

General Services Terms and Conditions China v.1.2 (2018)

1. Payment terms

The prices in the quotation to which these General Services Conditions apply exclude VAT or any other local taxes that may apply. Client shall pay any taxes applicable or connected to Riscure's performance of the services (included but not limited to any value added, services, sales or other transaction taxes, fees, (sur)charges and other similar taxes); and any regulatory cost recovery that is owed under the Agreement. The payment schedule is specified in the Agreement. The Client will be deemed to have accepted the services and service deliverables, unless Riscure receives within two (2) weeks after delivery a written notice of rejection specifying the problem and including feedback from the Client on revisions that are desired before acceptance. In case of a change of instructions, or if Client does not (timely) provide the agreed required information or cooperation, Client will be responsible for reimbursing Riscure for any costs or losses so caused to Riscure. Riscure will notify Client as soon as reasonably possible of such (imminent) costs or losses, and will use best efforts to mitigate such costs or losses.

2. Intellectual property

All rights in any pre-existing work used in the performance of services will remain the sole property of the party providing the pre-existing work (either Client or Riscure, as applicable). Specifically, all (intellectual property) rights regarding any processes, designs, knowledge or know-how related to the methodologies, techniques and (software and hardware) tools used for security advice, security evaluations and security testing, which are used or created by Riscure in performing the services set out in the Agreement, will be vested in Riscure. During the performance of services, each party grants to the other (and its contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services.

The copyright in the result(s) of the services performed by Riscure pursuant to an Agreement, will be vested in Client. Upon payment in full, the copyright will be assigned to Client. Client grants Riscure a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) the service deliverables for legitimate business purposes (including performing services to its other customers). The assignment of copyright at the conclusion of Riscure's performance of the relevant services is conditioned upon Client's compliance with the terms of the Agreement.

3. Indemnification

Riscure shall indemnify Client against any action at law based on the allegation that services developed by Riscure itself infringe(s) any intellectual property right, provided that Client shall notify Riscure promptly in writing of the claim and give Riscure sole control over its defence or settlement. Client agrees to provide Riscure with reasonable assistance in defending the claim, and Riscure will reimburse Client for reasonable out of pocket expenses that it incurs in providing that assistance. This obligation to indemnify shall cease to exist if and insofar as the infringement concerned relates to any modifications which Client has made in the software, equipment or materials or caused to be made therein by third parties.

4. Confidentiality

With respect to information, data or knowledge which is designated as confidential or which can reasonably be assumed to be confidential given the nature and character of the information and the circumstances of the disclosure, the parties will enter into a separate agreement (NDA) which will govern their respective obligations with respect to confidentiality.

5. Non-solicitation

Neither Party shall, during the term of the Agreement and for one (1) year after its termination, solicit for hire as an employee, consultant or otherwise any of the other party's personnel who have had direct involvement with the services, without such other Party's express prior written consent.

6. Riscure Services

The services set out in the Agreement can include the testing of the security of (part of) the Clients system(s) or product(s), by performing penetration tests and vulnerability scans by Riscure. These tests can for instance include (i) the use of false signals or false keys to analyse and/or to access to the whole or any part of the computer system or product of Client or (ii) reverse engineering of the product.

The services will be performed by Riscure solely on request of Client and with its explicit permission. Client is responsible for obtaining the necessary consents. The purpose of the services is to check the security of Client's system or product.

Client will not file a criminal complaint or otherwise notify local justice authorities (like the police or the district attorney's office) to the extent that Riscure performs the services for Client as agreed. Client will indemnify Riscure for any claims from third parties that arise from these services of Riscure.

7. Termination

7.1 Parties shall, in any event, be entitled to terminate the Agreement immediately in the event that:

- The other party is in material breach of its contractual obligations and has not remedied such breach within thirty (30) days after receipt of a written notice of default from the other party.
- The other party is declared bankrupt, is granted a suspension of payments or begins negotiations for a composition with its creditors or is otherwise insolvent.

7.2 Termination of the Agreement is solely possible as specified in the Agreement.

8. Liability

Riscure provides the requested services in accordance with industry standards. Riscure's liability under the Agreement is limited to direct damages in an amount not to exceed the lesser of (i) the amount Client paid (or was required to pay) during the previous 12 months for the specific project for which the direct damages were caused, or (ii) the amount paid out under Riscure's insurance policy. In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.

The limitations contained in the Agreement will not apply with respect to (i) Riscure's obligations under the Agreement to defend third party claims of intellectual property infringement, and to pay damages resulting from any final adjudication (or settlement to which Riscure consents) of such claims, or (ii) Riscure's liability for damages for gross negligence or wilful misconduct, or for damages caused in violation of mandatory applicable law.

9. Severability

In the event any provision, clause, sentence, phrase, or word in these General Services Conditions, or the application thereof in any circumstances, is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder hereof, or of the application of any such provision, sentence, clause, phrase, or word in any other circumstances.

10. Entire agreement

The Agreement constitutes the entire agreement of the parties with respect to the use of the services of Riscure. The Agreement may be modified only by means of a duly executed written amendment signed by the authorized representatives of both parties.

11. Resolving conflicts

Any dispute arising from the Agreement shall be submitted to the jurisdiction of the competent court of the country of the defendant. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

12. Applicable law

The Agreement and any dispute connected thereto shall be governed by the laws of the Netherlands, without effect to its conflict of laws rules.

This Riscure quotation, terms and conditions, description of services statement of work as well as any described approaches, methods and details of tooling are considered strictly confidential and intended for the requesting Client only. By opening and reading this document, you agree to not share any details of this quotation with employees outside your Company nor employees for whom this knowledge has no bearing on their role in your Company.