

# General Terms and Conditions

## 1 Applicability

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- 1.1 These General Terms and Conditions (hereinafter referred to as "**GTC**") shall apply to all contracts between Compass Security Schweiz AG (hereinafter referred to as "**Compass**") and its customers, who expressly acknowledge the applicability of the GTC (hereinafter referred to as "**individual contracts**") as well as the integral parts and amendments referred to in section 13.2.
- 1.2 By signing the individual contract which refers to the GTC the customer acknowledges that it has taken note of the GTC and considers its contents binding to the contractual relationship in question.

## 2 Placing and changing orders, waiver of fulfilment of orders

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- 2.1 Orders are placed by signing the individual contract. The following matters are usually set out in the individual contract:
- a) Description of the services to be per-formed (project description);
  - b) Duration and time schedule;
  - c) Description of the results and documents to be delivered by Compass;
  - d) Performance criteria and terms for the acceptance of the service results;
  - e) Special responsibilities of the customer;
  - f) Project team and contact person(s) in charge;
  - g) Cost: selection of type of invoicing (on the basis of actual work done or at a fixed price), applicable hourly rates and other rates of compensation or a definition of the fixed price, payment terms.
- 2.2 During the performance of the contractually agreed services both the customer and Compass may at any time propose changes to the agreed services in writing. If any changes are requested by the customer, Compass shall inform the customer in writing within 30 days if and under which conditions the requested changes are possible and the effect they will have on the contract, in particular the deadlines and prices. If Compass requests any changes, it must indicate the effect of the changes on the deadlines and prices. The customer must accept or reject such a request for changes from Compass within 30 days. Until the customer has reached a decision, Compass shall continue to perform the services in accordance with the valid service contract (see also section 5.5). The parties shall agree in writing on any changes requested under this paragraph.
- 2.3 The customer may waive any further services in writing at any time, subject to a notice period of three months. Compass has the right but not the obligation to stop performing the contractually agreed services as soon as it receives the

customer's waiver, unless the parties come to a different agreement in writing. However, the customer must pay the contractually agreed prices in full for all services which were actually performed until the end of the above notification period. In addition, the customer must compensate Compass for any loss sustained by Compass because, based on the belief that it would be expected to fulfill the contract, Compass has made arrangements regarding staff and/or material which have become wholly or partially void as a result of the customer's waiver of further services.

## 3 Services invoiced on the basis of actual work done

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- 3.1 When services are invoiced on the basis of actual work done, Compass shall estimate the time required as well as the expected total price as best as possible based on the details available at the time the contract is concluded. This estimate is usually included in the individual contract and shall be regarded as a non-binding guideline (see also section 3.4).
- 3.2 The prices to be paid for the services shall be based on the time actually spent on the customer's business by Compass staff or third parties mandated by Compass. The time shall be recorded in work reports and shall be invoiced at the applicable rate. Unless otherwise agreed, actual driving time, operation and use of any type of material as well as any other ancillary costs shall be invoiced separately on the basis of the applicable rate. Expenses which Compass must support with receipts shall also be charged separately.
- 3.3 The hourly rate applicable to actual work done and all other rates shall be set out in the individual contract. In the case of service projects that last for more than one year, Compass shall be entitled to adjust the applicable hourly rates and other rates by written notice 3 months before the end of the first year of the contract term at the earliest, in particular to account for changed cost factors such as salaries, material, etc. These adjusted hourly or other rates shall apply to services which are performed more than three months after receipt of the notification of the changes by the customer.
- 3.4 If, in the case of services invoiced on the basis of actual work done, the estimated time frame is exceeded, Compass shall obtain the permission of the customer before continuing to perform and finalize the services. Otherwise, the services shall be deemed to have been performed if the agreed services were performed during the estimated time frame.

#### **4 Services invoiced at a fixed price**

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- 4.1 If it has been agreed to perform the services at a fixed price, the fixed price shall cover all contractually agreed services except expenses which Compass must support with receipts and which shall be invoiced separately.
- 4.2 In the case of services invoiced at fixed prices, the agreed fixed prices shall be based on the information available at the time the contract is concluded. If this basis changes substantially and Compass could not have foreseen the changes at the time the contract was concluded, Compass shall be entitled to adjust the fixed prices with written notification to the customer and to stop any further work until it has received the customer's written agreement to the new fixed prices.

#### **5 Payment terms**

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- 5.1 Value added tax and any other indirect taxes or charges are not included in the prices for the services. Such expenses shall be declared separately and shall be borne by the customer.
- 5.2 If it has been agreed to invoice the services on the basis of actual work done, Compass shall issue monthly invoices for the services actually performed and supported by work reports as well as any ancillary costs. These invoices must be paid in full within 30 days of the invoice date.
- 5.3 If it has been agreed to invoice the services at fixed prices, the agreed price and separately declared taxes shall be paid in accordance with the payment schedule set out in the individual contract. If no payment schedule has been agreed, the fixed prices must be paid within 30 days of the invoice date.
- 5.4 In the event of a delay in payment, Compass may demand interest on arrears. The interest rate shall correspond to the rate for unsecured current account overdrafts demanded by large banks in Zurich plus 1%, but shall not be less than 5%. If the customer's delay in payment lasts for more than three months, the due interest on arrears shall increase by a further 5%. In the event of a delay in payment by the customer, Compass shall have the right to stop performing the services agreed in the individual contract until it receives the outstanding payment. This shall not affect Compass's right to withdraw from the individual contract if the customer continues not to pay the outstanding amount despite repeated reminders. In this case the customer must also pay all services already performed by Compass under the individual contract.
- 5.5 Compass may separately invoice extra work required as a result of additional requests from the customer which were not included in the individual contract or through the fault of the customer, in particular work required as a result of culpable non-compliance with deadlines by the customer.

#### **6 Service provider and contact persons**

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- 6.1 Compass requires the prior consent of the customer to mandate third parties to perform its obligations under the individual contract. Employees of the Compass Security Network Computing AG (holding)

or the subsidiary companies, namely Compass Security Deutschland GmbH or Compass Security Cyber Defense AG, are not considered as third parties and can be mandated without prior consent.

- 6.2 If contact persons are identified in the individual contract, notifications sent to these persons by Compass shall be deemed to have been sent to the customer. Directives and notifications received from these contact persons shall be binding on the customer.

#### **7 Confidentiality**

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- 7.1 Compass undertakes to treat all information on the customer acquired in connection with an individual contract as well as the results of the investigation as strictly confidential.
- 7.2 However, the obligation of confidentiality shall not apply to data which is publicly accessible or known or which has been developed independently of and outside the individual contract or which has been legally obtained from third parties.
- 7.3 Documents and tools (e.g. programs and data carriers) provided to Compass by the customer shall remain the property of the customer. After completion of the investigation these shall be returned to the customer or destroyed on instructions of the customer.
- 7.4 Compass shall comply with all further security provisions, e.g. the provisions on banking confidentiality or data protection legislation. If the processing of personal data forms part of the contract, a mutual Data Processing Agreement must be signed.
- 7.5 Publication of the collaboration between Compass and the customer in a Compass list of references requires the express consent of the customer.

#### **8 Ownership and registerable rights**

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- 8.1 The customer shall become the owner of the contractually due service results as well as the accompanying registerable rights when the results are handed over to it. However, Compass shall have the right to continue to use non-customer-specific know-how contained or shown in the service results without restriction and without having to pay the customer any compensation.
- 8.2 Compass may assume that the contractually agreed use of the information, documents and data carriers provided by the customer and the contractually agreed systems penetration shall not violate any rights of third parties, in particular copyrights, data protection rights or personal rights. Should Compass nevertheless be accused of such a violation of rights, the customer shall indemnify Compass fully.

## **9 Warranty**

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- 9.1 Compass warrants that in performing the contractually agreed services it shall apply its professional expertise and experience as well as its specialist know-how of the area covered by this contract which was publicly acknowledged at the time of the performance. It shall also exercise the diligence which can be reasonably expected.
- 9.2 Compass warrants that the results and documents delivered to the customer shall comply with the specifications and performance criteria set out in the individual contract or one of its integral components at the time of delivery. The warranty period shall end 60 days after the delivery of the service results in question. If a defect is identified and notified, the customer shall only have the right of rectification of defects during the warranty period. The right of rectification is subject to the customer notifying Compass of the defect immediately after its discovery.

## **10 Liability**

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- 10.1 Subject to the provisions of sections 9.1 and 9.2, Compass shall be liable towards the customer for each loss caused by Compass to the customer intentionally or through negligence within the scope of the individual contract as well as any damage pursuant to the Product Liability Act.
- 10.2 Compass's liability shall be limited to the maximum service price due by the customer for direct losses which the customer has suffered in connection with the performance of the contractually agreed services.
- 10.3 All further liability is expressly excluded to the extent that is legally possible, in particular for indirect loss or consequential loss, such as lost profit, additional expenditure or staff costs of the customer, non-realized savings, claims from third parties or loss of data as well as liability for auxiliary personnel and loss arising from late delivery of the services, in particular as a result of illness or accident suffered by staff members or third parties used by Compass,

## **11 Acceptance of the services**

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- 11.1 Unless special acceptance conditions have been agreed in the individual contract, the services shall be regarded to have been performed when Compass delivers the results and documents specified in the individual contract to the customer and the work has been finalized in accordance with the performance criteria specified in the individual contract.

- 11.2 If formal acceptance of the work has been agreed in the individual contract, the service results shall be deemed to have been accepted when they have been successfully tested in accordance with the agreed acceptance procedure. If the acceptance procedure is delayed through circumstances beyond the control of Compass, the work shall be deemed to have been accepted on the date originally set. In any case the service results shall be deemed to have been accepted as soon as the customer uses or can use the results productively. Minor defects shall not prevent acceptance.
- 11.3 If a work report has been signed it shall be regarded as a confirmation of the performance of the service.

## **12 Prohibition against labor piracy**

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- 12.1 Both contracting parties agree not to actively recruit employees of the other contracting party during the duration of the contract and up to a year after contract completion.

## **13 Final provisions**

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- 13.1 The individual contract shall enter into force upon signature by both contracting parties.
- 13.2 Appendices expressly mentioned in the individual contract are integral parts of the individual contract. Other agreements not expressly mentioned in the individual contract as well as amendments to the individual contract shall only be valid if they have been put down in writing and signed by both contracting parties.
- 13.3 The set-off of claims of the customer against claims of Compass requires a special written agreement between both contracting parties.
- 13.4 The rights and obligations of the contracting parties in sections 7.1 to 7.5 and 8.1 to 8.2 shall remain valid after termination of the individual contract and shall be binding on both the contracting parties and their legal successors.
- 13.5 In the case of a discrepancy between the individual contract and the GTC, the provisions of the individual contract shall prevail.
- 13.6 Any general terms and conditions of the customer shall not be applicable.
- 13.7 The individual contract as well as its integral parts listed in section 13.2 shall be subject to and construed in accordance with Swiss law.
- 13.8 The exclusive place of jurisdiction for disputes arising from the individual contract and the GTC is Rapperswil-Jona, Canton of St. Gallen (Switzerland).