

General Terms and Conditions for Suppliers to secunet Security Networks AG (as per 11/2010)

§ 1 General Provisions

(1) These General Terms and Conditions (hereinafter referred to as "GTC") shall apply to agreements between secunet and its suppliers on the procurement of product deliveries (purchase), services and work performance.

(2) Generally, the supplier is commissioned by means of an order placed by secunet referring to the offer submitted by the supplier and the supplier's order confirmation following the order.

(3) The parties acknowledge the exclusive applicability of these GTC as contractual basis for the performance to be effected. Any conflicting General Terms and Conditions of the Supplier shall be excluded.

§ 2 Remuneration, Due Date

(1) The amount of the remuneration for the respective performance effected by the contractor results from the order and is understood plus the applicable statutory VAT.

(2) The due date shall be 30 days after the invoice was made out by the contractor.

§ 3 Termination, Delivery of Documents

(1) In the absence in service agreements of a definite agreement on a specific scope of performance (e.g., term, number of deployment days), the parties to the agreement shall be entitled to terminate the agreement by the end of the month at 14 days' notice. Otherwise, due termination shall be by the end of the month at a month's notice.

(2) The right of both parties to terminate in exceptional cases for good cause shall remain unaffected. The ordering party shall be entitled to terminate the agreement for good cause, in particular in the event that the contractor has filed a petition to open insolvency proceedings, or that the contractor has discontinued its payments not only temporarily, or that insolvency proceedings have been initiated against the assets of the contractor or such initiation has been rejected for lack of assets.

(3) Notice has to be given in writing.

(4) In the event of a termination of the contractual relationship, the contractor undertakes to return to the ordering party all business documents and any business material. Furthermore, the contractor shall be obliged to delete all data connected with its activity on behalf of the ordering party on data carriers not to be handed over to the ordering party, and to confirm vis-à-vis the ordering party the complete return of all materials and the deletion of all data.

§ 4 Time of Performance, Passing of Risk, Acceptance, Cancellation, Passing of Ownership

(1) The contractor shall make available its performance to secunet without delay at the latest by the deadline agreed in the order and at the agreed place, with the performance being complete and, to the extent that work performance is concerned, ready for acceptance. The place of performance shall be the registered office of the ordering party in Essen or the receiving point specified in the order. The period for an examination by the ordering party in ac-

cordance with § 377 par. 1 HGB (Commercial Code) shall commence only after the subject matter of delivery has been installed and put into operation. The ordering party must notify the contractor within 14 days of apparent defects.

(2) The risk shall pass to the ordering party at the time of delivery or upon acceptance of a faultless item.

(3) Should the work performance be rendered in several parts, the acceptance shall be effected for the complete performance, unless otherwise provided for in the order. Regardless of whether the acceptance will cover a partial or the complete delivery, it shall be effected within 18 days as of the receipt of goods on secunet's premises or at the agreed place of delivery. The parties shall jointly determine and specify in writing the test and examination conditions required for the (partial) acceptance. Based on these test and examination conditions secunet shall examine and test the subject matter of the agreement, if necessary, involving the contractor. Both partial and complete acceptance shall be recorded in writing. Should the acceptance test show defects, the acceptance test shall be interrupted provided the defects are substantial. After notice of defects has been given, the term for the acceptance shall commence anew.

(4) If, after delivery or on the occasion of acceptance, the contractual performance or parts of it are rejected as not conforming to the agreement, the contractor shall be obliged to immediately take back the contractual performance at its expense.

(5) secunet shall be entitled to cancel partial performance the implementation of which has not yet been started. As a result of a cancellation, the total price shall be reduced by the individual price of the performance cancelled.

(6) After delivery up to the time of examination or acceptance, secunet shall ensure that technical and organizational measures are taken to safeguard the contractual performance.

(7) Ownership shall pass to the ordering party upon delivery or acceptance.

§ 5 Obligation to Examine and to Give Notice of Defects

In the event that the contractor receives goods with regard to which secunet has an obligation to examine and to give notice of defects, such as, e.g., in accordance with § 377 HGB (Commercial Code), the contractor shall be obliged to perform such obligation to examine and to give notice of defects instead of secunet.

§ 6 Changes to the Subject Matter of the Agreement

Up to delivery or acceptance, secunet shall be entitled to demand reasonable changes to the subject matter of the agreement. The supplier shall carry out such changes at the conditions and within the periods which are in conformity with the conditions calculated in the individual agreements. The agreed periods shall be extended to the benefit of the contractor if the agreed changes lead to delays which cannot be made up for in any other way.

§ 7 Defects in Purchases and Work Performance

(1) Claims based on defects in the subject matter of the agreement shall become statute barred 24 months after delivery or acceptance of the performance constituting the subject matter of the agreement, unless such claims are based on injury to life, limb or health or based on willful or grossly negligent acts.

(2) In the event of a defect, the contractor shall, at its discretion, remedy such defect by immediate removal or new manufacture.

Should the contractor fail twice in removing the defect within a reasonable period of time, secunet shall be entitled to grant a period of grace to the contractor. Upon expiry of such period of grace, secunet shall be entitled to demand reduction of the remuneration or rescission of the agreement and damages.

(3) The liability provisions laid down in § 9 shall also apply to claims arising from this section.

§ 8 Default, Damages Consolidated into a Lump Sum

(1) If the contractor fails to observe an agreed deadline for performance, e.g., for a partial acceptance or complete acceptance, the contractor shall be in default even without a reminder. In the event of default, secunet shall be entitled to grant a reasonable period of grace to the contractor. After expiry of this period, secunet shall be entitled to rescind the agreement in whole or in part and demand damages in lieu of performance.

(2) Should the contractor be in default in observing a performance deadline agreed in the agreement by more than seven calendar days, secunet shall be entitled to demand for each day of delay a contractual penalty amounting to 0.4% of the order value. For partial performance the contractual penalty shall be calculated based on its share in the order value. The total of the contractual penalty shall be limited to 8 % of the order value. The contractual penalties shall be credited against damages.

§ 9 Liability

(1) The parties to the agreement shall have unlimited liability in the event of

- intent,
- gross negligence,
- gross organizational negligence,
- as well as personal injury, or
- fraudulent concealment of a defect.

(2) The contractor shall have unlimited liability

- for warranties granted, and
- in the event of defects of title consisting in a third party right due to which it is not possible to use the subject matter of the agreement for the purpose assumed by the agreement.

(3) With regard to slight negligence, both parties shall only incur liability in the event of a breach of an essential contractual duty and such liability shall be limited to the typical foreseeable damage.

(4) On request, the contractor shall furnish proof of sufficient insurance cover for its liability risk by presenting its liability insurance policy. secunet shall be entitled to demand such proof at any time during the term of the contractual relationship.

(5) This shall be without prejudice to liability in accordance with the Product Liability Act.

§ 10 Copyright, License, Third Party Claims

(1) The contractor shall grant to secunet an irrevocable, transferable, non-exclusive license without limitations as to time and territory.

(2) To the extent that secunet contributes to the cooperation with the contractor works protected by copyright or other protected items, such as, e.g., patents, secunet reserves all pertinent rights. The contractor shall be granted licenses only to the extent needed by it to fulfil the respective purpose of the agreement.

(3) To the extent that, during the cooperation between secunet and the contractor, copyrights arise also for the contractor, the contractor shall grant to secunet the exclusive license with regard to time, territory and subject matter.

(4) The contractor shall be permitted to use third party components for producing the subject matter of the agreement provided the contractor remains in a position to transfer to secunet the rights required for serving the purpose of the agreement. In this case, the contractor shall grant to secunet a license which is non-exclusive, unlimited in time, irrevocable and transferable.

(5) Should a third party assert vis-à-vis secunet claims arising from patents, copyrights or other industrial property rights or other legal positions with regard to the subject matter of the agreement delivered by the contractor, secunet shall notify the contractor of this situation. The contractor shall take over representation of secunet in any litigation against it, and shall indemnify secunet with regard to such third party claims.

(6) Should third party claims exist, the contractor shall be entitled to secure for secunet the right to continue using the performance rendered by it, or to replace or change it in a way in which no third party rights are infringed such that the functionality of the subject matter of the agreement shall remain the same. The contractor is obliged to bear secunet's cost resulting from the need for secunet to change the subject matter of the agreement. If this is impossible, or secunet cannot be expected to do this, secunet shall be entitled to terminate the agreement. In addition, secunet shall be entitled to ascertain further damages.

§ 11 Force Majeure

In the event that, despite exercising reasonable care, one of the parties is prevented by force majeure, in particular as a result of the occurrence of unforeseeable, extraordinary circumstances (e.g., problems with energy supply, strike or lockout, operational breakdowns, war and unrest, natural disasters or fire, epidemics or quarantine, government measures or similar circumstances), from fulfilling its duty in due time or otherwise according to contract, said party shall, to the extent of the respective influence, be exempt from observing this duty or be entitled to postpone delivery of its performance by the duration of the impediment plus a reasonable start-up period. The parties shall immediately notify each other about events of force majeure.

§ 12 Set-Off and Right of Retention

The contractor shall only be entitled to a set-off if its claims have not been disputed or have become res judicata. The contractor shall only be entitled to assert a right of retention based on counterclaims arising from this contractual relationship.

§ 13 Duty of secunet to Participate

At the contractor's request, secunet shall make available to it free of charge the required information in good time and to a sufficient extent.

§ 14 Provision of Security Protection

secunet is a business under security protection and recognizes the binding character of the provisions of the security protection manual of the Federal Ministry of Economics and Technology. The security protection manual binds secunet to observe functional, organizational, personnel and material security protection measures. Should secunet plan to entrust the contractor with a sub-

order with regard to classified matters, for the execution of which classified parts of a classified order would have to be passed on to a subcontractor with regard to classified matters, this will be made dependent on the consent to be obtained from the client for the classified matter. A security protection clause will have to be included in the sub-order with regard to classified matters (cf. Annex 2 to the security protection manual).

§ 15 Confidentiality, Data Protection

(1) Confidential information shall be all information about facts related to a business, information that is only known to a very limited number of people, which means it is not common knowledge, and which, based on a justified interest of the owner of the business, is to be kept confidential, regardless of its nature and form. This also includes in particular oral information, written statements, memoranda, reports, documents, studies, analyses, drawings, letters, computer printouts, software programs, specifications, data, graphics, tables, sound recordings, image copies and any type of copies of the above-mentioned information.

(2) The parties to the agreement shall treat confidential information strictly confidentially and either party shall not pass it on to third parties without having obtained the other party's prior written consent. The Federal Office for Information Security (BSI) shall not be considered a third party as defined in these GTC, since in individual cases information must necessarily be disclosed to the BSI. They shall be permitted to pass on confidential information in each case to such staff members who need the respective confidential information for the purpose of executing the agreement, provided that the respective member of staff committed himself or herself in writing to observe confidentiality.

(3) The obligation to maintain confidentiality described above shall not apply to information which

- a) was already common knowledge at the point in time when it was received by the receiving party;
- b) was already known to the receiving party at the point in time when it was received by the receiving party;
- c) becomes common knowledge after it has been received without any involvement of the receiving party; or
- d) is made accessible by a third party which has no obligation to keep it confidential and refrain from using it, provided that such third party did not directly or indirectly receive such information from the receiving party;
- e) has to be disclosed based on legal provisions, final and absolute government or court decisions, provided that the disclosing party communicates to the other party the confidential information to be disclosed before it actually discloses it.

(4) Unless the parties have made other arrangements, the duty to observe confidentiality in line with this section shall expire five years after the respective agreement has been terminated.

(5) The contractor undertakes to observe the regulations laid down in the Federal Data Protection Act (BDSG), in particular § 5 BDSG.

§ 16 Sub-Contractors, Suppliers

(1) The contractor shall effect the performance with the help of personnel qualified to effect the agreed performance in line with the contractual agreements.

(2) The contractor shall be permitted to use sub-contractors to effect the performance. The contractor is obliged to immediately notify secunet should the performance be of relevance to security. In this case, the particulars have to be specified in the order.

§ 17 Concluding Regulations

(1) This contractual relationship shall exclusively be subject to German law to the exclusion of the UN Sales Convention and the rules of international private law.

(2) Alterations and supplements to these GTC must be made in writing.

(3) The exclusive venue for the contractual relationship and all rights and obligations connected with it shall be Essen. At its discretion, secunet shall also be entitled to bring an action against the contractor at the customer's registered office. The right of the parties to apply to the courts competent in each case for temporary relief shall remain unaffected by this venue clause.