

**General Terms and Conditions  
for the Performance of Services by secunet  
(as per 05/2018)**

As secunet shall be considered secunet Security Networks AG as well as secunet Service GmbH, secunet International GmbH & Co. KG and secunet International Management GmbH. secunet Security Networks AG holds directly or indirectly at least 50 % of shares or voting rights of these companies.

**§ 1 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 undue 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.

**§ 2 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.

**§ 3 Term and 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.

**§ 4 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.

**§ 5 Set-off and right of retention**

A set-off by the customer is only permissible for claims that are undisputed or that have been finally determined by a court. The supplier may only assert a right of retention in the event that counterclaims pertain under this contractual relationship.

**§ 6 Remuneration**

secunet's prices are ex works (Incoterms 2010) 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.

**§ 7 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.

**§ 8 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.
- (3) In the foregoing cases, secunet is entitled to estimate the sum owed by the customer by calculating "contingency costs". Contingency costs are estimated at 50% of the agreed daily rate for the employees envisaged for deployment at the customer, calculated from the third day of the delay for which the customer is at fault. If no daily rate has been agreed, €700.00 shall be charged as contingency costs. The customer reserves the right to demonstrate to secunet that secunet either suffered no damage or substantially lower damage as a consequence of the delayed deployment of the employees.

**§ 9 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.

**§ 10 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.

**§ 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.
- (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. 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. secunet Service 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. 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).

**§ 12 Final Provisions**

- (1) All agreements that include an amendment, supplement, deletion or clarification of these General Terms of Business – wholly or partly – require written form. The same applies to the amendment or deletion of this written form requirement.
- (2) secunet is entitled to outsource parts of the performance of the contract to third parties.
- (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