

# WAMAS<sup>®</sup> END USER LICENSE AGREEMENT, EMEA

## Version 7<sup>th</sup> December 2016

### 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. 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 customisation software which is created by adapting and/or configuring the Standard Software, and which is not subject to these terms and conditions.

#### 2.7 Affiliate

Affiliate includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.

### 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, 30 year, 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 (as set out below). 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 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**

The Standard Software includes third-party licenses for which special provisions apply. The third-party licenses used by WAMAS as well as the link to licencing provisions to be applied are published at <https://www.ssi-schaefer.com/en-de/wamas-eula-50696>.

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**

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The Standard Software and any copies that Licensee is authorised 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, organisation and code of the Standard 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(s) 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 were 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 unauthorised third parties.

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.

The license(s) relate only to the use of the Standard Software by Licensee for its own data processing.

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 except to the extent that any reduction of the Standard Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Standard Software with the operation of other Licensor approved software or systems used by the Licensee, unless the Licensor is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Licensee shall request the Licensor to carry out such action or to provide such information (and shall meet the Licensor's reasonable costs in providing that information) before undertaking any such reduction;
- 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.

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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 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(s) commence 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(s) at any time in the event that any extended use occurs without Licensor's approval.

Furthermore and irrespective of the withdrawal of the license, Licensor is entitled to charge liquidated damages to the extent of the double amount according to the current price and conditions' list (for Switzerland: contract penalty according to Art. 160 ff. OR); Licensor reserves the right to claim any damages exceeding such amount.

#### **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 (if any) and software 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.

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#### **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.

#### **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, 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**

7.1.1 Except as expressly stated in clause 7.1.2:

- a) the Licensor shall not in any circumstances have any liability for any losses or damages which may be suffered by the Licensee (or any person claiming under or through the Licensee), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
  - i. special damage even if the Licensor was aware of the circumstances in which such special damage could arise;
  - ii. loss of profits;
  - iii. loss of anticipated savings;
  - iv. loss of business opportunity;
  - v. loss of goodwill;
  - vi. loss or corruption of data,

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provided that this clause 7.1.1(a) shall not prevent claims for loss of or damage to the Licensee's tangible property that fall within the terms of clause 7.1.1(b) or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 7.1.1(a);

- b) the total liability of the Licensor, whether in contract, tort (including negligence) or otherwise and whether in connection with this license or any collateral contract, shall in no circumstances exceed a sum equal to €125,000.00; and
- c) the Licensee agrees that, in entering into this license, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this license or (if it did rely on any representations, whether written or oral, not expressly set out in this license) that it shall have no remedy in respect of such representations and (in either case) the Licensor shall have no liability in any circumstances otherwise than in accordance with the express terms of these terms and conditions.

7.1.2 The exclusions in clause 7.2.4 and clause 7.1.1 shall apply to the fullest extent permissible at law, but the Licensor does not exclude liability for:

- a) death or personal injury caused by the negligence of the Licensor, its officers, employees, contractors or agents;
- b) fraud or fraudulent misrepresentation;
- c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- d) any other liability which may not be excluded by law.

7.1.3 All dates supplied by the Licensor for the delivery of the Standard Software or the provision of any services shall be treated as approximate only. The Licensor shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

7.1.4 All references to "the Licensor" in this clause 7 shall, for the purposes of this clause and clause 13.4 only, be treated as including all employees, subcontractors and suppliers of the Licensor and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 13.4.

7.1.5 The Licensee shall comply with any third-party licenses and shall indemnify and hold the Licensor harmless against any loss or damage which it may suffer or incur as a result of the Licensee's breach of such terms howsoever arising.

7.1.6 The Licensor may treat the Licensee's breach of any third-party license as a breach of this license.

7.1.7 No action or claim, 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.

**7.2 Warranty**

7.2.1 The Licensor warrants that the Standard Software will conform in all material respects to the specification of Standard Software (the "Specification") for 90 days from the date of delivery ("Warranty Period"). If, within the Warranty Period, the Licensee notifies the Licensor in writing of any reproducible defect or fault in the Standard Software in consequence of which it fails to conform in all material respects to the Specification, subject to clause 7.3, the Licensor shall, at the Licensor's option, do one of the following:

- a) use its reasonable efforts to repair the Standard Software;
- b) replace the Standard Software; or
- c) terminate these terms and conditions immediately by notice in writing to the Licensee and refund any of the license fee(s) paid by the Licensee as at the date of termination (less a reasonable sum in respect of the Licensee's use of the Standard Software to the date of termination) on return of the Standard Software and all copies thereof,

provided the Licensee provides all the information that may be necessary to assist the Licensor in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Licensor to re-create the defect or fault. If the Licensor opts to repair or replace the Standard Software and, after 3 attempts, fails to substantially correct such defect or fault then the Licensee may terminate these terms and conditions immediately by notice in writing to the Licensor and receive a refund any of the license fee(s) paid by the Licensee as at the date of termination (less a reasonable sum in respect of the Licensee's use of the Standard Software to the date of termination) on return of the Standard Software and all copies thereof. This clause 7.2.1 shall be the Licensee's exclusive remedy and the Licensor's entire liability in respect of its subject matter.

7.2.2 The Licensor does not warrant that the use of the Standard Software will be uninterrupted or error-free.

7.2.3 The Licensee accepts responsibility for the selection of the Standard Software to achieve its intended results and acknowledges that the Standard Software has not been developed to meet the individual requirements of the Licensee.

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7.2.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this license or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

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

#### **7.3 Warranty Exclusions**

The warranty provisions of clause 7.2.1 shall not apply where such defect or fault has been caused, or contributed to, 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 or amendments of or additions to the Standard Software not authorised by Licensor; (d) use of the Standard Software in a manner or for a purpose or in a context for which it was not designed or outside the terms of these terms and conditions; (e) accident, negligence, or misuse of the Standard Software; (f) use of the Standard Software in combination with any other software not provided or pre-approved by the Licensor; (g) not loading the Standard Software onto Licensor-specified or suitably configured equipment; and furthermore, in respect of any Licensee reported defect or fault 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.

#### **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.

### **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(s) and the Materials and refund any of the license fee(s) paid by the Licensee as at the date of termination (less a reasonable sum in respect of the Licensee's use of the Standard Software to the date of termination) on return of the Standard Software and all copies thereof. 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.

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#### **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 license(s) of the Standard Software is negotiated and agreed upon on an individual basis in the respective agreement. The prices for the Standard Software license(s) 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 9% per annum above the 3 month Euribor (Euro Interbank Offered Rate) base rate from time to time. 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 recognised 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**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

##### **13.2 Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

##### **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.

##### **13.4 Third-Party Rights**

13.4.1 The Licensor and the entities referred to in clause 7.1.4 may enforce the terms of clause 7 subject to and in accordance with this clause 13.4, these terms and conditions and the Contracts (Rights of Third Parties) Act 1999.

13.4.2 It is agreed that it is intended to confer a benefit on the Licensor and its Affiliates by making the exclusions and limitations of liability available to them in accordance with these terms and conditions, provided that the rights of such Affiliates under this license shall only be enforceable by the Licensor on their behalf. The Licensor will owe no duty to them to enforce such rights and it may conduct or compromise any relevant proceedings as it sees fit.



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13.4.3 Except as provided in clause 13.4.1 and clause 13.4.2, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

13.4.4 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any person that is not a party to this agreement.