

General Terms and Conditions of CANCOM Austria AG for IT consulting and IT security services

These General Terms and Conditions are divided into two parts. The provisions set out in Part A (General Part) apply to IT consulting services and IT security services. Part B (Special provisions for IT security services) applies exclusively to IT security services and applies to these services in addition to and with priority over the provisions in Part A.

Part A - General Part

1 General Principles / Scope of Application

1.1 These General Terms and Conditions shall apply to all legal transactions between the customer and CANCOM Austria AG (hereinafter referred to as "CANCOM"). The version valid at the time of the conclusion of the contract shall be authoritative in each case.

1.2 Subsidiary agreements, amendments and supplements to these General Terms and Conditions, as well as all declarations in connection therewith, must be made in writing, i.e., also with an original signature or a qualified electronic signature, and shall only be effective if they have been acknowledged in writing by a representative authorized by CANCOM. This shall also apply to any waiver of the written form requirement. There shall be no verbal collateral agreements.

1.3 Deviations from the conditions referred to in point 1.1 shall only be effective if they have been acknowledged in writing by a representative authorized by CANCOM. Legal conditions and/or general terms and conditions of the customer of any kind, even if they are attached to requests for quotations, orders, or declarations of acceptance, for example, shall not apply and are excluded by mutual agreement, even if they are not contradicted by CANCOM. Contractual performance on the part of CANCOM shall in no case be deemed to constitute consent to contractual terms and conditions that deviate from CANCOM's terms and conditions.

2. Service content and deadlines for fulfilment

2.1 The scope of a specific assignment shall be contractually agreed on a case-by-case basis or shall result from CANCOM's respective offer.

2.2 CANCOM shall be entitled to have the tasks incumbent upon it performed in whole or in part by third parties. The third party shall be paid exclusively by CANCOM. No direct contractual relationship whatsoever shall arise between the third party and the customer.

2.3 CANCOM shall provide the services within deadlines customary in the market. Dates and deadlines for the provision of services shall only be binding if and insofar as they have been confirmed by CANCOM in writing in advance.

2.4 If the fulfilment of the order is delayed due to circumstances for which CANCOM is not responsible (e.g. operational disruptions, strike, force majeure, pandemics, transport obstacles, lack of cooperation by the customer, etc.), CANCOM is entitled, to the exclusion of warranties and/or claims for damages, either to withdraw from the contractual relationship or to extend the deadline appropriately. This shall also apply if the events occur at a time when CANCOM is already in default. CANCOM shall inform the customer of this in good time. In the event of cancellation, CANCOM shall be entitled to invoice the customer for partial services rendered up to that point at the agreed prices.

3. The Customer's Duty to Cooperate

3.1 The customer shall ensure that the organizational framework conditions for the performance of the assignment at its place of business allow the work to be carried out as undisturbed as possible and conducive to the rapid provision of the services when fulfilling the order.

3.2 The customer shall also inform CANCOM comprehensively about previously conducted and/or ongoing consultations and IT security services - also in other specialist areas.

3.3 The customer shall ensure that all documents required for the fulfilment and execution of the order are submitted to CANCOM in a timely manner, even without a special request by CANCOM, and that CANCOM is informed of all processes and circumstances that are of importance for the execution of the order. This shall also apply to all documents, processes and circumstances that only become known during CANCOM's activities.

3.4 Notification of the customer's contact persons or key persons (per location or area of responsibility) for compliance with the approval procedures, approvals, and processing of the service provision, as well as prompt notification of any changes in this regard. Furthermore, the customer shall ensure that the required contact persons are available to CANCOM, otherwise CANCOM may suspend services until they are available. For this

purpose, the customer undertakes to announce adequate contact persons and to provide them with the corresponding decision-making authority. Internally, the customer shall further ensure that short or quick decision-making channels are defined and that the named contact persons are also present on site at appointments if required.

3.5 The customer shall submit approvals and resolutions on the documents and materials submitted in a timely manner. The customer is aware that failure to meet the deadlines may result in the deadlines set out in the schedule not being met.

3.6 The customer shall allow CANCOM to access the information required for the successful completion of the order, provided that the customer can access this information. The customer shall also, if the services are to be provided on the customer's premises, grant CANCOM's representatives or subcontractors access to all necessary premises and take all necessary steps to remove or remedy any obstructions or interruptions in the performance of the ordered services.

3.7 The customer shall, if requested, provide equipment and auxiliary personnel to support CANCOM in the execution of the order.

3.8 The customer shall take all necessary measures to ensure the physical and legal safety of the working conditions, locations and facilities in its area of responsibility during the performance of the services under its sole responsibility.

4. Loyalty Clause

4.1 The contracting parties undertake to be loyal to each other.

4.2 The contracting parties shall mutually undertake to take all precautions that are suitable to prevent the independence of any third parties and employees of CANCOM from being jeopardized. This shall apply in particular to offers made by the customer for employment or the assumption of assignments for its own account.

4.2.1 For the duration of the contract and for one year thereafter, the Customer is therefore prohibited from all actions and preparatory acts relating to the enticement away of those CANCOM employees who are significantly involved in the contract in question. In the case of follow-up contracts, i.e. contracts that build on or are derived from an earlier contract, the period shall be extended accordingly (term of the follow-up contract plus one year after termination). At the customer's request, CANCOM shall provide a list of the employees expected to be significantly involved. CANCOM reserves the right to amend the list. In the event of a breach of this Section 4.2.1, the customer shall pay CANCOM a contractual penalty of EUR 100,000.00 per breach. Any further claims for damages,

injunctive relief and removal shall remain unaffected.

4.2.2 Furthermore, the customer undertakes not to enter into any business relationship whatsoever with persons or companies which CANCOM uses to fulfil its contractual obligations during and for a period of three years after termination of this contractual relationship (with respect to employees the provision in Section 4.2.1 applies). In particular, the Customer shall not commission such persons or companies to provide the same or similar services as those offered by CANCOM.

5. Reporting obligation

5.1 Unless otherwise stipulated in the specific project, CANCOM undertakes to report to the customer on its work, that of its employees and, if applicable, of commissioned third parties, in accordance with the progress of the work.

5.2 The customer shall receive the agreed results documents within a reasonable time, i.e., two to four weeks, depending on the type of assignment, after completion of the assignment.

5.3 CANCOM shall be free from instructions in the production of the agreed services and shall act at its own discretion and on its own responsibility. CANCOM shall not be bound to any specific place of work or working hours.

6. Protection of Intellectual Property

6.1 The copyrights to the works created by CANCOM and its employees and commissioned third parties (in particular offers, reports, analyses, expert opinions, organizational plans, programs, service descriptions, drafts, calculations, drawings, data carriers, etc.) shall remain with CANCOM. They may be used by the customer during and after termination of the contractual relationship exclusively for purposes covered by the contract. In this respect, the customer shall not be entitled to reproduce and/or distribute the work(s) without CANCOM's express consent. Disclosure of test reports to authorities or other public bodies is permitted if and insofar as this is necessary for the contractually stipulated purpose or required by law. Under no circumstances shall the authorised or unauthorised reproduction/distribution of the work give rise to any liability on the part of CANCOM (in particular, for example, for the accuracy of the work) vis-à-vis third parties.

6.2 The customer's breach of these provisions shall entitle CANCOM to immediately

terminate the contractual relationship prematurely and to assert other statutory claims as well as a contractual penalty in the amount of 100% of the agreed remuneration. Any further claims for damages or injunctive relief shall remain unaffected.

6.3 CANCOM reserves its rights to all test methods and/or procedures as well as to all -procedures as well as to all devices or equipment that it develops itself or uses generally.

7. Warranty

7.1 Irrespective of fault, CANCOM shall be entitled and obliged to remedy any inaccuracies and defects in its services that become known. CANCOM shall inform the customer thereof without delay.

7.2 This claim of the customer expires after six months after the respective service has been rendered.

7.3 Unless expressly agreed otherwise, the warranty period shall in any case be six months after performance of the service.

8 Liability

8.1 CANCOM shall only be liable to the customer for damage - except for personal injury - in the event of gross negligence (intent or gross negligence). This shall also apply mutatis mutandis to damage caused by third parties engaged by CANCOM.

8.2 CANCOM's total liability for all damages and expenses resulting from the contract shall be limited to the single contractual fee or EUR 250,000.00, whichever is lower. The contractual fee shall be calculated from the net sum of the remuneration incurred until the first possibility of ordinary termination in accordance with the contract.

8.3 Claims for damages by the customer may only be asserted in court within six months of knowledge of the damage and the damaging party, but at the latest within three years of the event giving rise to the claim.

8.4 In each case, the customer must provide evidence that the damage is due to CANCOM's fault.

8.5 If CANCOM provides the services with the assistance of third parties and warranty and/or liability claims arise against these third parties in this context, CANCOM shall assign these claims to the customer. In this case, the customer shall have priority over these third parties.

9. Secrecy / Data Protection

9.1 CANCOM undertakes to maintain absolute confidentiality about all business matters that come to its knowledge, in particular business and trade secrets, as well as any information it receives about the nature, scope of operations and practical activities of the customer.

9.2 Furthermore, CANCOM undertakes to maintain confidentiality vis-à-vis third parties regarding the entire content of the services as well as all information and circumstances that it has received in connection with the creation of the services, in particular also regarding the data of the customer's own customers.

9.3 CANCOM shall be released from the duty of confidentiality vis-à-vis any assistants and substitutes it uses. However, CANCOM shall transfer the duty of confidentiality to them in full and shall be liable for their breach of the duty of confidentiality as for its own breach.

9.4 The duty of confidentiality extends indefinitely beyond the end of this contractual relationship. Exceptions exist in the case of legally stipulated obligations to testify.

9.5 The Customer undertakes to keep confidential the business and trade secrets received from CANCOM in the context of the contractual relationship, not to disclose them to third parties without the prior written consent of CANCOM and not to use them for its own purposes without authorisation.

9.6 Since the provision of services involves the processing of personal data by CANCOM (as processor) on behalf of the customer (as controller), this constitutes commissioned processing within the meaning of Art 28 GDPR. This commissioned processing is carried out exclusively on the basis of a [unilateral declaration of commitment](#) on the processing of personal data by CANCOM in accordance with the legal requirements. Insofar as the customer passes on data to CANCOM, the customer shall be solely responsible for ensuring that all necessary third-party consents to the transfer of data to CANCOM have been obtained and that all data processing applications are compliant with data protection laws. The customer shall indemnify and hold CANCOM harmless in respect of all claims in this regard.

10. Remuneration

10.1 Once the agreed service has been provided, CANCOM shall receive a fee in accordance with the agreement between the customer and CANCOM. CANCOM shall be

entitled to issue interim invoices in accordance with the progress of the work and to demand payment on account in accordance with the respective progress. The fee shall be due in each case upon invoicing by CANCOM.

10.2 Unless another currency is expressly stated, the prices and charges stated in CANCOM's offers are in EURO and are based on CANCOM's cost price at the time the offer is made. The statutory value added tax is not included in any of the prices quoted and must be paid separately by the customer at the applicable rate.

10.3 Any cash outlays, expenses, travel costs, etc. incurred shall be additionally reimbursed by the customer against invoicing by CANCOM.

10.4 If the agreed service is not performed due to reasons on the part of the customer or due to a justified premature termination of the contractual relationship by CANCOM, CANCOM shall retain the right to payment of the entire agreed fee less saved expenses. In the event that an hourly fee is agreed, the fee shall be paid for the number of hours that could have been expected for the entire agreed work, less the expenses saved. The expenses saved shall be agreed as a lump sum of 30 per cent of the remuneration for those services that CANCOM has not yet rendered by the date of termination of the contractual relationship.

10.5 In the event of non-payment of interim invoices, CANCOM shall be released from its obligation to provide further services. However, this shall not affect the assertion of further claims resulting from non-payment.

11. Electronic Invoicing

11.1 Invoices may be delivered in electronic form by e-mail or in paper form, at CANCOM's discretion. In the case of electronic invoices, the customer shall ensure that these can also be retrieved from. The customer undertakes to provide CANCOM with its own e-mail address, which is exclusively set up for the receipt of electronic invoices. The CANCOM e-mail address is merely a dispatch address for sending electronic invoices; it is not possible to receive e-mails.

11.2 Electronic invoices are created in "portable document format" (pdf) and are not signed. It is not possible to receive electronic invoices and paper invoices at the same time. One pdf file is created per invoice. Each invoice is sent individually by e-mail.

11.3 The electronic invoice is deemed to have been received as soon as it can be retrieved or taken note of under normal circumstances.

11.4 Reminders will be sent in paper form to the billing address provided.

11.5 If an electronic invoice cannot be delivered, CANCOM reserves the right to send the invoice in paper form to the customer's postal address last notified to CANCOM.

11.6 The customer can cancel the electronic delivery of invoices at any time in writing and with a legally valid signature. In future, the customer will receive invoices by post at the postal address last notified to CANCOM. CANCOM reserves the right to independently change the delivery of invoices to the postal address last notified to CANCOM for good cause.

12. Contract Period

12.1 The contract ends in principle with the completion of the project and may not be terminated prematurely by ordinary notice of cancellation.

12.2 If the service does not relate to a project, but a permanent provision of services has been agreed, the term shall be based primarily on the provision in CANCOM's offer. If no provision is made in the offer, the contract shall be concluded for an indefinite period.

12.2.1 The contract referred to in Section 12.2 may be terminated by either party by giving 3 months' notice in writing by registered letter, but no earlier than the end of the minimum term stated in the offer.

12.3 Notwithstanding the foregoing, the contract may be terminated by either party at any time for good cause without notice. Good cause shall be deemed to be in particular

- if a contractual partner violates essential contractual obligations or
- if a contracting party defaults on payment after insolvency proceedings have been opened.
- if there are justified concerns about the creditworthiness of a contracting partner in respect of whom insolvency proceedings have not been opened and the contracting partner does not make advance payments at CANCOM's request or provide suitable security before CANCOM performs and the poor financial circumstances were not known to the other contracting partner when the contract was concluded.

12.4 CANCOM is also entitled to terminate the contract prematurely for good cause,

- if essential parameters of the service provision have changed and CANCOM can no longer be reasonably expected to continue the services from an economic point of view, or
- if the customer is more than 30 days in arrears with a payment.

12.5 In any case of full or partial premature cancellation/termination of the contract or any other termination of the contract, CANCOM shall be entitled to discontinue the provision of services, irrespective of any pending legal dispute.

12.6 In the event of termination for reasons for which CANCOM is responsible, the customer shall be obliged to pay for the services provided in full by CANCOM up to the effective date of termination or, in the event of incomplete provision, to the extent that these are usable for the customer.

13. References, Newsletter/Mail Information, Consent to Data Transfer

13.1 By placing an order, the customer grants CANCOM the right to name the customer's company name as a reference customer to third parties until revocation, which is possible at any time.

13.2 By placing an order, the customer agrees to be informed about new products by means of a newsletter by e-mail or telephone until revocation, which is possible at any time.

13. The customer gives his express consent for his (company) name, address and e-mail address to be passed on to the respective manufacturer, insofar as this is necessary for the fulfilment of the order.

14. Final Provisions

14.1 The contracting parties confirm that they have provided all information in the contract conscientiously and truthfully and undertake to notify each other immediately of any changes (e.g., changes of name, company, address, legal form, company register number, etc.).

14.2 In the event that individual provisions of these General Terms and Conditions should be and/or become invalid, this shall not affect the validity of the remaining provisions and the contracts concluded on the basis thereof. The invalid provision shall be replaced by a valid provision that comes as close as possible to its meaning and economic purpose.

14.3 The contractual relations shall be governed exclusively by Austrian law to the exclusion of its conflict-of-law rules. The place of performance shall be Vienna.

14.4 The court with subject-matter jurisdiction in Vienna shall have exclusive jurisdiction to decide on all disputes arising from the contractual relations - including those concerning their existence or non-existence.

Part B - Special Terms and Conditions for IT Security Services (Security Audits and Managed Defence Services)

15 Warranty

15.1 CANCOM expressly points out to the customer that a security analysis commissioned from CANCOM may have an influence on the integrity and availability of the tested IT systems and/or applications.

15.2 The methods and tools used by CANCOM for the security analysis correspond to an appropriate standard.

15.3 There are no further warranty claims against CANCOM for security analyses. CANCOM excludes any warranty claims or claims for damages which are or have been caused by an impairment of the integrity and/or availability of the tested IT system and/or the application which is or has been caused by a proper security analysis, i.e. a security analysis carried out to an appropriate standard.

15.4 In all other respects, the warranty provisions in Part A of these Terms and Conditions shall apply.

16 Liability

16.1 With regard to IT security services that include a security analysis, the following shall apply:

16.1.1 CANCOM does not check whether the customer holds the full and unrestricted rights to the IT system and/or application to be tested.

16.1.2 Liability for loss of data shall be limited to the typical recovery costs that would have been incurred if backup copies had been made regularly and in accordance with the risks involved. CANCOM shall not be liable for damage caused by the customer interrupting the security analysis during its execution.

16.1.3 CANCOM excludes any liability for damage caused by the examination of the customer's system for vulnerabilities, unless CANCOM applies procedures which are not state of the art for such examinations or CANCOM culpably applies them incorrectly. CANCOM warrants that it will perform the service to be provided in compliance with all duties of care and using state-of-the-art methods and tools, but shall not be liable for the completeness of the investigation. The customer is aware that threat situations are

constantly changing and that the mapping of this information for the underlying scan tool may therefore be subject to a certain time delay, which means that it is not possible to guarantee the completeness of the vulnerability list at all times. Therefore, CANCOM does not assume any guarantee and the customer expressly acknowledges that even in the event that no vulnerabilities are identified during the examination of the customer's test samples or computer and network systems by CANCOM, these do not actually have any vulnerabilities. Rather, a regular and targeted reassessment and investigation is necessary in order to reflect the development of the recognised rules of technology, to detect newly discovered risks and to recommend suitable preventive and reactive measures.

The customer is also aware that it may be necessary to open access to the customer's system when carrying out the examination and that unauthorised access by third parties may become possible in this context. CANCOM excludes any liability for damage caused by such unauthorised access by third parties, unless CANCOM applies procedures which are not state of the art for such examinations or CANCOM culpably applies them incorrectly.

16.1.4 Test reports are prepared on the basis of the information, documents and/or test samples provided by or on behalf of the customer and are intended solely for the benefit of the customer. The customer shall be responsible for drawing the necessary conclusions therefrom. Neither CANCOM nor its officers, employees or subcontractors shall be liable to the customer or third parties for any action taken or omitted on the basis of such test reports. If the tests are based on unclear, incorrect, incomplete or misleading information provided by the customer, CANCOM shall also not be liable.

16.1.5 If the customer suffers loss or damage as a result of CANCOM's failure to meet a bindingly agreed performance deadline, such loss or damage may be claimed up to a maximum of 5% of the part of the order affected by the delay.

16.1.6 If a claim is made against CANCOM by a third party (e.g. an end customer or service provider of the customer) due to any effects of the security analysis on the IT system and/or the application, the customer undertakes to indemnify CANCOM against any claims, provided that

a) the security analysis met a reasonable standard (otherwise "Part A Liability" applies accordingly) or

b) the damage was (partly) caused by a breach of duty by the customer because the customer

a. had a third-party IP address or a third-party IT system or a third-party application tested

without appropriate authorisation,

- b. did not inform affected third parties of the security analysis taking place or did not do so within a reasonable period of time, or
- c. did not have permission under data protection law to transmit personal data.

This obligation of the customer to indemnify relates to all expenses necessarily incurred by CANCOM or its employees and other vicarious agents as a result of extrajudicial, official and/or judicial claims by a third party. The customer shall bear all costs and fees for the necessary legal proceedings and reimburse all damages, losses and expenses.

16.1.7 CANCOM shall not be liable for damage to test samples caused by inspections, tests and the like carried out in accordance with the rules of technology at the time of testing.

16.2 All provisions of Section 16.1 on liability shall apply correspondingly to the performance of a social engineering audit that includes a physical on-site visit by CANCOM.

16.3 In addition, the provisions on liability pursuant to Part A shall apply.

17 Obligations of the customer to co-operate

17.1 With regard to IT security services that include a security analysis, the following shall apply in addition:

17.1.1 By placing the order, the customer confirms that the security analysis is carried out or is to be carried out on the customer's IT systems, applications, employees or premises provided by the customer in writing for the purpose of implementation.

17.1.2 If the security analysis is not carried out on the IT systems, applications, employees or premises of the customer, the customer assures by commissioning the service agreement that it has the full and unrestricted right to carry out the security analysis on the IT systems, applications, employees or premises.

17.1.3 At CANCOM's request, the Customer must prove that it has the unrestricted right to commission CANCOM to carry out the security analysis and the rights to access the IT systems, applications and premises.

17.1.4 Before CANCOM carries out the security analysis, the customer undertakes to back up in full all IT systems and/or applications to be analysed by CANCOM and the associated data. In addition, the customer must take all necessary security measures, including those that go beyond a backup, before using the service in order to be able to

restore the IT systems and/or applications and data to their original state after the security analysis if necessary.

17.1.5 Before performing the service CANCOM shall request from the customer all information and documents necessary for the performance. The customer undertakes to provide the necessary information in a timely, complete and correct manner. within a reasonable period of time before carrying out the security analysis

17.1.6 The customer undertakes to inform any affected third parties in good time about the security analysis to be carried out, as IT systems and/or applications of third parties, such as the provider's router or the web server of a hoster, are also used in a security analysis and, despite adequate security, an impairment of the proper operation of these IT systems and/or applications cannot be ruled out.

17.1.7 CANCOM expressly points out that the security analysis may cause damage to existing IT systems and/or applications. In particular, the security analysis may result in impairments and changes to content and data, for example on a website in the form of layout changes or impairments to the customer's server. This damage can usually only be rectified by importing backups or by - sometimes extensive - reworking by the customer. In addition, the customer is advised that the customer's IT systems and/or applications may not be usable during the security analysis.

17.2 If the contracting parties have agreed fixed dates for the performance of the work and the work cannot be performed on these dates or can only be performed with a delay or to a limited extent for reasons within the customer's sphere of responsibility, CANCOM shall be entitled to charge the customer for the hours or days of those employees who were scheduled to perform the commissioned services for the customer in accordance with the agreed rates. The customer is at liberty to prove that CANCOM has suffered less damage. Other claims for damages by CANCOM remain unaffected by this provision.

In such cases of delay, partial fulfilment or complete non-fulfilment, the agreed deadlines shall lapse and the parties shall agree new deadlines.

18. Audit Authorisation

If the provision of services includes a social engineering audit with a physical on-site activity, the following shall apply in addition:

The customer hereby expressly authorises:

- Attempts to gain physical access to the customer's grounds and premises;

- attempts to circumvent access restrictions, provided that no mechanical damage is caused to property or danger to life or limb is apparent;
- Attempts to gain access to network sockets, computers or network devices (e.g. cameras), as well as plugging in devices brought onto the premises;
- attempts to gain access to documents in paper form; and
- taking photographs for documentation purposes.

19 Instructions on the order and forwarding of the results

Unless CANCOM receives written instructions to the contrary from the customer prior to the execution of the order, no persons other than the customer itself are authorised to issue instructions to CANCOM, in particular with regard to the scope of the order or the transfer of test reports or expert opinions (hereinafter: "test reports"). The customer hereby irrevocably authorises CANCOM to pass on test reports to third parties if requested by the customer or if, at CANCOM's discretion, this arises from the circumstances, commercial practice or legal or official requirements.

20. Test reports

20.1 CANCOM's test reports shall exclusively reflect the facts ascertained at the time of the investigation in the context of the performance of the agreed order.

20.2 Unless otherwise agreed in individual cases, CANCOM shall provide the customer with test reports only in digital, encrypted form. The digital test report shall be transmitted in encrypted form and via the Internet by e-mail or other digital means of transmission (e.g. via customer interface, Internet portal, etc.).

20.3 If the test reports of CANCOM indicate a criticality, a time frame for treatment or scores (e.g. CVSS), CANCOM does not give any assurance that this information corresponds to the actual threat level on the part of the customer. Such information in test reports also does not constitute a recommendation for prioritisation or recommendation to adhere to a specific sequence. The implementation of the recommendations indicated is the sole responsibility of the customer, both with regard to the timing of implementation and the prioritisation of the individual measures.

21. Assumption of risk for test samples

The customer shall bear the costs and risk of delivery and return of test samples, unless collection by CANCOM or an inspection at the customer's site has been agreed. Test samples received by CANCOM from the customer shall be returned by CANCOM to the customer after completion of the services at the customer's expense and risk.

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