

General Terms and Conditions



INTRINSEC
Innovative **by design**



Site internet
www.intrinsec.com



Blog
securite.intrinsec.com



Twitter
[@Intrinsec](https://twitter.com/Intrinsec)

215 AV G. CLEMENCEAU 92024 NANTERRE CEDEX • TEL +33 1 41 91 77 77 • FAX +33 1 41 91 77 78
INTRINSEC SECURITE • SAS AU CAPITAL DE 2 680 340 € • SIREN : 812 535 284 • APE : 6203Z

1. General Terms and Conditions

The Contract is made up of the following contractual documents, presented in order of decreasing legal value

- The technical and financial proposal, each page of which will have been initialled by you, and of which this page will have been marked "good for agreement".
- Our General Sales Conditions, initialled and signed.

In the event of a contradiction between one or more provisions contained in any of these documents, the higher-ranking document shall prevail.

ARTICLE 1 – PURPOSE:

The purpose of the General Terms and Conditions (hereafter "GTC") is to determine the contractual conditions applicable to the performance of the Services by Intrinsec Sécurité, as defined in the Technical and Financial Proposal. The contractual obligations of the GTC prevail over any other document issued by the Parties.

Any order issued by the Client and accepted by Intrinsec Sécurité involves the full adherence of the Client to the GTC, notwithstanding any opposite provision stipulated in any other document, unless otherwise agreed by the Parties.

ARTICLE 2 – SERVICE PERFORMANCE TIME LIMIT:

• ARTICLE 2.1 – WITHIN AN AGREED SERVICES SCOPE:

The time limits of performance of the Services appearing in the Technical and Financial Proposal are for information only. The final planning shall be agreed by the Parties upon receipt of the order by Intrinsec Sécurité.

• ARTICLE 2.2 – WITHIN A MODIFIED SERVICES SCOPE:

The Client may request a modification of the Services scope. Such a request shall be investigated by Intrinsec Sécurité, which does not undertake to accept it. The Client accepts that such a modification may involve a reassessment of (i) the initial time limits, and (ii) the prices.

The Client acknowledges that such a modification shall not give rise to the payment of damages or to the contractual liability of Intrinsec Sécurité. Once the modification has been validated, Intrinsec Sécurité has thirty (30) business days to start performing the Services. At the end of this period, the Client may terminate the Contract as described in the "Termination for default" article. The Client may obtain the return of any deposit, to the exclusion of any other compensation or damages.

ARTICLE 3 – INTRINSEC SÉCURITÉ'S OBLIGATIONS:

The contractual obligations applicable to Intrinsec Sécurité are obligations of means. Notwithstanding the foregoing, the following obligations are obligations of result:

- The performance of the Services;
- The providing of the Deliverables stated in the Technical and Financial Proposal;
- The compliance with the financial conditions stated in the Technical and Financial Proposal;
- The compliance with its obligation of confidentiality.

Intrinsec Sécurité shall furthermore perform the Services in compliance with any applicable regulations and the state of the art. Intrinsec Sécurité shall particularly implement any technical and organisational security step so as to perform the Services in a secured manner.

Any operation consisting in testing the Client's computer components availability is excluded from the Services (for instance: "DDoS attack" operations).

Notwithstanding the aforementioned, the Client is informed and accepts that the RedTeam penetration testing services involve actions such as accessing and remaining in its information system (including phishing), social engineering and physical intrusion into its premises. These actions are excluded in normal penetration testing without formal authorization from the Client.

Intrinsic Sécurité guarantees the Client that these operations are not fraudulent and are carried out by a skilled, experienced, identified and authorised personnel. Intrinsic Sécurité shall neither illegally use the vulnerabilities found out during the performance of the Services, nor shall it use them for its own benefit or a third party's benefit,

Unless the Client explicitly refuses, the Service Provider may use references to the Client in its promotional or corporate communications (in particular logo, trade name, trademarks, existence of the Agreement, etc.).

The Service Provider undertakes not to give any details of the actions actually carried out during the performance of the Services, and to comply with the graphic charter and any conditions communicated to it.

This authorisation to use the brand and logo shall continue after the end of the Contract for a period of five years.

ARTICLE 4 – CLIENT'S OBLIGATIONS:

The Client is informed and accepts that adding hardware or software to its information system during the performance of the Services may involve a modification of the Services, their scope, or their prices.

The Client has determined, under his own responsibility or with the assistance of his advisors, his own objectives and the suitability of the Services to these objectives. In particular, it is the Client's responsibility to ensure that :

- Assign skilled and experienced personnel to the follow-up to the Contract;
- Implement any necessary back-up procedure and resources;
- Pass on to Intrinsic Sécurité on its own initiative or upon request from Intrinsic Sécurité any piece of information and document necessary to the performance of the Services;
- Inform Intrinsic Sécurité without delay of any event, of whatever nature, that impacts or could impact the proper performance of the Services.

The Client guarantees Intrinsic Sécurité that it has implemented any necessary security step so as to prevent any incident from occurring onto the computer components (such as corruption, unavailability or loss of data). In particular, the Client guarantees Intrinsic Sécurité that it has carried out all necessary backups of data and software configurations.

ARTICLE 5 – LIABILITY AND INSURANCE:

The total amount of the damages the Client may request shall not exceed the total annual amount of the Contract (excluding tax), per event giving rise to one or several direct damage(s). Moreover, Intrinsic Sécurité shall not be held liable for indirect damages such as loss of turnover, profit, savings, business opportunities or investments; nor shall Intrinsic Sécurité be held liable for any improper or illicit use of the Services or the Deliverables by the Client.

This limitation of liability shall not apply neither to body injuries, nor to gross misconduct or intentional fault, nor to an infringement of intellectual property right.

The Parties are insured for civil and professional liability covering physical, material and immaterial, consequential and non-consequential damages imputable to themselves, their employees or their subcontractors. The insurance policy includes, among others, the damages caused to the other Party's information system and all its components. The Parties have underwritten their insurance policies with notoriously solvent insurance companies. Upon request from a Party, the other Party shall provide it with an insurance policy certificate.

ARTICLE 6 – SUBCONTRACTING:

Intrinsic Sécurité shall not subcontract all or part of the Service to a third party without the Client's prior and written approval. The Client may refuse to approve any subcontractor without justification. Where the Client approves a subcontractor, Intrinsic Sécurité shall comply with the provisions of the Act relating to subcontracting n°75-1334 of December 31st, 1975. Intrinsic Sécurité shall also impose on the subcontractor all the provisions of the Contract under the same conditions.

ARTICLE 7 – CONFIDENTIALITY:

Confidential Information are defined as follows: Any scientific, technical, technological, commercial, social, financial, legal data or any other data of whatever nature; patentable or not; such as but not exclusively plans, drawings, specifications, processes, know-how, design, methods, studies, volumes of requirements, software; information relating to potential clients, clients' or partners' names; which may be directly or indirectly conveyed to the other Party, in any form, upon any medium, orally or in writing.

The confidentiality of those Information shall be reminded through an appropriate note on their medium, or reminded by any means at the time of their conveying. However, the Parties agree that not reminding, in writing or orally, the confidentiality of a piece of Confidential Information shall not be interpreted as withdrawing the confidential nature of that Information.

The obligations stated in this Article shall not apply to Confidential Information that (i) are or become publically known without the other Party's fault; or (ii) are legitimately known by the recipient Party before the other Party conveys the piece of Confidential Information; or (iii) are independently produced by the recipient Party without using any other piece of Confidential Information nor any reference to it.

The Confidential Information shall be kept confidential by both Parties and shall not be disclosed to any third party. They shall be used only for the Agreement purpose and within its frame.

As a consequence, the Parties shall require their own personnel to keep confidential the Confidential Information and not to disclose them to third parties. Moreover, the recipient Party shall take the same security measures to protect the other's Party Confidential Information as those it takes to protect its own Confidential Information.

Each Party shall more specifically (i) use and reproduce the Confidential Information only within the frame of the fulfilment of the Agreement; (ii) disclose the Confidential Information only to its personnel who need to know them for the fulfilment of the Agreement. Each Party shall therefore notify its personnel of the confidentiality of the Confidential Information and obtain their written commitment not to disclose them; (iii) keep the Agreement content confidential; (iv) not disclose the Confidential Information to third parties, unless the other Party has given its consent to the disclosure, or upon requirement of a legal, regulatory or judicial authority, or that disclosure is necessary to exercise or demonstrate the existence of a right in accordance with the Agreement. Each Party may disclose the Agreement and the related documents to its insurance broker, insurers, legal counsels, external auditors, tax and social authorities as well as any other supervisory authority; (v) ensure the logical and physical access to the Confidential Information (databases, files, e-mails, etc.), and more generally, ensure their security.

Each Party shall comply with the provisions stated in this Article throughout the duration of the Contract plus 5 years after the end of it.

Moreover, as of the date of notification of the Agreement termination or as of the end of it, each Party shall either return to the other Party the documents containing the Confidential Information or certify their deletion in writing. In no case shall any copy of the Confidential Information be kept.

The Parties agree that the contractual documents (the GTC and the Technical and Financial Proposal) are confidential.

ARTICLE 8 – INTELLECTUAL PROPERTY:

• ARTICLE 8.1 – GENERAL PROVISIONS :

The Parties remain the sole owners of their intellectual property rights relating to their equipment, software, programs, models, prototypes, methods, technical processes, algorithms, diagrams, procedures, documentations, and more generally of their know-how (referred to as the “Elements”); whether created for the specific needs of the Contract or not, before or during the contractual period. The Parties shall not therefore infringe the intellectual property rights of the other Party.

• ARTICLE 8.2 – DELIVERABLES ASSIGNMENT :

Intrinsic Sécurité assigns to the Client the exploitation rights relating to the Deliverables, for the whole legal duration of the protection, on a worldly, exclusive and non-transferable basis. The transferred rights are:

- The right to reproduce and perform the Deliverables, without quantitative limitation, in whole or in part, by any current or future means and process, known or unknown;
- The rights to use, adapt, modify, update, in whole or in part, the Deliverables;
- The rights to translate the Deliverables, in whole or in part, in any language;
- The rights to grant all or a part of the assigned rights.

In any case, the assigned rights do not include the rights:

- To market or distribute the Deliverables, by any means, including renting and lending, whether for payment or not;
- To assign all or a part of the assigned rights. Notwithstanding the foregoing, the Client may assign the rights to any company belonging to its corporate group.

• Article 8.3 Reservation of ownership

It is expressly agreed that Intrinsic Sécurité retains ownership of the goods and software delivered until full payment of the price in principal, interest and all incidental costs.

The risks are transferred to the Client upon signature of the delivery note.

ARTICLE 9 - WARRANTY ON GOODS

Intrinsic Sécurité only subscribes to obligations of means and not of result in the supply of goods. Consequently, Intrinsic Sécurité cannot be held responsible beyond the guarantee of the conformity of the hardware and software to the specifications appearing in the catalogues and documentation of the manufacturers and editors.

ARTICLE 10 – NON HIRING

The Client agrees not to hire or have employed, directly or indirectly, any member of Intrinsic Sécurité’s personnel for the duration of the Contract plus one (1) year from the date of termination.

Notwithstanding the above, if the Client wishes to hire a member of Intrinsic Sécurité's staff, it must obtain Intrinsic Sécurité's prior written consent at least three (3) months before the proposed hiring. In the event that Intrinsic Sécurité gives its consent, the Client will owe Intrinsic Sécurité an indemnity equal to twelve (12) months of salary (excluding bonus) of the staff member concerned. In any case, Intrinsic Sécurité remains free to refuse to give its consent, without any reason.

Failure by the Client to comply with any of the provisions of this article shall automatically result in the payment to Intrinsic Sécurité of the above-mentioned indemnity, in the same amount, and without prejudice to any damages and other remedies that Intrinsic Sécurité may claim.

The provisions of this article do not apply in the event of dismissal of the employee concerned.

ARTICLE 11 - PRICES:

The applicable prices are determined in the order as of the date of its receipt by Intrinsec Sécurité. The prices are set in euro excluding the current applicable VAT.

The prices of the Services will evolve according to the Syntec index, excluding software publishers, as Intrinsec Sécurité is not in control of the pricing policy of the publishers. In the event that the Services increase by 5% or more, Intrinsec Sécurité will inform the Client as soon as possible. The Parties will then meet to negotiate an amicable solution in good faith.

ARTICLE 12 - INVOICING:

Unless otherwise stated by Intrinsec Sécurité:

- Services are invoiced monthly in arrears;
- In case of Services with exclusive obligations of means, the invoices shall be monthly notified as the Services go along, with a justification of spent time;
- In case of Services with obligations of result:
 - o Amount higher than 10.000 € excluding tax:
 - Intrinsec Sécurité invoices a deposit of 20% upon receipt of the Client's order,
 - The following invoices are notified after each intermediate acceptance. Their amount correspond to the proportion of the related stage,
 - The balance is invoiced at the validation of the final acceptance,
 - o Amount lower than 10.000 € excluding tax: the invoices are notified to the Client upon validation of each intermediate acceptance and/or of the final acceptance.
 - o In case of day pool, we invoice 1/12 of the total amount of the day pool each month during the first year. The client has 12 months to use these days.

Acceptances and delivery of documents are deemed approved without reservation after an eight-working-day period. Unless otherwise stated, any ordered Service which has not been performed, or accepted by the Client, after two years from the date of the order shall be deemed performed and shall be invoiced as such.

ARTICLE 13 - PAYMENTS:

Payments shall be sent to Intrinsec Sécurité's head office. Any payment received by any Intrinsec Sécurité's personnel shall not be deemed as a discharge of the debt.

Unless otherwise stated by Intrinsec Sécurité:

- The Client shall pay within thirty days from the invoicing date;
- Without prejudice to any other right or claim of Intrinsec Sécurité, failures to pay on the due date shall give rise to the application of late payment interests of 8%;
- In case of unpaid amount, Intrinsec Sécurité may cancel the Client's order or suspend the performance of the Services.

In case of failure to pay on the due date, the Client shall perform the payment within fifteen working days after the invoicing date. After this period, without prejudice to any other right or claim, Intrinsec Sécurité may send a letter of formal notice with acknowledgement of receipt. Intrinsec Sécurité may also suspend the performance of the Services, terminate the Contract in his own right, require the return of any piece of equipment, software, data, document or file which may have been put at the disposal the Client, until full payment of the price by the Client. In this case, Intrinsec Sécurité shall not be held liable for any damage suffered by the Client.

ARTICLE 14- TERMINATION:

• ARTICLE 14.1 – Termination for breach:

In case of a breach by a Party, the aggrieved Party shall send the breaching Party a formal notice through a letter with an acknowledgement of receipt requiring the breaching Party to remedy the breach within thirty days from the receipt of the formal notice.

Where the breaching Party has not remedied the breach after the expiry of the said time limit, the aggrieved Party may terminate the Agreement by sending another letter with an acknowledgement of receipt, without prejudice to any damages it could lay claim to, and without compensation for the breaching Party.

• ARTICLE 14.2 – No-fault termination:

A Party may terminate the Agreement by sending a letter with an acknowledgement of receipt, without neither prior notice nor any compensation or damages, if:

- The other Party files into bankruptcy, unless the receiver decides that the Agreement shall continue;
- The other Party changes of control in favour of a competitor of the Party requiring the termination;
- The other Party cannot fulfil the Agreement because of case of force majeure;
- Change of circumstances, unpredictable at the time this Contract was executed, and which makes the performance of this Contract excessively onerous for one Party who did not accept at the time to bear the risk associated to this change of circumstances.

ARTICLE 15 – CONTRACT ASSIGNMENT:

No Party shall assign the Contract to any third party, unless prior and written consent from the other Party.

ARTICLE 16 – UNPREDICTABILITY:

If a change of circumstances, unpredictable at the time this Contract was executed, makes the performance of this Contract excessively onerous for one Party who did not accept at the time to bear the risk associated to this change of circumstances, this Party can request the other Party to renegotiate the Contract. The requesting Party shall continue to perform its obligations during the renegotiation phase.

Should the other Party refuse to renegotiate the Agreement, or should the renegotiation fail, the Parties can decide together to terminate this Agreement within the conditions of Article 12.2. The Parties expressly renounce to the possibility to appeal to any court on the basis of this Article.

ARTICLE 17 - PERSONAL DATA:

• ARTICLE 17.1 - General provisions:

Within this Article 17.1 "Personal Data", the terms "processing", "processor", "data subjects", and "personal data" have the meaning given by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereinafter, the "GDPR")

In this respect, it is expressly stipulated between the Parties that the Client remains the data controller and that Intrinsic Sécurité acts as a data processor within the meaning of Law No. 78-17 of January 6, 1978, as amended, and of May 25, 2018, within the meaning of the GDPR.

Consequently, in the performance of the Contract, Intrinsic Sécurité will act exclusively on behalf of the Client, in accordance with the stipulations of the Contract and the Client's instructions alone.

The Parties agree that the personal data processed by Intrinsic Security on behalf of the Client (the "Client Personal Data") shall remain the property of the Client.

Intrinsec Security certifies that it has sufficient guarantees regarding data security and confidentiality and undertakes to act in accordance with the Client's documented instructions regarding the Client's personal data, and to implement the security and confidentiality measures communicated by the Client.

In particular, Intrinsec Security undertakes to implement sufficient measures to ensure the security and confidentiality of the Client Personal Data entrusted to it and processed in the context of the Services, namely.

- Not to use the Customer Personal Data for its own account or for the account of third parties and not to transfer them without the prior written consent of the Customer;
- To implement appropriate technical and organisational measures to protect Customer Personal Data against accidental or unlawful destruction, accidental loss, alteration, misuse, unauthorised disclosure or access, and against any other form of unlawful processing
- To ensure that persons authorised to process Customer Personal Data are subject to appropriate confidentiality obligations;
- Not to make copies or duplicates of the Client Personal Data without the prior written consent of the Client (unless this is necessary for the performance of the Services provided by Intrinsec Sécurité);
- Inform the Client of any accidental or unauthorized access to the Client Personal Data, of any breach of the Personal Data Regulations or of any suspicion of such breach, as soon as possible and, if possible, no later than 48 hours after becoming aware of it.
- At the Customer's option, delete the Customer's Personal Data or return it to the Customer at the end of the Contract, and destroy existing copies, unless legally required to retain them;
- Make available to the Customer all information necessary to demonstrate compliance with the obligations set out in relation to personal data;
- Implement a policy for the security of information systems and the management of logical and physical access authorisations in particular, which it must maintain and develop throughout the duration of the Contract;
- To assist the Client in ensuring compliance with security obligations and in carrying out a data protection impact assessment;
- Not to recruit a subcontractor not provided for in the Contract without the written agreement of the Client;

It is the Client's responsibility as data controller to provide information to the persons concerned by the processing operations at the time of data collection.

- ARTICLE 17.2 - Responsibility of the CNIL:

The Client, as the person responsible for the processing of personal data, warrants to Intrinsec Sécurité that it has ensured, prior to the performance of the Services, that it is in compliance with all legal obligations regarding the protection of personal data, in particular those applicable to the processing of Data of employees by the employer.

ARTICLE 18 - JURISDICTION AND APPLICABLE LAW:

The Contract shall be interpreted in accordance with French law.

Before initiating any kind of legal proceedings in relation with this Contract or the non-performance hereof, the Parties shall consult with each other, conduct negotiations and attempt to find a satisfactory solution in their joint interest. If the Parties fail to resolve the matter within forty-five (45) days of the notice given by one of the Parties, any unresolved dispute or claim shall be submitted to the Commercial Court of Nanterre, France.