

## **General Terms and Conditions of Business for Procurement of secunet (as per 05/2022).**

### **§ 1 General**

- (1) As secunet shall be considered secunet Security Networks AG as well as stashcat GmbH, SysEleven GmbH, secunet International GmbH & Co. KG, secunet International Management GmbH and secustack 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 Industrial property rights, usage rights, third-party claims**

- (1) The supplier grants to secunet
  - a non-exclusive, irrevocable, transferable, sub-licensable and unlimited usage right in terms of time, space and content to the standard software
  - an exclusive, irrevocable, transferable, sub-licensable and unlimited usage right in terms of time, space and content to all other delivery items (e.g. custom-made software, customized software, documentation, source code, concepts, etc.).
- (2) If secunet introduces copyrighted works or other protected items, such as patents, in the course of its collaboration with the supplier, secunet shall retain all rights thereto. The supplier shall only be granted usage rights to the extent necessary for the performance of the respective contractual purpose.
- (3) The supplier may use third-party components to produce contractual objects provided it remains able to transfer to secunet the necessary rights to fulfil the contractual purpose. In this case the supplier shall grant to secunet a simple, non-exclusive, irrevocable, transferrable, open-ended and geographically unrestricted usage rights.

### **§ 3 Remuneration, Due Date**

- (1) The amount of the remuneration for the respective performance effected by the supplier 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 supplier.

### **§ 4 Termination, amendment of the contractual object**

- (1) secunet is entitled to demand reasonable amendments to the contractual object up to the point of delivery or

acceptance. The supplier shall realise such amendments in compliance with the conditions and deadlines that correspond to the conditions calculated in the individual contracts. The agreed periods shall be extended in favour of the supplier if the agreed change causes delays that cannot be otherwise allowed for.

- (2) secunet is entitled to cancel any partial services for which realisation has not yet been commenced. A cancellation will reduce the overall price by the unit price of the cancelled service.
- (3) secunet may terminate the Agreement without notice or withdraw from the agreement if the supplier has applied for the initiation of insolvency proceedings or if the supplier discontinues its payments for more than a temporary period or if insolvency proceedings have been initiated over the supplier's assets or such initiation has been rejected due to lack of assets.

### **§ 5 Warranty**

- (1) The supplier shall remedy any defect by way of immediate rectification or re-manufacture at its election. The statutory provisions apply in all other respects.
- (2) secunet's investigation period pursuant to section 377 (1) German Commercial Code (HGB) shall only commence once installation and commissioning of the delivery item is complete. secunet is required to raise complaints about apparent defects within 14 days.
- (3) If defects are notified within the inspection period, the inspection will be suspended where such defects are material. The inspection period shall start to run anew following the notification of a defect and renewed provision of the contractual object.
- (4) If a third party makes a claim arising from patents, copyright or other industrial property rights against secunet due to contractual objects provided by the supplier, secunet shall notify the supplier accordingly. The supplier shall, at its own expense, be responsible for the representation of secunet in any legal dispute conducted against it and indemnify secunet against any third-party claims of this type.
- (5) If any third-party claims pertain, the supplier is entitled to guarantee secunet the right of further use of the services rendered by it or to replace or amend them in such a manner that no infringement of third-party rights occurs and equivalent functionality of the contractual objects is guaranteed. The supplier undertakes to cover secunet's costs that arise as a result of secunet having to alter the contractual objects. If this is not possible or unreasonable for secunet, secunet may terminate the Agreement. secunet is entitled to assert compensation claims in addition.

### **§ 6 Serial defects**

- (1) A serial defect shall be deemed to exist if at least 5% of similar supply items or components that secunet receives from the supplier exhibit comparable defects for which the defect claims are not time-barred. Delivery items or components are generally deemed to be similar if they exhibit identical characteristics regarding their type, operating principle or purpose of deployment

and as such are distinct from delivery items and components of another kind.

- (2) In the event of a serial defect, secunet shall be entitled to claim subsequent performance from the supplier in accordance with clause 3 (1) for all similar delivery items, irrespective of whether the defect has actually occurred, provided the claims in respect of these delivery items have not become time-barred.
- (3) If the supplier is able to prove that only delivery items from a specific batch are affected, secunet's claim under these provisions shall be limited to the delivery items from the batch in question.

## **§ 7 Default**

- (1) If the supplier fails to comply with an agreed date for performance, for example for a partial or full acceptance, it shall be in default without a warning being required. In the event of default, secunet may demand that the supplier renders performance following a suitable grace period. On expiry of this period, secunet may withdraw from the Agreement in full or in part and demand compensation in lieu of performance.
- (2) If the supplier is in default of more than seven calendar days with respect to a performance date set down in the Agreement, secunet may demand liquidated damages at 0.4% of the value of the order for each day of default. Liquidated damages for sub-services are based on the pro rata order value. The total amount of liquidated damages shall be limited to 5% of the order value. The liquidated damages shall be set off against any claims for compensation.

## **§ 8 Set-off, right of retention**

- (1) The Supplier 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 Supplier 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.

## **§ 9 General Duties of the Supplier**

- (1) The supplier undertakes to meet the requirements prescribed by law in order to place the subject matter of the agreement on the market.
  - a) The supplier especially undertakes to comply with statutory provisions concerning marketing, taking back and disposing of used electrical and electronic equipment in an environmentally friendly manner, and to meet the resulting obligations. The supplier is liable for enabling clear identification and verification of the manufacturer free-of-charge, especially within the context of statutory labelling obligations. Any provisions governing the transfer of the manufacturer's obligations or assumption of costs to secunet, within the context of disposing the object of the contract, shall not become part of the contract.

- b) The Supplier undertakes to comply with regulations on the electromagnetic compatibility of operating equipment and to fulfil the obligations arising from them insofar as the object of the contract falls within the scope of these regulations. At secunet's request, the supplier shall in particular be obligated to immediately send the EU declaration of conformity to secunet, to carry out the CE marking and other legally required markings, and to provide other information to identify the object of the contract.

- (2) To the extent that the requirements prescribed by law with regard to placing the subject matter of the agreement on the market cannot be raised by the supplier, the supplier undertakes to support secunet in complying with the statutory requirements.

## **§ 10 Minimum Wage**

- (1) The supplier undertakes to pay the employees a remuneration at least equal to the respective minimum wage. Upon request, appropriate documentation must be provided to prove that these provisions are being complied with.
- (2) The supplier shall also oblige any joint subcontractors/factories or service providers to comply with the requirements regarding the payment of a minimum wage.
- (3) The supplier shall release secunet from all obligations and damages arising from a breach thereof.

## **§ 11 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 contracting 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 contracting party. secunet Service GmbH, secunet International GmbH & Co. KG, secunet International Management GmbH and secustack GmbH to which information necessarily have to be provided in order to realize the purpose of the contract, shall not constitute a third party within the meaning of these Terms and Conditions of Business. 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 or;
  - 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;
  - 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) On determination of the contractual relationship, the supplier undertakes to surrender all commercial documents and all commercial material to secunet. The supplier further undertakes to delete all data connected to its activity for secunet from data media that do not need to be surrendered to secunet and to confirm to secunet the complete surrender of all materials and the deletion of all data.
- (5) 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.
- (6) The supplier is obliged to comply with the General Data Protection Regulation (GDPR).

## **§ 12 Subcontractors, suppliers**

- (1) The supplier shall render the performance through staff that is duly qualified in accordance with the stipulations of the Agreement to render the specified performance.
- (2) The supplier may deploy subcontractors to render the performance. It undertakes to notify secunet without undue delay in the event of any services that are relevant to security. The details shall be stipulated in the order.

## **§ 13 Final Provisions**

- (1) secunet is entitled to outsource parts of the performance of the contract to third parties.
- (2) The place of performance is the place of the registered office of secunet in Essen, Germany.
- (3) 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.
- (4) 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.