

## 1. Definitions

The following terms have the following meanings in these general terms and conditions:

- 1.1 **'GTC'** refers to these general contractual terms and conditions.
- 1.2 **'Service provider'** refers to Swiss IT Security AG (CHE-114.608.384), headquartered in Wettingen (Switzerland).
- 1.3 **'Customer'** refers to the natural or legal person who uses the service provider's services.
- 1.4 **'Services'** includes the services to be provided by the service provider under orders, contracts for work or purchase agreements, in accordance with the agreements made between the parties, including the distribution and sale of products, consulting, installation, operating, readiness and maintenance services, managed services and software development for customers.
- 1.5 **'Parties'** means both the service provider and the customer.
- 1.6 **'Products'** refers to hardware and software developed or distributed by the service provider, and own or third-party cloud services.
- 1.7 If the **'written form'** is required in accordance with the GTC or if a **'written'** agreement has to be concluded, the written form requirement shall be met if the relevant agreement bears the handwritten, electronic or digital signatures of both parties. The written form requirement within the meaning of these GTC is also met if the corresponding declarations of intent required for an agreement arise from emails exchanged between the parties, even if these do not contain a handwritten, electronic or digital signature.
- 1.8 **'Fee'** refers to the price (fixed price, hourly rate, service fee, etc.) for the services to be provided by the service provider plus any surcharges, VAT, taxes, fees, customs duties, transport costs, transport insurance, packaging and other third-party costs that arise in connection with the provision of the service, expenses and travel costs.

## 2. Scope of the GTC

- 2.1 The service provider plans and implements IT security solutions for its customers. It also sells the products required for these solutions. These GTC apply to all goods and services that the service provider supplies and provides to its customers.
- 2.2 Deviations from these GTC are only valid if they have been agreed to in writing. If the parties make further agreements in addition to the GTC and there are contradictions, the following order shall apply, where the first agreements take precedence over the latter agreements:
  1. Written, individual agreements between the customer and the service provider;
  2. Service Level Agreement (SLA), provided that this has been concluded in writing; and
  3. These GTC.
- 2.3 If the customer has general terms and conditions that deviate from these GTC, the customer's general terms and conditions shall not be accepted. The customer's general terms and conditions are not recognised by the service provider as part of the contract and are not binding for the service provider.

## 3. Offer, acceptance, conclusion of contract

- 3.1 At the customer's request, the service provider will prepare a written offer in which the services and products to be provided, the billing type (fixed price, billing based on actual expenses, service fee, etc.), the fixed price, hourly rate or service fee for these services and products and any other conditions for the provision of services by the service provider are listed. Unless otherwise specified in the offer, the service provider is bound to its offer for thirty days from the date stated in the offer. This is the period of validity for the offer.
- 3.2 The contract between the service provider and the customer is concluded when the customer agrees to the service provider's offer without reservation and without any changes and within the period of validity for the written offer. The offer must be accepted in writing.
- 3.3 If the customer only agrees to the service provider's offer with a reservation or on the condition that certain changes are made, this constitutes a new offer. In this case, the contract is only concluded if the service provider gives its consent to the reservations or changes made by the customer in writing.

## 4. Goods or services provided by the service provider

- 4.1 The goods or services to be provided by the service provider are specified in the service provider's written offer or in the individual contracts concluded between the parties. The service provider's obligation to perform exclusively includes the services and product deliveries listed in the written offer or in the individual contracts.
- 4.2 Services to be provided by the service provider are generally provided by employees of the service provider or the Swiss IT Security Group. However, the service provider is also entitled to use third parties to provide its services. These third parties are not employed by the service provider or the Swiss IT Security Group. If the service provider does so, it shall notify the customer of this in advance.
- 4.3 Any service and delivery deadlines listed in the service provider's written offer or in the individual contracts are simply guidelines or approximate deadlines. As such, they are not binding unless the deadlines have been explicitly agreed as binding in writing. If there is no such explicit, written agreement, the service provider is entitled to set the date for service to be provided or to set the delivery period at its discretion and to schedule the provision of services and product delivery based on its capacity and availability.
- 4.4 It shall take the customer's interests into account to the greatest extent possible.
- 4.5 Delivery obligations and obligations to perform that are explicitly agreed as binding shall be extended if the customer does not fulfil its duties of cooperation or in the event of an unusual, unforeseeable event that delays the provision of services or delivery of products. In this case, the deadline will be extended by the duration of the event and a reasonable time thereafter. For example, exceptional events may particularly occur if there are natural disasters, armed conflicts, pandemics, epidemics, operational disruptions, strikes and industrial disputes, delivery delays on the part of one of the service provider's manufacturers, providers or suppliers, and in all cases of force majeure. The service provider is in no way liable for any delays in performance or delivery caused by such events. In particular, they do not give the customer the right to compensation or the right to withdraw from the contract.
- 4.6 If the provision of a service or the delivery of a product ultimately becomes impossible for the service provider, the service provider shall be released from its obligation to perform. Any advance payments already received for the provision of the service or the product delivery that has become impossible must be repaid to the customer. There is no such repayment obligation if the impossibility is caused by the customer, for example, if it has not fulfilled its duties of coop-

eration. In this case, the service provider is entitled to retain any advance payments already received and to demand compensation for any additional damage that it has suffered as a result of the customer's actions.

## 5. Customer's duties of cooperation

- 5.1 The customer is obliged to support the service provider in providing its services to the greatest extent possible. It is required to fulfil all of the prerequisites early on so that the service provider can provide its goods or services. This also includes informing the service provider about special features with respect to the existing IT environment or other relevant facts required to provide the service before the contract is concluded, if possible. If the customer did not notify the service provider of such special features prior to the contract being concluded and if this results in additional work, the service provider is entitled to adjust the agreed fee (also see point 6.2 of these GTC).
- 5.2 Before the service provider starts to provide services, the customer must ensure that its data is sufficiently secured (e.g. with respect to confidentiality, integrity, availability, etc.). Furthermore, the customer must immediately take all actions it is required to take so that the service provider can meet its obligation to perform and its delivery obligation. As an example, the customer must provide the service provider with keywords, passwords and other necessary access requirements as well as the data, information, infrastructure and documents in good time and free of charge, and grant the service provider access to the premises and IT and communication systems it requires to provide its services or deliver products. The customer is required to respond to service provider enquiries as soon as possible.

## 6. Fee, invoicing and due date

- 6.1 The service provider shall bill for its services and products either at a fixed price, based on hours worked, based on a service fee or as a combination of these billing methods. The type of billing method used is regulated in the written offer from the service provider or in the individual contracts. The customer is obliged to pay the service provider the fee listed in the written offer or agreed in the individual contracts on time.
- 6.2 If the parties have agreed on a fixed price for certain services or products, this fixed price only includes the services and products listed in the written offer. Additional services and products are to be compensated in addition to this. The fixed price is also based on the circumstances and basic principles the service provider was aware of when the contract was concluded. If the service provider was not aware of certain circumstances when the contract was concluded or if there are changes to basic conditions that could not be foreseen, it has the right to adjust the fixed price. If the service provider is required to carry out additional work because the customer does not properly fulfil its duties of cooperation, it is also entitled to adjust the fixed price.
- 6.3 If the parties have agreed to bill based on actual expenses for certain services, the service provider will charge the services to be provided based on the hourly rate agreed in its written offer or in the individual contracts. The customer is required to pay the following surcharges on top of the agreed hourly rate:
- **Provision of services from Monday to Friday between 7 am and 7 pm:** the customer is only required to pay the agreed hourly rate.
  - **Provision of services from Monday to Friday between 7 pm and 7 am:** the customer is required to pay a surcharge of 25% on top of the agreed hourly rate.
  - **Provision of services between midnight on Friday and midnight on Saturday:** the customer is required to pay a surcharge of 50% on top of the agreed hourly rate.

- **Provision of services on Sunday and general public holidays between midnight the day before and midnight on the day in question:** the customer is required to pay a surcharge of 100% on top of the agreed hourly rate.

The hourly rate and any surcharge to be paid in accordance with the section above will be multiplied by the number of hours the service provider takes to provide the agreed service. Travel time is included in the time required for the service. The smallest time calculation unit is 15 minutes (0.25 hours).

- 6.4 The price listed in the service provider's written offer or in the individual contracts (fixed price, hourly rate, service fee, etc.) is exclusive of VAT, taxes, fees, customs duties, transport costs, transport insurance, packaging and other third-party costs that arise in connection with the provision of the service. The customer is required to pay these costs in addition to the agreed price. Expenses and travel costs are also not included in the fixed price or hourly rate and are to be borne by the customer unless otherwise agreed in writing.
- 6.5 The fee for services to be provided or for services that have been provided by the service provider and for product deliveries is payable without deduction by bank transfer to the account specified by the service provider.
- 6.6 If payment dates have been agreed in writing, the respective fee is due for payment on the relevant dates.
- 6.7 If payment dates have not been agreed in writing, the fee is due for payment within 30 calendar days of the invoice being issued. Receipt of the invoice by the customer determines the start of the payment term. In this case, the service provider is entitled to determine the time of invoicing at its own discretion. In particular, it is also entitled in this case to request advance payments or partial payments without giving any reasons for this. If an advance payment has not been received by the service provider, the service provider is not obliged to provide its services. In this case, any agreed binding deadlines and delivery deadlines to be met by the service provider will become void and will lose their binding nature.

## 7. Default

- 7.1 If fixed calendar dates have been agreed as payment dates, these dates shall constitute due dates. If the fee is not paid by the agreed calendar date at the latest, the customer is considered to be in default on payment without a reminder being sent when the agreed payment date passes.
- 7.2 If no fixed calendar dates have been agreed as payment dates, the customer will be in default on receipt of a reminder once the 30-day payment term as per point 6.7 of these GTC passes. The service provider is entitled to demand a reminder fee of CHF 20.00 for each reminder sent.
- 7.3 If the customer is in default of payment for the fee or part thereof, it is required to pay default interest of 5%. It is also required to pay compensation for late performance and also has coincidental liability.
- 7.4 If the customer is in default of payment, the service provider is entitled to continue to demand performance and compensation for damages or to waive subsequent performance and either to demand compensation for the damage resulting from non-performance or to withdraw from the contract after setting a reasonable grace period.

## 8. Offsetting and right of retention

- 8.1 The customer is not entitled to withhold payments it is required to make to the service provider for any reason, nor is it entitled to offset them against receivables it has against the service provider.

## 9. Retention of title

- 9.1 The service provider retains ownership of the products it has

delivered until all payments agreed under the contractual relationship have been received. If applicable law dictates that the customer is required to take special actions necessary to establish retention of title, the service provider is entitled, empowered and authorised to take these actions. In particular, the service provider is also entitled to have the retention of title entered in the retention of title register at the customer's place of residence or registered office or branch. The customer explicitly agrees and entitles, empowers and authorises the service provider to make the entry on its own.

## 10. Guarantee

- 10.1 The customer and the service provider acknowledge and agree that the services and products to be provided by the service provider are very complex. Based on the current state of technological advancement, completely error-free service provision or unconditional functionality and target achievement cannot be guaranteed even if services are carefully provided. This particularly applies as the functionality of products developed or sold by the service provider or the service provided by the service provider and the achievement of targets all depend on various factors over which the service provider has no control (e.g. customer hardware and software, operation by the customer, data transfer, interventions by the customer or by third parties, etc.). **As such, the service provider only guarantees properties, purposes, functionalities and the achievement of targets for which it has explicitly given a guarantee in writing. Any guarantee for further material defects or defects of title is explicitly excluded.**
- 10.2 If the service provider has explicitly provided a guarantee for a specific property, purpose, functionality or target achievement, **the customer's guarantee claim only includes the repair or subsequent delivery by the service provider. The repair or subsequent delivery is guaranteed to the extent that the costs incurred by the service provider as a result of the repair or subsequent delivery do not exceed the fee that the service provider has invoiced to the customer in the context of the relevant contract prior to the notice of defects.** In addition, any guarantee claims are explicitly excluded in the case of a guarantee given for a specific purpose, functionality or target achievement. In particular, all rights to repair and subsequent delivery (insofar as they go beyond the scope of the aforementioned repair and subsequent delivery), all rights to rescission (cancellation of the contract), reduction (fee reduction) and replacement delivery and substitute performance, all claims for damages or compensation for consequential damages, all claims resulting from incorrect or improper performance (see Article 97 et seq. of the Swiss Code of Obligations [CO]), all claims in tort (Article 41 et seq. of the CO) and any other potential claims arising from defectiveness with respect to the service are excluded.
- 10.3 Unless otherwise explicitly agreed in writing, the service provider does not offer any guarantee for third-party services and products, even if such services or products have been integrated into the service provider's services.

## 11. Liability

- 11.1 The service provider shall be liable for any direct damage caused **intentionally or through gross negligence**. The customer is responsible for providing evidence of breach of contract or unlawfulness, intent or gross negligence, as well as for damage and the causal link. **In any case, liability is limited to a maximum of the amount of the fee that the service provider has invoiced prior to the damage occurring in the context of the relevant contract.**
- 11.2 **Regardless of the legal basis for which liability exists, any liability on the part of the service provider that goes beyond point 11.1 of these GTC is completely excluded insofar as this is permitted by law. For example, this particularly applies to direct or indirect damage, consequential damage caused**

**by defects, lost profit, claims by third parties and consequential damage such as damage that is in any way related to damage to hardware or software or damage from production downtime or loss of work, additional expenses, staff costs, unrealised savings, data loss, data corruption, data theft, or unauthorised access to data by third parties. Liability for damage caused by third parties or damage caused by force majeure is also excluded.**

## 12. Rights of use

- 12.1 The service provider grants the customer the (non-exclusive) right to use the programs, software, codes, documents, documentation, training material and concepts it has developed or written for the purposes agreed in writing with the service provider. The service provider shall retain all other rights (such as copyright, related property rights within the meaning of copyright law, any patent, design, trademark and other intellectual property rights, the right of use for all known and as yet unknown types of use, for reproduction, distribution, modification and exploitation, processing and further development as well as granting rights of use to third parties, etc.) to the developed programs, software, codes, documents and documentation, training material, concepts and experiences of any kind, and to other products and service deliverables of the service provider, even if changes or extensions are made to products or service deliverables.
- 12.2 The customer may use the programs, software, codes, documents, documentation, training material, concepts and other products and service deliverables developed or written by the service provider exclusively for its own use and for the agreed purposes. It is not entitled to transfer the programs, software, codes, documents, documentation, training material, concepts or other products and service deliverables or the rights to them to third parties either in whole or in part, to surrender them to third parties or to otherwise make them accessible to third parties without the service provider's written consent. This obligation continues to apply for an indefinite period of time, even after the contractual relationship comes to an end.
- 12.3 If the service provider uses or supplies third-party software, the latter retains all rights to this software unless another agreement is made between the third party or manufacturer, the provider and the customer. The licensing terms and any additional conditions of the respective software manufacturer and the provider, if applicable, shall apply. These are binding for the customer and are recognised by the customer as terms of use and contractual terms and conditions. The customer is obliged to comply with the licensing terms and any additional conditions of the software manufacturer and the provider, if applicable. If the software supplied to the customer or the software subscription services provided to it are not used in line with the licensing terms and conditions of the manufacturer and the provider, if applicable, or if the licensing terms or any additional conditions of the software manufacturer or the provider are infringed in any other way, and the service provider suffers damage as a result of this, the customer is obliged to compensate the service provider for any damages. This is regardless of whether it is at fault for the infringement.

- 12.4 If the customer purchases a cloud service from the service provider, the cloud service provider's terms of service, terms of use and privacy policy shall apply. These are binding for the customer and are to be recognised by the customer as binding contractual terms and conditions. The customer is obliged to comply with these terms and conditions.

## 13. Non-disclosure

- 13.1 The parties are obliged to treat information, facts and data concerning the other party, which they become aware of through the contractual relationship and which are neither obvious nor generally accessible, as confidential. They are

not permitted to make such information, facts and data accessible to third parties. Exceptions to this include third parties who are involved in the provision of services in accordance with point 4.2 of these GTC. Cases where a contracting party is obliged by law or by a legally binding order of an authority to disclose information, facts and data to third parties also remain reserved. Finally, the parties shall be exempt from the non-disclosure duty to assert or defend any legal claims that may arise from the contractual relationship that exists between them.

- 13.2 The non-disclosure duty exists from the start of the contractual relationship and lasts for two years after the service provider has stopped providing services.

#### 14. Data protection

- 14.1 The parties agree to comply with the relevant data protection provisions.

#### 15. List of references

- 15.1 The service provider is entitled to include the customer in its list of references after the service provider has stopped providing the service, specifying its name but not providing any detailed information about the project.

#### 16. Non-solicitation

- 16.1 The parties are obliged not to poach any employees employed for the term of the contractual relationship and for a period of one year after the service provider stops providing services.

#### 17. Interpretation and changes to the GTC

- 17.1 The provisions of these GTC are to be interpreted in such a way that they are legally effective and binding. Should a provision be invalid or otherwise unenforceable, the remaining provisions of these GTC shall remain valid. In this case, the invalid provision shall be replaced by a valid and enforceable provision that comes as close as possible to the meaning and purpose of the provision to be replaced from an economic perspective.
- 17.2 The service provider is entitled to change these GTC at any time. The version of the GTC applicable at the time the contract is concluded is binding for product deliveries. For continuing obligations (such as service contracts or development projects), the service provider will inform the customer of any changes to the GTC in writing. If the customer does not object to the change to the GTC in writing within 14 days of receiving the change notification, the change is deemed to have been approved by the customer. If the customer objects to the change to the GTC, the service provider is entitled to terminate the contractual relationship with a notice period of one month.

#### 18. Applicable law

- 18.1 These GTC and the entire contractual relationship between the service provider and the customer are **exclusively** subject to **Swiss substantive law**, to the exclusion of any statutory provisions that refer to foreign law or any international treaties (particularly the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 [the Vienna Convention]).

#### 19. Place of jurisdiction and place of performance

- 19.1 The exclusive place of jurisdiction for any disputes arising from or in connection with these GTC or the contractual relationship between the service provider and the customer – including any disputes concerning the valid conclusion, legal validity, amendment or dissolution of these GTC or the contractual relationship between the service provider and the customer – is **Wettingen (Switzerland)**. The **place of performance** is also **Wettingen (Switzerland)**.