.vantronix General Terms and Conditions

2011-11-10

Art. 1- Applicability

(1) These General Terms and Conditions ("Agreement") shall apply to all business relations between the .vantronix secure systems – Compumatica B.V. and everyone entering into an agreement with .vantronix ("Customer), separately or jointly referred to as "the Party, the Parties", save as varied by express agreement accepted in writing by both Parties.

(2) This Agreement shall govern any future individual contract particularly regarding the sale of hardware and software, the production of works, turn key contracts consulting and general provision of services ("the Goods") between the Parties. .vantronix may review, change and amend the terms of this Agreement at any time. Customer will receive a version of the new Agreement in writing, via email or facsimile. If it does not contradict in writing, via email or facsimile within 14 days the new version will replace the previous Agreement.

(3) These conditions, supplemented by .vantronix' End-User-License-Agreement ("EULA") regarding Software, quotations and acceptances of offers and Customer's orders or confirmations of quotation exclusively contain all agreements between the Parties. Any different or additional terms proposed by Customer are objected to and will not be binding upon .vantronix, even if not contested expressly, unless assented in writing by .vantronix.

(4) The delivery at an "ex works" basis (INCOTERMS 2000) is agreed per default between the Parties. The INCOTERMS 2000 are hereby included into the contract between the Parties and are applicable to the contractual relationship of the Parties as long as this Agreement does not deviate from the stipulations of the INCOTERMS 2000. In that case the stipulations of this Agreement prevail. .vantronix will send an INCOTERMS 2000 sample on request of Customer.

(5) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documents of information issued by .vantronix shall be subject to correction without any liability on part of .vantronix.

Art. 2- Orders and Contract Conclusion

(1) By sending an order, which could be deemed as legally binding, Customer offers to conclude a contract. Customer's confirmation of a non-binding .vantronix' quotation shall be deemed to be such an offer to conclude a contract. .vantronix can accept such an offer by either delivering the objects of purchase or accepting the offer in writing, via email or facsimile. Preceding .vantronix' quotations are not legally binding, unless stated differently in the quotation.

(2) Information on web-sites, in catalogues, brochures or advertising as well as .vantronix' quotations or estimates of costs are legally non-binding, as long as not declared otherwise in writing by .vantronix.

(3) The property in drawings, and further documents as well as the intellectual property rights therein are reserved to .vantronix.

(4) .vantronix reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory requirements or, where the Goods are to be supplied to .vantronix' specification, in general .vantronix may require changes which do not materially affect the quality or performance of the Goods.

Art. 3- Prices and Terms of Payment

(1) The price of the order shall be .vantronix' quoted price in the quotation or acceptance of offer or, where no price has been quoted, the price list in .vantronix' published price list current at the date of acceptance of the order.

(2) All prices are calculated excluding value added tax, which will be invoiced separately. Travelling and other expenses will be charged according to the price list in effect on the day of performance or the specifications in the quotation and they shall be billed separately.

(3) By default all prices are given by .vantronix on an ex works basis (according to INCOTERMS 2000). In particular packaging, transport costs, bank transfer costs and customs duties will be covered by Customer.

(4) Customer shall pay within 14 days after receipt of .vantronix' invoice, unless otherwise stated explicitly in the acceptance of the offer or the quotation. Payment shall be conducted via inter-bank payment transaction only; no cheque or bill of exchange will be considered as fulfilment of the payment obligation.

(5) Customer only has the right for retention if its counter claims are indisputable, legally assessed or accepted by .vantronix and deriving from the same contractual relationship.

(6) .vantronix reserves the right that deliverance shall only be made when Customer has paid in advance or fulfilled other provisions to secure the payment. If Customer fails to carry out its duty in the set time line .vantronix shall be entitled to sell the Goods differently. In that case .vantronix shall be entitled to claim damages.

Art. 4- Delivery Times

(1) Except otherwise agreed in writing delivery dates or dates for completion of contractual duties shall not be binding. The delivery time only commences when all technical questions are solved mutually and Customer fulfils its 3 obligations to co-operate to the required extent. The given time line is adequately extended if the delivery of .vantronix' suppliers is delayed through no fault of .vantronix. This also applies if a failure to perform obligations is a result of force majeure, such as but not limited to acts of nature, war, invasion, act of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity.

(2) If a fixed time for delivery is provided for in the contract, and .vantronix fails to deliver within such time or any extension thereof granted, Customer shall be entitled, on giving to .vantronix within a reasonable time notice in writing, to claim a reduction of 3 % per week of the price payable under the contract, unless it can be reasonably concluded from the circumstances of the particular case that Customer has suffered no loss or a minor loss. This limit shall not apply if the business had to be settled on a fixed date or if the delay was caused negligently or intentionally by .vantronix, its agents or representatives or if there is any further breach of essential contractual obligation.

(3) If Customer fails to accept delivery on due date, it shall nevertheless make any payment conditional on delivery as if the Goods had been delivered. .vantronix shall arrange for the storage of the Goods at Customer's risk and cost.

Art. 5- Transfer of Risks
Risk of damages to or loss of the Goods shall pass to Customer as follows:
 "ex works delivery" (according to INCOTERMS 2000) is agreed on by default. In that case risk shall pass to Customer at that time when .vantronix notifies Customer that the Goods are available for collection.
 As far as other conditions then "ex works" from INCOTERMS 2000 are explicitly agreed on the point of time for the transfer of risk will be determined according to the stipulations of the INCOTERMS 2000 and additionally according to Dutch law.

Art. 6- Retention of Title
(1) Notwithstanding the delivery and the passing of the risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to Customer until .vantronix has received payment in full of the price of the Goods, all other Goods agreed to be sold by .vantronix to Customer and all outstanding accounts including from different contracts for which payment is due.

(2) After termination of the contract .vantronix shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the Goods; until such time when the property in the Goods passes to .vantronix, Customer shall hold the Goods as .vantronix' fiduciary, and shall keep the Goods 4 properly stored, protected and insured. Until that time Customer shall be entitled to resell or use the Goods in the ordinary course of business, but shall account to .vantronix for the proceeds of sale or otherwise of the Goods including insurance proceeds, and shall keep all such proceeds separate from any money or properties of Customer or third parties.

(3) If the Goods are processed or reshaped by Customer and if this is done with Goods .vantronix has property in, .vantronix shall become co-owner of the Goods. The same shall apply if .vantronix' Goods are completely reshaped and mixed with other Goods.

(4) If third parties take up steps to pledge or otherwise dispose of the Goods, Customer shall immediately notify .vantronix in order to enable .vantronix to seek a court injunction in accordance with Article 3.1 and 3.2 of the Dutch license agreement. Procedure. If Customer fails to do so in due time he will be held liable for any damages caused.

(5) .vantronix shall on demand of Customer release any part of the collateral if the value of the collateral held in favour of Customer exceeds the value of the claims being secured in about 10 %. It is .vantronix' decision to release those parts of the collateral suitable for him.

Art. 7- Warranties

(1) Customer shall examine the Goods as required (Unpledgeability of the right to take back The right to take back is not subject to pledge. If insolvency proceedings are initiated against the assets of the obligor, the right to take back may, for the duration of the insolvency proceedings, not be exercised by the obligor either)and in doing so check every delivery in anyrespect. Any claim by Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specifications shall be notified to .vantronix within 14 days time from the date of delivery.

(2) The warranty above is given by .vantronix solely subject to the following conditions and the applicable terms of the Dutch Civil Code: .vantronix warrants that all items delivered under this Agreement will be free from defects in material and workmanship and conform to applicable explicitly agreed specifications. The content of the warranty conforms with the requirements of Dutch Law (Dutch Civil Code) and is not an independent additional guarantee. Irrelevant differences of the actual condition of the Goods to the intended condition do not imply the existence of a defect.

(3) The warranty does not apply any more if Customer removes serial numbers or other signs indicating the origin. Furthermore .vantronix shall not be liable in respect of any defect in the Goods arising from any design or specification supplied by Customer. The warranty does not cover defects in or damage to the products, which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial application. .vantronix shall not be liable for the Goods being fit for a particular purpose to which Customer intends to put them unless otherwise explicitly agreed upon, and the warranty does not extend to parts, materials or equipment manufactured by or on behalf of Customer unless such warranty is given by .vantronix to 5 Customer.

(4) Where any valid claim in respect of the Goods which is based on any defect in the quality and condition of the Goods or their failure to meet specification is notified to .vantronix in accordance with this Agreement, .vantronix shall be entitled at .vantronix' sole discretion to

either replace the Goods free of charge or repair the Goods. Software-defects must be reproducible. If .vantronix is either not ready or not able to repair or replace the Goods Customer shall only be entitled at Customer's sole discretion to claim for a reduction of price or the cancellation of the contract.

Art. 8 Liability

APART FROM THE PROVISIONS LISTED BELOW .VANTRONIX SHALL NOT BE LIABLE TO CUSTOMER (WHETHER IN CONTRACT, TORT, BREACH OF STATUTORY DUTY, RESTITUTION OR OTHERWISE) FOR ANY DAMAGES, CLAIMS OR COSTS WHATSOEVER OR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL DAMAGES, ANY LOST PRORFITS, LOST SAVINGS OR COMPENSATION FOR DAMAGES DUE TO DEFECTS IN THE GOODS.

.VANTRONIX' LIABILITY AS A WHOLE IN CONNECTION WITH THESE CONDITIONS SHALL BE LIMITED TO EURO 15.000 PER INCIDENT.

THE LIABILITY FOR LOSS OF DATA SHALL BE LIMITED TO THE TYPICAL COST AND EFFORT OF RETRIEVING DATA WHICH WOULD HAVE OCCURRED, IF THE DATA HAD BEEN STORED PROPERLY AND IN A RISK-ADEQUATE MANNNER.

ALL CLAIMS SUBJECT TO .VANTRONIX' LIABILITY BECOME TIMEBARRED WITHIN 1 YEAR AFTER DELIVERY, UNLESS .VANTRONIX HAS FRAUDULENTLY CONCEALED THE DEFECT.

.VANTRONIX SHALL BE LIABLE FOR A BREACH OF ANY CARDINAL CONTRACTUAL OBLIGATION BY .VANTRONIX OR ITS EMPLOYEES, LEGAL REPRESENTATIVES AND VICARIOUS AGENTS, WHEREAS THE LIABILITY IS RESTRICTED TO THE TYPICAL AND PREDICTABLE DAMAGE OCCURRING UNDER SUCH AN AGREEMENT. A CARDINAL OBLIGATION SHALL MEAN A PRECISELY DELINEATED CONTRACTUAL OBLIGATION WHOSE FULFILMENT IS ESSENTIAL TO ACHIEVING THE PURPOSE OF THE CONTRACT HENCE WITHOUT ITS FULFILMENT THE ACHIEVEMENT OF THE CONTRACT'S PUPROSE WOULD BE ENDANGERED OR A CONTRACTUAL OBLIGATION WHOSE FULFILMENT PERMITS FOR THE PROPER EXECUTION OF THE CONTRACT AND ON WHOSE FULFILMENT THE CUSTOMER COULD REGULARTLY RELY. OBLIGATIONS THAT ARE NOT COMPRISED BY THAT DEFINION SHALL NOT BE CARDINAL OBLIGATIONS.

NOTWITHSTANDING ANYTHING IN THE CONTRARY IN THIS AGREEMENT .VANTRONIX SHALL BE LIABLE WITHOUT LIMITATION FOR ALL DEFECTS RESULTING FROM WILFUL MISCONDUCT OR GROSS NEGLIGENT MISCONDUCT ON THE PART OF .VANTRONIX AND ITS EMPLOYEES, LEGAL REPRESENTATIVES AND VICARIOUS AGENTS AS WELL AS FOR CAUSING BODILY INJURY, DAMAGE TO HEALTH, THE DEATH OF A PERSON, FOR ANY DAMAGES THAT ARE SUBJECT TO THE Dutch PRODUCT LIABILITY ACT AND FOR DAMAGES RESULTING FROM A BREACH OF AN INDEPENDENT GUARANTEE ACCORDING TO THE

STIPULATION OF THE GUARANTEE.

Art. 9- Intellectual Property

(1) .vantronix reserves all intellectual property rights, particularly copyrights, patent rights, brand rights and further industrial and other property rights to the delivered programs, the documentation, web-sites, catalogues, brochures and handbooks and other delivered material.

(2) .vantronix grants Customer a perpetual, non-exclusive license for the use of .vantronix' software and documentation according to the terms and conditions of the EULA in accordance with the specifications of the Dutch Copyright Act.

Art. 10- Co-operation Obligation of Customer

(1) Customer shall attend to its duty to co-operate prior to and during the execution of this contract. Customer particularly shall establish suitable working conditions for .vantronix in its sphere, particularly attend arranged meetings with .vantronix, shall make available required rooms and technical systems etc.

(2) Concerning .vantronix' software Customer shall test it sufficiently before using it in its systems and make sure that it is applicable for its intended purpose. Furthermore Customer shall make adequate data backups, according to the latest state of the art technology.

Art. 11- Compliance with Law and Indemnification

(1) Customer shall comply with all law and fulfil all its legal obligations applicable to the purchase of .vantronix' Goods. In particular Customer shall be responsible for paying all its taxes, customs charges for obtaining the Goods, possess all necessary permissions to receive the Goods and Customer assumes the duty to attend to all import rules applicable to the purchase of .vantronix' Goods and assures to make sure that the import of the purchased Goods is in compliance with all applicable import rules.

(2) Customer shall indemnify and hold harmless .vantronix against all claims raised by third parties comprising legal authorities, arising from any Customer's failure to comply with applicable legal obligations, in particular 7 from Customer's failure to pay due taxes, customs charges for the Goods, failure of obtaining necessary permissions for receiving the Goods or from the breach of applicable import rules through importing of the purchased Goods.

Art. 12- Export Rules.
Customer agrees that the Goods will not be shipped, transferred or exported into any country or used in any manner prohibited by the Canadian Controlled Goods Act, the United States Export Administration Act or any other applicable export laws, restrictions or regulations of Canada, the United States of America, The Netherlands, or other countries (collectively the "Export Laws"). In addition, if the Goods are identified as export controlled items under the Export Laws, Customer represents and warrants that Customer is not a citizen, or otherwise located within, an embargoed nation (including without limitation Iran, Iraq, Syria, Sudan, Libya, Cuba, North Korea, and Serbia) and that Customer is not otherwise prohibited under the Export Laws from receiving the Goods.

Art. 13- Additional Conditions for Services and Support
(1) The supply of services serves to consult and assist Customer. Services are accounted for after actual .vantronix' effort according to the prices of the price list in effect on the day of performance.

(2) Customer shall confirm in writing the extent of the provision of services onsite.

(3) In executing the contracts .vantronix has to utilise adequately qualified members of staff. Nothing in this agreement shall constitute the right of Customer to act as agents of .vantronix or to represent .vantronix in any way whatsoever. .vantronix and its employees do not depend on instructions of Customer, .vantronix' employees rather have to follow .vantronix' instructions.

(4) On-site man days included in selected products may only be called upon to conduct the initial installation, configuration and integration of the product into existing networks, as well as for initial instructions on the use of the product. These man-days cannot be called upon as support services later if not used for the initial activation when buying the product.

Art. 14- Turnkey Services/Works
(1) If during the implementation of the Agreement Customer changes its requirements and specifications in a way that the change request influences the work price or delivery time, the price or delivery date shall be mutually adjusted accordingly.

(2) If the Parties have mutually agreed on a fixed price and during the preparation or execution of the contract it becomes apparent that the costs will exceed the originally considered price for more than 25 %, .vantronix shall be entitled to claim a respective adjustment of the project price.8

(3) Turnkey services/works are subject to Customer's acceptance. For definable partial performance .vantronix shall be entitled to demand acceptance of these partial performance. As a result the payment for this partial performance shall become due with acceptance. At first .vantronix shall state the acceptability of the work. Thereupon Customer shall without delay test the work; upon successful acceptance Customer shall attest without delay successful acceptance in writing. The tests of the work are deemed to be successful if the work meets in substantial parts the requirements explicitly agreed upon for the work. The details of the acceptance procedure shall be provided by .vantronix, whereas Customer shall provide the test data derived from the mutually agreed specifications. During acceptance the Parties shall produce a record, signed by both Parties, containing a list of the detected defects. Customer shall immediately inform .vantronix in a comprehensible way of substantial defects, which Customer shall eliminate within an appropriate period of time. Subsequently a further acceptance regarding the detected defects shall take place. Defects, that are not substantial, shall not entitle Customer to deny acceptance and shall be stated as defects subject to warranty procedures in the acceptance record.

(4) If Customer does not carry out the acceptance after a successful testing of the work or after .vantronix' demanding of acceptance and if .vantronix additionally sets a time limit of three weeks, successful acceptance shall be deemed performed successfully, as long as Customer does not specify its reasons for denial of acceptance in writing within the set period of time.

Art. 15- Confidentiality

(1) .vantronix and Customer agree to keep secret and not to communicate to third parties the Know-how or any other information which is either marked confidential or which has to be deemed confidential from the circumstances it is provided under or comes to the attention of the other Party ("the Confidential Information").
The Parties shall each take all appropriate steps to safeguard the Confidential Information and to protect the Confidential Information against disclosure, misuse, espionage, loss unauthorized use or theft. The Parties shall oblige their employees and contractors to also keep the Confidential Information secret.

(2) The secrecy obligation does not apply to any information of which can be proven by written documents that it:
- was known to the receiving Party at the time of disclosure and was not disclosed to it by a third party breaching any secrecy obligation, or
- is generally available to the public through no fault of either Parties
If the receiving Party is required to disclose Confidential Information under operation of law, it will disclose only such information as is legally required by order of a court of competent jurisdiction or other competent administrative body and will use reasonable efforts to obtain confidential treatment for any 9 Confidential Information that is so disclosed. The receiving Party will provide the disclosing Party notice of such possible disclosure prior to disclosure in order to give the disclosing party an opportunity to contest such disclosure.

(3) The obligation to keep the Confidential Information secret survives the scope of this Agreement and continues as long as the Confidential Information has not become known to the public.

Art. 16- Miscellaneous

(1) Should any provisions of this Agreement be held by court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby. The Parties agree to replace the invalid, ineffective or unenforceable provision by a valid, effective and enforceable provision, which economically best meets the intention of the Parties. The same shall apply in case of omission. All terms and conditions of this Agreement are separable.

(2) This Agreement supersedes and invalidates all other commitment and warranties relating to the subject matter hereof, which may have been made by the Parties either orally or in writing prior to the date hereof.

(3) This Agreement and the entire legal relationship between .vantronix and Customer shall be governed by the law of the Federal Republic of the Netherlands. The CISG-rules shall not apply. Place of Jurisdiction shall be The Hague, the Netherlands

Art. 17- Arbitration Settlement

(1) All disputes arising out of this contract or related to its violation, termination or nullity may be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna. This only applies if Customer does not have a headquarter or a branch office in a country being member of the European Union whereas the foregoing only comprises the same legal entity and not affiliates of Customer. If Customer has a headquarter or a branch office in a country of the European Union all legal disputes shall be finally settled before national courts in The Heague instead of through Arbitration.

(2) Notwithstanding the forgoing, this arbitration does not apply if a Party of this contract chooses to take legal action in any court of proper jurisdiction. Both Customer and .vantronix, as initially the first to take legal action, shall have the right to choose whether to settle the dispute through arbitration or before a national court. The Parties do not have to agree mutually on one or the other, it suffices that the Party at first starting to take legal action makes a choice between the procedure of arbitration or the proceedings before a national court by officially starting the proceedings at one of them. Proceedings are officially started before a national court, when the legal proceedings are instituted by filing the plaint by any Party. The relevant point of time when 10 official proceedings are started for arbitration shall be the event, that one Party gives notice to the other of the appointment of its arbitrator. If a Party has formally started the proceedings of either the arbitration or before a national court the chosen procedure is prior to the other procedure and terminates the dispute for good, even if the other Party disagrees, excluding legal remedies inherent in the chosen procedure. During the duration of the proceedings or after the termination the same dispute cannot be negotiated through the respectively other procedure.
(3) The number of arbitrators shall be three.
(4) The seat of the arbitration shall be Vienna.
(5) Language of the Arbitration shall be English.
(6) The Arbitral Tribunal shall apply Dutch substantive law. Regarding the procedure, especially with respect to taking evidence, the Arbitral Tribunal shall apply Dutch law.
(7) A dissenting opinion shall not be permissible.