

## General Terms and Conditions of Business of EgoSecure GmbH for service and purchase contracts and contracts for work and services – status June 2016

### General provisions

#### Section 1 Subject matter of contract

These general terms and conditions of business apply to all contracts entered into by the Contractor, EgoSecure GmbH ("EgoSecure") and the Principal. Section 16 applies in addition to services. If creating a work is required, Sections 17 to 20 shall apply additionally.

1.2 EgoSecure shall render its services exclusively in accordance with the generally recognised technological standards at the time of awarding the contract. EgoSecure is not required to render a service that extends beyond the written performance description. EgoSecure shall, in particular, render services in an information technology (IT) environment.

1.3 The standard products or standard technologies or documentation that may be stated in the contract shall, in each case, become the basis for executing the contract as stated in the version available at the time of entering into the contract.

1.4 Performance and quality descriptions on the part of EgoSecure do not constitute any guarantees. These are subject to express and written confirmation by EgoSecure.

#### Section 2 Bringing about the contract

Solely these general terms and conditions of business apply, which the Principal consents to upon awarding the contract. This also applies if EgoSecure does not object to the Principal's general terms and conditions of business.

#### Section 3 Remuneration

3.1 In the absence of agreements to the contrary, EgoSecure shall receive remuneration based on costs in the form of daily rates in accordance with the offer. A daily rate covers the work performance of eight hours each day. Work performance that extends beyond or falls short of this shall be remunerated on a pro rata basis. The daily rates refer to activities that are performed in the period from Monday to Friday between 6.00 a.m. and 8.00 p.m. If EgoSecure's employees perform activities outside the above-mentioned period following authorisation by the Principal, the pro rata daily rate shall be increased as follows:

- in the case of night work 30 %
- in the case of work on Saturdays 25 %
- in the case of work on Sundays 50 %
- in the case of work on public holidays 100 %

The surcharges shall not be applied on a cumulated basis. The respective higher surcharge shall apply.

In the case of services that EgoSecure's employees do not render at the location of the company's registered office, separate travelling times, costs, expenses and, where applicable, the cost of

overnight stays shall be invoiced. The following underlying conditions apply:

- Business class flight
- First class rail ticket
- EUR 0.60/km kilometre allowance
- Hotel according to costs incurred, at most 4 stars
- Public transport, taxis and parking costs according to costs incurred
- Daily expenses in accordance with the valid tax guidelines

With regard to travelling times, 1/12 of the daily rate shall be charged for each hour.

3.2 All prices are to be construed plus the respective, valid statutory turnover tax.

3.3 Amounts shall be due for payment two weeks from the invoice date without deductions.

3.4 The Principal may only set off against EgoSecure's claims, or exercise a right of retention, if the Principal's counter claim is undisputed or res judicata.

#### Section 4 Executing the contract

4.1 The Principal shall appoint a professional and competent contact person for dealings with EgoSecure. EgoSecure shall for its part appoint a person responsible for projects who can prepare co-ordination measures and make decisions at short notice.

4.2 Within the framework specified by the contract, EgoSecure shall determine and is responsible for the manner in which, how and by whom the contract shall be executed. The Principal does not, insofar, have the right to issue instructions but EgoSecure shall endeavour at all times to take the Principal's wishes into consideration.

4.3 EgoSecure is entitled to award services to subcontractors.

4.4 EgoSecure shall receive the development and documentation guidelines specified in the contract by the Principal. Otherwise, it shall use its own development and documentation guidelines.

#### Section 5 Contractual obligations on the part of the Principal

5.1 If the information or documents made available by the Principal prove to be incorrect, incomplete or not clear or objectively impracticable, the Principal shall – following notification by EgoSecure – make the necessary corrections and/or provide the necessary supplementary information without delay. This particularly applies to concepts specified by the Principal. The Principal shall rectify defects or malfunctions in provided components for which EgoSecure has provided notification without delay.

5.2 The Principal shall, as a key contractual obligation in good time and gratuitously, render in particular the following services in full and in perfect quality, and maintain these during the period in which services are rendered. The Principal shall, in each case at the request of EgoSecure,

- make available to EgoSecure at short notice the required information, make available the

necessary documents, state discussion partners and make decisions in good time,

- make available suitable workplaces including telephone and internet connections,
- make available and ready for use the necessary development environment with the requisite number of PCs/laptops and additional aids as part of the customary operating hours and the company access regulations, and
- procure the necessary licenses, authorisations and access entitlements.

EgoSecure shall be notified in good time of commitments to certain utilisation times, in particular restrictions regarding utilisation times.

5.3 The Principal undertakes, as a key contractual obligation, to notify EgoSecure within five workdays, following the expiry in vain of the last additional period it has set, whether or not it shall be requesting compensatory damages instead of performance and/or withdrawing from the contract.

### **Section 6 Amending the services (Change Request)**

6.1 Changes to services and all implemented documents and other outcomes of the contract that are affected by the changes shall be treated in accordance with the following procedure.

6.2 A change request may be issued by both the Principal and EgoSecure. Any change request is to be drawn up in writing and handed over to the responsible contact person.

6.3 If the Principal issues the change request, EgoSecure shall investigate such a change, insofar as EgoSecure is willing to implement the change, within a period to be agreed upon by the contracting parties, determine the effects of the change and set them out in writing in a subsequent offer. If EgoSecure issues the change request, the subsequent offer shall already contain the effects to be listed:

- Description of the functional change and its effects on implemented documents and other outcomes
- Effects on the defined performance scope and changes prompted as a result to the expenditure and the agreed dates

6.4 If a change request necessitates a comprehensive review by EgoSecure as to whether or not and at what conditions the change is practicable, it may request the agreement of additional remuneration in that respect.

6.5 If the change request on the part of the Principal necessitates an interruption of the work, EgoSecure may request, for the duration of the interruption, the agreed remuneration and the corresponding increase of an agreed fixed price if and insofar as the employees affected by the interruption could not be meaningfully used elsewhere. Implementation periods shall be extended by the number of calendar days on which the contractual work had to be interrupted because of the change request, and shall be extended by a reasonable start-up period.

6.6 The Principal shall notify EgoSecure within a reasonable period, at the latest within 14 days, whether or not it shall accept the subsequent offer.

6.7 As long as the contracting parties have not reached agreement on implementing the change, EgoSecure shall continue to perform the work in accordance with the existing contract without a corresponding change.

6.8 Changes to the performance scope are to be agreed upon in an addendum to the contract.

### **Section 7 Utilisation rights**

7.1 Job results are evaluations, planning and concept documents and programme material (e.g. software) including appertaining documentation, reports, drawings and similar job results.

7.2 Individually obtained job results are the job results or the elements of a job result that EgoSecure obtains as part of the contract in particular on behalf of the Principal (where applicable by way of calling on the services of third parties). They do not include the integrated standard job results of EgoSecure or third parties.

7.3 Standard job results are all job results of EgoSecure or third parties not specifically developed for the Principal, or parts thereof that are the subject matter of the contract. Altering, processing and reworking standard job results – including as part of the contract – similarly apply as standard job results.

7.4 In the absence of agreements to the contrary, the Principal shall be granted a basic and non-assignable right to use the individually obtained job results following payment in full. The Principal is entitled to duplicate, translate, process and publicly report on the individually obtained job results.

7.5 The Principal shall be granted a basic and non-assignable right, following payment in full, to use standard job results, in particular all standard methods and procedure models, appertaining manuals, standard training documents and standard software products provided these are part of the subject matter of performance and the Principal has acknowledged the corresponding licensing conditions or those of the third party in writing.

7.6 EgoSecure's software comprises components that are licensed as Open Source, that is they correspond to the requirements of the Open Source definition or the free software definition, as well as proprietary components. The open source licensed components are stated in the performance description. The source code of the components licensed as open source shall be made available to the Principal in conjunction with the corresponding copyright notices, disclaimers and potential other notices. EgoSecure guarantees that the Principal may use the open source licensed components for the purposes set out in the contract. The Principal may acquire further-reaching utilisation rights from the respective rights owners to the open source licensed components if the Principal enters into licensing contracts with these on the conditions of the respective applicable open source licenses.

7.7 The utilisation rights shall be granted for an unlimited period of time and may only be terminated by EgoSecure for good cause. Good cause shall be deemed given, in particular, if the Principal violates its contractual obligations in a particularly serious manner or irrespective of a prior warning does not properly honour them or violates statutory provisions to the detriment of EgoSecure.

### **Section 8 Third party rights**

8.1 The Principal may make, job results of third parties available to EgoSecure,, provided this is provided for in the contract, to create the subject matter of performance, for processing or for other redesigning.

8.2 The Principal shall ensure that the utilisation conditions for job results of third parties do not conflict with the creation of the subject matter of performance, the utilisation rights described in Section 7, processing as well as the utilisation and/or publication of the processing. The Principal shall render EgoSecure and its subcontractors exempt from any liability for third party claims that are based on use of these job results.

### **Section 9 Freedom of third party rights**

9.1 EgoSecure guarantees that the assignment of utilisation rights in accordance with Section 7 does not conflict with any third party rights, and shall render the Principal exempt from any third party claims asserted on the basis of infringement of these rights. This shall not apply, in particular, if the alleged rights infringement is attributable to changes to the services by the Principal. Furthermore, it shall not apply if the Principle uses unaltered software supplied by EgoSecure in conjunction with software that is not subject to this contract such that the rights of third parties are infringed upon if the unaltered software supplied by EgoSecure would not have infringed upon the third party rights or if the Principal uses the services in an inadmissible or inappropriate way.

9.2 The Principal undertakes to notify EgoSecure without delay in writing of any claim asserted against the Principal. The Principal authorises EgoSecure at its discretion to ward off the claims on its behalf and take action out of court and settle the dispute as it sees fit. To exercise this authority, EgoSecure shall make available the necessary information and grant the Principal acceptable support. The Principal shall not influence the defence on the part of EgoSecure against third party claims by way of actions or the failure to take action that have not been co-ordinated with EgoSecure, and not acknowledge the claim without prior, written approval by EgoSecure.

### **Sections 10 Dates and force majeure**

10.1 Periods and dates are, as a matter of principle, non-binding unless they are expressly described as binding in the contract.

10.2 Periods shall be extended and dates postponed for EgoSecure appropriately in the case of disruptions attributable to force majeure and other hindrances that are not EgoSecure's responsibility provided such hindrances – such as disruptions to its own deliveries, strikes, lock-outs and operational

disruptions etc. – exert an influence on EgoSecure's service. If the Principal fails to render the services incumbent upon the Principal in good time, similarly assured dates shall be postponed by the corresponding period.

10.3 The contracting parties shall inform each other of foreseeable delays as soon as they identify these. The contracting parties shall draw each other's attention in good time to the failure to honour binding dates.

### **Section 11 Violation of obligations on the part of EgoSecure**

11.1 Insofar as EgoSecure fails to render a due service, or fails to render it as required, the Principal may only request compensatory damages instead of performance or the reimbursement of expenses incurred in vain and withdrawal on condition that EgoSecure is responsible for the violation of the obligation if EgoSecure has determined a reasonable period for performance or subsequent performance and the period has lapsed in vain.

11.2 Reasonable periods set by the Principal must last for at least fifteen workdays. EgoSecure shall only be deemed to have defaulted by way of the issue of a warning.

11.3 If EgoSecure has already partially brought about the performance, the Principal may only request compensatory damages instead of performance if this requires its interest in the entire performance. In such a case, withdrawal from the entire contract is only possible if the Principal has no interest in the partial service.

11.4 If EgoSecure fails to bring about a due service as per agreement, the Principal may not withdraw from the contract and/or request compensatory damages instead of the entire performance or the reimbursement of expenses incurred in vain if the violation of an obligation is insignificant.

### **Section 12 Reservation of title**

EgoSecure reserves the right to ownership of and the rights to the items that are the subject matter of performance up until settlement in full of its receivables resulting from the contract. The Principal is to notify EgoSecure immediately in writing in the case of third party intervention and inform the third parties of EgoSecure's rights.

### **Section 13 Liability/limitation period**

13.1 EgoSecure shall provide compensatory damages based on whichever legal grounds only:

- in the case of intent, gross negligence, in the case of breaching guarantees or in the case of fraudulent concealment in full;
- in other cases: only in the case of violating a key obligation if such action jeopardises the contractual purpose, in the case of default and in the case of impossibility, at all times limited to typical, direct damage that is foreseeable at the time of entering into a contract and in terms of amount limited in total and at most to the total remuneration of the contract and at most to € 500,000 for each case of damage and € 1,000,000 for each year.

EgoSecure shall not be liable for consequential damage caused as a result of minor negligence, other indirect damage or the loss of expected profits.

13.2 The defence of contributory negligence remains unresolved. Liability for all other damage is excluded whereby this does not affect the statutory liability in the case of personal damage and liability in accordance with the product liability act.

#### **Section 14 Secrecy, data protection**

14.1 EgoSecure and the Principal undertake to treat in confidence, without time restrictions, all company secrets and confidential information of which they gain knowledge as a result of the actions of the other company, and not to make these available to third parties. This obligation to maintain secrecy does not apply to company secrets and confidential information that was already known to the recipient beforehand without breaching secrecy requirements or which are or become generally known without this being the recipient's responsibility, or which were or shall be lawfully surrendered to the recipient by a third party without an obligation to maintain secrecy or which are proven to have been independently developed by the recipient or which had been released in writing for disclosure by the surrendering company.

14.2 EgoSecure and the Principal shall place all persons under obligation to maintain secrecy in accordance with Section 14.1 who are used to render services.

14.3 EgoSecure and the Principal shall safeguard data secrecy in accordance with Section 5 BDSG (German Data Protection Act) and in the case of executing the contract only use vicarious agents who have been placed under obligation to maintain secrecy.

#### **Section 15 Termination**

15.1 The Principal may terminate a contract at any time by giving notice of termination. In such a case, EgoSecure may request the agreed remuneration minus what it saves in expenses as a result of rescinding the contract or otherwise acquires by way of otherwise using its employees or intentionally fails to acquire.

15.2 Each party may terminate a contract without notice for good cause if the other party violates key provisions of the contract and fails to provide remedial action without delay following a written request. In addition to this, EgoSecure shall be entitled to terminate without notice if the Principal allows a set additional period to lapse in vain.

15.3 Insofar as a partial acceptance applies, the accepted services shall not be taken into consideration for reducing the remuneration.

15.4 If the Principal gives reason for EgoSecure to terminate without notice, with regard to the legal consequences of the termination the same shall apply as in the case of termination by the Principal

#### **Special provisions for service contracts**

##### **Section 16 Exclusion of withdrawal in the case of service contracts**

16.1 A service contract may only be terminated under the preconditions set out in Section 15. Contrary to Section 11, withdrawal from a contract is excluded.

#### **III. Special provisions for contracts for work and services**

##### **Section 17 Co-operation duties on the part of the Principal**

17.1 As a result of the highly complex and Principal-related nature of IT and software projects, bringing a project to a successful conclusion can only be achieved as part of lasting and intensive co-operation between the Principal and EgoSecure. This applies, in particular, to drawing up the performance description which, to a considerable extent, calls for organisational decisions on the part of the Principal and intensive and interactive analysis of the affected work and functional processes of the Principal. Such co-operation on the part of the Principal is a key contractual obligation.

17.2 The Principal shall render, as a key contractual obligation in good time and gratuitously, the required co-operation and provision services in full and in perfect quality, and maintain these during the period in which services are rendered. In particular, the Principal shall

- safeguard the operating and system care (operating systems and other used software products),
- save data and programmes at regular intervals, at least once a day, in a machine readable form and in several generations,
- make available test data/test cases in good time.

##### **Section 18 Violation of co-operation duties**

If the Principal fails to honour its duty to co-operate, fails to do so perfectly or in good time or if the Principal defaults in subsequently honouring its duty to co-operate, EgoSecure may request appropriate compensation. EgoSecure may furthermore set a reasonable additional period for subsequently honouring the duty to co-operate by stating that it would terminate the contract were the additional period allowed to lapse in vain.

##### **§ 19 Acceptance**

19.1 By way of the acceptance, the Principal notifies EgoSecure that the work corresponds to the performance description.

19.2 EgoSecure shall hand over to the Principal in conjunction the provision suitable for acceptance an inventory of the works to be accepted and the works themselves. The four-week acceptance period shall commence upon the provision for acceptance.

19.3 During the acceptance review, the Principal shall draw up a record of identified defects by way of stating the information that is expedient in respect of identifying defects. The defects shall be allocated to

the defect categories following harmonisation between the Principal and EgoSecure. The Principal is free to make its decision regarding the declaration or rejection of the acceptance. The Principal shall inform EgoSecure without delay in writing of the identification of defects.

19.4 At the latest at the end of the acceptance period, the Principal shall hand over to EgoSecure the acceptance record containing the declaration or rejection of the acceptance, the subject matter of acceptance, the justification for rejecting the acceptance and the defect record.

19.5 Defects identified during the acceptance review shall be categorised as follows:

Category 1: The work cannot be used. The defect cannot be bypassed by way of organisational or other economically acceptable aids.

Category 2: Use of the work is not impaired to the extent that it cannot be used. The defect can be bypassed by way of organisational or other economically acceptable aids.

Category 3: No significant effects on functionality and usability. Using the work is not restricted or is only restricted in an insignificant manner.

19.6 If defects that hamper the acceptance are identified during the acceptance review, the acceptance period shall be extended by the duration of rectifying the defects and by a reasonable test period. An extension of the acceptance period shall not apply if, as a result of the defects that hinder the acceptance, performing the acceptance review is neither significantly impaired nor needs to be suspended.

19.7 The Principal is to declare the acceptance of the work in the acceptance record as soon as EgoSecure has furnished proof of the proper working order of the work in accordance with the performance description or that the work corresponds to the performance description and in that respect no category 3 defects were identified.

19.8 Category 1 defects shall, as far as possible, be rectified during the acceptance review. Category 2 and 3 defects that remain following the acceptance shall be rectified as part of the guarantee.

19.9 The acceptance/partial acceptance of the work shall be deemed declared if the Principal does not declare the acceptance within the acceptance period of four weeks, or reject it, although no category 1 defects apply.

19.10 EgoSecure may request partial acceptance reviews for performance parts that can be marked off and can be used in an economically independent manner. In such a case, the entire performance shall be deemed accepted by way of the last partial acceptance (final acceptance). The success of the final acceptance shall not affect partial acceptance reviews that have already been conducted.

## Section 20 Guarantee

20.1 EgoSecure guarantees that the work corresponds to the performance description and does not contain any defects that nullify or

considerably hamper the value or the suitability for the use presupposed in accordance with the contract or use that is customary. The guarantee period commences upon acceptance and lasts twelve months.

20.2 If defects arise, the Principal shall provide notification of such defects without delay in a coherent way of stating written information that is expedient in respect of identifying defects. The Principal shall support EgoSecure as part of acceptable action in the case of rectifying defects.

20.3 EgoSecure shall, at its own discretion, primarily honour the guarantee by way of rectifying the defect or manufacturing a new work (subsequent performance). The Principal shall set reasonable periods in which EgoSecure can provide subsequent performance. If the subsequent performance regarding the due performance ultimately fails, irrespective of at least two attempts to provide subsequent performance for each defect for which notification of defects is provided, the Principal may, at its own discretion, request a reduction in the remuneration or withdraw from the contract and in the case of culpability on the part of EgoSecure claim for damages or the reimbursement of expenses incurred in vain.

20.4 However, the Principal may only request withdrawal from contract and/or claims for damages instead of the performance or the reimbursement of expenses incurred in vain in the case of a considerable violation of an obligation on the part of EgoSecure, that is only in the case of category 1 defects.

20.5 In the case of defects that are limited to performance parts that are partially suitable for acceptance, the right to withdraw from the contract shall be limited to these performance parts provided the other performance parts are solely in themselves of economic use to the Principal.

20.6 In the case of software maintenance, the right to terminate without notice shall take the place of the right to withdraw from the contract.

20.7 The guarantee shall expire for the work components that the Principal alters or in which the Principal intervenes unless the Principal furnishes proof that it did not cause the defect.

20.8 EgoSecure may request reasonable remuneration for its expenditure provided it has taken action as a result of notification of a defect without the Principal having furnished proof of a defect in the work.

## V. Final provisions

### Section 21 Assignment, setting off, applicable law and place of jurisdiction

21.1 Amendments to and supplementary information regarding the contract, termination and warnings and the setting of periods shall be subject to the written form in order to be deemed valid. This also applies to this clause. Assurances and guarantees of any kind that justify a further-reaching duty to assume liability

on the part of EgoSecure as specified in these terms and conditions of business shall be subject to express and written confirmation by EgoSecure. Verbal subsidiary agreements have not been entered into.

21.2 The Principal may not assign its receivables to third parties – irrespective of the regulation of Section 354a HGB (German Commercial Code).

21.3 The Principal may only set off with undisputed or res judicata claims.

21.4 Solely the law of the Federal Republic of Germany applies without the UNCITRAL purchase laws.

21.5 Karlsruhe is deemed the place of jurisdiction.