

# 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 Deutschland GmbH (hereinafter referred to as "**Compass**") and the customer acting in his commercial or independent professional capacity, which expressly declare these GTC to be applicable (hereinafter referred to as "**individual contracts**") as well as the integral parts and amendments referred to in section 12.2.

## 2 Placing of an Order, Modification, Additional Expenditure, Waiver of Execution of the Order

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2.1 The order shall be placed by signing the individual contract. As a rule, the following points are specified in the contract:

- a) Description of the services to be performed (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) Costs: 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 ten 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 ten days. Until the customer has reached a decision, Compass shall continue to perform the services in accordance with the valid service contract.

2.3 Compass may invoice separately for additional expenses incurred as a result of additional wishes of the customer not specified in the individual contract or as a result of fault on the part of the customer, in particular as a result of culpable non-compliance with agreed deadlines by the customer.

2.4 After the start of the performance of the services, the customer shall be entitled at any time, subject to a notification period of six weeks, to waive the provision of further services in writing. Compass has the right, but not the obligation, to discontinue the performance of the contractually agreed services as of receipt of the customer's waiver, unless the parties

agree otherwise in writing. However, the customer shall pay in full the contractually agreed service prices for the services effectively rendered up to the expiry of the aforementioned notification period. In addition, the customer shall reimburse Compass for the expenses that Compass could consider necessary in good faith with regard to the further fulfilment of the contract and which became partially or completely invalid due to the customer's waiver, e.g. personnel and/or material dispositions already made. In the case of a contractually agreed fixed price, the above calculation is based on the service prices (daily rates) normally agreed with Compass, whereby the contractually agreed fixed price represents the upper limit.

## 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 service prices owed shall be determined on the basis of the time actually spent by Compass personnel or third parties commissioned by Compass for the customer and documented in work reports and the applicable rates. The additional costs (expenses, travel expenses, material, etc.) shall, unless expressly agreed otherwise, be invoiced additionally on the basis of the respective valid rate.

3.3 The daily rates applicable to the service on a time and material basis and the other rates shall be laid down in the individual contract. In the case of service projects lasting longer than one year, Compass shall be entitled to change the applicable daily rates or the further rates by written notification at the earliest three months before the end of the first year of the contract period and in particular to adjust changed cost factors, in particular wages, materials, etc., whereby both increases and decreases shall be taken into account. These changed daily rates or rates shall be applied to services rendered later than three months after receipt of the notification of change by the customer. However, in this case the customer has the right to terminate the contract within one month after receipt of the written notification at the end of the first year.

3.4 In the case of services on a time and material basis, if the estimated time requirement is exceeded, the work shall only be continued with the Customer's consent until the fulfilment criteria have been met. If approval is refused or not granted within a reasonable period (ten days), Compass will prepare a report on the progress of the project to date.

#### **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 For the provision of services at fixed prices, the agreed fixed prices are based on the principles known at the time the contract was concluded. If these fundamentals change significantly and if this was not foreseeable for Compass at the time the contract was concluded, Compass shall be entitled to demand a change in the fixed prices by written notification to the customer. If no agreement on the relevant fixed prices can be reached within ten days of the request, Compass may terminate the contract extraordinarily. Services rendered until then will be invoiced according to the agreements made (pro rata).

#### **5 Payment terms**

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- 5.1 All prices are net without deductions plus the current statutory value-added tax. Invoices must be paid within 30 days of the invoice date.
- 5.2 If the provision of the service has been agreed on a time and material basis, Compass shall invoice the actual expenses incurred and documented in the performance records (work reports) as well as the incidental costs incurred on a monthly basis.
- 5.3 If the provision of services at fixed prices has been agreed, Compass may invoice the respective fixed price of the individual modules after complete execution of the respective module, unless otherwise agreed in writing.
- 5.4 In the event of default in payment, Compass may demand default interest in the amount of eight percentage points above the respective base interest rate. Compass shall then have the right to suspend the services owed under the individual contract until full payment has been made if the customer is in arrears. Compass reserves the right to terminate the respective individual contract if the customer fails to meet his payment obligation despite repeated requests for payment. In this case, the customer must also pay for all services already rendered by Compass in accordance with the individual contract.

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

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- 6.1 Compass shall only be entitled to involve third parties in the fulfilment of its obligations under the individual contract with the prior consent of the customer. This does not include employees of Compass Security Network Computing AG (parent company) and its subsidiaries.
- 6.2 The customer is obliged to support Compass in the execution of the services. In particular, the customer must perform the following cooperative actions: Provision of necessary information, access data and technical access options. If Compass cannot provide the services due to the lack of cooperation of the customer, § 615 BGB (German Civil Code) shall apply if the customer is in default of acceptance.

#### **7 Confidentiality**

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- 7.1 Compass undertakes to treat all information about the customer received from the customer in connection with an individual contract and the results of the consultation as strictly confidential.
- 7.2 However, the obligation to treat as confidential shall not apply to data that is generally accessible or already known, nor to data that has been developed independently by Compass and outside the scope of the individual contract or lawfully acquired from third parties.
- 7.3 Documents and tools provided by the customer to Compass (e.g. programs and data carriers) remain the property of the customer and will be returned to the customer by Compass after completion of the order or destroyed at the customer's request.
- 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 Property and proprietary rights, in particular release from liability with regard to the rights of third parties**

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- 8.1 The ownership of the contractually owed service result as well as the industrial property rights thereto shall pass to the customer upon its transfer to the customer. Compass shall, however, have the right to continue to use without limitation any non-customer-specific know-how that is contained or shown in the result of the service, without any compensation owed to the customer.
- 8.2 The customer undertakes to ensure that the contractually agreed use of the information, documents and data carriers made available by him as well as the contractually agreed penetration into systems does not infringe any rights of third parties, in particular copyrights, data protection rights or personal rights. Should Compass nevertheless be accused of such an infringement, the customer shall indemnify Compass to the full extent. This obligation to indemnify does not apply to damages resulting from injury to life, limb or health or in the event of wilful or grossly negligent action by Compass, representatives or vicarious agents of Compass or in the event of breach of so-called cardinal obligations, i.e. those whose fulfilment enables the proper execution of the contract at all and on the observance of which the contracting party regularly relies and may rely. In the case of slightly negligent breaches of the above-mentioned so-called cardinal obligations, liability is limited to the typically foreseeable damage arising from the present transactions.

## **9 Limitation and exclusion of liability**

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- 9.1 The execution of Compass's contractual obligations may result in impairments of the customer's hardware and software. However, this is a necessary consequence of the proper fulfilment of Compass's contractual obligations and therefore does not entitle the customer to compensation claims, neither contractual nor statutory.
- 9.2 A fault-based liability is excluded if Compass or a legal representative or vicarious agent of Compass has not acted with intent or gross negligence. Legal liability independent of fault, in particular under the Product Liability Act, shall remain unaffected by this.
- 9.3 Compass shall be liable to the customer - for whatever legal reason - for direct damages incurred by the customer in connection with the performance of the contractually agreed service, up to a maximum of the amount of the service price owed by the customer.
- 9.4 Any further liability, in particular for indirect damages or consequential damages, such as loss of profit, additional expenses or personnel costs of the customer, unrealized savings, claims of third parties or loss of data as well as liability for assistants and damages from delayed performance, in particular as a result of illness or accident of the employees or third parties employed by Compass, etc., is expressly excluded.
- 9.5 The exclusions and limitations of liability mentioned under 9.2 to 9.4 do not apply to damages resulting from injury to life, body or health or in the case of wilful or grossly negligent actions by Compass, representatives or vicarious agents of Compass or in the case of violation of so-called cardinal obligations, i.e. those whose fulfilment enables the proper execution of the contract at all and on the observance of which the contracting party regularly relies and may rely. In the case of slightly negligent breaches of the above-mentioned so-called cardinal obligations, liability is limited to the typically foreseeable damage arising from the present transactions. The exclusions and limitations of liability mentioned under 9.2 to 9.4 shall also not apply to warranty declarations made.

## **10 Notification of complete provision of services**

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- 10.1 Unless special provisions regarding notification of the complete provision of the services are to be complied with in accordance with the individual contract, the services shall be deemed to have been rendered as soon as Compass has handed over the results and documents specified in the individual contract to the customer and has completed the work in accordance with the fulfilment criteria specified in the individual contract.

## **11 Non-solicitation**

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- 11.1 Both contracting parties undertake not to actively entice away employees of the other contracting party during the term of the contract and within one year of termination of the contract.

## **12 Final provisions**

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- 12.1 The individual contract shall come into existence upon signature by both contracting parties.
- 12.2 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.
- 12.3 The offsetting of claims of the customer against claims of Compass requires a special written agreement of both contractual parties, unless the claims of the customer are undisputed or legally established.
- 12.4 The rights and obligations of the contracting parties in accordance with Sections 7 (Confidentiality) and 8 (Ownership and property rights, in particular release from liability with regard to the rights of third parties) shall also apply after termination of the individual contract and shall bind both the contracting parties and their legal successors to the extent that they enter into all rights and obligations (arising from this contract) of the contracting parties by law. In all other cases of legal succession, the contracting parties undertake to ensure that the respective legal successors take over the rights and obligations in accordance with the clauses mentioned in sentence 1.
- 12.5 Any general terms and conditions of the Customer shall not apply.
- 12.6 The individual contract as well as the integral parts with amendments listed in section 12.2 are subject to German law.
- 12.7 The exclusive place of jurisdiction for disputes in connection with the individual contracts and these GTC shall be Berlin.