

# TC SIGNATUR SERVICE

## General Terms and Conditions \ EN

### A. TC Signature Service

#### 1 Scope of Services

**1.1** These General Terms and Conditions on the Signature Service apply to any and all services provided by Symantec Limited – hereinafter called Symantec. The signature cards used for the Signature Service are chip-cards with a qualified electronic certificate of an accredited certification service provider complying with the German Signature Act. TC Signature Service will be provided by TC TrustCenter GmbH, an accredited certification services provider under German law and an affiliate of Symantec.

**1.2** The services to be performed by Symantec are described exclusively by this Agreement and its respective Attachments ("Services"). The Agreement includes the (a) Order Form, (b) the Service Description and (c) these General Terms and Conditions on the Signature-Service, whereas amendments and agreed Change requests are Attachments. In the event of any conflicts between the individual components of the Agreement the first-named component shall have priority over any component named subsequently, unless the subsequent component expressly determines otherwise.

**1.3** If the Signature Service is used for an application or purpose which requires the use of qualified electronic signatures by law, Symantec represents that the Signature Service generates qualified electronic signatures. Symantec is not obliged to fulfil any other legislative or regulatory or performance requirements in relation to electronic signatures in respect of the Signature Service provided under this Agreement.

#### 2 Transmission of Data

**2.1** Symantec will not transmit the data contained in certificates to third parties for advertising purposes. Symantec does not make any further commercial use of the data obtained in connection with an application for a certificate.

**2.2** Symantec undertakes to keep all personal and organisation-related data which is not included in the certificate secure from unauthorised access. Symantec will only assign the processing of data to companies, which operate compliant to the applicable data protection laws.

#### 3 Obligations of co-operation of the customer

**3.1** The Customer shall ensure that one or more member(s) of the Customer's organisation will be registered in a Signature Act compliant way by Symantec. This applies to any new certificate application, including an application for certificate renewal or a new application after a revocation or expiration of a valid certificate.

**3.2** The Customer shall send Symantec a Signing Authorisation Document allowing the use of Signature Act compliant chip-cards by Symantec.

**3.3** The Customer shall inform Symantec immediately about any changes concerning a given authorisation, particularly about any revocation of a given authorisation.

**3.4** The customer shall provide to Symantec all information necessary for the provision of the goods and services to be provided. A verification by Symantec of the validity of the information provided shall only take place in relation to clear mistakes and incompleteness, unless a further examination is agreed.

**3.5** The customer shall protect the provided log-in data such as user name and password sent by Symantec against misuse by a third party.

**3.6** The customer shall inform Symantec immediately in writing of any disruption to goods and services used. The duty to inform shall relate to all detailed circumstances of the event as well as the form and the effects of any disruption. The customer shall, to a reasonable extent, assist in the analysis and rectification of any disruption.

### B Contractual Relationship

#### 4 Scope

**4.1** Deviating, opposing or supplementary general terms and conditions will not form part of the contract even if Symantec are aware of them, unless Symantec clearly agrees in writing.

**4.2** The law in force of the Federal Republic of Germany is applicable for these General Terms and Conditions, expressly excluding international private law and the UN Treaty on International Sale of Goods.

**4.3** The customer shall be notified in writing of any modification of these General Terms and Conditions. Such modifications are deemed to be accepted if the customer does not oppose in writing. The customer must inform Symantec within six weeks in writing after notification of modification in the event that the customer opposes the modification.

**4.4** The invalidity of one or more provisions of these General Terms and Conditions shall not affect the validity of the remaining provisions of these General Terms and Conditions.

#### 5 Conclusion of Contract

**5.1** The services and offers of Symantec are solely based on these General Terms and Conditions which shall also apply, without having been specifically agreed again, to all future business as far as the customers is a enterprise customers or acts as enterprise customers.

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**5.2** All details in brochures, advertisements or equivalent on the services of Symantec also including prices are non binding and subject to confirmation in writing. Technical modifications are acceptable within reasonable limits.

**5.3** By sending a signed order form to Symantec the Customer is making a legally binding offer Symantec will accept in written form. No order is binding upon the parties until the customer's order has been accepted in writing by Symantec. The parties acknowledge and agree that the terms and conditions in this Agreement will supercede any terms and conditions contained in any order form submitted by the customer to Symantec.

**5.4** If the service has been ordered from Symantec's web-sites, the agreement will be saved by Symantec and, upon request, will be send to the customer along with these Terms and Conditions via email.

### **6 Place of Jurisdiction and Written Form**

**6.1** In so far as the customer is a business customer, or if the customer is a public corporation or public asset, the exclusive place of jurisdiction for all legal disputes arising from or in connection with this agreement is Dublin, Ireland.

**6.2** All modifications or supplements of contractual agreements shall be made in writing for evidence purposes. This also applies for the requirement of the written form itself. The requirement for the written form shall be adhered to by utilising the digitally signed form.

### **C Terms of Payment**

#### **7 Prices**

**7.1** All prices stated by Symantec are exclusive of value added tax, which will be added at the applicable rate.

**7.2** In the event that the period from the date of the formation of the contract to the agreed date of performance or delivery of goods or the date of performance or delivery of goods desired by the customer and accepted by Symantec exceeds 4 months, the prices on the date of performance or delivery shall apply. If the prices agreed to in the contract are exceeded by more than 10 per cent, the customer shall be entitled to terminate the contract.

#### **8 Payment**

**8.1** The service will be invoiced at the beginning of each service period. Invoices amounts are due within 14 days from the date of the invoice.

**8.2** The contractual parties may only deduct from claims which are legally final or undisputed.

**8.3** In the event that the Customer is in default with payment, Symantec may demand interest from the start of the default not less than eight percent per year above

the German statutory interest rates. Furthermore, Symantec reserves the right to make further claims based on damage resulting from default.

**8.4** In the event that Symantec becomes aware of a substantial deterioration in the economic position of the Customer after the conclusion of this Agreement, Symantec may provide any goods and services subject to pre-payment or the prior provision of security. If such pre-payment or security is not provided after the expiry of a reasonable period of two weeks, Symantec may withdraw from the Agreement in whole or in part and/or demand damages instead of performance or reimbursement of expenses..

**8.5** The assignment of claims is only allowed with the prior written approval of the other party to the contract, which shall not be unreasonably denied. A right of retention is only valid for opposite claims of the respective contractual agreement.

### **D Diversification of Risks**

#### **9 Warranty**

**9.1** Symantec warrants that the provided services have the contractually agreed capabilities. Such shall be determined finally and exclusively in terms of the actual contractual Agreements between the Parties as to the characteristics, nature and type of goods and services. The acceptance by Symantec of any additional warranty or guarantee with respect to the Services will be exclusively determined by the issuance by Symantec of a separate and written declaration of guarantee which is expressly labelled as a declaration of guarantee.

**9.2** Defects which reduce the value or merchantability of the performance results or the delivered goods in an immaterial way, shall not be taken into account. An immaterial defect shall exist in particular if the defect can be rectified by the customer itself quickly and with minimal expense.

**9.3** The term of warranty is one year starting from the date of acceptance. If the customer has not notified Symantec of the defect in due time, no warranty term is applicable.

**9.4** Symantec shall accept no warranty for disruption to performance of Symantec insofar as such is not related to fault on the part of Symantec and results from:

- a) actions by the Customer or third parties in relation to the technical equipment of Symantec,
- b) the technical facilities or infrastructure of the Customer,
- c) the defective, incorrect or negligent use of goods and services of Symantec,
- d) failure to comply with or use the instructions and con-

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- ditions in the description of the goods and services or other product information or
- e) labour disputes, force majeure, war, unrest or other circumstances unavoidable for Symantec.
  - f) changes to the performance results or other interferences with or intrusions in the performance results by the Customer or third parties for whom the Customer is responsible.
- 9.5** If any defect occurs, the Customer shall give notice of such immediately in writing clearly, providing details necessary for the identification of the defect. Insofar as the Customer does not give any notice of defect within seven calendar days after receipt of the goods or detection of the defect, such shall be deemed to be an unreserved approval. the Customer shall support Symantec to a reasonable extent in rectifying defects. Symantec shall rectify defects within a reasonable period of time.
- 9.6** Symantec will, in the first instance, fulfil its warranty obligations in cases of defects notified in a timely manner by way of subsequent performance or delivery whereas Symantec shall, within a reasonable time period and at customer's choice, rectify the defect or the perform the service again. However, Symantec is entitled to reject the kind of remedy chosen by the customer if the remedy is only possible at disproportional costs and another kind of remedy will have no material disadvantage for the customer.
- 9.7** In the case of defect the Customer may exercise the statutory rights to withdraw from the contract, act itself and demand reimbursement of the related expenses, reduce the price, claim damages or reimbursement of expenses only after Symantec has been given a reasonable period of time for subsequent performance in accordance with clause 6.5 and Symantec has been given notice that the Customer will refuse subsequent performance after the expiry of the reasonable period of time and the subsequent performance has not taken place within this period. A failed rectification according to statutory warranty provisions shall apply provided that a failure of subsequent performance shall occur at the earliest after the third failed attempt at rectification pursuant to clause 6.5. Any claim for damages or reimbursement of expenses is furthermore only possible if the preconditions of clause 7 ("Liability") are also fulfilled.
- 9.8** Symantec may demand reimbursement for expenses insofar as Symantec has been active in relation to a notification of defect even if no defect existed and even if the Customer has not duly proven a defect in goods and services of Symantec in terms of clause 6.4.

## **10** Liability

- 10.1** Symantec shall be liable for intentional and grossly negligent breaches of duty by Symantec, its legal representatives or management as well as for their culpably negligent breaches of duty leading to death, personal injury or injury to health. Symantec shall be liable to an amount limited to the typical foreseeable damage for the fault of other agents as well as in the cases mentioned before.
- 10.2** Otherwise, Symantec shall be liable for minor negligence only insofar as such breach of duty leads to death, personal injury or injury to health or to an amount limited to the typical foreseeable damage in cases of minor negligent breaches of a obligatory duty. The provisions of the Law of Product Liability Act shall remain unaffected.
- 10.3** Unless otherwise expressly agreed in writing, for the purposes of this clause 10 the respective order value shall be deemed to be the typical foreseeable damage and in cases of ongoing obligations the annual order value shall apply.
- 10.4** Except in cases of wilful acts the liability of the Parties for loss of profit, indirect or consequential loss and other types of pure financial loss is excluded.
- 10.5** The Customer may claim damages instead of rectification or compensation for expenses in accordance with its statutory rights only after Symantec has been given a reasonable period of time within which to perform or provide subsequent rectification and Symantec has been given notice that the Customer will refuse rectification or subsequent rectification after the expiry of the reasonable period of time and the rectification or subsequent rectification has not taken place within this period.
- 10.7** The above clauses shall apply to all claims for damages based on whatever legal grounds, but in particular for liability related to torts.
- 10.8** Symantec shall not be liable for the loss of data and/or programs as far as the damage is due to the fact that the customer has not run data back-up in order to ensure that lost data can be recovered with reasonable efforts.
- 10.9** The Customer shall immediately give written notice of any damage or loss justifying the Customer claiming damages. The Customer shall undertake reasonable measures to protect against damage and limit damage. In particular, the Customer shall protect its data base against destruction or loss by way of the normal security measures and shall use reasonable security measures in terms of the state of the art to protect such against external influences, in particular against damaging soft-

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ware or other phenomena which could endanger individual data or a complete data base. The liability for loss of data shall be limited to the typical expenses for recovery resulting from the normal compliance with the above security measures.

### 11 Export

Any export of hardware or software with encryption capabilities by Symantec shall be subject to the condition that permission is obtained from the responsible authorities at the time of the export. In the event that any necessary export permit is refused Symantec shall be entitled to withdraw from the contract. There shall be no valid claims for damages resulting from any delay related to the procedures for obtaining an export permit. I am not a citizen, national or resident of, and am not under the control of, the government of: Cuba, Iran, North Korea, Syria, and Sudan, nor any other country to which the United States or the European Union or any other applicable country has prohibited export. I will not download or otherwise export or re-export the Programs, directly or indirectly, to the above mentioned countries nor to citizens, nationals or residents of those countries. I am not listed on the United States Department of Treasury lists of Specially Designated Nationals, Specially Designated Terrorists, and Specially Designated Narcotic Traffickers, nor am I listed on the United States Department of Commerce Table of Denial Orders, or any lists published by the European Union or other applicable countries. I will not download or otherwise export or re-export the Programs, directly or indirectly, to persons on the above mentioned lists. I will not use the Programs for, and will not allow the Programs to be used for, any purposes prohibited by the laws of United States or the European Union or any other applicable countries, including, without limitation, for the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction.

### E Term and Termination

**12.1** During the contract period of the ordered quota or prior to its exhaustion, the contract cannot be terminated by either party.

**12.2** After expiry of a quota, the Customer may request a follow-up quota. If such a request is not filed and the Customer retrieves additional signatures

- a)** either one month after expiration of the contract period
- b)** or a quantity of over 5 % of the requested quota, this represents a follow-up quota of the previously ordered one. This is to ensure uninterrupted and unlimited continuation of services described in this offer.

**12.3** After termination of the contract, Symantec will block access to the signature service. The chip card and the respective PIN letter are passed over to the certificate holder if the certificate holder does not block the chip card.

**12.4** The right of contract termination without notice for important reasons remains untouched. Such reason is especially present in cases where the Customer files for bankruptcy or has initiated insolvency proceedings or has in other ways severely violated its contractual duties.

**12.5** Since qualified certificates must remain in the certificate directory after revocation and since the Customer has requested user quotas in the sense of an application service provision, no refunds of submitted payments can be made in case of cancellation or withdrawal.

### F Special Conditions on TC Time Stamp

**13.1** In addition to Clause 1.1 these General Terms and Conditions on the Signature Service apply to any and all services provided for the TC Time Stamp service in the case of such an agreement. The signature cards used for the Signature Service are chip-cards with a qualified electronic certificate for the generation of a qualified time stamp of an accredited certification service provider complying with the German Signature Act.

**13.2** Notwithstanding Clause 1.2 the agreement includes the **(a)** Order Form, **(b)** the Service Description and **(c)** these General Terms and Conditions on the TC Time Stamp.

**13.3** Notwithstanding Clause 1.3, Symantec represents that the TC Time Stamp service generates qualified time stamps. Symantec is not obliged to fulfil any other legislative or regulatory or performance requirements in relation to time stamps in respect of the TC Time Stamp service provided under this Agreement.

**13.4** Notwithstanding Clause 3, the Clauses 3.1 to 3.4 do not apply to the TC Time Stamp service.