

# General Terms and Conditions

## **SECURA B.V.**

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## 1. GENERAL TERMS & CONDITIONS

### 1.1. Applicability

- a) These General Terms and Conditions are applicable to and form an integral part of all Agreements and all offers, purchase orders or tenders issued by Secura, and exclude any (general) purchase or other conditions of the Client unless specified and agreed upon in a separate signed and countersigned contract stating prevalence of conditions.
- b) Once these General Terms and Conditions have been applicable to a legal relationship between Secura and the Client, the Client is deemed to have consented in advance to the applicability of these General Terms and Conditions to Agreements entered into and to be entered into thereafter.

### 1.2. Delivery of Services

#### 1.2.1. Mutual Obligations

- a) Secura shall perform the Services with due skill, professionalism and care, in accordance with the offered and/or contracted Services and professional standards, using the proper materials and or systems and employing sufficiently qualified staff.
- b) The Client ensures that Secura is able to perform the services under statutory working conditions, providing proper working space and adequate working facilities. The Client will provide Secura in advance with the actual security policies, house rules and procedures that need to be followed by Secura. Secura will act accordingly.

#### 1.2.2. Delays, Postponement and Cancellations

##### a) Delay

Fees apply, to all services in scope of the agreement, in case of:

- a delay requested by the Client
- a delay due to the system under test not being ready at start date
- a delay due to not meeting agreed start criteria (e.g. required documentation or test environment).

In case of a such a delay, the following fees apply (in addition to the original price of the services in scope):

- No additional cost if Client postpones the agreed services up to 10 business days before planned start date (except for international travel and stay costs);
- 30% of the agreed price if Client postpones the delivery of the agreed services within 10 to 6 business days before the planned start date.
- 60% of the agreed price if Client postpones the delivery of the agreed services within 5 business days before the planned start date or upon the planned start date.

Client can delay a project with a maximum of 60 business days. A delay of more than 60 business turns into a cancelation initiated by Client (cancelation conditions apply).

##### b) Cancellation

If Client cancels a project (up to 10 business days before the planned start date), 20% of the original price of the services in scope will be charged. In case this happens less than 10 business days before the planned start date, the same percentages will be charged as in case of a Delay.

- c) None of the (delivery) periods stated or agreed by Secura are final deadlines. Secura will make a reasonable effort to honour the (delivery) periods as much as possible. Secura is entitled to suspend fulfilling its (upcoming ) obligations under an Agreement in the event that the Client fails to fully meet his (payment) obligations and/or fails to do so in time. Any adverse effects due to the suspension will be for the expense of the Client.

### **1.3. Pricing, invoicing and payment**

All prices agreed to are in EURO and are exclusive of value added tax (VAT), any other form of tax levied by the Government, and international travel and accommodation expenses. Travel- and accommodation expenses within the Netherlands are included in prices. Secura has the right to adapt prices once a year on January 1<sup>st</sup> according to the Eurostat services producer price index (SPPI).

Secura's invoices comply with the legal requirements in the European Union. The Client is due to payment within 14 days after the date of receipt of the invoice. If invoices are not paid after these 14 days, the Client falls short of his obligation and is bound to pay 1% interest per month without prejudice. All costs made in the pursuit of the receipt of the amount of the invoice (judicial and non-judicial costs) are for the Client, notwithstanding the fact that Secura remains fully entitled to the payment of the invoice.

## **2. PERFORMANCE OF THE AGREEMENT**

### **2.1. Preparation of the execution of Services**

For an efficient performance of the agreed Services, Parties inform each other fully, timely, adequately and correctly. If the necessary preparations are not completed in time, this will affect the performance within the set time frame. Upon mutual consultation the scope may be redefined or the assignment might be postponed taking into consideration article 1.2.2 subsection a).

### **2.2. Replacement of employee(s)**

Secura is entitled to replace her employee(s) with employee(s) with similar qualifications during the assignment in situations Secura deems such replacement necessary.

### **2.3. Publication**

Parties – including any third parties involved – will not in any way publish or express in any written or oral form the existence of the Agreement, the content of the Agreement (in draft or final version) or subsequent documents or the intention to come to these Agreements, without their prior written consent by all Parties.

### **3. LICENCE CONDITIONS FOR SOFTWARE AND PRODUCTS**

#### **DELIVERED BY SECURA**

##### **3.1. Applicability**

- a) The terms Software and Product refer to any software, code, application, mobile app, or physical appliance that Secura offers commercially. The conditions in this chapter three, are not applicable to Software-as-a-Service implementations.
- b) By installing, copying or otherwise using the Software or Product, the Client agrees to be bound by all of the license conditions for Secura Software and Products as expressed in this document.
- c) The Software or Product is provided "As Is", without warranty of any kind, express or implied, including but not limited to the warranties of fitness for a particular purpose and noninfringement.

##### **3.2. Right of use**

- a) The license grants the Client the following rights: to install, use, run or otherwise interact with no more than the number of licenses ordered, each on a single computer.
- b) Secura reserves the right to replace, modify, or upgrade the software or product.
- c) Client may not transfer, sell rent, lease, lend, sublicense, copy, modify, translate, time-share or electronically transmit media or documentation unless agreed otherwise.
- d) Client acknowledges that the software in source code form remains a confidential trade secret of Secura and therefore the Client agrees not to modify the software or product or attempt to reverse-engineer, decompile, or disassemble the software or product, or use (parts of) the software or product to create a derivative work.
- e) Usage of Software or Products for attacking targets without prior mutual consent is illegal in most countries. It is the end user's responsibility to obey all applicable local, state and/or federal laws. Secura assumes no liability and is not responsible for any misuse or damage caused by (ab)use of the Software.

##### **3.3. Software & Intellectual property Rights**

- a) Client acknowledges that all Intellectual Property (IP) rights, titles, and interests in and to the Products and the Software, together with its source codes, sequences, derivative works, interfaces, any documentation, data, trade names, trademarks, or other related materials (collectively, the "IP portfolio"), is, and at all times shall remain, the sole and exclusive property of Secura.
- b) The IP portfolio contains trade secrets and proprietary information owned by Secura and is protected. Except the right to use the Software or Product, as expressly provided herein, these General Terms & Conditions do not grant to Client any rights to, or in, patents, copyrights, database rights, trade

secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licenses with respect to the Services or the Software.

### **3.4. Service Level Agreement (on Software and Products delivered by Secura)**

- a) The Service Level Agreement (SLA) entitles the Client to technical support Services (specified below), on lawfully licensed Software and Products. The following elements will be part of the SLA:
  1. **Secura Helpdesk:** Access to the Secura Helpdesk for questions and support with operational problems with installation of new releases.
  2. **New releases:** Secura continuously works on improving its software and products and adding functionality. This may lead to new releases. New releases of (components of) the software or product can be downloaded by the Client. New releases will be backward compatible as much as possible.
  3. **Bug fixing:** In the case the Client discovers an error in the software or product, Secura will investigate the issue and try to come up with a solution (bug fix or new release). Secura will keep the Client informed.
- b) The Support Contract fee is 20% of the official list price of the software licenses and products, per year, and is mandatory. The fee will be charged in advance, thirty days before the commencement of the next succeeding year, and shall be paid by the Client no later than the first day of that next succeeding year. Where the Support Contract does not cover an entire year the Service fee shall be calculated pro rata.
- c) Secura guarantees that the support shall be carried out professionally and in accordance with reasonable standards. Secura does not guarantee that the software and product shall operate without interruption or problem or that every software or product error can be remedied or relieved.
- d) The SLA will be agreed upon for a given period between the Client and Secura. The term of the contract shall be extended automatically by the term of the original period each time, unless the Client or Secura terminates the contract in writing with due observance of a notice period of one month prior to the end of the Support Contract.

## **4. LIABILITY**

### **4.1. Approval & Liability of Secura under normal performance of security assessments**

#### **4.1.1. Approval**

Performing security assessments by breaking into computer systems, software programs or hardware is illegal in most countries. By signing an Agreement, a Master Agreement or a Purchase Order the Client explicitly approves the execution of assessments by Secura. If other Parties are involved, Client will arrange their approval in writing prior to the start of the assessment.

#### **4.1.2. Indemnification**

In accepting these General Terms and Conditions, Client authorises Secura B.V. to perform a security assessment at the location of Secura offices, Client offices and/or remotely via internet. The scope of these tests has been defined in the intake form or other agreements between Secura and Client. Client

declares that it is legal owner or holder of the objects in the scope and therefore has the authorisation to permit Secura B.V. to perform the specified assessment on these objects during the engagement.

Client acknowledges and agrees that Secura uses amongst others:

- Technical operations, false signals, keys or identity to gain access to the Client's automated systems and data.
- Copying and storing data encountered on the Client's automated systems.
- Use of computing capacity of the Client's automated systems.
- Processing, transferring or changing the data encountered on the Client's automated systems and appending data to it.

Client also acknowledges that in performing security testing, Secura B.V. may gain access to Client information or Client automated systems, other than specified in the scope, as a result of a successful penetration. Client agrees that this is acceptable and without consequences .

Client further declares it shall indemnify and hold harmless Secura B.V. and any company owned by, or affiliated with Secura B.V. and their respective officers, directors, principals, employees and affiliates, against any losses, costs (including costs for legal assistance), damage, demands, liabilities and claims - including claims by Third Parties - , missed savings and loss of business continuity that may be caused by or ensue from the execution of the engagement, except where caused by malicious intent or gross negligence on the part of Secura B.V.

#### **4.2. Liability in case of under performance or professional errors**

In case of professional error or underperformance, Parties will provide each other with a reasonable, agreed, timeframe to rectify any shortcomings without the prejudice to claim the actual directly related damages of the Party involved. The liability of Secura will be limited to the contracted price for the Services.

## **5. CONFIDENTIALITY**

### **5.1. Confidential Information & the process of handling of confidential information**

#### **5.1.1. Applicability**

The confidentiality clauses in this document are applicable to all confidential information received by either Party, or generated in or by the execution of a contract by Secura. This includes, but is not limited to, information on specific vulnerabilities, designs, reports, credentials, contracts and personal information. This Confidentiality shall survive the contract for seven years after which Parties are no longer obliged to these General Terms and Conditions regarding Confidentiality. If either Party wishes to maintain other arrangements, Secura is willing to sign or provide other, specific Non-Disclosure Agreements (NDA).

#### **5.1.2. Obligations**

"Confidential Information" means all information of a confidential and/or proprietary nature, provided by or on behalf of a Party, directly or indirectly, in whatever form (including on paper, electronically, on magnetic media, orally or otherwise). The Receiving Party agrees that, unless the Disclosing Party gives its prior written authorization, it shall:



- a) not use the Confidential Information disclosed by the other for any other purpose than for the Services and;
- b) protect the other Party's Confidential Information against disclosure in the same manner and with the same degree of care, but not less than a reasonable degree of care, with which the Party protects Confidential Information of its own and;
- c) limit circulation of the Confidential Information disclosed by the other Party to only employees of the Parties and of their Affiliated Companies that have a need to know in connection with the services.
- d) The Confidential information may not be passed to third parties without prior written consent of the Disclosing Party. Any Third Party acting for or under the instructions of the Receiving Party shall be considered an integral part of the Receiving Party.

### **5.1.3. Exclusion**

The following information is explicitly excluded from this confidentiality clause:

- a) Information which is already known to the recipient before entering into an Agreement.
- b) Information that is already publicly known (as long as the recipient didn't wrongfully release it to the public).
- c) Information that is independently developed by the Recipient without reference to or use of the Confidential Information of the Disclosing Party.
- d) Information that is disclosed to the Recipient by some other Party who has no duty of the confidentiality to the Disclosing Party.

### **5.1.4. Forced Disclosure**

Recipient shall not be in breach of these General Terms and Conditions if it forced to disclose Confidential Information as a results of legal obligations, court orders or orders by official regulatory bodies. In such cases, the counterparty must be informed of this forced disclosure in writing, prior to the actual provision of Confidential Information to such Third Parties.

## **5.2. Breach of confidentiality**

Any breach related to the Confidential Information provisions may cause to the other Party harm. The Disclosing Party shall be permitted to seek injunctive relief to prevent and limit any such harm without prejudice to the right to hold the Party that caused the breach liable for damages that occur as a direct result of the breach. Parties will act upon common practice.

## **6. INTELLECTUAL PROPERTY RIGHTS**

All IP Rights that are connected to the delivery of Services, Products or Software remain at the property of the Delivering Party unless stated otherwise by Agreement, Master Agreement or Purchase Order. The Receiving Party will only gain the right to use, gain entitlements to the services only serving the purposes as expressed in writing. The owner of IP Rights does not allow the other contracting Party to alter, change, delete, copy, film, share, photograph, modify, publish, exploit the IP Rights, unless prior written consent is given. The owner of IP Rights is allowed to take technical measures protecting the contractually limited use of its IP Rights.

A transfer of IP rights can only be achieved by prior written agreement of the Parties involved. This does not restrict the original owner of the IP Rights to exploit or use these IP Rights for purposes of own use or the for the use of other parties.

Parties guarantee that there are no Third Party IP Rights that conflict with the sharing of information, software, hardware, programs, material of websites, design material for usage, processing, installing, incorporation or implementation. They indemnify each other against any claim or actions based on damages, costs and expenses (including but not limited to loss of profit and reasonable attorneys' fees) based upon infringement of any Third Party IP Rights.

## **7. DATA PROTECTION**

All Parties subject to contractual relations comply with the applicable data protection regulations, laws and regulatory obligations. If there appears to be a Controller and Processor relationship Parties will arrange their mutual obligations and responsibilities in a Processing Agreement prior to the start of the underlying business contract. Each of the parties involved will bear their own liability regarding compliance and proper organisational and technical protectionary measures.

## **8. MISCELLANIOUS**

### ***8.1. Termination of Contract***

All clauses in these General Terms and Conditions (like prapgraph 3.2 and 3.3, article 4, 5, 6 and 7, but not limited to) , the Agreement, Master Agreement or Purchase Order that are destined to survive the termination or the expiration of these documents, shall survive the termination and expiration of these documents.

### ***8.2. Invalidness of provisions***

If any of these provisions and/or provisions in an Agreement, Master Agreement or Purchase Order becomes invalid by law, or will be held unlawful or unenforceable by court or by any future legislative or administrative action, this will not in any way effect the remaining provisions. If any provision that is held invalid, unlawful or unenforceable, the Parties will draft a substitute provision that reflects the original intention of the former provision in a way that is permissable under applicable law.

### ***8.3. Force Majeure***

If a Party is prevented from performing any of its contracted obligations for reason of force majeure (an unforeseeable event beyond control of a party to the Agreement, Master Agreement or Purchase Order), the performance or delivery shall be suspended and Parties will define the period of force majeure and seek for alternative ways to provide the services without any liability.

### ***8.4. No beneficiary effects for employees deriving from contracts***

Parties warrant that no employee of any Contracting Party will receive from the other Party any direct or indirect benefit arising from the to be settled or accept any gift or award contract. Failure to comply with this provision shall constitute a breach of the contract at hand.

### ***8.5. Dispute Settlement***

The Agreement, NDA, Master Agreement or Purchase Order are governed and construed in accordance with the laws of the Netherlands. Any dispute between Parties shall be settled amicably by negotiation. A dispute that cannot be settled despite reasonable effort of the Parties involved, shall at the request of either Party be submitted to the Dutch Court. The United Nations Convention on International Sale of Goods shall not apply to any of the documents written between the Parties.

#### **8.6. Deposition**

These General Terms & Conditions, dated 25 June 2018 (and any subsequent modified versions), are deposited with the Chamber of Commerce in Eindhoven on June 25, 2018. These can be found at any time on: <https://www.secura.com/terms-conditions.html>