

# General Terms & Conditions for Products and Services

General Terms & Conditions for products and services by infodas GmbH (09/2023)

The following general terms and conditions (“**GTC**”) apply to all contracts between INFODAS GmbH (HRB 6484, registered court of Cologne, Germany; Tax-ID: DE 122810060) having its principal offices at Rhonestr 2, 50765 Cologne, Germany (“**INFODAS**”), and any Client and/or end-user (“**CLIENT**”, “**END USER**”) that obtains and uses INFODAS-branded software or hardware and related services. CLIENT accepts GTC by placing an order with INFODAS. Conflicting or deviating conditions of CLIENT shall not become part of the GTC, unless agreed to in writing by INFODAS.

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## INFODAS

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## 1 Definitions

Capitalized terms used throughout GTC have the following meanings:

**APPLICABLE LAWS** – means applicable national, federal, state, and local laws, rules, guidelines, court or government agency orders, and regulations.

**CDS** – means Cross Domain Solutions, a macro term for PRODUCTS such as the SDoT Diode, SDoT Security Gateway or SDoT Labelling Service, that belong to the SDoT product family.

**CLAIM** – means claim, demand, lawsuit, dispute, or proceeding.

**CLIENT** – means the party purchasing the PRODUCTS and/ or related services.

**CONTRACT** - means for the purposes of these GT&C the agreement between the CLIENT and INFODAS about the purchase of PRODUCTS and services.

**CONSUMABLES** - means limited life components i.e. all HARDWARE components which by design are intended to operate for a limited period of time or are subject to customary wear and tear.

**DOCUMENTATION** – means INFODAS then-current operating manuals, user instructions, technical literature, and functional materials describing the features, plans, options, and functions of the products made generally available by INFODAS to its CLIENTs or users, including user guides, knowledge base, release notes, featured articles published at [www.infodas.com](http://www.infodas.com) .

**END USER** – means the party that will install and use PRODUCTS in its IT infrastructure and systems.

**FEEDBACK** – means suggestions regarding features, functionality, modifications, enhancements, improvements, or performance of PRODUCTS.

**FEES** – means fees for products and services listed in infodas price lists or proposals quoted to CLIENT.

**HARDWARE** – means INFODAS-branded hardware such as security appliances.

**DEFECT** – means fault, error or malfunction, means a single, reproducible problem affecting the features and functionality of PRODUCTS, excluding problems arising out of the usual wear and tear.

**LOSS** – means damages, attorney fees, expert witness fees, and litigation costs arising out of the DEFECT

**PERSONAL DATA** – means information relating to an identified or identifiable individual.

**PRODUCTS** – means the INFODAS-branded products that can be software or the combination of hardware and software.

**REPRESENTATIVE** – means a party's employees or independent contractors.

**SERVICES** – means professional services provided by project managers or system engineers for solution design, configuration or training, or trainings of PRODUCTS.

**SDOT** – means Secure Domain Transition (SDoT) products that consist of hardware and software.

**SOFTWARE** – means INFODAS-branded software, releases, patches, tools and utilities.

**TEMPEST** – means specifications authorized by governments and international agencies for the electromagnetic emission security of hardware deployed in classified environment. Proof of compliance with applicable TEMPEST specifications requires activities by a government certified third-party provider. INFODAS offers these activities as an optional service for its Hardware PRODUCTS.

**THIRD PARTY PROVIDERS** – means INFODAS licensors or suppliers.

**VERSION** – means the numbering of the software according to the following convention x.y.z, where x denotes the major version, y denotes the minor version and z denotes the patch level. A major version includes all minor versions and patches.

## 2 Purpose of these GT&Cs

The purpose of these GT&Cs is to lay down general conditions for sale and licensing of INFODAS PRODUCTS and Services as further defined in this document and its attachments.

These GT&Cs apply to all the transactions in which INFODAS products are transferred to a CLIENT as the result of a sales, rental or loan.

Specific conditions may be agreed between INFODAS and the CLIENT on a project/transaction base. In case these conditions shall prevail on these GT&Cs, this will be agreed in writing between the Parties.

## 3 INFODAS Proprietary Rights

- (1) All intellectual property rights to the PRODUCTS and its constituents, including but not limited to logos, designs, text, software, technical drawings, configurations, graphics, files, icons, images, audio clips, and their compilation (meaning the selection, collection, assembly, arrangement) and INFODAS Confidential Information are and shall remain INFODAS, and/or its Third-Party Providers property.
- (2) No title to, or ownership of, those rights to the PRODUCTS or INFODAS Confidential Information is transferred to CLIENT pursuant to these GT&C.
- (3) CLIENT receives no access to the SOFTWARE source code at any time. For avoidance of doubt, the source code is excluded from the license stipulated in these GT&C.
- (4) SDoT, PATCH.works, SAVe and INFODAS, SDOT product family, PATCH.works, SAVe logos are registered trademarks of INFODAS in Germany and other countries. The slogan "Connect More. Be Secure." is a registered trademark of INFODAS. All other trademarks, service marks, registered trademarks, or registered service marks, used or delivered within the scope of the license are the property of their respective owners. CLIENT shall not use, nor distribute any of these above-mentioned trademarks in any advertising, promotion, or publicity without obtaining INFODAS' written approval beforehand.

## 4 Scope of License

- (1) INFODAS hereby grants CLIENT, upon conclusion of the contract and subject to payment of the entire fee stipulated in these GT&Cs, a non-exclusive, non-transferable, irrevocable license to use the major version of the PRODUCTS and documentation and have it used by its representatives for unlimited period of time and subject to limitations arising from the CONTRACT.
- (2) Right to use is limited to the right to install and use PRODUCTS as precisely indicated in the DOCUMENTATION and the CONTRACT. Any other types of usage are excluded from the license.
- (3) During the time period between the receipt of PRODUCTS and payment of the full license fee, Infodas is permitted to withdraw or limit the rights of the CLIENT to enjoy the license.
- (4) CLIENT is strictly prohibited to reverse engineer, decompile or disassemble the PRODUCTS. The right to modify or have the PRODUCTS modified is in any case excluded.

## 5 Warranty procedures

- (1) INFODAS warrants that PRODUCTS are free from DEFECTs resulting in a material deviation from the applicable DOCUMENTATION.
- (2) WARRANTY is provided exclusively on HARDWARE part of PRODUCTS for DEFECTs which are not caused by wrong or improper use of.
- (3) WARRANTY is valid for one (1) year from the first date of delivery of the HARDWARE to the CLIENT unless otherwise agreed in writing.
- (4) In addition, INFODAS may offer WARRANTY extension up to a total of five (5) years from the delivery date. After this period, INFODAS shall not be bound to support the hardware anymore, which means that the repair or the update of the installed software may require to procure new hardware.
- (5) CLIENT shall request the activation of the WARRANTY extension before the expiry of the initial warranty period only via service channels in accordance with eligible support levels.
- (6) Upon the occurrence of a DEFECT, INFODAS will repair or replace HARDWARE upon its receipt. Repair or replacement of HARDWARE under INFODAS' standard product warranty requires an evaluation of the PRODUCTS by INFODAS.
- (7) The evaluation is executed by INFODAS Technical Support in person or remotely, and a Return Material Authorization (RMA) number is assigned by INFODAS.
- (8) CLIENT must ship the unit(s), at its own cost, to INFODAS whereas the RMA number must be clearly indicated on the shipping box and respective papers.
- (9) If the DEFECT is covered by warranty, INFODAS is entitled to remedy the DEFECT by repairing or replacing the PRODUCTS. A replacement unit may be a new or reconditioned unit of equivalent or better value. Additional activities or third-party services such as TEMPEST are not included in the WARRANTY unless otherwise agreed in writing.
- (10) If a repair of PRODUCT is not possible, e.g., due to lack of availability of spare parts on the market, a replacement device may be delivered. A replacement cannot be guaranteed to be the same HARDWARE type. Successor devices that have the same or superior functionality than the original device are possible. Technical changes may occur. A replacement device can be a new or refurbished device of equal or better value. In case of different hardware the CLIENT might need to upgrade to a new version of the software supporting this new hardware.
- (11) PRODUCTS will be returned to the CLIENT via standard courier at INFODAS' expense after repair or a replacement will be delivered.
- (12) Country-specific import and export regulations, customs, courier availability, shipping authorizations and TEMPEST may cause delays. Accordingly, CLIENT is advised to purchase and keep spare of PRODUCTS for mission critical projects.
- (13) Infodas may operate warranty through authorized third parties.
- (14) Infodas does not assume any liability for repairs conducted by the Client and/or non-authorized third parties.
- (15) CONSUMABLEs are not covered by WARRANTY.
- (16) In the event of a HARDWARE replacement by INFODAS, the warranty period shall not be extended. The HARDWARE provided as a replacement will fit into the warranty period of the replaced product.
- (17) Additional third-party activities or services, such as TEMPEST certification, are not included in the warranty.

- (18) Any warranty claim must be made in writing within the warranty period stated above and will be processed within normal working hours of Infodas German headquarters.
- (19) CLIENT shall support INFODAS in the provision of activities related to WARRANTY as far as such support is not unreasonable.

## **6 Maintenance and Support**

- (1) MAINTENANCE applies to the software installed in PRODUCTS.
- (2) MAINTENANCE is mandatory for all PRODUCTS in use by clients unless otherwise agreed. MAINTENANCE fee renews automatically at the negotiated support level unless CLIENT requests different support level or a prepaid package. INFODAS provides MAINTENANCE only for the current version of the software and if CLIENT makes respective payments of MAINTENANCE fees.
- (3) MAINTENANCE includes activities such as the provision of software updates for PRODUCTS as far as covered by the license.
- (4) Service hours are Mondays to Fridays from 9am to 5pm, CET.
- (5) The Service Desk is available to CLIENTs as a single point of contact (SPoC) during service hours for reporting faults, as well as queries and other information and/or complaints about infodas PRODUCTS and/or partner PRODUCTS supplied by INFODAS.
- (6) During service hours, the Service Desk can be reached via email or telephone. The email and phone contact of the Service Desk are available on Infodas website.
- (7) STANDARD support covers phone and email support activities. Infodas will process the incoming tickets according to their order of arrival and the availability of internal resources. For this reason, Infodas shall have no commitment to the processing of support tickets in given timeframes, unless this is defined through a dedicated maintenance contract.
- (8) CLIENT shall support INFODAS in the provision of activities related to SERVICES and MAINTENANCE, as far as the necessary action is not unreasonable. In particular, when requesting INFODAS assistance in the form of support, the CLIENT may be requested to provide information on the encountered DEFECT or other technical information to the support team. This information will be treated as confidential by Infodas and used only for the purpose of executing the requested support activities.
- (9) Upon the report of a DEFECT or critical incident via Service Desk, INFODAS will seek diligently a resolution through experienced engineers. Resolution requires an evaluation of the DEFECT by INFODAS. Evaluation may lead to change of severity level indicated by CLIENT upon first reporting.
- (10) The Client may request a customized support level at any time. In this case, Infodas may offer the requested support level through a dedicated support contract.
- (11) MAINTENANCE at the STANDARD support level is included during for the first 12 months after PRODUCT delivery in the product price. MAINTENANCE period is considered to start on the first day of month successive of the one when the delivery of products occurred.
- (12) MAINTENANCE fee for successive periods is due in the last month of the active MAINTENANCE period.
- (13) prepaid multi-year maintenance packages are invoiced at the time of order.
- (14) MAINTENANCE can be terminated at the earliest after one year in writing with a notice period of three months to the end of the month.

- (15) If the Client wants to reactivate maintenance after a termination, the corresponding maintenance fees will be charged retroactively from the moment of the termination. In this case infodas might ask the CLIENT to update to a current software version.
- (16) The right of extraordinary termination remains unaffected.
- (17) INFODAS reserves the right to discontinue PRODUCTS or specific versions of them. In this case, an End of Life (EoL) communication will be provided through infodas website.

## **7 TEMPEST**

- (1) Compliance to a given TEMPEST standard is offered by Infodas as an option for HARDWARE.
- (2) TEMPEST compliance is provided by means of zoning procedure, i.e. sending the device to an external accredited measurement laboratory to measure the electromagnetic emissions of the device and, if require, reduce them.
- (3) After the zoning, the device and its accessories (e.g. power cables) are marked with anti-tampering labels, to ensure that no unauthorized manipulation has occurred.
- (4) Should the client note a manipulation of the anti-tampering labels, he has to inform Infodas in order to arrange the repetition of the zoning procedure.
- (5) Each repair/maintenance which requires opening the device or replacing one of its accessories will require a new TEMPEST measurement, which will be quoted by Infodas at current list prices.

## **8 Product Delivery**

The following provisions apply to the provision of PRODUCTS.

- (1) Delivery dates or periods can be agreed as binding or non-binding, must be in writing and confirmed by INFODAS and CLIENT.
- (2) INFODAS is entitled to make partial deliveries at any time.
- (3) Compliance with delivery obligations may require timely and proper input from CLIENT. If CLIENT fails to meet its obligation, delivery period shall be extended accordingly.
- (4) INFODAS is not liable for delays to delivery caused by THIRD parties such as government authorities (e.g. customs & border control), couriers or CLIENT warehouse operations.
- (5) In the case of cross-border deliveries, CLIENT shall bear any customs duties, fees and other charges incurred. CLIENT shall also handle legal or official proceedings in connection with cross-border deliveries on his own responsibility, unless otherwise expressly agreed.

## **9 Service Delivery**

The following provisions apply to the provision of SERVICES:

- (1) Delivery dates or period can be agreed as binding or non-binding, must be in writing and confirmed by INFODAS and CLIENT.
- (2) INFODAS is entitled to make partial deliveries at any time.
- (3) Compliance with delivery obligations may require timely and proper input from CLIENT. If CLIENT fails to meet its obligation, delivery period shall be extended accordingly.
- (4) INFODAS is not liable for delays to delivery caused by THIRD parties such as government authorities (e.g. customs & border control), couriers or CLIENT warehouse operations.

- (5) In the case of cross-border deliveries, CLIENT shall bear any fees and other charges incurred. CLIENT shall also handle legal or official proceedings in connection with cross-border deliveries on his own responsibility, unless otherwise expressly agreed.

## **10 Liability**

- (1) INFODAS does not accept any liability arising out of improper handling which includes handling outside of the DOCUMENTATION, storage and use of PRODUCT or normal wear and tear.
- (2) INFODAS shall always be liable to the CLIENT for damages caused by intent or by gross negligence by INFODAS or its legal representatives or vicarious agents for damages resulting from injury to life, body, or health for which the provider, its legal representatives or vicarious agents are responsible.
- (3) INFODAS shall not be liable for slight negligence unless it has violated an essential contractual obligation, the fulfillment of which is essential for the proper execution of the contract or the violation of which endangers the achievement of the purpose of the contract and on the fulfillment of which CLIENT may regularly rely.
- (4) Liability pursuant to clause (2) for material damage and financial loss shall be limited to the foreseeable damage typical for the type of the contract. This shall also apply to lost profits and savings. Liability for consequential damages is excluded.

## **11 Payment and Invoicing**

- (1) CLIENT receives invoices from INFODAS through mail or online.
- (2) Obligation to pay arises 30 days after receipt of INFODAS invoice for PRODUCTS and SERVICES unless otherwise agreed in writing. The price is determined by the valid INFODAS price list, INFODAS proposals or other forms of written agreement.
- (3) Payments are due for PRODUCTS and SERVICES as specified in the invoice.
- (4) PRODUCTS are invoiced upon delivery to CLIENT. SERVICES are invoiced based on actual hours or training provided to CLIENT or the agreed milestones.
- (5) In the event of default in payment, INFODAS shall be entitled to charge the statutory default interest in the amount of nine percentage points above the base interest rate of the European Central Bank as stipulated by the German Civil Code.

## **12 Import / Export Control**

- (1) INFODAS observes German export control regulations and is required by the Federal Office of Information Security (BSI) to apply certain measures of protection and control of German, EU and NATO approved crypto devices.
- (2) PRODUCTS are subject to export control of the German Federal Office of Economics and Export Control (BAFA) as dual-use goods of export list item no. 5A002A1 (Regulation (EC) No. 2021/821). If Supplies are exported outside of the European Union, a corresponding application must be submitted and may cause delays in delivery.
- (3) Declaration of Compliance. This only applies to PRODUCTS with the software versions approved for German, EU or NATO SECRET and use-cases were end-user needs to protect / work with classified information up to German, NATO or EU SECRET. CLIENT needs to provide INFODAS with a signed declaration of compliance (DoC) at the time of purchase order / contract signature.



If CLIENT is not aware of the type of data being processed / protected by end-user at the time of purchase order / signature, DoC needs to be provided as soon as details become known.

- (4) End-user certificate. Any end-user, therefore final owner / holder / user of a SDoT unit regardless of the version (NATO, EU, German, International) needs to sign an end-user certificate.
- (5) CLIENT acknowledges the above and shall observe import and export control regulations relevant to his project. CLIENT will ensure that PRODUCTS are not shipped, transferred, exported or used in any manner prohibited by law.

### **13 Other Provisions**

- (1) No tacit, oral or written ancillary agreements have been made between INFODAS and CLIENT. Amendments or supplements to the contract are only effective if they are agreed in writing. This also applies to an amendment of the GT&C. Deviations from the present GT&C, changes or amendments to this contract are also effective if they are individual agreements within the meaning of § 305b BGB (German Civil Code). To facilitate proof, these individual agreements must always be in writing.
- (2) Disputes. The UN Convention for Contracts for the International Sale of Goods (CISG) shall apply to all disputes arising from this legal relationship.
- (3) Venue. Place of jurisdiction is Cologne, Germany. For all disputes arising from the contract or in connection with the contract, the place of jurisdiction shall be Cologne, unless otherwise stipulated by mandatory law or agreed in writing.
- (4) Confidentiality. CLIENT shall not disclose information included in the contract or the pricing contained herein to any third party, except as may be required by law, regulation, or other governmental authority, and except that INFODAS and CLIENT may disclose such information to its attorneys, accountants, and business advisors who are obligated to keep such information confidential.
- (5) Data Protection Policy. All data of the CLIENT are processed in accordance with the data protection laws of Germany and in particular in accordance with the provisions of the GDPR. Please find information on data protection under <https://www.infodas.com/en/data-protection-policy>.
- (6) INFODAS reserves the right to update these GT&Cs. INFODAS will notify CLIENT of any changes to the GT&C in due time before the new version enters into force. Existing transactions will continue to be subject to the GT&Cs valid when they have been contracted.
- (7) Any assignment of rights of CLIENT from this contract requires the prior written consent of INFODAS.