General Terms and Conditions for the Sale of SINA Software, SINA Hardware and Provision of Related Services from secunet (as per 07/2024)

§ 1 General

(1) As secunet shall be considered secunet Security Networks AG as well as secunet Service GmbH, secunet International GmbH & Co.KG, secunet International Management GmbH, stashcat GmbH and SysEleven GmbH. secunet Security Networks AG holds directly or indirectly at least 50 % of shares or voting rights of these companies.

(2) All agreements that include an amendment, supplement, deletion or clarification of these General Terms and Conditions or the contractual relationship based on these terms and conditions – wholly or partly – require at least text form. The same applies to the amendment or deletion of this text form requirement.

Insofar as this Agreement or a contractual relationship based on this Agreement contains references to the written form, the written form can also be replaced by the electronic form or text form, provided that no statutory prevailing provisions apply. Text form requires an electronic signature using a software solution. The aforementioned requirement applies accordingly to the amendment or revocation of this text form clause.

(3) Deviating – conflicting or amending – general terms and conditions shall not become part of the contract unless their validity is explicitly agreed to at least in text form.

§ 2 Scope of Use, Obligations of the Customer

(1) secunet grants to the customer a non-exclusive usage right to the contractual object that is limited in content to the purpose of the agreement and limited geographically to the location of the contractual use. Depending on the contractual purpose, this right may be open-ended or temporarily limited. The usage rights may be subject to further special limitations.

(2) If secunet provides enhancements, updates, upgrades etc. for the customer that replace the previously provided contractual object, these new versions shall be subject to the stipulations of these General Terms and Conditions. In this case, the customer's authorisations in respect of a previously provided contractual object under this agreement shall lapse, even without an express demand for surrender.

(3) The customer undertakes to return to secunet any previously provided contractual object without undue delay on termination of the usage authorisation or, if and for such period as it is subject to a statutory duty of a longer retention period, without undue delay on termination of the retention period and to delete all copies made itself without undue delay. secunet shall be assured on demand in writing that this has been complied with. This paragraph shall apply accordingly in the event of a determination of the agreement and withdrawal from the agreement.

(4) The software includes Open Source components. The customer undertakes to comply with the relevant licensing terms, which secunet shall provide in advance on request.

(5) The customer is not entitled to distribute SINA products on a commercial basis without secunet's express approval.

(6) The acquisition of a licence of a SINA product gives only the right to install and operate the software on one hardware at the same time (single user licence). For each management as a backup system or each sub domain management, a separate SINA Management licence must be acquired. The customer is obliged to notify secunet, without undue delay, of each transgression of the contractually agreed number of SINA smart cards and/or licences.

(7) The customer is not authorised to alter, extend or otherwise rework the software and hardware or to decompile the software without the approval of secunet or the BSI. This provision does not apply to elements of the software that are subject to the customary Open Source Licensing Conditions.

Note: Unauthorised alterations to products approved for classified use according to § 2 will lead to the loss of the BSI licence! In addition to that, access to the code of the program may affect the interest of the Federal Republic of Germany in the protection of classified information (see also the note regarding § 4).

(8) The customer is obliged to observe the guidelines from the user manual regarding "Disposal of SINA Products" with regard to the handling of products that are no longer used.

§ 3 Obligations of the Customer

(1) If the delivered goods are an electrical/electronic device or contain an industrial battery or if the packaging is not subject to system participation, secunet offers the customer, at the customer's request - to be expressed in writing at the time of conclusion of the purchase contract - to take over disposal against reimbursement of the actual costs incurred in accordance with the statutory provisions. The transport costs to the return centre to be determined by secunet shall in any case be borne by the customer. Otherwise, the customer shall assume the obligation to properly dispose the delivered goods and packaging at its own expense in accordance with the statutory provisions after termination of use. In this case, the customer shall indemnify secunet and secunet's suppliers against claims of third parties related to those statutory obligations.

(2) The customer shall contractually oblige commercial third parties to whom he passes on the delivered goods to properly dispose the delivered goods after termination of use at their expense in accordance with the statutory provisions and to impose a corresponding obligation in the event of renewed passing on of the goods. If the customer fails to contractually obligate commercial third parties to whom he passes on the delivered goods to assume the obligation to dispose of the goods and to impose a corresponding obligation, the customer shall be obligated to take back the delivered goods at his expense after termination of use and to properly dispose them in accordance with the statutory provisions. In this respect, too, the customer shall indemnify secunet and

secunet’s suppliers against the statutory obligations and the related claims of third parties.

(3) These provisions shall apply within the scope of application of the relevant European legal acts, including their respective implementation into national law, provided that mandatory law or mandatory official orders do not prevent the implementation of these provisions.

§ 4 Special Usage Restrictions for Products Approved for Classified Use

(1) Insofar as the customer is supplied with a version of SINA that has been licensed by the German Federal Office for Information Security (BSI) and classified as Restricted, Confidential, SECRET or TOP SECRET (hereinafter called "Classification Category"), the software and hardware shall be operated in line with the licence and the relevant classification list of BSI.

(2) The operation, the disposal and the maintenance of the software and hardware shall be handled according to the respective provisions for the protection of classified information VSA (Verschlusssachenanweisung). Unauthorised alterations of the software and hardware lead to the loss of the BSI licence. In addition to that, access to the code of the program may affect the interest of the Federal Republic of Germany in the protection of classified information.

(3) The customer shall notify secunet in writing of the final disposition of the software and hardware.

(4) secunet will only be subject to a warranty obligation if the customer operates the software – in accordance with the BSI licence – on approved hardware that has been cleared by secunet. Additionally, as regards high-security software products, no assurance can be given that the full functional scope of the deployed hardware, including additional peripheral devices, and also as the operation of programs by other manufacturers will be possible. This applies in particular to secunet software that deploys virtualisation technology (such as SINA Workstation).

§ 5 Term and Termination

(1) For services and additional benefits that are not offered as an integral component of a piece of software or hardware, and unless otherwise provided for, performance shall be deemed to commence on commissioning of the software or, if the commissioning is not performed by secunet, then on delivery of the software. The term of the contract is one year and is automatically renewed for another year if the contract is not terminated at least 3 months before the end of the term. If an automatic extension of product services is not required, please notify us on placing the order.

(2) secunet may terminate any agreement without notice or withdraw from the agreement if the customer has applied for the initiation of insolvency proceedings or if the customer discontinues its payments for more than a temporary period or if insolvency proceedings have been initiated over the customer’s assets or such initiation has been rejected due to lack of assets.

§ 6 Passing on of the Contractual Object

(1) The customer may only disseminate the contractual object to a third party homogeneously and by way of full and final surrender of its own use of the contractual object. A temporary or partial transfer of use by third parties for consideration is prohibited, irrespective of whether the contractual object was transferred in a tangible or intangible form.

(2) In the case of products approved for classified use, any transfer to third parties that are neither German public authorities nor companies holding classified information for German public authorities shall require the prior approval of secunet. In this case, the customer is not allowed to sell, lease, give away or otherwise dispose of the software and hardware including the user documentation to third parties on a permanent or temporary basis without the prior written approval of secunet. secunet shall only deny its approval, if it is itself subject to such restrictions of disposition – whether of contractual, administrative or statutory nature – vis-à-vis third parties and these third parties deny the necessary approval to secunet.

Note: SINA is subject to the legislation of the Federal Republic of Germany with regard to the protection of classified information. The unauthorised disposition may represent a violation of the provisions of the protection of classified information law and even lead to criminal prosecution, in particular according to §§ 93 ff. Strafgesetzbuch [German Criminal Code]!

§ 7 Collateral

(1) secunet shall retain title to any transferable contractual objects until full payment of the due remuneration (reservation of title).

(2) The customer may neither pledge this contractual object nor assign it by way of security.

(3) Until full payment has been made, selling on or processing by the customer shall only be permitted within the framework of the remaining provisions of this agreement on condition that the customer effectively assigns to secunet by way of security its claims against its buyers arising from the selling-on or on other legal grounds and that, on selling on, the customer transfers the property to its buyer subject to payment. secunet revocably authorises the customer to collect the assigned claims in its own name for its own account. This collection authorisation may only be revoked if the customer does not properly comply with its payment obligations.

(4) Further, secunet reserves the grant of the usage rights to the respective contractual object accruing to the customer under this agreement until full payment of the fee due is received. Paragraphs (2) and (3) apply accordingly to this extent. Use by the customer for test purposes is temporarily permitted.

§ 8 Set-off and Right of Retention

(1) The customer shall not be entitled to set off any claims unless such claims are undisputed or have been finally judicially determined or unless such claims arise from the same contractual relationship.

(2) The customer shall not be entitled to exercise a right of retention unless the claims are undisputed or have been finally judicially determined or unless such claims arise from the same contractual relationship.

§ 9 Export Restrictions

Note: The export and cross-border transfer of SINA are subject to restrictions and approval requirements, in particular under the EU Regulation on Dual Use Goods (Regulation VO 2021/821).

(1) In case of export or cross-border transfer, in particular a cross-border sale, the customer shall comply with the applicable export control and customs provisions and other provisions of foreign trade law on its own responsibility and obtain the necessary export licences of the competent agencies as required.

(2) In case of cross border delivery and/or service relationships between the customer and secunet, the customer shall bear the relevant customs duties, fees and other charges. In addition to that, the customer shall examine the import, export control, customs and other provisions of foreign trade law applicable to him and comply with them on his own responsibility. secunet has no duty to advise insofar.

§ 10 Remuneration

secunet's prices are ex works (Incoterms 2020) and net of any VAT that may be due. The remuneration is due and payable within 30 days upon having been invoiced. Any contractually agreed remuneration for continuing obligations (e.g. support services) shall be paid in advance.

§ 11 Material and Legal Defects

(1) The customer undertakes to examine the supplied contractual object on delivery without undue delay and to notify secunet of any defects also without undue delay. If the customer omits the notification, the contractual object shall be deemed approved unless the defect was not apparent on examination. Notification of such a latent defect must be made on discovery without undue delay; otherwise the contractual object shall also be deemed approved in respect of this defect. The customer shall have complied with its duties of notification by prompt submission of the notice. The provisions of this paragraph shall not apply for any defects that secunet fraudulently conceals.

(2) On notification of a defect, the customer shall describe the issues occurring as specifically as possible by stating the symptoms and shall support secunet in its error analysis and defect rectification by providing secunet with comprehensive information and enabling access to the contractual object. If required, the customer shall remove any data, data media, modifications and enhancements prior to rectification of the defect.

(3) secunet warrants that contractual use is not precluded by any third-party rights. If a third party brings a claim against the customer to the extent that a secunet service is breaching its rights, the customer shall notify secunet without undue delay. Both secunet and its suppliers are entitled, but not obliged, to defend the claims asserted each at their own expense to the permissible extent. The

customer is not permitted to acknowledge third-party claims without the prior consent of secunet or to admit to the underlying facts or to enter into a settlement in this respect.

(4) For material and legal defects, subsequent performance will be rendered at secunet's election either by rectifying the defect or re-manufacture. secunet may elect to perform the rectification of the defect at the customer's or its own premises or instruct third parties to do so. secunet may also perform services by way of remote maintenance in consultation with the customer. In the case of defective software, secunet may also render subsequent performance by showing the customer ways of preventing the effects of the defect. The customer shall accept a new or previous program version of equivalent value that does not contain the defect if it is reasonable for it to do so.

(5) If subsequent performance is not possible for secunet or is only possible at disproportionate effort, secunet has the right to take back the contractual object against reimbursement of the remuneration paid less a sum that takes the period of use into account. In this case the customer is obliged to return the contractual object.

(6) A merely insignificant diminution of quality does not represent a defect.

(7) If secunet provides services at the customer's request during the search for or rectification of errors without being obliged to do so, secunet may charge for this in line with its standard rates. This applies in especially where no defect is identifiable.

§ 12 Default

(1) If the performance of services by secunet is delayed for reasons for which the customer is at fault or that lie within its sphere of risk, secunet may demand appropriate compensation.

(2) If the customer fails to comply with its duty of cooperation for reasons for which it is at fault or that lie within its sphere of risk, it shall be required to reimburse secunet for the additional expenditure arising as a result.

§ 13 Liability

(1) secunet is – irrespective of the legal ground – only liable for damages and compensation of frustrated expenses in case of intent or gross negligence or culpable violation of a material contractual obligation. In case of violation of a material contractual obligation, the liability of secunet is limited to the typically foreseeable damage, except in case of intent or gross negligence. The above limitations of liability do not apply in case of personal injury and to the statutory liability under Produkthaftungsgesetz (German Product Liability Act) and in case of a guarantee that secunet assumed vis-à-vis the customer.

(2) The liability of secunet for the loss of data is limited to the repair costs that would have been incurred in case of a regular and risk-adequate preparation of backup copies and the implementation of necessary precautionary measures within the customer's sphere of responsibility. § 254 BGB (German civil code) remains unaffected.

(3) The above limitations of liability also apply directly in favour of the employees of secunet, of representatives and of persons whom it uses to perform its obligations.

§ 14 Limitation

The limitation period for warranty and compensation claims by customer against secunet is one year from the commencement of statutory limitation period. If legislation provides for maximum periods for the limitation of compensation claims, the claims shall become time-barred no later than on expiry of these statutory maximum periods. Claims to the refund of the purchase price following withdrawal or reduction, which can only be declared within a year of delivery of the contractual object, shall become time-barred no earlier than three months after the submission of the declaration of withdrawal or reduction by the customer, i.e. no later than fifteen months following the delivery of the contractual object. In the event of intent or gross negligence on the part of secunet, of fraudulent concealment of a defect, of personal injury or legal defects that constitute a third party's right on the basis of which the surrender of the contractual object can be demanded, of claims under product liability legislation and/or from a warranty assumed by secunet vis-à-vis the customer, the respective statutory limitation periods shall apply instead of the foregoing provisions.

§ 15 Confidentiality and Data Protection

(1) Confidential information shall be all information about facts related to a business, information that is only known to a very limited number of people, which means it is not common knowledge, and which, based on a justified interest of the owner of the business is to be kept confidential, regardless of its nature and form. This also includes in particular oral information, written statements, memoranda, reports, documents, studies, analyses, drawings, letters, computer printouts, software programs, specifications, data, graphics, tables, sound recordings, image copies and any type of the above-mentioned information.

(2) The parties to the agreement shall treat confidential information strictly confidentially and either party shall not pass it on to third parties without having obtained the other party's prior written consent. Irrespective of the secunet company to which these General Terms and Conditions apply, none of the companies set out below shall be deemed a third party: secunet Security Networks AG, secunet International GmbH & Co. KG, stashcat GmbH, SysEleven GmbH, and secunet International Management GmbH, insofar as there is an obligation for secunet to disclose information to them in the course of fulfilling the contractual objective, as well as the Federal Office for Information Security (BSI), to such extent as information is required to be disclosed to them in individual cases. Either party shall be permitted to pass on confidential information to such staff members who need the respective confidential information for the purpose of executing the agreement, provided that the respective member of staff committed himself or herself in writing to observe confidentiality.

(3) The obligation to maintain confidentiality described above shall not apply to information which

a) was already common knowledge at the point in time when it was received by the receiving party;

b) was already known to the receiving party at the point in time when it was received by the receiving party;

c) becomes common knowledge after it has been received without any involvement of the receiving party;

d) is made accessible by a third party which has no obligation to keep it confidential and refrain from using it, provided that such third party did not directly or indirectly receive such information from the receiving party or

e) has to be disclosed based on legal provision, government or court decisions, provided that the disclosing party communicates to the other party the confidential information to be disclosed before it actually discloses it.

(4) Unless the parties to the agreement have made other arrangements, the duty to observe confidentiality in line with this section shall expire five years after the respective contractual relationship defined in the offer has been terminated.

(5) The parties to the agreement undertake to observe the General Data Protection Regulation (GDPR).

§ 16 Final Provisions

(1) secunet is entitled to outsource parts of the performance of the contract to third parties.

(2) This contract relationship of the parties and all rights and obligations in connection therewith are exclusively governed by the law of the Federal Republic of Germany except the regulations referring to other legal systems. The application of CISG is excluded.

(3) The exclusive venue for the contract relationship and all rights and obligations in connection therewith is Essen. secunet may, at its option, sue the customer also at the place of his registered office. This choice of jurisdiction clause does not affect the right of the parties to apply for interim relief with the statutorily competent courts of jurisdiction.