

## **General Terms and Conditions for the Performance of Services by secunet (as per 08/2021)**

### **§ 1 General**

- (1) As secunet shall be considered secunet Security Networks AG as well as secunet International GmbH & Co. KG, secunet International Management GmbH, secustack GmbH and stashcat GmbH. secunet Security Networks AG holds directly or indirectly at least 50 % of shares or voting rights of these companies.
- (2) All agreements that include an amendment, supplement, deletion or clarification of these General Terms of Business – wholly or partly – require at least text form. The same applies to the amendment or deletion of this text form requirement.
- (3) Deviating – conflicting or amending – general terms and conditions shall not become part of the contract unless their validity is explicitly agreed to at least in text form.

### **§ 2 Usage rights**

- (1) secunet grants to the customer a non-exclusive usage right to the contractual object that is limited in content to the purpose of the Agreement and limited geographically to the location of the contractual use. Depending on the contractual purpose, this right may be open-ended or temporarily limited. The usage rights may be subject to further special limitations.
- (2) If secunet provides enhancements, updates, upgrades etc. for the customer that replace a previously provided contractual object, these new versions shall be subject to the stipulations of these Terms and Conditions of Business. In this case, the customer's authorisations in respect of a previously provided contractual object under this Agreement shall lapse, even without an express demand for surrender.
- (3) The customer undertakes to return to secunet any previously provided contractual object without due delay on termination of the usage authorisation or, if and for such period as it is subject to a statutory duty of a longer retention period, without undue delay on termination of the retention period and to delete all copies made itself without undue delay. secunet shall be assured on demand in writing that this has been complied with. This paragraph shall apply accordingly in the event of a determination of the agreement and withdrawal from the Agreement.
- (4) The software includes open-source components. The customer undertakes to comply with the relevant licensing terms, which secunet shall provide in advance on request.

### **§ 3 Obligations of the customer**

- (1) If the delivered goods are an electrical/electronic device or contain an industrial battery or if the packaging is not subject to system participation, secunet offers the customer, at the customer's request – to be expressed in writing at the time of conclusion of the purchase contract – to take over disposal against reimbursement of the actual costs incurred in accordance with the

statutory provisions. Otherwise, the customer shall assume the obligation to properly dispose the delivered goods and packaging at its own expense in accordance with the statutory provisions after termination of use. In this case, the customer shall indemnify secunet and secunet's suppliers against claims of third parties related to those statutory obligations.

- (2) The customer shall contractually oblige commercial third parties to whom he passes on the delivered goods to properly dispose the delivered goods after termination of use at their expense in accordance with the statutory provisions and to impose a corresponding obligation in the event of renewed passing on of the goods. If the customer fails to contractually obligate commercial third parties to whom he passes on the delivered goods to assume the obligation to dispose of the goods and to impose a corresponding obligation, the customer shall be obligated to take back the delivered goods at his expense after termination of use and to properly dispose them in accordance with the statutory provisions. In this respect, too, the customer shall indemnify secunet and secunet's suppliers against the statutory obligations and the related claims of third parties.
- (3) These provisions shall apply within the scope of application of the relevant European legal acts, including their respective implementation into national law, provided that mandatory law or mandatory official orders do not prevent the implementation of these provisions.
- (4) Furthermore, the customer is not entitled, unless expressly agreed otherwise with secunet, to obtain further business secrets by observation, investigation, dismantling or tests ("reverse engineering"), insofar as these provided products and objects are not publicly available.

### **§ 4 Passing on of the Subject Matter of the contract**

The customer may only disseminate the contractual object to a third party homogeneously and by way of full and final surrender of its own use of the contractual object. A temporary or partial transfer of use by third parties for consideration is prohibited, irrespective of whether the contractual object was transferred in a tangible or intangible form.

### **§ 5 Term, termination**

- (1) The contractual term for recurring services is one year unless agreement to the contrary has been made. Absent a termination at least three months prior to the expiry of the term, the Agreement shall be extended by a further year at a time.
- (2) secunet may terminate any agreement without notice or withdraw from the Agreement if the customer has applied for the initiation of insolvency proceedings or if the customer discontinues its payments for more than a temporary period or if insolvency proceedings have been initiated over the customer's assets or such initiation has been rejected due to lack of assets.

## § 6 Collateral

- (1) secunet shall retain title to any transferable contractual objects until full payment of the due remuneration (reservation of title).
- (2) The customer may neither pledge this contractual object nor assign it by way of security.
- (3) Until full payment has been made, selling on or processing by the customer shall only be permitted within the framework of the remaining provisions of this Agreement on condition that the customer effectively assigns to secunet by way of security its claims against its buyers arising from the selling-on or on other legal grounds and that, on selling on, the customer transfers the property to its buyer subject to payment. secunet revocably authorises the customer to collect the assigned claims in its own name for its own account. This collection authorisation may only be revoked if the customer does not properly comply with its payment obligations.
- (4) Further, secunet reserves the grant of the usage rights to the respective contractual object accruing to the customer under this Agreement until full payment of the fee due is received. Paragraphs (2) and (3) apply accordingly to this extent. Use by the customer for test purposes is temporarily permitted.

## § 7 Set-off, right of retention

- (1) The customer shall not be entitled to set off any claims unless such claims are undisputed or have been finally judicially determined or unless such claims arise from the same contractual relationship.
- (2) The customer shall not be entitled to exercise a right of retention unless the claims are undisputed or have been finally judicially determined or unless such claims arise from the same contractual relationship.

## § 8 Remuneration

secunet's prices are EXW (Incoterms 2020) and net of any VAT that may be due. Remuneration is due and payable 30 days after invoicing. Any agreed remuneration for continuing obligations (e.g. support) shall be payable in advance.

## § 9 Material and legal defects

- (1) The customer undertakes to examine the supplied contractual object on delivery without undue delay and to notify secunet of any defects also without undue delay. If the customer omits the notification, the contractual object shall be deemed approved unless the defect was not apparent on examination. Notification of such a latent defect must be made on discovery without undue delay; otherwise the contractual object shall also be deemed approved in respect of this defect. The customer shall have complied with its duties of notification by prompt submission of the notice. The provisions of this paragraph shall not apply for any defects that secunet fraudulently conceals.
- (2) On notification of a defect, the customer shall describe the issues occurring as specifically and state the symptoms and shall support secunet in its error analysis and defect rectification by providing secunet with

comprehensive information and enabling access to the contractual object. If required, the customer shall remove any data, data media, modifications and enhancements prior to rectification of the defect.

- (3) secunet warrants that contractual use is not precluded by any third-party rights. If a third party brings a claim against the customer to the extent that a secunet service is breaching its rights, the customer shall notify secunet without undue delay. Both secunet and its suppliers are entitled, but not obliged, to defend the claims asserted each at their own expense to the permissible extent. The customer is not permitted to acknowledge third-party claims without the prior consent of secunet or to admit to the underlying facts or to enter into a settlement in this respect.
- (4) For material and legal defects, subsequent performance will be rendered at secunet's election either by rectifying the defect or re-manufacture. secunet may elect to perform the rectification of the defect at the customer's or its own premises or instruct third parties to do so. secunet may also perform services by way of remote maintenance in consultation with the customer. In the case of defective software, secunet may also render subsequent performance by showing the customer ways of preventing the effects of the defect. The customer shall accept a new or previous program version of equivalent value that does not contain the defect if it is reasonable for it to do so.
- (5) If subsequent performance is not possible for secunet or is only possible at disproportionate effort, secunet has the right to take back the contractual object against reimbursement of the remuneration paid less a sum that takes the period of use into account. In this case the customer is obliged to return the contractual object.
- (6) A merely insignificant diminution of quality does not represent a defect.
- (7) If secunet provides services at the customer's request during the search for or rectification of errors without being obliged to do so, secunet may charge for this in line with its standard rates. This applies in especially where no defect is identifiable.

## § 10 Default

- (1) If the performance of services by secunet is delayed for reasons for which the customer is at fault or that lie within its sphere of risk, secunet may demand appropriate compensation.
- (2) If the customer fails to comply with its duty of cooperation for reasons for which it is at fault or that lie within its sphere of risk, it shall be required to reimburse secunet for the additional expenditure arising as a result.

## § 11 Liability

- (1) Irrespective of the legal grounds, secunet shall only be liable for compensation for damages and reimbursement of wasted expenditure in the event of wilful conduct or gross negligence or culpable breach of a cardinal contractual duty. In the event of a breach of a cardinal contractual duty, secunet's liability, except in cases of wilful conduct or gross negligence, shall be limited to the typically foreseeable damage. The foregoing limitations of liability shall not apply in the event of personal injury,

statutory liability under product liability legislation and a guarantee assumed by secunet vis-à-vis the customer.

- (2) secunet's liability for data loss is limited to the cost of restoration that would have been incurred for the regular and risk-appropriate creation of permissible backup copies and performance of necessary precautionary measures in the customer's area of responsibility. This is without prejudice to section 254 German Civil Code (BGB).
- (3) The foregoing limitations of liability shall also apply directly vis-à-vis the employees, representatives and vicarious agents of secunet.

## § 12 Statute of Limitation

The limitation period for warranty and compensation claims by customer against secunet is one year from the commencement of the statutory limitation period. If legislation provides for maximum periods for the limitation of compensation claims, the claims shall become time-barred no later than on expiry of these statutory maximum periods. Claims to the refund of the purchase price following withdrawal or reduction, which can only be declared within a year of delivery of the contractual object, shall become time-barred no earlier than three months after the submission of the declaration of withdrawal or reduction by the customer, i.e. no later than fifteen months following the delivery of the contractual object. In the event of wilful conduct or gross negligence on the part of secunet, of fraudulent concealment of a defect, of personal injury or legal defects that constitute a third party's right on the basis of which the surrender of the contractual object can be demanded, of claims under product liability legislation and/or from a warranty assumed by secunet vis-à-vis the customer, the respective statutory limitation periods shall apply instead of the foregoing provisions.

## § 13 Confidentiality, Data protection

- (1) Confidential information comprises all information relating to matters that are connected to a commercial operation, are only known to a closely restricted group of people, i.e. are not in the public domain, and are to be kept secret due to a justified interest of the owner of the business, irrespective of their type or form. In particular this also includes verbal information, letters, memoranda, reports, documents, investigations, analyses, drawings, letters, computer print-outs, software programs, specifications, data, graphical presentations, tables, sound recordings, graphical reproductions and any kind of copy of the above information, for which the disclosing party has taken reasonable measures to keep the information secret.
- (2) The parties will treat the confidential information in strict confidence and not pass it to a third party without the prior written consent of the other party. Irrespective of the fact with which secunet-company this contract will be closed, no one of the following companies can be regarded as third party: secunet Security Networks AG, secunet International GmbH & Co. KG, secunet International Management GmbH, secustack GmbH, and stashcat GmbH The German Federal Office for Information Security (BSI), to which information may have to be

provided in individual cases, shall not constitute a third party within the meaning of these Terms and Conditions of Business. Each party may pass the confidential information to such employees as require the confidential information for purposes of performing the Agreement, provided the respective employee has undertaken to observe confidentiality by way of a written confidentiality obligation.

- (3) The foregoing obligation does not apply to information that
  - a) was already in the public domain at the point at which it was received by the receiving party;
  - b) was already in the possession of the receiving party at the point at which it was received by the receiving party;
  - c) was already in the public domain after its receipt without the involvement of the receiving party;
  - d) is made accessible by a third party with no obligation of secrecy and non-use, whereby it is assumed that such third parties did not receive the information directly or indirectly from the receiving party or
  - e) is required to be disclosed due to a statutory provision or a legally binding official or judicial ruling, provided the disclosing party notifies the other party of the confidential information to be disclosed prior to its disclosure.
- (4) Unless the parties have reached a contrary agreement, the confidentiality obligations under this clause shall come to an end five years after the winding up of the respective contractual relationship described by the proposal.
- (5) The parties to the agreement undertake to observe the General Data Protection Regulation (GDPR).

## § 14 Export restrictions

- (1) In the event of an export or cross-border transfer, especially a cross-border resale, the customer shall be responsible for complying with the applicable export control and customs regulations and other foreign trade regulations and for obtaining any necessary (export) permits from the competent authorities.
- (2) In the case of cross-border delivery and/or service relationships between the customer and secunet, the customer shall bear any customs duties, fees and other charges incurred. Within the framework of such relationships with secunet, he shall furthermore be responsible for checking and complying with regulations that govern import, export control, customs and other foreign trade to which he is subject. secunet is not obliged to provide consulting services in this respect.

## § 15 Final Provisions

- (1) secunet is entitled to outsource parts of the performance of the contract to third parties.
- (2) This contract relationship of the parties and all rights and obligations in connection therewith are exclusively governed by the law of the Federal Republic of Germany except the regulations referring to other legal systems. The application of CISG is excluded.
- (3) The exclusive venue for the contract relationship and all rights and obligations in connection therewith is Essen.

secunet may, at its option, sue the customer also at the place of his registered office. This choice of jurisdiction clause does not affect the right of the parties to apply for interim relief with the statutorily competent courts of jurisdiction.