

**General Terms and Conditions** of Barracuda Networks AG, Eduard-Bodem-Gasse 1, A-6020 Innsbruck (referred to below as „Barracuda Networks“) for services:

### 1. Subject

- (1) These general terms and conditions of Barracuda Networks are valid for supporting services and implementational services of the contractor and specify the content of the service contract.
- (2) Supporting services are pure advisory activities of the contractor. The responsibility for planning, control and management of the service provision and for the results attained are the sole responsibility of the customer.
- (3) Implementational services are services of the contractor where it has the responsibility for planning, control and management of the service provision and the results attained.
- (4) The scope of the supporting services mentioned in para. (2) and the implementational services mentioned in para. (3) in each case confirm to the service contract.
- (5) No general conditions of business of the customer become part of the service contract.
- (6) A service contract is an offer accepted by the customer in which services are offered.

### 2. Confidentiality

- (1) If a contract party receives of confidential information of the other contract parties or the agents used in each case (particularly technical information and information about business and operating matters) in the course of carrying out a service contract, it is obliged to keep this confidential. The duty of confidentiality is unaffected by the fulfilment of the contract.
- (2) Both contract parties must adhere to paragraph §15 (“Datengeheimnis“ – Data secrecy) of the Datenschutzgesetz (Data Protection Act) in the valid form (currently 17.8.1999, BGBl 165/1999). The duties above remain valid after the ending of the contract.

### 3. Payment

- (1) The calculation of payment is carried out in accordance with the agreement in the service contract in particular concerning the actual cost and/or a fixed price.
- (2) Cost estimates and/or approximations contained in the service contract in particular concerning the time and material requirements are not binding.

- (3) All rights to the product created during the provision of a service in whatever form and whatever type are only transferred to the customer on complete payment. Until payment, the customer is excluded completely from all rights, in particular transferable rights of use and copyright.
- (4) The provision of the service is considered complete in any case when the customer implements the product created, of whatever type and form, in the way intended way.

### 4. Payment conditions

- (1) In the absence of a contrary agreement, all payments to be made to the contractor are due without delay after issuing the invoice without deduction.
- (2) The customer can only set off claims that are not disputed or are legally laid down and also can only claim a right to offset because of such claims.
- (3) If the customer exceeds the payment goal allowed, interest on arrears at 5% above the then current EURIBOR for six-month deposits is to be paid; any damages beyond this must be met by the customer.

### 5. Particular duties of the customer

- (1) The customer is obliged to provide all information necessary or useful for carrying out the service taken on by the contractor.
- (2) The customer must provide free and secure access to its offices to the contractor and its agents, in particular sub-contractors, insofar it is necessary to fulfil the service.
- (3) The customer is further obliged to provide the contractor free of charge the equipment necessary to carry out the service, so long as the contractor does not have access to them itself, in particular telephone, hardware, offices amongst others.
- (4) The customer guarantees to have all rights, in particular copyright, rights of use, etc. that are necessary for the proper carrying out of the service order placed.

## 6. Ending the contract

- (1) The contractor has the right to cancel the contract if the provision of the service is not possible for operational reasons.
- (2) The parties to the contract have the right to cancel the service contract for a significant reason without adhering to a period of notice. The cancellation must be made in writing by recorded delivery to the last known address of the contract partner. A significant reason that allows the contractor an exceptional cancellation exists especially when the customer breaches a condition of this contractual agreement.
- (3) If the service to be provided by the contractor consists entirely of maintenance work, the service contract can be cancelled in the normal way with notice of 4 weeks at the end of a calendar quarter.
- (4) In those cases where the ending of the contract involves reasons not connected to the contractor, it receives the full payment. In all other cases, the contractor is entitled to a proportional payment.

## 7. Liability provisions

- (1) BARRACUDA NETWORKS SHALL BE LIABLE FOR DAMAGE WITHIN THE SCOPE OF THE STATUTORY PROVISIONS IF IT CAN BE PROVEN THAT SUCH DAMAGE WAS CAUSED BY BARRACUDA NETWORKS OR ITS STAFF WILFULLY OR WITH GROSS NEGLIGENCE.
- (2) LIABILITY FOR ORDINARY NEGLIGENCE SHALL BE LIMITED TO A MAXIMUM OF THREE TIMES OF THE CONTRACT VALUE OR 100,000 EURO BY MUTUAL AGREEMENT AND TO THE EXTENT PERMITTED BY LAW. COMPENSATION FOR CONSEQUENTIAL DAMAGE AND PECUNIARY LOSS, SAVINGS NOT EARNED, LOSS OF INTEREST, INDIRECT DAMAGE AND FOR DAMAGE FROM THIRD-PARTY CLAIMS OF ANY KIND AGAINST BARRACUDA NETWORKS SHALL BE EXCLUDED IN ANY CASE. BARRACUDA NETWORKS SHALL NOT BE LIABLE FOR DAMAGES IN CASE OF DESTRUCTION OF DATA, SOFTWARE OR HARDWARE IF CUSTOMER DID NOT FULFIL OR DID NOT SUFFICIENTLY FULFIL ITS OBLIGATIONS OF OPERATING THE EDP PROPERLY AND TO MAKE TIMELY DATA BACKUPS.

- (3) For ordinary negligent behaviour by the contractor, its employees or agents no liability arises. No liability arises by the contractor for indirect damage, consequential damage and lost profits or in particular for damage caused by changes, amendments or editing of products from the contractor by the customer, or which arise in such a product.
- (4) Any liability of the contractor is furthermore restricted to such typical damage whose occurrence the contractor could have reasonably foreseen at the conclusion of the contract according to the circumstances known to it at the time.
- (5) If the fulfilment of the contract is not properly carried out by employees or agents of the contractor, for whatever reason, this must be advised by the customer without delay otherwise all other claims are forfeited.
- (6) The contractor is not liable for the loss of data. Data backups are the responsibility of the customer. The customer is responsible for taking suitable backup measures before the beginning of the service or during it.
- (7) Any liability of the contractor beyond those in paragraphs (1) to (6) above for whatever legal reason is excluded – subject to obligatory legal requirements. This exclusion includes in particular claims arising from default in performance of the contract, fault at conclusion of contract, culpable breach of warranty duties and claims for faults of agents and representatives of the contractor.

## 8. Warranty

- (1) The contractor can free itself from demands for price reductions and revocation of the contract by exchanging the defective product against a non-defective one, providing performance without defects, or by carrying out an improvement that is reasonable for the customer or provides the missing item, at its choice and within an appropriate period of time. With defects, the contractor has the right in each case within an appropriate period of time and at its own choice to exchange the defective product against a non-defective one, providing performance without defects, or by carrying out an improvement that is reasonable for the customer or provides the missing item, at its choice and within an appropriate period of time. The right of assertion of a defect by the customer must be made within 6 months from handover. The customer must prove that the defect was already present at handover.

- (2) In the case of annulment and the retraction of the services provided by the contractor, it must make a suitable payment for the use.
- (3) Any guarantee and/or warranty claims made by the customer on the real assets received from the contractor expressly do not extend to the services provided by the contractor.

## 9. Rights of use

- (1) Insofar nothing else is agreed in the service contract in this respect, the contractor is the sole legal owner of all copyright for all programmes, programme listings, plans, reports, drawings, etc. created in the course of fulfilling the service contract.
- (2) The customer has the right, after complete fulfilment of its duties from the service contract, to use the programmes, programme descriptions, plans, reports, drawings, etc. created in the course of the fulfilment of this contract in unchanged form as is necessary for the achievement of the goals declared to the contractor in the service contract. The programme listings (source code) are not provided for the customer unless this is agreed in writing.
- (3) Where the results of the contractor's work represent copyright protected material, the contractor gives the customer rights of use for this material in accordance with the above para. (2) necessary extent. This granting of rights is made under the deferred condition that the customer fulfils all duties arising from this service contract.

## 10. Limitations and complaints

- (1) All claims against the contractor arising out of this contract, in particular damage claims and warranty claims, become time barred without exception with six months from completion and handover of the agreed service. Claims against the customer are subject to the legal time bar.
- (2) The customer is obliged to test the products produced in the course of the service comprehensively for operativeness within one week of handover, or otherwise the right to warranty and damages claims is lost. Defects thus discovered must be notified to the contractor without delay in writing by recorded delivery. This is also valid for hidden defects that are identified within the warranty period.

## 11. General conditions

- (1) The contractor has the right to use employees and/or sub-contractors of its choice to fulfil the service taken on.
- (2) The customer agrees not to directly employ employees or agents of the contractor either directly or indirectly or via third parties for itself or connected organisations in any form or to call on their services with or without payment. This limitation is valid from conclusion of the service contract until two years after its end or after fulfilment.
- (3) For each breach of the standardised duty in para. (2), the customer is subject to a flat contract penalty – not subject to the judicial right of mitigation – in the sum of € 50,000 (in words : fifty thousand Euro). The right of the contractor to claim for further damages is unaffected by this.
- (4) For checking the duty mentioned in para. (2), the customer gives the contractor the right of information at any time about the employees and other workers in the company. In the case of a founded suspicion of a breach by the customer of the standardised duty in para. (2), it is obliged to provide the evidence of keeping to this requirement without delay.
- (5) The short-term non-implementation of a right of the contractor in the service contract does not mean the surrender of the future claim of this right.
- (6) The transfer of rights and claims in this service contract by the customer requires the previous written agreement of the contractor.
- (7) The service contract is subject only to the substantive Austrian law. The uniform UN convention on contracts (Convention on Contracts for the International Sale of Goods from 11 April 1980, UNCITRAL) is expressly excluded.
- (8) The only court of jurisdiction for all legal disputes arising from or in connection with the service contract is agreed by the parties as Innsbruck.
- (9) Supplements and amendments to the service contract must be made in writing. This is also valid for any waiver of the requirement for the written form.
- (10) All costs, fees and tax arising from the formation and/or the completion of this service contract are to be paid by the customer.

- (11) If a requirement of this service contracts proves to be invalid, this does not affect the validity of the remaining requirements of the contract. In this case, the parties to the contract agree to replace the invalid requirement with a valid one that comes as close as possible to the business goal of the invalid requirement in accordance with the recognisable will of the contract parties.

Amended: August 2010