

## 1 General provisions

These General Terms and Conditions of Business and Delivery ("GTC") apply both to InfoGuard AG and to all subsidiaries that are directly or indirectly controlled by InfoGuard AG (each company hereinafter referred to as "InfoGuard").

The following GTC apply to all orders (for products, third-party products and services) and form an integral part of the contract with the customer. Agreements to the contrary are only binding if they have been agreed in writing. These GTC shall cancel out any of the customer's general terms and conditions. Should GTC not contain a specific provision, the Swiss Code of Obligations ("OR") shall apply on a subsidiary basis.

InfoGuard is authorised to amend these GTC at any time with effect for the future. The currently applicable GTC can be viewed on [infoguard.ch](http://infoguard.ch).

The contract between the parties is concluded by the written acceptance (email is sufficient) of the offer ("Order Placement") by the customer.

## 2 Products and services

InfoGuard offers its own products and services, and in some cases also acts as a reseller of third-party products (e.g., hardware and software) and supplies the customer with third-party products and associated subscription and maintenance contracts from third-party manufacturers.

InfoGuard provides no warranties for the qualities of third-party products and their functionality and accepts no liability. In such cases only the specifications and conditions of the third-party manufacturer shall apply. InfoGuard shall support the customer in the commissioning and operation of the third-party products within the scope of the order and with corresponding service agreements (see clause 3).

## 3 Services

### 3.1 General

InfoGuard offers the following services in particular: SOC and managed services, incident response consulting, penetration testing, engineering, and dealing in third-party products (hardware and software).

The nature and scope of the services to be provided by InfoGuard for the customer are agreed within the framework of the respective contract.

### 3.2 Duties of care

InfoGuard shall provide the services through the deployment of appropriately qualified specialist personnel and the requisite diligence.

## 4 Technical documentation

Unless otherwise agreed, the technical specifications in InfoGuard brochures and catalogues are not binding. Data in technical documents shall only be binding if the binding nature of this data is expressly stipulated in the contract or the technical documents in question.

The technical documentation and operating instructions of the manufacturers of third-party products shall apply within the scope of the general terms and conditions of the third-party manufacturer.

## 5 Applicable regulations, operating requirements etc.

The customer bears sole responsibility for ensuring that the products and third-party products comply with all relevant provisions regarding delivery, installation, operating requirements, product safety etc. in force at the place of intended use.

At the customer's request, InfoGuard may perform product modifications on the products that are necessary to comply with the relevant provisions in force at the place of intended use. Such modifications require the approval of InfoGuard and will be invoiced to the customer

additionally. InfoGuard shall not perform any product modifications on third-party products.

## 6 Prices

All prices are net ex works, excluding packaging, in the currency stated in the offer. The prices are exclusive of VAT and all other charges on the products supplied by InfoGuard, third-party products and/or services provided.

All taxes, fees and other charges incurred in connection with InfoGuard's products, third-party products and/or services, whether within or outside Switzerland, shall be borne by the customer.

## 7 Terms of payment

Unless otherwise agreed, the payment deadline is 30 days from the date of invoice.

If no payment or an incomplete payment is made after expiry of the payment deadline, the customer shall be deemed to be in default without further notice. In this case, InfoGuard is entitled to charge default interest of five percent, even without issuing a prior reminder, as well as to withhold further deliveries/services and to withdraw from the contract without setting a grace period. InfoGuard reserves the right to assert any further claims for damages.

## 8 Withdrawal/cancellation

If the order is cancelled by the customer after written acceptance by InfoGuard, the customer must pay 100 percent of the order amount.

## 9 Delivery dates

Delivery dates are approximate and non-binding, unless expressly agreed otherwise in writing.

If the parties have agreed a binding delivery date, the delivery date shall be deemed to have been met if the goods have been handed over for dispatch on the date agreed. InfoGuard may reasonably extend delivery dates if the circumstances relevant to InfoGuard and/or its suppliers change in such a way that the manufacture, transport, delivery or export or import of the products and third-party products is impaired. The customer is only entitled to withdraw from the contract due to a delayed delivery after it has set InfoGuard a reasonable written deadline for subsequent performance and InfoGuard has not effected delivery within this extended deadline, although it would have been reasonable given the circumstances.

Under no circumstances may the customer claim damages due to delayed delivery.

Contractually agreed training periods must allow for an appropriate preparation period before the desired start of the first training course.

## 10 Delivery requirements for products/third-party products

Delivery of products may depend on the requirement and/or receipt of an import and export licence.

For the delivery of certain products, a document signed by the customer is required by the Swiss Export Control Authority (Seco) at the time of export. The customer undertakes to provide InfoGuard with such a document upon first request.

## 11 Shipping, transport, and insurance/packaging

The customer is liable for transport and must provide transport instructions upon Order Placement. InfoGuard must be informed in good

time of any special requirements relating to shipping, transport, and insurance. The customer must take out insurance against all risks.

InfoGuard shall provide appropriate packaging for all products to be delivered. Packaging shall be charged separately and cannot be returned for a refund. Products and third-party products can only be returned to InfoGuard in their original packaging or in undamaged packaging of an equivalent quality.

## 12 Safety regulations at the place of fulfilment

The customer must inform InfoGuard in good time, and by no later than upon Order Placement, of all safety regulations in force at the place of fulfilment (including application-specific regulations) that affect InfoGuard's fulfilment of the order. The notification must include, among other things, the regulations issued by the competent authorities or the customer's company or organisation with regard to the safety of the customer's and/or InfoGuard's employees and equipment.

The customer must notify InfoGuard in writing of any product modifications to be made to the products on the basis of such safety regulations by no later than upon Order Placement. InfoGuard may refuse to provide warranty services and/or other services at the place of installation if fulfilment of the applicable safety regulations cannot be guaranteed or if appropriate information on the safety regulations is not provided. InfoGuard shall not perform any product modifications on third-party products.

## 13 Transfer of risk/retention of title

Risk shall transfer to the customer in accordance with the statutory provisions (Art. 185 Swiss Code of Obligations (OR)). InfoGuard has a shipment obligation to dispatch, and services are always provided ex works. Benefit and risk transfer to the customer on dispatch ex works. If the transport of the products is delayed for reasons for which InfoGuard is not at fault, or if it becomes impossible for such reasons, InfoGuard is authorised to store the products at the customer's risk. In this case, the risk transfers upon dispatch of the notice of deposit. The products remain the property of InfoGuard until they have been paid for in full. The customer undertakes to support InfoGuard upon receipt of the property. In particular, the customer must co-operate with InfoGuard in accordance with the applicable legislation when making entries in the relevant retention of title register. The customer shall bear all costs associated with the retention of title.

## 14 Inspection and acceptance of the delivery of products / third-party products

The customer must inspect the product, the third-party product, and the packaging immediately upon receipt. Objections relating to packaging, shipping or transport must be made by the customer to the last of the carriers and to InfoGuard in writing immediately upon receipt of the products and third-party products by the customer, and by no later than within five days.

Subject to additional consideration, InfoGuard shall support the customer with acceptance tests at the factory or on site.

If the customer fails to give notice of the defects in writing within the prescribed period, matters including the functionality of hardware and software shall be deemed to have been accepted; in this case, the warranty shall be excluded for defects that would have been discovered during a proper inspection of the products and third-party products.

If the complaint is without merit, InfoGuard is entitled to claim the expenses incurred from the customer.

## 15 Warranties

### 15.1 Factory warranties

Where an item of work is due, the General Terms and Conditions of Delivery for InfoGuard products and the statutory provisions on

contracts for work and labour pursuant to Art. 363 et seq. OR shall apply.

### 15.2 Product warranty for third-party products

InfoGuard does not provide any warranties for third-party products. The warranty rules of the third-party manufacturer in question shall apply.

### 15.3 Warranty disclaimer

The warranty obligation shall not apply in particular to

- minor defects;
- natural wear and tear or damage occurring after the transfer of risk as a result of incorrect or negligent handling;
- excessive or improper use, modifications or repairs by the customer;
- use of unsuitable equipment;
- external influences for which InfoGuard is not responsible; or
- non-reproducible software errors.

## 16 Data storage

InfoGuard's data is generally stored on its own infrastructure in a data centre of a third-party service provider in Switzerland. The third-party service provider undertakes to InfoGuard to take all technical and organisational measures required by Swiss and European data protection legislation, that correspond to the state of the art and that are suitable on the basis of relevant international norms and standards. The customer acknowledges that there is no absolute certainty that the operation of the data centre will be uninterrupted and error-free.

InfoGuard uses external IT service providers and cloud providers with servers in Switzerland and abroad to provide its services and may use certain IT services and means of communication that may entail data security risks (e.g., Microsoft Teams). Should the customer wish to take special security measures, it is the customer's responsibility to notify InfoGuard accordingly.

## 17 Cyber security

InfoGuard protects its systems against cyber attacks and takes appropriate technical and organisational measures to this end.

InfoGuard is ISO 27001-certified and maintains this certification.

InfoGuard cannot guarantee that the customer's data will not fall victim to cyber attacks, cybercrime, brute force attacks, hacker attacks and other fraudulent and malicious activities by third parties, including but not limited to viruses, forgeries, malfunctions, and disruptions that are beyond the control and responsibility of InfoGuard.

## 18 Limitation of liability

InfoGuard shall have unlimited liability in cases of gross negligence and wilful intent. In the event of minor negligence, liability is limited to the order volume or a maximum of CHF 100,000, whichever is lower. Furthermore, InfoGuard is not liable to the customer for any production downtime, loss of profit, loss of use, financial losses and losses as a result of a delay or interruption to the service, or for contractual losses or consequential losses.

The customer shall be liable for any damage caused by its employees. This also applies if InfoGuard employees manage or monitor the service. InfoGuard shall assume liability in the context of wilful misconduct and gross negligence for damages caused as a result of incorrect instructions being issued by InfoGuard employees. The customer shall be liable for any damage caused by defects in the equipment and materials provided by it. This shall also apply if such

have been used by InfoGuard employees without complaint, unless they ought to have recognised the defects with reasonable diligence.

InfoGuard shall not be liable for any loss or damage (including consequential loss) suffered by the customer or third parties as a direct or indirect consequence of the use or inability to use InfoGuard products, unless otherwise expressly stated in the contract or in the mandatory provisions of the applicable legislation. In particular, InfoGuard is not liable for damages arising from or in connection with the loss, distortion, delay or misuse of data, the use of distorted data or the effects of data lost, distorted or delayed during ongoing (manual or automatic) data processing, regardless of whether this data is processed by InfoGuard products or not.

To the extent permitted by law, InfoGuard expressly and fully excludes liability for direct or indirect damage or consequential damage suffered by the customer as a result of power or energy outages or power or energy rationing, cyber attacks, hacker attacks, viruses, spam mails, transmission errors, technical errors or interruptions, misuse/disruption of the Internet, the InfoGuard website, the network, the IT infrastructure or telecommunications, transmission errors, technical faults or interruptions, misuse/disruption of the Internet, the InfoGuard website, the websites linked to the InfoGuard website, the network, the IT infrastructure or telecommunications network, as well as data misuse by third parties or data loss.

InfoGuard shall accept no liability for third-party products (hardware and software).

## 19 Data protection

The parties undertake to comply with the provisions of the relevant data protection legislation. Further information on the handling of personal data by InfoGuard can be found in InfoGuard's privacy policy, which can be accessed in its current and binding form on the InfoGuard website.

## 20 Intellectual property (IP)

### 20.1 InfoGuard's IP

All industrial property rights (patents, trademarks, utility models, rights relating to the design and layout of semiconductor chips, other design rights etc.) and copyrights relating to the products supplied, third-party products and documentation shall remain the exclusive property of InfoGuard or its licensors. The customer shall not acquire any such rights on acquisition of the products or third-party products.

The concepts, architectures and methods developed by InfoGuard as part of the fulfilment of the contract remain the exclusive property of InfoGuard and may be used by the customer for an indefinite period of time, but may not be passed on, sold or copied without written consent.

The customer shall benefit the expertise (concepts, methods, ideas, formulations, templates etc.) built up by InfoGuard over many years of working with customers. Unless otherwise agreed in writing, the expertise that InfoGuard develops for customers is not exclusive and may also be used by InfoGuard for other customers, subject to professional secrecy.

### 20.2 Third-party products

In the case of third-party products, the ownership and licence terms of the third-party manufacturer shall apply exclusively. The customer is obliged to comply with these provisions.

### 20.3 Education services

Training documents and training installations shall remain the property of InfoGuard even if they are created specifically for a customer. If the customer wishes to carry out product training itself (train the trainer), a

corresponding authorisation and licence must be obtained from InfoGuard for the use of the training documents and training installations.

## 21 Non-solicitation clause

During the term of the contractual relationship and for 18 months after termination of the contractual relationship or fulfilment of the contract, the customer shall not be permitted to headhunt InfoGuard employees. If an employee concludes an employment contract with the customer within these specified periods, it is incumbent on the customer to prove that the employee was not recruited on the basis of headhunting. In the event of a breach of the non-solicitation clause, the customer must pay InfoGuard liquidated damages in the amount of 1.5 times the gross annual salary of the employee concerned (based on the last annual salary at InfoGuard).

## 22 Confidentiality

The parties undertake to use all observations, documents and other information, in particular information about business and trade secrets, as well as any information about customers, only in fulfilment of this contract. They undertake not to make any confidential information accessible to third parties during the term of this contract or for the period after its termination. The parties are not permitted to copy or otherwise reproduce documents in whole or in part, in any form whatsoever. The confidentiality obligation contained in this article shall survive the end of the contract. The parties undertake to take all reasonable measures to ensure compliance with this confidentiality obligation.

The customer must treat all non-public information in connection with the products as confidential. In particular, the customer may not pass on such information (including product documentation and operating instructions) to third parties. The customer shall subject its employees, business partners and other third parties who could gain access to confidential information to all confidentiality obligations.

## 23 Closing provisions

### 23.1 Further services

Further services in connection with implementation services such as maintenance, advisory support, or adaptation to modified deployment and operating conditions are provided by InfoGuard in accordance with the terms of additional, separate contracts.

### 23.2 Severance

Should any parts of this contract be void or become legally ineffective, the remainder of the contract shall continue to apply. The parties shall then interpret and structure the contract in such a way that the purpose intended with the correct or legally ineffective parts is achieved as far as possible.

### 23.3 Set-off

Any set-off of the customer's claims against InfoGuard's claims requires the prior specific written agreement of both parties.

### 23.4 Assignment

The customer undertakes not to assign the rights and obligations associated with the products and services, as well as claims or other entitlements arising from this contract, to third parties without the prior written authorisation of InfoGuard. InfoGuard may outsource the provision of services to third parties.

The regulations of the respective third-party manufacturer apply to the assignment of third-party products.

### **23.5 Force majeure**

Each party is entitled to refuse to fulfil its contractual obligations if this is precluded by the circumstances listed below or is unreasonable to do so from an economic perspective: strikes and lockouts and other circumstances beyond the control of the parties, such as fire, war (whether declared or not), acts of terrorism or political violence, official orders, epidemics/pandemics, mobilisation, riots, confiscation, seizure, embargo, sanctions, restrictions in energy supply, specific travel warnings from the competent authorities to leave certain countries and regions at the respective destination or not to travel there, as well as errors and delays at a subcontractor for any of these reasons. A circumstance referred to in this clause that occurred prior to the conclusion of the contract shall only give the party a right to refuse performance if its effects on the fulfilment of the contract are proven and were not foreseeable at the time the contract was concluded. The party invoking force majeure shall immediately inform the other party of the commencement and termination of such circumstances. If force majeure prevents the customer from fulfilling the contract, the customer shall indemnify InfoGuard for the costs incurred by InfoGuard in securing the delivery item. Irrespective of other provisions, each party has the right to withdraw from the contract in writing if fulfilment of the contract is prevented for longer than six months in accordance with this provision.

### **23.6 Amicable resolution**

In the event of differences of opinion, both contracting parties undertake to attempt to reach an amicable resolution before calling a judge and to give at least the other party sufficient opportunity to submit a written statement.

### **24 Place of fulfilment, place of jurisdiction and governing law**

The place of fulfilment for all obligations of the parties is Zug, Switzerland. The courts in Zug, Switzerland, are expressly and exclusively competent concerning for all business relationships and any legal disputes.

Swiss substantive law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN CISG) and to the exclusion of the Swiss provisions of private international law (IPRG).

InfoGuard AG, Switzerland

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