

## General Terms and Conditions of Delivery of secXtreme GmbH

Version 01.00 dated 28 February 2014

### 1 General provisions

1.1 All deliveries and services of secXtreme GmbH, Brunnthal, ("secXtreme") shall be solely governed by the present General Terms and Conditions ("Terms and Conditions"). Contrary or differing Terms and Conditions shall not apply unless expressly agreed upon by us. The present Terms and Conditions shall apply even if we unconditionally carry out the delivery to the purchaser knowing of the purchaser's contrary or differing Terms and Conditions. Any reference we may make in the context of the conclusion of the contract to a letter or offer of the purchaser, which includes Terms and Conditions of the purchaser or of a third party, shall not constitute any agreement to the validity of said letter or offer.

1.2 Verbal agreements before or during the conclusion of the contract require our written confirmation to become effective.

1.3 Amendments to the contractual agreements including the present Terms and Conditions require our written confirmation to become effective.

1.4 Solely the managing directors or authorised representatives of secXtreme are entitled to agree upon contractual agreements that differ from the present Terms and Conditions on behalf of secXtreme.

1.5 If the purchaser does not accept an offer made by us within two weeks upon receipt, we are entitled to withdraw the offer.

1.6 Cost estimates are non-binding and subject to a charge unless expressly agreed otherwise.

1.7 The present Terms and Conditions shall also apply for all future deliveries to the purchaser until the entry into force of our new Terms and Conditions of delivery.

### 2 Conclusion of contract, delivery, passing of risk and deadlines for delivery

2.1 Unless otherwise stipulated, the contract between secXtreme and the purchaser is concluded upon receipt of secXtreme's order confirmation, at the latest upon secXtreme's provision of the service.

2.2 Unless expressly stipulated otherwise, the delivery shall be effected EXW at the location of secXtreme from where the dispatch to the purchaser shall be effected (Incoterms® 2010).

2.3 Upon the purchaser's request, we shall insure the deliveries against the usual risks of transport at the purchaser's expense.

2.4 The beginning and deadlines for deliveries shall only be binding if the duties to cooperate are fulfilled by the purchaser, in particular if all information, documents, permits, enquiries and approvals to be furnished by the purchaser are received in time, and if agreed terms of payment are complied with. If these conditions are not fulfilled correctly and in time, deadlines shall be extended reasonably; this shall not apply if secXtreme is solely responsible for the delay.

2.5 If non-observance of the delivery deadlines is due to force majeure and other disturbances beyond our control, such as war, terror attacks, import and export restrictions, including those concerning the suppliers, the agreed delivery deadlines shall be extended by the duration of the disturbances. This shall also apply to industrial action concerning us or our suppliers.

2.6 Partial deliveries – in particular separate delivery of ordered hard- and software – and corresponding billings are permitted, unless they are unreasonable to accept for the purchaser.

### **3 Receiving deliveries**

The purchaser shall not refuse to receive deliveries or services due to minor defects.

### **4 Delay**

4.1 In the case of default in acceptance or breach of other duties to cooperate on the purchaser's part, the risk is passed to the purchaser from the day on which the delivery item is ready to be dispatched and secXtreme has notified the purchaser to this effect. In this case secXtreme is entitled to demand compensation of its damage from the purchaser including further additional expenses in the amount of 0.5 % of the net price of the delivery items for each full calendar week of the delay, however in total no more than 5 % of the price of the delivery items in total. The contracting parties reserve the right to prove that additional expenses were higher or lower. Further claims on the grounds of default in acceptance shall remain unaffected.

4.2 The occurrence of a delay in delivery caused by secXtreme shall be determined in accordance with statutory provisions. If secXtreme causes a delay in delivery, the purchaser is entitled to demand lump-sum compensation of its damage caused by delay. The lump-sum compensation shall amount to 0.5 % of the net price (delivery value) for each full calendar week of the delay, however in total no more than 5 % of the delivery value of the goods delivered with delay. The contracting parties reserve the right to prove that additional expenses were higher or lower.

4.3 If secXtreme's non-fulfilment of delivery times is due to force majeure and other disturbances beyond secXtreme's control, such as war, terror attacks, import and export restrictions, including those concerning the suppliers, the agreed times shall be extended by the duration of the disturbance. This shall also apply to industrial action concerning secXtreme or our suppliers.

4.4 secXtreme reserves the right to claim that secXtreme's suppliers did not deliver items correctly or in time. secXtreme shall notify the purchaser without delay of the delivery item being unavailable and shall exercise the right of withdrawal immediately if secXtreme intends to withdraw from the contract as well as give the purchaser a respective consideration without delay if required.

### **5 Defects as to quality and defects of title**

5.1 The purchaser shall give written notification of recognisable defects without delay, at the latest 7 working days upon receipt of the goods. The purchaser shall give written notification of other defects without delay upon discovery.

5.2 In each case the date on which we receive the notification shall be decisive.

5.3 Unjustified notifications of defect shall entitle us to demand reimbursement of our expenses from the purchaser, unless the purchaser proves that the unjustified notification is not its fault.

5.4 Claims on account of defects shall be excluded if the notification of the defect is not received in good time.

5.5 Claims on account of defects as to quality are subject to a statute of limitations of 12 months. The present provision shall not apply where longer periods of limitation are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for buildings), Sec. 479 para. 1 (right of recourse) and Sec. 634a (defects of a building) German Civil Code ("Bürgerliches Gesetzbuch").

5.6 The period of limitation for defects as to quality shall commence with the delivery of the item (passing of risk).

5.7 If a defect as to quality, the cause of which had already existed at the time of the passing of risk, occurs during the period of limitation, we shall be entitled to remedy the defect or deliver a defect-free item at our option as subsequent performance.

5.8 Subsequent performance shall not renew the limitation period.

5.9 If subsequent performance is unsuccessful, the purchaser shall be entitled to withdraw from the contract or reduce the remuneration; any claims for damages shall remain unaffected.

5.10 The purchaser's claims with respect to expenses incurred in the course of alternative performance, in particular costs of transport, travel, labour and material, shall be determined in accordance with statutory provisions. They shall be excluded to the extent that expense are increased because the delivery item was subsequently brought to a location other than the purchaser's branch, unless doing so complies with its normal use.

5.11 There shall be no claims to subsequent performance in the case of insignificant deviations from the agreed quality or only minor impairment of usability. Other rights shall remain unaffected thereof.

5.12 Defects as to quality shall not include

(i) natural wear and tear;

(ii) conditions of the goods or damage occurring after the passing of risk from faulty handling, storage or assembly, non-compliance with installation and handling provisions or excessive strain or use;

(iii) conditions of the goods or damage occurring due to force majeure, in particular external influences not assumed under the contract, or due to the deployment of the goods for tasks beyond those provided for under the provisions of the contract or outside its normal scope of use;

(iv) non-reproducible software defects.

5.13 Claims on account of defects as to quality shall not arise if the goods are modified by third parties or by the installation of parts manufactured by third parties, unless the defect has not been caused by the modification. We shall not be liable for the condition of the goods where this depends on the design or choice of materials, unless the purchaser has enjoined the design or material.

5.14 The purchaser's rights of recourse against us shall be limited to cases where the purchaser has not concluded any agreements with its customer exceeding the scope of the statutory provisions governing the claims based on defects, such as goodwill.

5.15 Our obligation to pay damages and compensation of futile expenses within the meaning of Sec. 284 German Civil Code on the grounds of defects as to quality shall be governed by clause 9 in all other respects. Any additional or other claims of the purchaser based on defects as to quality exceeding the claims provided for in this clause 5 shall be excluded.

5.16 For defects in title not caused by infringement of property rights or copyrights of third parties the provisions of this clause 5 shall apply accordingly.

## **6 Rights of use**

6.1 Unless expressly stipulated otherwise, secXtreme shall grant the purchaser a non-exclusive right to use delivered software that is non-sublicensable and has no restrictions regarding time and place.

6.2 Unless expressly stipulated otherwise, the purchaser shall be entitled to install and use software delivered by secXtreme only on corresponding hardware delivered by secXtreme and to use only one copy of the software each at the same time ("one-user-license").

6.3 Software stand-alone:

If the delivery of solely software without corresponding hardware is expressly agreed upon by

secXtreme and the purchaser, the purchaser shall be entitled to install or use the software also on appropriate hardware as requested by the purchaser.

#### 6.4 Software stand-alone for testing purposes:

If the delivery of solely software without corresponding hardware is expressly agreed upon by secXtreme and the purchaser for testing purposes, secXtreme and the purchaser also agree whether the software may be installed (i) in a virtualised environment or (ii) only for a certain period on appropriate hardware as requested by the purchaser.

#### 6.5 Not For Resale (NFR)-system:

In the case of the delivery of a Not-For-Resale (NFR)-system agreed upon by secXtreme and the purchaser, the purchaser shall not be entitled to resell the delivered software and/or hardware or to lease or grant the right of use otherwise for consideration to third parties by way of derogation from clause 11.4 of these Terms and Conditions.

#### 6.6 Cold-Standby devices:

In case the delivery of hardware without corresponding software as what is known as "Cold-Standby device" agreed upon by secXtreme and the purchaser, the purchaser shall be entitled to install a copy of a software product purchased from secXtreme on the hardware. However, the purchaser shall only be entitled to use such software to the extent that the hardware, on which the respective software was installed and used originally, is not operational or the software installed thereon is not being used at the same time.

6.7 The purchaser shall be entitled to create a full copy and to the extent that it is required for its workflow further required copies of the software. The customer shall be obligated to designate each copy as backup copy and provide it with the copyright notice of the original data carrier. The customer shall not be entitled to copy the software in any other cases.

6.8 In case the purchaser culpably and contrarily to agreement enables third parties to use the software and the manual/documentation, produces a non-approved copy or uses the software on other computers, the purchaser shall be obligated to pay compensation for damages in the amount of the purchase price. The parties shall be free to prove a higher or lower damage.

6.9 6.9 In the case of the resale of the software the customer shall be entitled to transfer rights to the software to the same extent as they are transferred to the customer for the fulfilment of the contract. The customer shall be obligated to definitively abandon its own use, to transfer the program copies made or to destroy copies that have not been transferred, and to contractually obligate the third party to use the software only to the extent agreed upon in the present contract.

#### 6.10 The purchaser shall be obligated to

(i) refrain from reverse engineering, decompiling, disassembling or otherwise reconstructing, identifying or deriving, or replicating the functionality of the software delivered by secXtreme, or from making the files readable again otherwise, unless provided for by mandatory statutory provisions;

(ii) refrain from modifying the software delivered by secXtreme;

(iii) hand over secXtreme's work results to third parties (in particular hard- and software as well as corresponding documentation or other reports by secXtreme) only with secXtreme's prior written consent.

## 7 Services

7.1 If services by secXtreme are agreed upon, the respective provisions of the service agreement between secXtreme and the purchaser shall apply (Service-Level-Agreement).

7.2 If the optional alternatives “Keep-Your-Hard-Disc” or “Keep-Your-Flash-Disk” are used, the purchaser is obligated to completely delete all the copies of the software products delivered by secXtreme and existing on the corresponding data carriers.

#### 7.3 Support and update service:

If secXtreme’s support- and update service is used, the purchaser shall be free to (i) download updates for software delivered by secXtreme directly from the Internet onto hardware delivered by secXtreme or to (ii) download a software image from the Internet and store it on a new data carrier – consequently to create a new software installation medium. Unless expressly agreed upon otherwise, the purchaser shall remain obligated also in these cases within the meaning of clause 6.2 of the present Terms and Conditions (use only on secXtreme hardware and one-user-license).

### 8 Property rights and copyrights

8.1 secXtreme’s software/products partly include open-source products. Their licensing conditions shall apply in the respective current version.

8.2 We shall not be liable for claims on the grounds of infringement of industrial property rights or copyrights of third parties (“property rights”), if the property right is or was owned by the purchaser or an enterprise in which it holds, directly or indirectly, a majority of the shares or voting rights.

8.3 The purchaser shall be obligated to notify us without delay of (alleged) infringements of property rights that are becoming known or of risks relating thereto and (insofar as possible) allow us to conduct the litigation (also out of court) at our request.

8.4 At our option we shall be entitled to obtain a right of use for the product infringing the property right or to modify it in a manner that results in its no longer infringing the property right or to replace it with a similar product that no longer infringes the property right. If this is impossible for us under reasonable conditions or within a reasonable period of time, the purchaser shall be entitled to assert its statutory withdrawal rights – as far as it has enabled us to perform the modification. Under the conditions mentioned above we shall be entitled to assert our withdrawal rights as well. The provision of clause 5.13 shall apply accordingly. We reserve the right to take the measures at our option within the meaning of clause 8.4 sentence 1, even when the infringement of the property right has not yet been legally finally established or acknowledged by us.

8.5 Claims of the purchaser shall be excluded if it is responsible for the infringement of a property right or if it does not support us to a reasonable extent in our defence against claims by third parties.

8.6 Our liability to pay damages in cases of infringement of property rights shall be governed by clause 10 in all other respects.

8.7 For the limitation period of claims on the grounds of infringement of property rights, clauses 5.1, 5.5 and 5.6 shall apply accordingly.

8.8 Any claims exceeding the claims provided for in this clause 8 or any other claims of the purchaser on the grounds of infringement of property rights of third parties shall be excluded.

### 9 Product description

9.1 Unless expressly mentioned in the product description or expressly agreed upon, the deliveries and services of secXtreme are not fault-tolerant and thus not designed and intended for use in dangerous environments, which require failsafe operation. This includes in particular (but is not restricted to) aircraft navigation, aircraft security systems, weapon systems, medical technology and life-support systems, telecommunication technology, nuclear power plants or other applications where malfunctioning of a product by secXtreme or a defective service by secXtreme may result in death, personal injuries or property damage.

9.2 The purchaser knows that the products and services by secXtreme including their implementation may result in the fact that problems in the purchaser's IT systems are disclosed or that strains or malfunctioning may occur when operating the respective IT systems.

## **10 Liability and claims for damages**

10.1 In case of intent and gross negligence as well as the lack of a warranted quality we shall be liable unrestrictedly.

10.2 In case of slight negligence we shall be liable unrestrictedly in the case of injury to life, limb and health. In other cases of slight negligence we shall be liable only if an obligation is violated, whose fulfilment enables proper implementation of the contract in the first place, whose violation endangers the achievement of the purpose of the contract and on whose compliance the customer can regularly rely on ("cardinal obligation"). In case of violation of a cardinal obligation the liability shall be limited to the damage predictable in this type of contract. This shall also apply to lost profit and lost savings. Liability shall be excluded for any other remote consequential damages caused by a defect.

10.3 We shall be liable for the loss of data in the case of slight negligence and within the scope described in clause 10.2 only if the customer has performed data backups on a daily basis.

10.4 Liability for all other damage shall be excluded, in particular for data losses or hardware malfunctioning which are caused by incompatibility of the components existing on the customer's IT-system with the new hard- and software and the hard- and software to be modified, respectively, as well as for system malfunctioning which may occur due to existing misconfiguration or older, interfering, not completely removed drivers. Liability under the Product Liability Act shall remain unaffected.

10.5 The liability exclusions and restrictions agreed upon hereunder shall apply equally to our legal representatives, employees and other agents.

10.6 The present provisions shall not imply a change in the burden of proof to the detriment of the purchaser.

## **11 Retention of title**

11.1 In the case of hardware:

secXtreme shall retain title to the sold goods until receipt of payment in full of all claims resulting from the business relation with the purchaser. Until the transfer of ownership the purchaser shall handle the goods with due care. In case of seizure, insolvency, damage or loss of goods as well as change in possession, secXtreme must be given notice without delay. In the case of violation of the present obligations secXtreme shall be entitled to withdraw from the contract after the fruitless expiration of a reasonable period of time.

11.2 In the case of software:

secXtreme shall retain title and rights to be conceded until receipt of payments in full of the compensation owed. Before that, rights shall be preliminary only and may be revoked at any time by secXtreme. If retention of title is asserted by secXtreme, the purchaser's right to further use the software shall expire. All programme copies made by the customer must be deleted without delay.

11.3 The purchaser shall be entitled to process or combine our products in the course of its regular business operations. We shall acquire partial ownership of the products that are made by means of processing or combining, which the purchaser transfers to us already now, in order to secure our claims. The purchaser shall be obligated to store the objects we partially own free of charge as an ancillary contractual obligation. The amount of share we partially own shall be determined by the relation between the value of our product (calculated on the basis of the final invoice amount including value added tax) and the item made by means of processing or combining at the time of processing or combining.



11.4 The purchaser shall be entitled to resell our products in the course of its regular business against payment in cash or subject to retention of title. The purchaser shall hereby assign to us already all claims it is entitled to in full arising out of the resale of our product with all ancillary rights, whether our product has been processed or not. The assigned claims shall secure our claims within the meaning of this clause. The purchaser shall be entitled to receive the payment on the assigned claims. We shall be entitled to revoke the rights of the purchaser within the meaning of this clause 11.4 if the purchaser does not correctly comply with its obligations of payment to us, is in default of payment, ceases to pay or if the purchaser files for the opening of insolvency proceedings or a similar process for debt settlement of its assets. We may revoke the rights of the purchaser according to this clause 11.4 also in the (imminent) case of a substantial deterioration of the purchaser's financial situation or in the case of the purchaser's inability to pay or over-indebtedness.

11.5 At our request the purchaser shall without delay provide us with a written notification as to whom it sold the goods we own or partially own and to which claims it is entitled from the sale of such goods; it shall also issue us publicly certified certificates of the assignment of the claims at its expense.

11.6 The purchaser shall not be entitled to dispose of the goods that are subject to retention of title or are partially owned by us or the claims assigned to us in any other way. The purchaser shall be obligated to notify us without delay of seizures or other impairments of rights concerning the items we own or partially own, or of claims. The purchaser shall bear all costs that are necessary to remove third-party access to our retained goods or collateral goods and to recover the item, unless such costs cannot be collected from third parties.

11.7 If the value of the securities in our favour exceeds our claims by more than 10 % in total, we shall release securities of our choice upon the purchaser's request.

## **12 Rescission**

12.1 In case the purchaser is in breach with the contract, in particular in the event of default of payment or the existence of other reasons for rescission in accordance with the present Terms and Conditions, we shall be entitled to rescind the contract after expiry of a reasonable period of grace without any prejudice to our other contractual and statutory rights.

12.2 Without setting any period of grace we shall also be entitled to rescind,

- (i) in the (imminent) case of a substantial deterioration of the purchaser's financial situation resulting in the risk that the purchaser is unable to comply with a payment obligation it has vis-à-vis us, or
- (ii) in the case of the purchaser's inability to pay or over-indebtedness, or
- (iii) in the case of non-delivery within the meaning of clause 4.4 of the present Terms and Conditions.

12.3 In the case of a termination within the meaning of this clause 12, the purchaser's assertion of a damage or of other rights on the grounds of termination shall be excluded.

## **13 Prices and payment conditions**

13.1 The price for our services shall be determined by the offer (end customers) and, respectively, by the current price list provided by secXtreme (EU and non-EU-partners, respectively) and shall be exclusive of respective VAT.

13.2 Unless expressly agreed upon otherwise the payment shall be made within 30 days from the invoice date without any deductions. Payments shall be transferred to the business account of secXtreme GmbH at

Kreissparkasse München Starnberg Ebersberg,  
IBAN DE33 7025 0150 0010 5234 70,  
BIC BYLADEM1KMS.

13.3 secXtreme shall be entitled to make delivery conditional upon concurrent payment (e.g. by cash on delivery or direct debit) or advance payment.

13.4 Spare parts shall be delivered and repaired goods shall be returned against a reasonable flat-rate charge for dispatch and packaging and shall be exclusive of the remuneration of the service we provided, unless these are covered by liability for defects as to quality.

13.5 secXtreme shall also be entitled to offset the purchaser's payments with the oldest claim due.

13.6 In the case of the purchaser's default of payment secXtreme shall be entitled to request immediate payment in cash for all claims resulting from the business relationship that are due and not subject to any conditions. This right shall not be excluded by an extension or the acceptance of bills of exchange or cheques.

13.7 The purchaser shall be entitled to offset claims with counterclaims only insofar as the purchaser's counterclaims are undisputed and/or have been finally established by the courts.

13.8 The purchaser shall be entitled to withhold payments or to offset payments with counterclaims only insofar as the purchaser's counterclaims are undisputed or have been finally established by the courts.

#### **14 Export control clause**

14.1 Our deliveries and services (fulfilment of contract) shall be conditional upon the fact that no hindrances attributable to national or international export control provisions, in particular embargos or other sanctions, impair fulfilment. In particular, secXtreme retains the right to terminate the contract without prior notice if the termination is necessary for secXtreme to comply with national or international legal provisions.

14.2 The purchaser shall be responsible for its compliance with import and export provisions applicable to deliveries and services (including those of other countries). This shall apply in particular in the case of resale of our products. In case of cross-border delivery or service the purchaser shall bear incurred customs duties, fees and other expenses.

14.3 The purchaser undertakes to provide any information and documentation required for export or transport. Delays caused by export enquiries or approval procedures shall suspend deadlines and delivery times. In the case that required approvals are not granted or that the delivery and service are not approvable, the contract shall be considered not concluded with regard to the affected parts.

14.4 Upon secXtreme's request the purchaser shall issue an end-use-certificate without delay according to the respective form to be found on the website of the German Federal Office for Economic Affairs and Export Control ("Bundesamt für Wirtschaft und Ausfuhrkontrolle") ([www.ausfuhrkontrolle.info](http://www.ausfuhrkontrolle.info)).

14.5 In the case of deliveries to countries outside the EU, upon secXtreme's request the purchaser shall issue a confirmation of arrival ("Gelangensbestätigung") according to the tax provisions of the Federal Republic of Germany in order to prove that the respective item has in fact arrived outside the EU.

14.6 In the case of transfer of the goods delivered by us (hardware and/or software and/or technology as well as corresponding documents no matter in which way they have been provided) or work performances and services provided by us (including technical support of any kind) to third parties in Germany or abroad, the purchaser shall comply with the respective applicable provisions of national and international (re-)export control legislation.



## **15 Confidentiality**

15.1 All business or technical information originating from secXtreme (including features that can be extracted from provided items or software and other information or experience) shall be kept confidential vis-à-vis third parties ("confidential information") as long and insofar as such information is not verifiably publicly known, intended for resale through the purchaser by secXtreme or expressly designated as confidential. At the purchaser's own business operation such information shall be given to persons only who are necessarily required to use such information and who are also obligated to keep such information confidential. Such information shall remain in the exclusive ownership of secXtreme. Such information shall not be copied or used commercially without secXtreme's prior written consent.

15.2 Upon secXtreme's request all confidential information (including copies or records made if applicable) and loaned items shall be handed over to secXtreme or be destroyed completely and without delay.

15.3 secXtreme shall retain all rights to the confidential information within the meaning of clause 15.1 (including copyrights and the right to file industrial property rights, such as patents, utility models and semi-conductor protection, etc.).

## **16 Transfer for testing purposes**

Insofar as secXtreme provides the purchaser with products for a limited period of time for testing purposes only, these Terms and Conditions shall apply accordingly – in particular with regard but not limited to the limitations of liability agreed upon herein.

## **17 Other provisions**

17.1 The customer shall not be entitled to transfer rights and obligations from the respective contract to a third party without secXtreme's prior consent.

17.2 Place of jurisdiction for all disputes arising out of or in connection with this contract shall be Munich (Regional Court Munich I, "Landgericht München I")

17.3 All legal relationships between us and the purchaser shall be exclusively governed by the laws of the Federal Republic of Germany with the exclusion of UN convention on the sale of goods.