

## **General Terms and Conditions for Services**

### **CRYPTRON Security GmbH**

Date 02/2022

#### **1 Scope of application, conclusion of contracts**

- 1.1 CRYPTRON Security GmbH provides services on the basis of these General Terms and Conditions (GTCs) and the respective individual contract or order. General Terms and Conditions of the Customer shall not apply, even if the Customer refers to them in a standard order form or otherwise in connection with an order and/or CRYPTRON Security GmbH does not expressly object to them.
- 1.2 These General Terms and Conditions, together with the Individual Contract, constitute the entire agreement between the Customer and CRYPTRON Security GmbH with respect to the content of the services provided by CRYPTRON Security GmbH. Any previously made deviating agreements as well as verbal agreements are not valid; they are replaced by these General Terms and Conditions and the Individual Contract. Changes and additions are only valid if they have been agreed upon in writing. The creation of obligations at the expense of CRYPTRON Security GmbH requires the signature of a representative of CRYPTRON Security GmbH authorized to represent the company. Declarations contained in offers, acceptances, letters of confirmation or other correspondence shall bind CRYPTRON Security GmbH only to the extent that they have been expressly agreed in the individual contract. The cancellation of this written form requirement must also be irrevocably in writing.

#### **2 Scope and performance of services**

CRYPTRON Security GmbH undertakes to duly provide its agreed services. The scope of the services is set out in the respective binding service description. Performance dates and deadlines are only binding if they have been designated as binding in the individual contract.

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**3 Organizational Guidelines**

- 3.1 CRYPTRON Security GmbH and the Customer shall each appoint a contact person responsible for the project who can make and receive binding declarations on behalf of the party by whom he is appointed. The contact person shall only be replaced by another person for good cause.
- 3.2 CRYPTRON Security GmbH is entitled to engage third parties as subcontractors to fulfill its obligations. In this case, CRYPTRON Security GmbH is also responsible for the contractual fulfillment of the agreed obligations and is responsible in relation to the Customer for employing sufficiently qualified personnel to perform the services.
- 3.3 The personnel of CRYPTRON Security GmbH providing the Services shall be subject exclusively to the right of instruction and supervision of CRYPTRON Security GmbH. CRYPTRON Security GmbH itself or the contact person designated by CRYPTRON Security GmbH shall be the sole contact person vis-à-vis the Customer for all questions and demands.

**4 Compensation**

- 4.1 In principle, remuneration is based on time and effort, unless the contracting parties agree otherwise in writing in the individual contract. In the case of remuneration based on time and effort, CRYPTRON Security GmbH shall invoice at the end of the month.
- 4.2 If, in the case of fixed-price remuneration, the workload of CRYPTRON Security GmbH or its subcontractors is higher than the estimated workload on which the agreed fixed price is based due to incomplete or insufficient information from the Customer or improper cooperation by the Customer, CRYPTRON Security GmbH shall be entitled to a corresponding increase in the original remuneration at CRYPTRON Security GmbH's rates in effect at the time.
- 4.3 If services cannot be rendered for reasons beyond the control of CRYPTRON Security GmbH or which lie within the sphere of the Customer, CRYPTRON Security GmbH shall be entitled to the agreed remuneration, unless the Customer proves that the CRYPTRON Security GmbH employees concerned have been deployed elsewhere.
- 4.4 The invoices issued are due for payment within 15 days after receipt of the invoices by transferring the invoice amount to an account at a Swiss bank to be made known by CRYPTRON Security GmbH.
- 4.5 All prices are exclusive of the applicable statutory value added tax and all other applicable taxes and public charges.
- 4.6 The customer shall not be entitled to set off any claims. Only legally established or undisputed claims are excluded from this. CRYPTRON Security GmbH retains title to all deliveries and services until they have been paid for in full. Several customers are jointly and severally liable.

**5 Warranty**

- 5.1 CRYPTRON Security GmbH warrants that it will perform the agreed services by appropriately qualified personnel with due care and diligence. CRYPTRON Security GmbH does not assume any liability for a certain result or success.
- 5.2 No warranty claims can be made on the basis of information in brochures, advertising literature and general product and service descriptions and other written or verbal statements that have not been expressly included in the individual contract, nor on the basis of minor or insignificant defects.
- 5.3 CRYPTRON Security GmbH shall not be obligated to provide a warranty with respect to services rendered to the extent that an inadequacy is caused by a modification of the service that was neither performed by CRYPTRON Security GmbH nor permitted by CRYPTRON Security GmbH.
- 5.4 If, in the course of work in connection with the assertion of warranty claims, it turns out that the customer is not entitled to warranty, CRYPTRON Security GmbH shall be entitled to charge for expenses incurred according to time and material on the basis of the agreed prices.
- 5.5 The warranty period shall be six months.

**6 Liability**

- 6.1 CRYPTRON Security GmbH shall be liable to the Customer for damages unlawfully caused by CRYPTRON Security GmbH only to the extent that CRYPTRON Security GmbH is guilty of intent or gross negligence. The damage and the causal connection of the actions of CRYPTRON Security GmbH or its assigned employees or subcontractors for the damage incurred, as well as the intent or gross negligence must be proven by the Customer.
- 6.2 Any liability of CRYPTRON Security GmbH for slight and simple gross negligence as well as for indirect and consequential damages, as well as to data, is excluded to the extent permitted by law.

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- 6.3 This limitation of liability applies with regard to all claims for damages, regardless of their legal basis, in particular also with regard to pre-contractual and collateral claims.
- 6.4 Claims for damages by the Customer against CRYPTRON Security GmbH must be asserted within a period of six months from knowledge of the damage.

**7 Special liability provisions**

- 7.1 The Customer is aware that even in the event of a controlled hacker attack on a company, which is carried out for test purposes as part of an external security check, there are risks of damage, rendering unusable or destruction of data and/or software. Therefore, the Customer assumes the following obligations.
- 7.2 The Customer undertakes to comply with the precautionary measures described in more detail in Section 7.5. In the event of non-compliance with these precautionary measures, CRYPTRON Security GmbH shall not be liable for any damage incurred in the course of the security check. The Customer shall bear the burden of proof for compliance with the precautionary measures.
- 7.3 The Customer shall be solely liable for ensuring that all data and software stored or otherwise used by it are properly backed up and that it has backup copies of all data stored and/or processed or edited by it prior to the agreed commencement of the external security check/security audit.
- 7.4 As a rule, CRYPTRON Security GmbH shall take the following precautionary measures:

**Influence on the operation**

CRYPTRON Security GmbH shall not give the Customer any advance warning in connection with the performance of the security checks/security audits, and in particular shall not inform the Customer in advance about the start and the techniques/methods used. CRYPTRON Security GmbH shall, however, endeavor to use only those methods that cause no or as little as possible interference with ongoing operations. However, CRYPTRON Security GmbH assumes no liability for any interference with the customer's ongoing operations. Als geringe Beeinflussung im Sinn dieses Punktes wird die durchschnittliche Erhöhung der Auslastung um 10 % der Maximalauslastung (Durchschnitt während einer Messdauer 24 Stunden) mit einem Spitzenwert von 50 % der Maximalauslastung (Durchschnitt während einer Messdauer 5 Minuten), als Nichtbeeinflussung der Systemauslastung ein Anstieg aufgrund von Nebeneffekten, die technisch bedingt sind, sowie die Erhöhung der Systemauslastung aufgrund von Intrusion-Detection Mechanismen, die durch den Kunde verwendet werden, festgelegt.

Low impact in the sense of this point is defined as an average increase of the load by 10% of the maximum load (average during a measurement period of 24 hours) with a peak value of 50% of the maximum load (average during a measurement period of 5 minutes), non-impact on the system load is defined as an increase due to side effects, which are technically caused, as well as an increase of the system load due to intrusion detection mechanisms, which are used by the customer.

- 7.5 Direct modification of data - CRYPTRON Security GmbH will endeavor to use only techniques/methods that do not directly alter the data processed or stored by the customer in production operations during project implementation without prior information of the customer. A direct change is understood to be the substantial alteration or deletion of data. A change of data caused by side effects that are technically conditioned, as well as by intrusion detection mechanisms used by the customer, is not a direct change of data in the sense of this provision.
- 7.6 Reconfiguration of systems - CRYPTRON Security GmbH shall endeavor to use only techniques/methods that do not cause direct changes to configuration data during project implementation without prior information of the customer. A direct change of configuration data shall be understood as a substantial change or deletion. A change of data that occurs due to side effects that are technically caused, as well as one that occurs due to intrusion detection mechanisms used by the customer, is not a direct change of configuration files in the sense of this provision.
- 7.7 Special Attacks - CRYPTRON Security GmbH shall notify the Customer in advance, in writing, of the use of methods/techniques which, according to the state of the art, may cause more than minor interference with ongoing operations or changes to data, to a person to be named by the Customer. The use of such methods/techniques shall only be deemed to be approved if the customer expressly confirms such use in writing.
- 7.8 Data backup - For the duration of the project, the customer will ensure that potentially vulnerable data is backed up at least daily, and particularly critical data is backed up several times daily (total backup or incremental backup).

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- 7.9 System redundancy - For the duration of the project, the customer will ensure that potentially vulnerable systems are redundant so that if one instance fails, a second instance can automatically take over.
- 7.10 Traceability - In order to quickly isolate and track the problem in the event of a system failure or data loss, the customer will ensure that appropriate logging mechanisms are enabled throughout the project.
- 7.11 Explicit exception of systems - If the customer wishes to ensure that certain systems, defined by their network address, are not covered by the security check, this must be made known in writing when the order is placed.
- 7.12 Precautions of the Customer
- The customer is aware that impairments of the integrity of the systems checked by CRYPTRON Security GmbH are possible. In the event of special attacks, CRYPTRON Security GmbH will use methods/techniques that may jeopardize the integrity of the checked systems. The customer acknowledges this.
  - The Customer undertakes to secure those systems, the failure or impairment of which could result in economic damage for or to its customers, as follows before CRYPTRON Security GmbH carries out the Security checks/security audit:
  - Any liability for damages on the part of CRYPTRON Security GmbH shall in any case be limited to the amount of the net order value. In addition, the rules of item 6 above shall also apply in connection with the special liability provisions.

## **8 Solicitation of personnel**

- 8.1 The contracting parties shall always strive for mutual loyalty. The Customer undertakes in particular to refrain from actively enticing away employees and other staff of CRYPTRON Security GmbH. In the event of a violation, the Customer undertakes to pay a contractual penalty (irrespective of fault) in the amount of six gross monthly salaries of the employee concerned. The contractual penalty is not offset against any claims for damages. CRYPTRON Security GmbH is at liberty to claim further damages against proof. The Customer agrees to inform CRYPTRON Security GmbH if the Customer should consider hiring or employing an employee of CRYPTRON Security GmbH during the term of this Agreement who was involved in the performance of the obligations under this Agreement. This also applies in the event that the Customer should have the hiring or employment performed by a third party.
- 8.2 The Customer undertakes not to enter into contracts with subcontractors of CRYPTRON Security GmbH directly or via third parties within the period of one year from termination of the order. Should this be the Customer's intention, he shall obtain prior written permission from CRYPTRON Security GmbH. In case of infringement, CRYPTRON Security GmbH may claim a penalty in the amount of 5 times the order value of the contract in question. The contractual penalty shall not be offset against any claims for damages.

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**9 Confidentiality**

- 9.1 For the purposes of this Agreement, "Confidential Information" shall mean such data, information and software which the Parties disclose to each other or which the Parties otherwise obtain from the other Party in connection with the business relationship entered into hereunder. Such Confidential Information includes, but is not limited to, data and information of any nature whatsoever and regardless of whether the data and information has been provided orally, in writing and/or electronically - in the latter two cases regardless of the nature of the medium or data carrier.
- 9.2 The foregoing obligations shall not apply as long as and to the extent that the Confidential Information is or becomes generally known without the fault of one of the contracting parties or is lawfully disclosed or provided to a contracting party by a third party without breach of a confidentiality obligation or has demonstrably been developed by the Customer independently and without the use of Confidential Information or has been previously released for disclosure in writing by the providing contracting party.
- 9.3 Upon request, but no later than upon termination of the cooperation of the Parties, all confidential information handed over in this context shall be demonstrably destroyed or returned to the other Party.
- 9.4 The parties shall treat confidential information as strictly confidential and shall not disclose it to third parties. They may only disclose confidential information to their employees if they need to have access to confidential information in order to fulfill their contractual obligations. The parties shall ensure that the confidentiality obligation is also fulfilled by any third parties engaged and their employees. They shall provide evidence of their obligation to the above confidentiality agreement or a corresponding obligation at the request of the respective other party. The parties undertake to comply with the provisions of the Data Protection Act.
- 9.5 CRYPTRON Security GmbH is authorized to disclose, process and/or have processed by third parties personal data to trusted companies exclusively in compliance with the data protection provisions.
- 9.6 CRYPTRON Security GmbH reserves the right to hand over confidential information (esp. audit reports and results) to the Customer only personally in the context of a meeting for reasons of confidentiality.

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**10 Duties of customer**

- 10.1 The Customer shall provide all necessary and expedient supplies, cooperation and measures in a timely manner and at its own expense and shall create the conditions to enable CRYPTRON Security GmbH to take the agreed measures.
- 10.2 The Customer shall provide the employees of CRYPTRON Security GmbH as well as its vicarious agents with the necessary support and provide the required qualified personnel to enable CRYPTRON Security GmbH to provide the agreed services.
- 10.3 Details regarding the customer's cooperation and provision shall be stipulated in the individual contract or in supplements thereto.
- 10.4 Depending on the service content stipulated in the individual contract, the subject of security audits by CRYPTRON Security GmbH may also be the auditing of systems, software and databases of third party manufacturers/service providers (third party systems), which may take place both at the customer's premises (on site) and at CRYPTRON Security GmbH, in the latter case CRYPTRON Security GmbH may also transfer (copy) copies of affected third party software and third party databases to its systems solely for auditing purposes. The Customer shall be responsible for ensuring that such third parties agree or have agreed to the examination of the affected Third Party Systems. By placing an order with CRYPTRON Security GmbH, the Customer acknowledges that the necessary declarations of consent from the third parties concerned have been obtained. In the event that third parties assert rights or claims against CRYPTRON Security GmbH arising from such verification activities, the customer shall support CRYPTRON Security GmbH in defending such claims/rights to the best of its ability at its own expense; in any event, the customer shall indemnify and hold CRYPTRON Security GmbH harmless in full in such cases.

**11 Rights to results**

- 11.1 The comprehensive right, in particular copyright, with all powers to all concepts, know-how, methods, work results and other documents created within the scope of the individual contract ("Results") brought in and used by CRYPTRON Security GmbH or its subcontractors shall be exclusively vested in CRYPTRON Security GmbH in relation to the Customer, even if such Results have been created through the cooperation or the specifications of the Customer.
- 11.2 The Customer shall be granted the non-exclusive right to use the results produced on the basis of an individual contract for its own internal operational purposes without the right to pass them on to third parties.

**12 Announcements**

- 12.1 Notwithstanding the other provisions of this Agreement, the Customer shall permit CRYPTRON Security GmbH to publicly refer to the basic subject matter of its activities for the Customer as a reference, as well as to the reasons for having selected the respective services of CRYPTRON Security GmbH. Provided that the Customer gives its written consent to this, CRYPTRON Security GmbH may furthermore refer to the solution selected for the Customer and publish a high-level profile, the subject of which is the reasons for the selection of CRYPTRON Security GmbH, the subject matter of the services, e.g. the solution implemented or to be implemented, as well as its advantages.

**13 Others**

- 13.1 CRYPTRON Security GmbH shall be permitted to make anonymous use of any knowledge gained or applied in the course of providing the Services, provided that such knowledge does not specifically relate to the Customer's circumstances.
- 13.2 The Customer shall not disclose to any third party any information obtained by CRYPTRON Security GmbH as a result of the provision of the Services without the prior consent of CRYPTRON Security GmbH, in particular not in the course of any activity to be provided to third parties. The Customer undertakes to impose such a prohibition of disclosure on its employees and third parties who may gain access to such knowledge in the course of the provision of services.
- 13.3 The transfer of rights and obligations under this Agreement with discharging effect for one party shall only be permitted with the consent of the other party.

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**14 Termination of contract**

- 14.1 The contract shall enter into force upon signature by both parties. Contracts that do not have a term provision are concluded for an indefinite period. They may be terminated in writing with six months' notice to the end of the month.
- 14.2 Either party shall be entitled to terminate the Agreement extraordinarily by giving 30 days' notice in writing if the other party acts in breach of a material agreement of this Agreement and fails to remedy the breach and to eliminate the consequences of the breach within a period which shall generally not be less than 30 days.
- 14.3 Either party shall be entitled to terminate the contract if insolvency proceedings are opened against the other party or if insolvency proceedings are rejected for lack of cost recovery or if the other party ceases its business, engages in a non-insolvency-related business transaction or is no longer able to meet its payment obligations under this contract.

**15 Severability clause**

- 15.1 Should any provision of this contract be or become invalid or should the contract contain a loophole, the legal validity of the remaining provisions shall not be affected thereby. In place of the invalid or missing provision, a valid provision shall be deemed to have been agreed which comes as close as possible to the economic result intended by the parties.

**16 Applicable law and place of jurisdiction**

- 16.1 This Agreement and all claims arising out of or in connection with it shall be governed by substantive Swiss law, excluding the UN Convention on Contracts for the International Sale of Goods and the conflict of laws rules.
- 16.2 Any disputes arising out of or relating to the breach, termination or invalidity of this Agreement shall be subject to the exclusive jurisdiction of the competent court for Zurich. CRYPTRON Security GmbH shall, however, be entitled to bring an action against the Customer at any other statutory place of jurisdiction.
- 16.3 The Customer and CRYPTRON Security GmbH agree to treat the existence, content and outcome of each proceeding as confidential, unless otherwise provided under applicable law. All collected electronic data of CRYPTRON Security GmbH shall be stored and archived in Switzerland.

Aadorf, 9. February 2022