CONDITIONS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, ENFORCED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD FOR THE CONFLICTS OF LAWS PRINCIPLES THEREOF. EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY COURT OF THE STATE OF NEW YORK LOCATED IN NEW YORK COUNTY, NEW YORK AND ANY FEDERAL COURT LOCATED IN NEW YORK COUNTY, NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO THESE TERMS AND CONDITIONS. FURTHER, EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION OR DEFENCE THAT IT MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY SUCH PROCEEDING IN ANY SUCH COURTS. THE PARTIES AGREE THAT ANY OR ALL OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE ANY OBJECTIONS TO VENUE OR TO CONVENIENCE OF FORUM. EACH OF THE PARTIES (ON BEHALF OF ITSELF AND ITS AFFILIATES) AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING WILL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE LAW.

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EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS. EACH PARTY CERTIFIES THAT IT HAS BEEN INDUCED TO ENTER INTO THESE TERMS AND CONDITIONS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS SET FORTH ABOVE IN THIS SECTION 13.1.

13.2 Waiver

No waiver by any party of any term or condition herein, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition herein on any future occasion.

13.3 Imposition

Licensee undertakes to ensure that all its employees and representatives comply with all obligations under these terms and conditions and to ensure that all rights of Licensor relating to the Standard Software as set forth herein shall be upheld by Licensee's employees and representatives. In the event of a breach of these terms and conditions by Licensee's employees or representatives, Licensee will indemnify Licensor.