



viprinet®

## GENERAL TERMS OF BUSINESS OF VIPRINET EUROPE GMBH

Effective: 1 September 2013

In this document, the general terms of business (“Allgemeine Geschäftsbedingungen”, in the following named “Terms”) of Viprinet Europe GmbH, called “Viprinet” in the following, have been translated to English for your convenience only. Legally applicable is only the German original.

These Terms apply to all contractual and pre-contractual relationships between Viprinet and (potential) contractual partners (“Client”), and are subordinate to the main contract respectively agreed on between Viprinet and the Client, and, as the case may be, further contracts, e.g. framework agreements. The Client’s terms of business are rejected and, for their effectiveness, require a corresponding agreement in writing.

The conditions in Part A apply to all contractual and pre-contractual relationships; the other parts apply depending on the main contract.

### Part A: General Terms

#### § 1 Definitions

- (1) “Goods” means the good or goods respectively covered by the main contract between Viprinet and the Partner, e.g. the purchased or leased product(s).
- (2) “Routers” are all Multichannel VPN Routers offered by Viprinet. “Modules” are all “Hot Plug Modules” offered by Viprinet. “Viprinet Products” shall mean all goods and services offered by Viprinet, including Routers and Modules, e.g. software, service and support, regardless of whether Viprinet sells them or gives them out for free, and of which party offers them to the respective customer.
- (3) “VPN Hub” means the connection point in form of a Multichannel VPN Hub that is usually located in a data processing center and that is used for bundling WAN lines through the usage of one or several Viprinet Routers.

#### § 2 Quotes, Delivery Dates

- (1) Notwithstanding differing indications, Viprinet’s quotes are valid for 14 (fourteen) days after submission.
- (2) Details on delivery dates are not binding but shall be given as accurately as possible to the best of knowledge; they rely on the timely delivery of material to Viprinet that is necessary for the Goods. In case of delivery delays due to force majeure or other events outside of Viprinet’s power, delivery dates are prolonged by the time adequate to eliminate the cause of delay. In case of said delays with a delay period of more than 3 (three) months, each party may withdraw from the respective contract or the unfulfilled part of the contract, as the case may be. Further claims, i.e. for damage compensations, are excluded in this case.
- (3) In case of delivery periods communicated by Viprinet longer than 6 (six) months, the indicated prices shall be preliminary and may be altered through an interim price adaptation.

### § 3 Prices, Delivery, Interest On Arrears

- (1) Prices are strictly net, exclusive of V.A.T., shipping and handling and, on the Client's request, cargo insurance. Except as otherwise agreed, invoices shall be payable without any deduction within 10 (ten) workdays after invoice date. If the Client has to pay to Viprinet, the payment date shall be the date at which the payment arrives on Viprinet's account.
- (2) Viprinet delivers only at cash on delivery through UPS, after advance payment to Viprinet or by purchase order handled by factoring defined by Viprinet. With advance payment, the entire invoice amount shall be payable within 7 (seven) workdays after submission of the confirmation of order; otherwise the following para. 3 applies. With advance payment, Viprinet grants 2% discount, unless the Client owes Viprinet money out of the respective or any other relationship.
- (3) If in case of an advance payment order the Goods' payment has not arrived in Viprinet's account within 10 (ten) workdays after delivery of the confirmation of order, Viprinet is entitled to cancel the order and collect a cancellation fee of 5% of the net order amount, however of at least €50.00 plus tax.
- (4) If, insofar and as long as the Client is in default of acceptance, Viprinet may deposit the Goods on account and at the risk of the Client, and destroy the Goods after unsuccessful passing of a warning with an adequate period of grace.
- (5) Viprinet delivers ex works Bingen am Rhein, Germany (Place Of Performance, Incoterms 2010, EXW). That means that costs of shipping and handling, regardless of direction or reason of transportation, shall in principle be borne by the Client.
- (6) Viprinet is entitled to partial delivery at its own discretion.
- (7) The Client shall pay interest for delay of payment of 8% above the respectively current base lending rate of the German Central Bank.

### § 4 Retention Of Title

- (1) Viprinet retains the title of ownership in delivered Goods until all Viprinet's accounts against the Client have been fully settled ("Retained-Ownership Goods"), regardless of their legal basis (Checking Account Reservation).
- (2) The Client may dispose of Retained-Ownership Goods if and when he is in arrears with payment only upon Viprinet's written consent. When and as far as the Client disposes of Retained-Ownership Goods according to this Sentence 1 permissibly, he assigns his claims against his contractual partner to Viprinet as a precaution ("Precaution Assignment"), and Viprinet is entitled but not obligated to assert said claims directly with said contractual partner. At any time Viprinet expresses the request, the Client shall inform Viprinet immediately of the Precaution Assignments according to this paragraph, and provide supporting documents. In case the Client disposes of Retained-Ownership Goods together with other Goods at a total price, he already now assigns to Viprinet the part of his claims from the respective deal that equals the invoice value of the Retained-Ownership Goods.
- (3) When and as far as the value of the Precaution Assignments exceeds Viprinet's claims by more than 10%, Viprinet releases the Precaution Assignments exceeding said limit upon the Client's request.

- (4) The Client shall immediately inform Viprinet of loss, damage and garnishment as well as other interference through a third party of Retained-Ownership Goods. If and when the Client gains knowledge of Retained-Ownership Goods being subject to compulsory measures (e.g. garnishment), he shall immediately inform Viprinet of all facts and provide all documents necessary and/or useful for the defense of Viprinet's rights, and he shall furthermore inform the garnisher in writing of Viprinet's rights.
- (5) In case of Client's delay of payment, Viprinet may, after effectless warning that set an adequate period of grace, withdraw from the contract and at its own discretion take back Retained-Ownership Goods or demand return of said Goods at the Client's expense. For said case, the Client grants Viprinet irrevocably access to his premises in which he stores the Goods, and redemption of the Goods.

## § 5 Warranty

- (1) Goods have the functionality and performance parameters mentioned in the current manual or other documentation respectively at the time of delivery. Specific characteristics of hard- and software as well as suitability for a specific purpose (including, e.g., compatibility with the Client's or another person's hardware and/or software) shall have to be ascertained in writing by Viprinet in order to be part of Viprinet's obligation.
- (2) Viprinet grants a 1(one)-year warranty for Goods. The period starts with the transition of risks or, when the Client is in default of acceptance, at the time Viprinet offers the Goods.
- (3) The Client shall examine the Goods for defects immediately and give Viprinet notice of obvious defects immediately and in such detail that Viprinet can identify and localize the defect quickly. Unobvious defects shall be reported immediately after the Client gains or must have gained knowledge of them. Prior to any return of defective Goods, the Client shall inform Viprinet's customer service of the return, and he shall include the shipping note in the return delivery.
- (4) For every defect reported by the Client, Viprinet may undertake two attempts to remedy the defect free of cost for the Client, of which at Viprinet's discretion each one may be rectification of the defect or replacement delivery. If both attempts fail to remedy the reported defect (Failure Of Remedy), the Client may lower the purchase price adequately to the defect or withdraw from the contract.
- (5) Should the identification of a reported defect result in the defect not existing, the Client shall bear the cost of examination and other expenses caused by his report of defect at the rates agreed on with Viprinet, or at Viprinet's then current conditions respectively, including freight and shipping charges.
- (6) All guarantee is void for Goods that the Client treats in any way against Viprinet's specifications, i.e. if he
  - exposes them to extreme temperatures, humidity, dust, gas, magnetism, or other unsuitable conditions;
  - repairs and maintains them, unless he is a partner certified by Viprinet for repair and maintenance, himself or has a third party that is not a partner certified by Viprinet for repair and maintenance repair or maintain them;
  - arbitrarily opens, alters, extends them or has an unauthorized third party do so, unless the Client proves that his arbitrary action was not causative for the reported defect; or
  - violates or breaks a warranty seal.

In case of any treatment according to this paragraph, the Client can raise warranty claims towards Viprinet for alleged defects of Viprinet Products only if he provides evidence that the defect is not caused by said treatment; in other cases, all warranty claims are waived.

## **§ 6 Liability**

- (1) As far as liability is not mandatory by law (e.g. according to the German Product Liability Act), or is caused through deliberate or grossly negligent action of Viprinet or a legal representative or auxiliary person of Viprinet, or regards the violation of life, body or health, Viprinet's liability is waived.
- (2) Viprinet takes, unless mandatory by law, no responsibility in indirect or consequential damage or loss of profit.
- (3) Viprinet's liability is capped by the amount of typical and predictable damages, and Viprinet shall only be liable in cases when the Client has executed appropriate measure for the security of his property and assets. In case of loss of data, Viprinet's liability shall be capped by the amount typically arising when the Client has, before the loss of data, performed regular and risk-compliant backups of data and programs (including the operating system) on suitable and state-of-the-art backup media.

## **§ 7 Export Regulations**

The Goods may be subject to German export and embargo regulations. The Client has been informed that the export of Goods out of Germany is subject to permission from the German Federal Office of Economics and Export Control (BAFA) and that, unless ascertained otherwise by Viprinet, the Goods may only be used in the European Union.

## **§ 8 Confidentiality**

The Client and Viprinet assure each other to keep every piece of information of the other party confidential that is either obviously confidential or that is denominated confidential by the revealing party ("Confidential Information").

## **§ 9 Intellectual Property Of Viprinet**

- (1) All intellectual property of Viprinet with regard to hardware and software remains with Viprinet, unless agreed upon differently between the parties in writing.
- (2) The Client may not disassemble, revert, combine with other software or hardware, imitate or in any other way alter any of Viprinet's software, and may not disassemble, revert or in any other way alter any of Viprinet's hardware, neither during the term of the contract nor thereafter.
- (3) Furthermore, the Client may not garble, replace, cover up or alter any of Viprinet's trademarks on hard- or software.

## **§ 10 Miscellaneous**

- (1) The Client may only set off uncontested and legally binding claims against Viprinet's claims, and may only insofar assert rights of retention.
- (2) Contracts and declarations of intent, i.e. warnings, reports of defect and terminations, shall be given in writing.
- (3) Viprinet may alter these Terms with 4-(four) weeks' notice indicating the updated Terms and providing a copy to the Client.
- (4) All business relationships between the parties shall be governed by the laws of Germany excluding the UN Convention on Contracts for the International Sale of Goods (CISG). ). The courts competent for Bingen am Rhein, Germany, shall have sole jurisdiction in relation to all matters arising out of this agreement.
- (5) No subsidiary agreements have been made, and any such agreement and any waiver of the requirement of written form have to be made in writing.
- (6) Any part of a stipulation of these Terms or of a contract between the parties which is wholly or partially void, invalid, or unenforceable shall be severed from the remainder, and said remainder shall remain enforceable. Furthermore, said void, invalid or unenforceable stipulation shall be replaced by one that the parties would have reasonably wanted to include in this agreement if they had known about the lack of legal force.

## **Part B: Licensing Of Software Use**

### **§ 11 Right Of Use Of Viprinet Software**

- (1) For Viprinet software delivered to the Client, unless agreed upon differently, he is granted a simple, permanent, non-transferable right of use in the machine code (excluding the source code), which is conditioned by the one-time or, as the case may be, recurring payment of license fees.
- (2) The Client may, with the exception of backups, make copies of the software only when the copies are necessary for the use of the software in accordance with the contract.
- (3) Viprinet may revoke the right of use in this paragraph 1 completely or partially with Good Cause. A Good Cause shall be, e.g., when the Client, in spite of a reminder, fails to pay due license fees within 2 (two) weeks after receipt of the reminder, or violates a stipulation in this § 11.
- (4) At the end of the termination of the right of use, regardless for what reason, the Client shall at his discretion return to Viprinet or delete the delivered software and all copies, including partial copies and modifications. In the latter case, he shall confirm to Viprinet the deletion in writing.

## Part C: Conditions Of Rent Of VPN Hubs

### § 12 General Rent Conditions

- (1) The fees accruing for the rent of VPN Hubs from Viprinet are due quarterly in advance.
- (2) In the VPN Hub rental contract, a monthly data transfer ("Traffic") volume is included that shall be paid by the Client in advance for each month. If and as far as the Client causes more Traffic than his volume contains, the respective amount shall be invoiced in the following month. It is the Client's responsibility to monitor his Traffic.

### § 13 Availability And Maintenance

- (1) Rented VPN Hubs are in principle available on 365 days a year. Viprinet guarantees a monthly availability of the VPN Hub of 99%, however a yearly total availability of 99.9%. For each month of a lower availability than 99%, Viprinet refunds 50% of the respective monthly rent, for each month of a lower availability than 95% the entire monthly rent, however not including the Traffic costs according to this sentence 1 and other fees. In case the monthly availability falls short of 99% on two subsequent months, the Client has a 2(two)-week right of extraordinary termination of the rental contract.
- (2) Maintenance shall not count as lack of availability according to this paragraph 1, shall however not exceed a monthly total duration of 3 (three) hours. Unless necessary, Viprinet performs maintenance between 10:00 PM and 6:00 AM CEST, or during weekends.

### § 14 Liability

With regards to lack of availability of the VPN Hub, Viprinet shall not be liable for indirect or consequential damage or loss of profit. Liability claims shall be capped by one month's rental fee.

### § 15 Conditions Of Use, Protection Requirements

- (1) The Client shall store the access data delivered to him in course of the rental contract safely, and not transmit or otherwise pass them to a third party.
- (2) The Client is mindful of, and he accepts that IP addresses assigned to him in course of the VPN Hub rent have possibly been assigned to other persons, that IP addresses can be included in blacklists, that in said case he has no right to demand assignment of another IP address, and that Viprinet has no duty to examine IP addresses for blacklisting. The Client shall in said case attend to the removal from said blacklist himself.
- (3) The Client may not use or have use Viprinet's services for the following or similar purposes:
  - a. unauthorized intrusion into third-party computer systems (hacking);
  - b. unauthorized obtainment or manipulation of data;
  - c. interference with third-party computers through the deployment/forwarding of data streams and/or e-mails;
  - d. unauthorized search for open ports of computer systems (portscanning);

- e. spoofing of an IP address or e-mail or news header;
  - f. spreading of a virus or other malicious software; or
  - g. deployment of automatically generated e-mails without express consent of each recipient (spam).
- (4) The Client shall furthermore examine all computers connected with the VPN Hub provided by Viprinet directly or indirectly for comprehensive security regularly. He shall especially ensure that computers are not infected by viruses, trojans or other malicious software, and that no attacks emanate from said computers to other system on the Internet.

## **§ 16 Violation Of Conditions And Obligation To Cooperate**

If the Client violates a stipulation in § 15, or if from one of his computers emanates an attack to another computer on the Internet (e.g. spam deployment, virus activity, denial-of-service attack), Viprinet may at its discretion and without prior warning block the VPN Hub partially or entirely, however shall inform the Client of said blocking immediately. For each blocking, the Client shall pay a flat-rate expense compensation of €250.00 plus taxes. Blocking does not release the Client from paying the rent for the VPN Hub. A blocking shall be removed as soon as its reason does not exist anymore, the Client complies with his obligations to cooperate according to § 15, and all computers connected to the VPN Hub directly or indirectly have been secured.

## **§ 17 Extraordinary Termination**

A violation of § 15 gives Viprinet the right of extraordinary termination of the VPN Hub rent contract. The Client shall in such case pay as flat-fee damages the rental fees that would have accrued until his next possible ordinary-termination period ends. If the Client proves that the resulting damages were significantly smaller or did not accrue at all, he shall pay the respectively smaller amount. Viprinet reserves the right to assert higher damages.

## **§ 18 Right Of Recourse**

The Client is responsible and liable for all actions, damages and fees that are caused by him or another person, authorized or not, with or without their knowledge or intent, through the use of his access data according to § 15 para 1, for his entire Internet presence, his servers, his Internet access as well as for his Internet domains. In case of any violation of any of the Client's duties, Viprinet shall, upon first written request, have the right of recourse against the Client with regards to all claims, costs and expenses, including lawyer's fees and court costs, expressly including, but not limited to, trademark and patent issues.

## **§ 19 Denial Of Performance**

Should the Client be in default of payment with regards to the VPN Hub rent by an amount exceeding fees or other cost of 4 (four) weeks, Viprinet shall be entitled to block the Client's VPN Hub until all uncontested claims have been settled. All claims for damages caused by such blocking or the lack of possibility to use the VPN Hub are hereby expressly excluded. Rental fees shall be payable also for the time of said blocking, and said blocking shall be construed as a declaration of termination on Viprinet's side.