

## **General Terms and Conditions of Sale of Secusmart GmbH (the "Terms")**

### **1. General**

- 1.1 These Terms shall apply to and are an integral part of any agreement for the supply of hardware, software and/or any of these services (**the "Secusmart Solution"**) between Secusmart GmbH ("**Secusmart**") and its customers. Customers are businessmen according to sec 14 of the BGB (German Civil Code) and any legal persons under public law and public-law entities with special funds ("**Customer/s**"), but not consumers.
- 1.2 These Terms shall apply exclusively and shall constitute a key component of all offers, contract confirmations and purchase agreements; we shall not recognize any Customer terms and/or conditions that conflict with or deviate from our Terms, unless we have expressly agreed in writing that said conditions shall apply. Our Terms shall also apply in the event that we should carry out deliveries to Customers without reservation while aware of Customer conditions that conflict with or deviate from our Terms.
- 1.3 Legally relevant declarations and notifications, which are to be submitted to us by the Customer after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of cancellation or reduction), must be made in writing.
- 1.4 None of our employees is authorised to make agreements that deviate from these Terms.
- 1.5 Except as specified in this agreement we make no representations, warranties, endorsement, guarantees, assurances or conditions whatsoever, either express or implied about the Secusmart Solution.
- 1.6 References to the validity of statutory regulations are for clarification purposes only. Therefore, the statutory regulations shall also apply without such clarification insofar as they are not directly changed or are explicitly excluded in these Terms.
- 1.7 The law of the Federal Republic of Germany applies. The provisions of the UN Sales Convention and legal norms which refer to a different legal system are not applicable. Insofar as transcripts of these Terms are produced or copied in a language other than German, the German original version is the only version which is binding for us and the Customer.
- 1.8 The place of jurisdiction is Duesseldorf, Germany. Courts of Düsseldorf, Germany shall be the sole place of jurisdiction for all disputes arising directly

or indirectly out of the contractual relationships – including internationally – with our place of business in Düsseldorf, Germany. We are, however, entitled to take legal action against Customers in the general jurisdiction of the Customer.

- 1.9 Ancillary agreements, amendments or additions require express written consent, including a waiver of the requirement for written consent. Written consent may also be provided in the form of an email and/or a fax.

## **2. Offers, Conclusion of Agreements**

- 2.1 Our offers are binding. Our explanations regarding the conclusion or modification of agreements shall be binding following a written order confirmation by the Customer to our offer. If the Customer submits an offer, the conclusion of an agreement shall be binding following a written order confirmation by us.
- 2.2 All information (e.g. product descriptions and price information) on our website, in brochures or any other advertising media regarding the products we offer is non-binding.

## **3. Prices**

- 3.1 All prices shall be in Euro.
- 3.2 Insofar as nothing to the contrary has been agreed, the prices and conditions valid at the conclusion of the agreement shall apply.
- 3.3 Value-added tax (VAT) is not included in our prices; the amount required by law on the invoicing date shall be indicated separately on the invoice.
- 3.4 Should taxes, charges, levies or other external costs contained in the agreed price change more than two months after the conclusion of the agreement, we shall be entitled to change said price accordingly.

## **4. Payment and Settlement**

- 4.1 Unless otherwise agreed or otherwise stated in our invoices, the purchase price shall be payable immediately. The costs of monetary transactions shall be borne by the Customer.
- 4.2 The Customer shall only be entitled to offset receivables when the counterclaims in question have been finally determined, are undisputed or have been recognised by us. Furthermore, he shall only be entitled to

exercise right of retention insofar as his counterclaim is based on the same contractual relationship.

- 4.3 If there is a delay in payment or if the payment period is exceeded, we shall charge interest at 8 percentage points above the base lending rate, unless a higher interest rate has been agreed. We shall reserve the right to assert further claims of damages resulting from delayed payment.
- 4.4 In all cases, agreed discounts relate only to the net invoice value and are only permissible on condition that no receivables owed by the Customer are outstanding at that point in time. Insofar as nothing to the contrary has been agreed, discount periods shall begin as of the date of the invoice.
- 4.5 If, after concluding an agreement, we recognize that the Customer's ability to meet our payments may be compromised, we shall be entitled to exercise our rights in accordance with section 321 of the BGB (German Civil Code). In this case, we shall be entitled to declare due all receivables arising from the Customer's account that are not yet due.

## **5. Deliveries, Delivery Periods and Deadlines**

- 5.1 Delivery deadlines that have not expressly been agreed as binding shall not be deemed to be binding. Delivery periods that we have stated as being binding are only deemed to begin when all technical questions have been resolved. Furthermore, in order for the deadline to be adhered to, all obligations on the part of the Customer must be fulfilled correctly and in good time. We reserve the right to plead non-performance of contract.
- 5.2 Delivery periods shall begin with the date of our order confirmation.
- 5.3 The event of a delay in delivery is determined in accordance with the statutory provisions. However, in any case the Customer must submit a notice of delay in delivery.
- 5.4 In the case of *force majeure*, the contractual obligations of both parties shall be suspended and the deadlines for the fulfilment of contractual obligations shall be postponed accordingly; instances of *force majeure* shall also include internal and external labour disputes, transport delays, machinery breakdown, acts of government and other circumstances for which neither of the parties is answerable. The other contractual party shall be notified of the event of *force majeure* without delay. Both contractual parties shall be entitled to withdraw from the agreement no sooner than six weeks after receiving this notification.

- 5.5 We shall be liable for delayed performance only in the event of willful misconduct or gross negligence on our part or on the part of our legal representatives or vicarious agents in accordance with statutory regulations. In the event that the delivery or performance deadline is non-binding, we shall only be deemed to be in delay with our obligations to deliver/perform when the Customer sends a reminder indicating a reasonable period of grace, when this period has expired without delivery/performance and when the further legal preconditions have been met.
- 5.6 Insofar as we are unable to observe binding delivery deadlines (non-availability of performance) for reasons for which we are not responsible, we will inform the Customer hereof immediately and at the same time indicate the probable new delivery time. If performance is also unavailable within the new delivery deadline, we are entitled to withdraw from the contract in whole or in part; we shall reimburse the Customer immediately for any performance already made on the part of the Customer. The unavailability of performance in this sense refers, in particular, to late delivery on the part of our suppliers, in case we have concluded a congruent hedging transaction, neither we nor our suppliers are at fault or we are not obligated to carry out the procurement.
- 5.7 Customer agrees to provide - at Customer's expense - all goods and services, including without limitation hardware, software and network connections which we do not expressly indicate in our quote or other agreement signed by us that we will provide. Further, Customer is obligated to provide assistance to us in order to help ensure that the goods and/or services provided by us operate within Customer's environment. If Customer fails to provide the necessary goods, services and/or assistance (duties to cooperate): (i) Customer's payment obligations will not be excused or delayed; and (ii) we may not provide further services until Customer carries out his duties.

## **6. Place of Fulfilment, Transfer of Risk, Dispatch, Partial Delivery**

- 6.1 Unless otherwise specified in the order confirmation the parties agree to delivery "Ex works" (Incoterms 2010). Notwithstanding any terms of delivery or payment of the transportation costs agreed between the parties, the risks of loss or damaging shall pass to the Customer upon collection of the goods by the Customer or first carrier on behalf of the Customer at our premises. The Customer shall take delivery of our goods at the headquarters of our company or any other agreed place within 10 days from the receipt of the notice of release. From the date of delivery, or if the Customer has not taken delivery of the goods from the due date of delivery, the Customer shall bear all risks of loss or damages.

- 6.2 Unless otherwise agreed we will - at the expense of Customer - take care for the shipment, including contracting for the carriage, which means that we will determine the transport route and means as well as the forwarder and carrier, providing the package and taking out insurance of the goods on behalf. The goods will be packaged in accordance with normal sector practice. If so requested by the Customer, we shall provide additional packaging, protective equipment and/or transport equipment, based on our experience; additional costs arising from this shall also be borne by the Customer.
- 6.3 The place of fulfilment for our performance and for the Customer's payment obligations shall be the headquarters of our company.
- 6.4 If the Customer is in default of acceptance or culpably fails to comply with other obligations of cooperation or delays of our delivery result from the purchaser's actions, we are entitled to claim reimbursement for damages, including reimbursement of any related additional expenses (e.g. storage costs), incurred as a result of these damages.
- 6.5 We shall be entitled to make partial deliveries in acceptable volumes. Excess or short deliveries, which are usual in the sector, shall be permitted with regard to contractually agreed volumes.

## **7. License rights to software**

- 7.1 Notwithstanding anything to the contrary, Secusmart software is licensed. Subject to the Terms herein, and subject to payment of the applicable license fees, if any, we grant Customer a non-exclusive, non-transferable, non-sublicensable license to: (i) use up to the number of copies of the software for which applicable fees have been paid; (ii) enable up to the number of Secusmart products or computers, as applicable, for which fees have been paid (i.e. number of client access licenses, device or user ("**CALs**") purchased, as applicable); and (iii) to use the software as set forth above only for Customer's own internal or business purposes in accordance with the type of CALs, as indicated by us, as being granted to Customer and only for the time period specified. If we provide any software updates or upgrades, such updates and upgrades are subject to the license granted herein.
- 7.2 Customer may not distribute, modify, copy, reproduce or in any other manner duplicate any software, or any content, made available to Customer as part of the Secusmart Solution, in whole or in part, except as expressly authorised in the documentation for the applicable Secusmart Solution or in the course of making unmodified regular back-ups of such software or content. The Customer has no right to obtain from us, our affiliates, or our resellers any source code for any software. Customer agrees that neither it

nor its affiliates or authorised users will alter, modify, adapt, create derivative works, translate, deface, or Reverse Engineer any software, hardware or any content, made available to Customer as part the Secusmart Solution, in whole or in part, or permit, acquiesce, authorise or encourage any other person to do the same. "**Reverse Engineer**" includes any act of reverse engineering, translating, disassembling, decompiling, decrypting or deconstructing data, software (including, but not limited to, interfaces, protocols, and any other data included in or used in conjunction with programs that may or may not technically be considered software code), service, or hardware or any method or process of obtaining or converting any information, data or software from one form into a human-readable form.

Notwithstanding the foregoing, copying, decompiling or revising the software made available to Customer as part of the Secusmart Solution is only permitted within the scope of mandatory German law.

## **8. Scope of maintenance services**

- 8.1 Customer shall be entitled to receive maintenance and support services in the scope and to the extent as agreed upon between Customer and us in the maintenance agreement.
- 8.2 Customer should be aware that the maintenance services cover only the Secusmart Solution or some portion thereof depending upon the maintenance agreement purchased. The maintenance services do not include us providing support for problems that result from factors external to the Secusmart Solution components and services such as from: (i) any third party software or hardware; or (ii) the interoperability of the software with third party software or hardware. For the avoidance of doubt: Support for third party equipment is not provided, regardless of whether or not it was purchased from us. Third party equipment may be covered by the third party manufacturer's warranty. We do not provide a warranty on third party equipment. To the extent that we have the right to pass through any third party manufacturer warranties to the Customer we will do so to the extent we are able to. Copies of applicable third party manufacturer warranties, to the extent they exist, are available upon request.
- 8.3 If it is agreed that we may provide updates of any software, such updates regularly will be provided at no additional charge unless otherwise agreed. An Update is a minor release that provides new and/or additional features or functionality. Updates will typically be identified by a change in the second version number of the software, e.g. from version 1.2 to 1.3. Upgrades and new product releases are not included. An upgrade is a new major version release of the covered software that provides functional enhancements at the platform-level which materially advance the software's capabilities. Upgrades will typically be identified by a change in the first version number of the

software, e.g. from version 10.x to version 11.x. A new product release is a software release that contains new features or substantial additional functionality, which we may determine in our sole discretion, is subject to additional license fees or terms.

## **9. Liability for Material Defects**

- 9.1 The statutory regulations shall apply for the rights of the Customers in the event of material defects in quality or defects in title, if no other provisions are made in the following sections. The special statutory regulations for final delivery of goods to a consumer remain unaffected in all cases (supplier's recourse in accordance with §§ 478,479 of German law (BGB)).
- 9.2 The basis for our liability is above all the agreement made regarding the condition of the goods. All product descriptions which have been incorporated into the individual contracts are considered to apply and to be part of the agreement regarding the condition of the goods.
- 9.3 The Customer is obligated to inspect goods received immediately upon receipt. Claims for damages are only valid if made in writing without delay. Hidden defects must be notified in writing without delay upon their discovery. Notification of damages shall be considered without delay when it takes place within two weeks of delivery, whereby the deadline shall be deemed observed if the notification is sent within this period of time. If the Customer fails to carry out a proper inspection and/or notification of damage, our liability for the non-reported damage is excluded.
- 9.4 In case the delivered item is faulty, then the Customer may decide whether to demand repair of the fault (rectification) or delivery of a flawless item (replacement). Should the Customer fail to state which of these two rights he would like to select, then we are entitled to set him a fair time limit. Should the Customer not choose within this time limit, then the right to decide is passed on to us upon expiry of the time limit.
- 9.5 We are entitled to make due subsequent performance conditional upon the Customer's paying the purchase price due. The Customer, however, is entitled to withhold an appropriate part of the purchase price in proportion to the defect.
- 9.6 The Customer shall provide us without delay with the necessary time and opportunity to carry out investigation of the faulty goods and shall hand over the faulty goods, or a sample, upon request and at our expense. Should a Customer demand for repair be proven unjustified, then we reserve the right to demand the costs for shipment and packaging incurred be reimbursed by

the Customer, along with the expenses of carrying out the inspection. In the case of replacement, the Customer shall return the defective item to us in accordance with the statutory provisions.

- 9.7 If we should decide for reasons of good will to agree to accept the return of goods, these must be sent in their original condition, as well as in the original packaging together with proof of return shipment and proof of purchase.

## **10. General limitation of liability**

- 10.1 In case of intent or gross negligence on our part or by our agents or assistants in performance we are liable according to the provisions of applicable law; the same applies in case of breach of fundamental contract obligations. To the extent the breach of fundamental contract obligations is unintentionally our liability for damages shall be limited to the typically predictable damage. Our liability for culpable damage to life, body or health as well as our liability under the Product Liability Act shall remain unaffected.
- 10.2 Any liability not expressly provided for above shall be disclaimed.
- 10.3 The foregoing exclusion or limitation of liability shall also apply for our legal representatives, senior executives, employees and assistants in performance.

## **11. Reservation of title**

- 11.1 All delivered goods remain our property until all obligations have been fulfilled (reserved goods). The foregoing shall also apply to any debts arising or incurred in the future, e.g. as a result of acceptor bills of exchange and also if payments are made on specifically designated claims. This reservation shall expire completely at the time of the settlement of all open claims. We are entitled to assign our claims for payment against the Customer.
- 11.2 The Customer is not entitled to pledge as security, assign as collateral, process or modify the goods prior to the transfer of its ownership. The Customer is obligated to notify us immediately in writing if and when a third party exercises rights (such as seizing or attaching) over the goods which belong to us. The Customer shall bear all costs which must be incurred for suspending such seizures or return transport of the goods, for which they are not compensated by third parties.
- 11.3 If the Customer acts in violation of the contract, in particular in case of non-payment of the due purchase price, we are entitled in accordance with statutory regulations to withdraw from the contract and/or demand that the goods be returned based on the reservation of title. Any demand for the return of goods shall not be deemed to include a simultaneous declaration of withdrawal; on the contrary, we are entitled to demand solely the return of the goods and reserve the right to withdraw from the contract. If the Customer fails to pay the purchase price due, we may assert these rights only if we have



first set the Customer an appropriate time limit for payment without result or if setting a time limit may be dispensed with according to the statutory legal provisions.

## **12. Export and Compliance with Laws**

- 12.1 Should the Customer wish to export our goods, Customer shall be responsible for adhering to relevant national and international legal requirements and constraints regarding import and export; in particular, Customer shall acquire the necessary export permit at Customer's own risk and expense and carry out all customs formalities necessary for the export and the import of the goods. At Customer's request we shall acquire the necessary export permit and carry out all customs formalities necessary only for the export of the products at Customer's own risk and expense.
- 12.2 Insofar as the Customer's registered business location is outside the EU, our delivery performance obligations are subject to the admissibility of German and authoritative international import and export law.
- 12.3 Customer shall comply with all applicable federal, national, state, provincial, and local laws and regulations including, without limitation, those relating to anti-bribery, corruption, money laundering, improper payments, anti-mafia or anti-terrorist laws, as well as any applicable laws regarding data protection and privacy.

## **13. Export Certificate, VAT**

- 13.1 Should a Customer located outside of the Federal Republic of Germany (foreign Customer) or its authorized representative retrieve goods and transport or transfer these outside the Federal Republic of Germany, the Customer shall provide us with documentary evidence which conforms to the statutory requirements of the value added tax law.
- 13.2 Should this export certificate not be forthcoming, the Customer shall be required to pay, on the invoiced amount for the effected delivery, the level of VAT currently required in the Federal Republic of Germany, provided that the tax-free status for exported deliveries cannot be claimed by us.
- 13.3 With regard to deliveries from the Federal Republic of Germany to other EU member states, the Customer shall, prior to delivery, provide us with the VAT identification number under which Customer pays purchase tax within the EU. If this is not forthcoming, Customer shall be required to pay the VAT that we are legally obliged to pay on our deliveries in addition to the agreed purchase price.