

# TERMS & CONDITIONS FOR THE SUPPLY OF GOODS FOR SECON CYBER SECURITY

THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 12.

## 1. INTERPRETATION

### 1.1 Definitions

In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 14.6.

**Confidential Information:** means all information (written or oral), which comes into either party's possession under or in connection with the Contract and these Conditions that is information of the other party or any member of its group and:

- (i) is of a confidential nature (whether identified as confidential or not); or
  - (ii) is marked by the disclosing party as "confidential" or otherwise identified as being confidential.
- Contract: the contract between Secon and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person, company or any other organisation, who purchases Goods from Secon.

**Deposit:** means any deposit payable by the Customer to Secon for the purchase of the Goods as identified in the Order, or as otherwise agreed between Secon and the Customer.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's order for the Goods, as set out in the Order Form, the Customer's written acceptance of Secon's quotation, or overleaf, as the case may be.

**Order Confirmation:** means either when Secon confirms acceptance of the Order, whether by telephone, facsimile, post or electronic means or by delivery of the Goods to which the Order relates.

**Order Form:** means Secon's purchase order form from time to time;

**Price:** means the price of the Goods as specified as part of the Order.

**Secon:** means Secon Cyber Security Limited.

**Software:** means any software which Secon supplies pursuant to an Order.

**Special Condition:** means any condition, which Secon agrees in writing as a variation or addition to these Conditions.

**Standard Charges:** mean Secon’s non-discounted charges for the Goods as at the time of the Order.

**Standard Services:** mean the physical delivery and installation of the Goods and acting as a central point of contact between the Supplier and the Customer.

**Supplier:** means the third party supplier or licensor of the Goods.

**1.2 Construction**

In these Conditions, the following rules apply:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to writing or written includes faxes and e-mails.

**1.3 These Conditions:**

- (a) apply to all Contracts, whether made orally or in writing, to the exclusion of all other terms and conditions which you may put forward, whether in a purchase order, which are implied by trade, custom, practice or course of dealing or otherwise;
- (b) supersede all earlier agreements, arrangements or understandings made between Secon and you in relation to its subject matter;
- (c) cannot be varied unless agreed in writing by a director of Secon;
- (d) may, in relation to a particular Contract, be varied by a Special Condition.

Such Special Condition shall apply only to the particular Contract in respect of which the Special Condition was agreed.

1.4 If there is a conflict between any terms contained in an Order and these Conditions, the terms contained in the Order shall prevail. If there is a conflict between a Special Condition and these Conditions, the Special Condition shall prevail.

1.5 Secon may modify the Conditions at any time on giving the Customer written notice or by posting the modified Conditions on any Secon website. Any modified Conditions shall not apply to any Contracts entered into before the date on which such modified Conditions were notified to the Customer. However, any Order placed after the date of notification in accordance with this clause shall be governed by the 3modified Conditions.

**2. ORDER PROCESS**

2.1 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable specification submitted by the Customer are complete and accurate.

2.2 The Order shall only be deemed to be accepted when Secon issues an Order Confirmation, at which point the Contract shall come into existence.

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2.3 The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Secon, which is not set out in the Contract.

2.4 Secon is not obliged to accept Orders and may reject an Order without reason.

**3. HANDLING FEES**

3.1 Secon reserves the right to charge a handling fee (the “Handling Fee”) on cancellation by the Customer of the Contract. Such fee shall take into consideration the Supplier’s terms and conditions, which shall be made available on request by the Customer and any fees or costs imposed by the Supplier on Secon in relation to the cancellation of the Contract shall be passed on to the Customer in addition to any other fees that Secon may, in its absolute discretion, charge.

**4. CAPACITY**

4.1 Secon supplies the Goods to you as agent for the Supplier. Notwithstanding that Secon will invoice you for the Goods, any Supplier’s terms of use or other terms and conditions relating to the Goods shall also apply to the Customer and shall be provided directly by the Supplier.

**5. CONFIDENTIALITY**

5.1 Each Party will keep Confidential Information received in relation to the Contract and these Conditions in strictest confidence.

5.2 The recipient of Confidential Information will

- (a) use a reasonable standard of care in protecting Confidential Information, which will not be less than the standard of care used by the recipient in protecting its own confidential information;
- (b) only use the Confidential Information to perform its obligations under the Contract and these Conditions;
- (c) not disclose Confidential Information to any third party, without the express written permission from the disclosing party;
- (d) on request by the other party, return or destroy the Confidential Information.

5.3 Information is not Confidential Information if:

- (a) it is in or enters the public domain other than as a result of a breach of this Clause 5;
- (b) it is already in the recipient’s lawful possession or is obtained by a third party who is free to disclose the Confidential Information;
- (c) it is authorised for release by the disclosing party’s written consent; or
- (d) it is required to be disclosed by law or regulatory body, provided that the disclosing party is given reasonable advanced notice of the disclosure.

5.4 The Customer will not reverse engineer, disassemble or decompile any Goods in order to ascertain, identify or investigate any information which may be Confidential Information.

5.5 Nothing in the Contract or these Conditions will prevent either party from disclosing Confidential Information to its professional advisors, subject to those advisors maintaining the confidentiality of the information.

5.6 This Clause 5 is intended to continue after expiry or termination of the Contract.

## 6. PRICE AND PAYMENT

6.1 An estimate or quotation for the Goods given by Secon shall not constitute an offer and shall be open to variation, unless it is expressed to be a fixed price quotation. Unless Secon agrees otherwise in writing, estimates or quotations shall be valid for a period of 14 days from their date.

6.2 Unless expressed otherwise, the Price excludes the following, which are payable in addition:

(a) VAT at the applicable rate and any import and other applicable taxes, duties and levies;  
(b) freight rates,

(c) charges for installation and/or training in relation to the Goods;

(d) Secon's reasonable travel, hotel expenses and subsistence expenses; (e) any allowance for currency fluctuation.

6.3 The Price (including any Deposit) or Handling Fee (if applicable) is payable within 30 days of the date of Secon's invoice unless otherwise agreed in writing and Secon will not be obliged to deliver the Goods until the Customer has paid the Price in full, cleared funds. Payment shall be made to the bank account nominated in writing by Secon. Time of payment is of the essence.

6.4 If the Customer fails to make any payment due to Secon under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

6.5 The Customer shall pay all amounts due under the Contract in full without any setoff, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Secon may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Secon to the Customer.

6.6 If the Customer fails to pay the Price or Handling Fee (if applicable) according to Secon's payment terms, Secon may, in addition to its other rights:

(a) suspend the delivery of any Goods or terminate any Order which may have been accepted;

(b) recover any Goods (if already delivered) for which the Price remains unpaid, pursuant to clause below.

6.7 Secon will not normally charge for Standard Services but reserves the right to do so should the Customer, following evaluation of the Goods to which the Standard Services relate, purchase such Good directly from the Supplier or a party other than Secon.

## 7. DELIVERY AND ACCEPTANCE

7.1 Any indication, which Secon gives in relation to the timescale for delivery of the Goods will be an estimate only. Secon will use reasonable endeavours to deliver the Goods within the time-scales estimated but time of delivery of the Goods is not of the essence.

7.2 In relation to Goods, delivery will be deemed to have occurred either:

(a) when Secon or its nominated carrier delivers the Goods to the address notified to Secon for delivery; or

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(b) where the Customer nominates its own carrier to effect delivery, when the Goods are delivered to the Customer's nominated carrier ("Delivery").

7.3 Secon reserves the right to:

- (a) arrange delivery of the Goods in advance of any estimated date of Delivery with prior notice; and/or
- (b) deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

7.4 The Customer may not modify, cancel or change either the date of Delivery or the location where Delivery is to take place without Secon's prior written consent.

7.5 Should the Customer fail to accept Delivery at the time or place required by the Contract, Secon may in addition to its other rights:

- (a) charge the Customer reasonable administrative and storage charges (including any associated costs and expenses, which shall include insurance costs) until Delivery of the Goods in question is accepted by the Customer; and/or
- (b) require the Customer, by written notice, to accept Delivery at a set time or place within 28 days from the date of such notice; and/or
- (c) resell or otherwise dispose of part or all of the Goods; and/or
- (d) treat the Contract to which the Goods relate as having been repudiated by the Customer.

**8. RISK AND TITLE**

8.1 Risk in the Goods will pass to the Customer on Delivery (as defined in clause 7.2(a) above).

8.2 Notwithstanding the passing of risk in the Goods, title in such Goods will not pass to the Customer until Secon has been paid the Price and any other sums due under any other Order in full cleared funds.

8.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold such Goods as Secon's bailee and keep such Goods separately and properly stored, protected and identified as Secon's property;
- (b) adequately insure such Goods with reputable insurers to their full replacement value from the date of Delivery, ensuring that Secon's interest is noted on the policy;
- (c) store the Goods separately from all other Goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (d) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.2; and
- (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

8.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.2, then, without limiting any other right or remedy Secon may have, Secon may at any time:

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- (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8.5 Should the Customer sell or otherwise dispose of the Goods to a third party before title in the Goods has passed to the Customer, the Customer shall, by reason of the relationship of bailment between Secon and the Customer in relation to such Goods pay such proceeds of sale into a separate account or otherwise ensure that such proceeds of sale are kept in a separate and identifiable form.

8.6 Notwithstanding any conditions contained herein, in no event shall title in any Software pass to you, the title in which shall remain reserved to the Supplier or its licensors.

## 9. INSTALLATION

9.1 Where any Goods need to be installed or the Customer requires any ongoing support or maintenance following delivery of the Goods, Secon’s terms and conditions for the supply of services shall automatically apply in addition to these terms and conditions. Secon shall take all reasonable measures to ensure that a copy of its terms and conditions for the supply of services are made available to the Customer, either by placing the terms online or by sending the terms directly to the Customer.

## 10. RETURNS

10.1 Notwithstanding any terms contained in the Contract, where the Customer is a “consumer” as defined in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the Regulations), the Customer’s statutory rights under the Regulations shall remain unaffected.

10.2 The Customer shall inspect the Goods immediately on Delivery and notify Secon within 3 Business Days of any damage to or shortfall in the Goods received. If the Customer fails to notify Secon of any such damage or shortfall within the aforementioned timescale, the Customer will be deemed to have accepted the Goods in full and without damage.

10.3 Where the Customer notifies Secon within 3 Business Days of the date of Delivery of any defect in relation to the Goods, Secon will return the damaged Goods to the Supplier for evaluation and thereafter at Secon’s discretion will,

- (a) replace the Goods free of charge; or
- (b) refund the Price, plus any delivery costs, which you may reasonably incur in returning the Goods.

10.4 Any issues relating to Goods which you notify to Secon following expiry of 3 Business Days of the date of Delivery shall be governed solely by the terms of the applicable warranty given by the Supplier in relation to such Goods.

10.5 Where the Customer wishes to return any of the Goods to Secon for any reason other than as specified in this clause 10, Secon will only be obliged to accept such returns and refund the Price, if the Supplier permits and agrees to refund Secon in turn for the Goods.

## 11. WARRANTIES

11.1 Secon makes no warranties, representations, undertakings or conditions in connection with the sale of the Goods. In particular, but without limitation, Secon gives no warranties that the Goods are of satisfactory quality or fit for a particular purpose or otherwise meet your requirements.

## 12. LIMITATION OF LIABILITY

12.1 Secon shall not be liable to the Customer in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 10.1;
- (b) any defect in the Goods arise because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the Customer alters or repairs such Goods without the written consent of Secon;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or improper storage or working conditions; or
- (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

12.2 Under no circumstances will Secon be liable for:

- (a) losses incurred by the Customer through any failure or delay to deliver Goods; or
- (b) any loss of actual or anticipated profits or savings, loss of business, loss of opportunity, loss of use or for any special, indirect or consequential loss whether arising from a breach of the Conditions or negligence in Delivery or Installation of the Goods even if Secon has been advised of the possibility of your incurring the same.

12.3 Secon does not limit its liability for death or personal injury caused by Secon's negligence or for any other losses or damages which cannot be limited by law.

12.4 Subject to clause 12.3, Secon's entire aggregate liability to the Customer for direct loss, whether in contract, tort (including negligence) or arising in any due to the negligent act or omissions of themselves, their employees, agents or sub-contractors shall not exceed the Price due in respect of the Services giving rise to the claim.

12.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

12.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier. 12.7 This clause 12 shall survive termination of the Contract.

## 13. SUSPENSION / TERMINATION

13.1 If the Customer becomes subject to any of the events listed in clause 13.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.

13.2 For the purposes of clause 13.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

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(b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer];

(c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

(e) (being a company) the holder of a qualifying floating charge over the Customer’s assets has become entitled to appoint or has appointed an administrative receiver;

(f) a person becomes entitled to appoint a receiver over the Customer’s assets or a receiver is appointed over the Customer’s assets;

(g) (being an individual) the Customer is the subject of a bankruptcy petition or order;

(h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(a) to clause 13.2(f) (inclusive);

(j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

(k) the Customer’s financial position deteriorates to such an extent that in the Supplier’s opinion the Customer’s capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

(l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

13.3 Without limiting its other rights or remedies, Secon may suspend provision of the Goods under the Contract or any other contract between the Customer and Secon if the Customer becomes subject to any of the events listed in clause 13.2(a) to clause 13.2(l), or Secon reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all the Supplier’s outstanding unpaid invoices and interest.

13.5 Termination of the Contract, however arising, shall not affect any of the parties’ rights, remedies, obligations and liabilities that have accrued as at termination.



13.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

**14. GENERAL**

Terms & Conditions for the supply of Goods for Secon Cyber Security Limited

14.1 Assignment and other dealings.

(a) Secon may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Secon.

14.2 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax, or e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier’s delivery receipt is signed; or, if sent by by fax or e-mail, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3 Severance.

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**14.4 Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**14.5 Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

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14.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Secon.

14.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

14.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including noncontractual disputes or claims).