

## **DEFENSELAYERS TERMS OF SERVICE („TERMS OF SERVICE”)**

The following Terms of Service have been issued by Defenselayers

The Terms of Service regulate the providing of the Services offered by Defenselayers, as well as establishing the rights and responsibilities of the Client and Users in relation to using said Services.

The Terms and Service come into force as of June 1st 2020

The Client is required to accept these Terms of Service to use the Services offered by Defenselayers.

The current version of the Terms of Service is available on the Defenselayers Portal. Defenselayers allows the Client to reproduce and download the Terms of Service.

### **1. DEFINITIONS**

- 1.1. Defenselayers** - Defenselayers Sp. z o.o. seated in Warsaw, address: ul. Sabały 58, 02-174 Warszawa.
- 1.2. Defenselayers Portal** – refers to the web domain provided by Defenselayers at *www.defenslayers.com* designed for communication, sharing and updating Software, as well as documenting, selling services, etc.
- 1.3. Price List** – the pricing for the Services provided.
- 1.4. Client Data** – all data processed for the Client and on their behalf in relation to the Client's use of the Services, including personal data.
- 1.5. License Terms** – the License Agreement constituting Attachment no. 2 to the Terms of Service
- 1.6. Client** – an entrepreneur, legal person or organizational unit making an order with Defenselayers in order to use the Services as a part of their business activities. In order to avoid doubt, a consumer cannot be a Client.
- 1.7. Software** - a work defined in the License Terms.
- 1.8. Order Term** – as established in article 12.1 below.
- 1.9. Fee** – the fee owed to Defenselayers based on the realization of the Order. The amount owed as well as the method of payment are defined by the Terms unless agreed separately by the parties for a particular Order.
- 1.10. Administration Panel** – a panel or other online tools provided to the Client for the purpose of managing and purchasing Services.
- 1.11. Contractor** – an entity which provides services used by Defenselayers to ensure that the Services are available for the use by the Client.
- 1.12. Privacy Policy** – a document describing the terms of protection of the Clients' personal data by Defenselayers.

- 1.13. Anticorruption Regulations** – any legal regulations relating to corruption that forbid the issuing of corruption offers of any value, directly or indirectly to anyone, including public officials as a part of business activity.
- 1.14. Terms of Service** – the following Terms of Service.
- 1.15. Force Majeure** – an extreme, unforeseen event independent from the Parties that was unforeseeable and unavoidable given due diligence, in particular natural disasters, epidemics, riots or strikes and military action.
- 1.16. Party** – refers to the Client or Defenselayers.
- 1.17. Service** – the current description of services provided by Defenselayers constituting Attachment no. 1 to this contract.
- 1.18. User** – a natural person authorized by the Client to use the Services.
- 1.19. Order** – an executive contract entered into by the Parties in accordance with the regulations of the Terms of Service serving as the basis to provide the Client with the access and ability to use the Service. The Order templates constitute Attachment no. 3 to the Terms of Service.

## 2. **CLIENT STATEMENTS AND RESPONSIBILITIES. TERMS OF SERVICE.**

- 2.1.** The Client is enabled to use the Services in accordance to the Terms described herein, after creating an Order, providing access to Services will occur immediately after the Payment to Defenselayers is made.
- 2.2.** The Client undertakes to use the Services in accordance to the Terms of Service, the Order and applicable laws.
- 2.3.** The Client undertakes not to resell, distribute, deliver, rent or allow access to the Service to a third party in any manner.
- 2.4.** The Client undertakes to provide the following contact information to enable Defenselayers to:
- provide Services in accordance to the Terms of Service and Order.
  - relay information relating to Service updates to the Client.
  - perform Client satisfaction and Client service surveys.
- 2.5.** The Client is allowed to provide access to the Services to Users solely in the scope defined by the Terms of Service. Said scope cannot be larger than the scope in which the Client is allowed to use the Services based on the Terms of Service. The Client undertakes to ensure that the User adheres to the Terms of Service and the Order.
- 2.6.** The Client assumes responsibility for the safety of use of the Services by Users. The User assumes sole responsibility for the confidentiality of their account, registration and password information. Defenselayer shall not be held liable for the damages resulting from or connected to the theft of the username or passport, or the disclosure of said information to other Users.
- 2.7.** The Client undertakes to immediately inform Defenselayers about any unauthorized access to the Services, in particular if the Services are accessed by a party other than the Users.
- 2.8.** The Client undertakes to use the Services in accordance with the law, Terms of Service and corresponding Order. The Client undertakes to ensure that the Users shall not:

- impersonate another person, or mislead in another manner;
- interfere in the use of the Services by other users;
- delete information relating to intellectual property rights, including copyrights, trademarks and other property rights included in the Services and Software;
- use any domain search/download software or another device in order to download or index any part of the Services or its contents in order to collect user information or for other unauthorized uses;
- create user accounts through automated methods or under false pretense;
- use the Service or gain access to any Defenselayers product or service in a manner violating these Terms of Service.

**2.9.** The Client may of their own volition or upon a request from Defenselayers relay comments, bug reports, ideas or other opinions concerning the Services or the Software, including suggestions for improvement of the Services or Software ("**Opinions**"). By sending an Opinion, the Client authorizes the unpaid use of said Opinion at Defenselayers' discretion. The Client hereby issues Defenselayers a non-exclusive, territorially and temporarily unlimited license to use the Opinion for any goals in any manner.

### **3. DEFENSELAYERS STATEMENTS, RESPONSIBILITIES AND RIGHTS.**

**3.1.** Defenselayers undertakes to provide access to the Services to the Client. Defenselayers undertakes to ensure that the Services will be provided in accordance to the Terms of Service and the corresponding Order.

**3.2.** A completed Order for Services shall be recognized as correctly completed by the Parties, provided no complaints are made against it.

**3.3.** In order to execute the obligations stemming from the Terms of Service and the Order, including providing the Client access to the Services, Defenselayers is authorized to use Contractors, to the use of which the Client agrees.

**3.4.** Defenselayers reserves the right to perform an audit, including one performed by an independent auditor. Audits shall happen no more often than once a year, upon providing the Client with a 20 day notice in writing. Should the audit show that the Client is using the Services in infringement of the Terms of Service, in particular the License Terms, the Client undertakes to remove any causes of said infringements and to reimburse Defenselayers for reasonable cost accrued by the audit.

### **4. ORDERS**

**4.1.** Based on the Terms of Service, the Client is authorized to place Orders. Concluding an Order authorizes the Client to access the Administration Panel which allows the Client to use the Services in accordance to the Terms of Service.

**4.2.** Orders can be placed solely via electronic means of communication.

**4.3.** The Client confirms that the User is a person authorized to place Orders on the Client's behalf through the Administration Panel.

**4.4.** The Order shall be concluded upon the Payment of the Fee by the Client.

## **5. PROCESSING OF CLIENT DATA**

- 5.1.** Client Data shall be processed by Defenselayers insofar as said processing is necessary for the execution of the Order, including the provision of Services in accordance to the Terms of Service.
- 5.2.** The rules of personal data processing by Defenselayers are included in the Privacy Policy available in the Client Portal.
- 5.3.** Insofar as Client Data shall constitute personal Data, the Client authorizes Defenselayers to process them in accordance with the Privacy Policy for reasons connected to the execution of the Order.

## **6. INTELLECTUAL PROPERTY**

- 6.1.** Notwithstanding the provisions of the Terms of Service that explicitly state otherwise, the Client retains all rights, including intellectual property rights to the Client Data. Defenselayers as well as licensors and Contractors retain all rights, including intellectual property rights to all any content and products delivered to the Client while realizing the Order and performing the Services, including the Software.
- 6.2.** The Client may be authorized to download the Software in relation to their use of the Services. Some elements of the Software may be subject to separate third-party license terms. Defenselayers undertake to relay said terms to the Client.
- 6.3.** Unless specified otherwise, Defenselayers grants the Client an inexclusive, non-transferrable, territorially unlimited license to the Software and related works upon the payment of the Fee in accordance to the Terms of Service.
- 6.4.** All rights to the Software that have not been explicitly granted to the Client by the Terms of Service are reserved by Defenselayers. The Client shall not receive other or different rights (assumed or in any other form) to the Software.
- 6.5.** Client agrees to use his logo and trademark for Defenselayers marketing purposes, unless the Client expressly states otherwise.

## **7. LIMITATIONS**

- 7.1.** The Client is not authorized to:
  - access the Services in a manner aimed at avoiding the payment of the Fees owed to Defenselayers described in the Terms of Service;
  - distribute, license, sublicense, rent, sell, lease, mortgage, auction or transfer the ownership or deliver copies of the Software in any other way to third parties;
  - publish, deliver or disclose information to third parties concerning competitive analysis, performance test results, comparative test results, or Software analysis without the written consent of Defenselayers;
- 7.2.** In other cases, restriction in using the Software is included in the License Terms.
- 7.3.** Given the constant development of new hacking techniques and system, network and/or computer attacks, Defenselayers does not ensure or guarantee that:

- the Software will detect, block or fully delete or clean all malicious or false applications, programs and files, or those unused by the Client. *szywe, lub których Klient nie używa;*
- the Software will be immune to hacking or attacks.

**7.4.** The Client accepts that the effectiveness of the security measures, as well as the usage of its computers, network and data is dependent on factors lying solely with the Client.

## **8. GUARANTEES AND DISCLAIMERS**

**8.1.** Defenselayers shall perform due diligence in order to ensure the correct fulfillment of the obligations stemming from the Terms of Service and Order.

**8.2.** With exception to point 8.1 above, Defenselayers does not issue any guarantees pertaining to the Services.

**8.3.** The Service is delivered to the Client in its current form and the Parties agree to exclude Defenselayers' liability for the proper functioning, quality and usefulness of the Service.

## **9. SUSPENSION OF ACCESS TO THE SERVICES**

**9.1.** Defenselayers reserves the right to suspend access to the Services, should:

- the Client infringe the Terms of Service in a meaningful and repetitive manner, provided that should the infringement be removable, access can be suspended only upon previously giving notice of the infringement and the demand of its removal with a deadline no shorter than 21 days. Access can only be suspended after the upon the expiration of the deadline;
- the Client infringe the Terms of Service in a substantial manner;
- the Client infringe the Terms of Service in a manner other than substantial, provided that should the infringement be removable, access can be suspended only upon previously giving notice and the demand of its removal with a deadline no shorter than 24 hours. Access can only be suspended after the term expires;
- an unauthorized party gain access to the Services through the fault of the Client;
- the suspension of access to the Services be necessary to ensure legal compliance;
- the Client be unable to perform the duties stemming from the Terms of Service or the Order;
- in other cases explicitly stated in the Terms of Service.

**9.2.** If the above provisions do not place the duty of setting a deadline for the removal of an infringement on Defenselayers, Defenselayers reserves the right to suspend access to the Service immediately, without setting a deadline.

**9.3.** Defenselayers undertakes to ensure that every access suspension is performed in accordance to the Terms of Service, and its length is necessary to remove the causes of the Suspension or to ensure the legality of the Services.

## **10. PRICING AND FEES**

- 10.1. The Fees for the use of the Service shall be priced according to the Price List, with the exception of point 10.7 below.
- 10.2. Defenselayers reserves the right to add VAT to the Fees listed in point 10.1 above, provided that the applicable law requires it, in the legally required amount.
- 10.3. Defenselayers reserves the right to bill the Fees in Euros.
- 10.4. The Fees shall be pre-paid based on a VAT invoice issued by Defenselayers.
- 10.5. The Parties agree that the date of payment shall be the date Defenselayers' account is credited, or the date Defenselayers receives a payment confirmation from a payment operator.
- 10.6. The Client agrees to receive VAT invoices as well as any attachments to them in electronic form, based on the regulations of the Act on Value Added Tax. VAT Invoices in electronic form shall be sent to the email address indicated in the Order.
- 10.7. The Price List can be amended at any time. The current Price List is available on the Defenselayers Portal. Changes made to the Price List have no bearing on Orders made before the Price List was amended. Should additional Services be purchased after the amendment, the updated Price List shall be used.
- 10.8. Changes to the Price List do not require written form.

## 11. CHANGES TO THE TERMS OF SERVICE AND OTHER TERMS

- 11.1. The method of performing Services can be changed. These changes can in particular include adding, updating or deactivating given services, or their parts or functionalities. Irrespective of the above, the method of performing Services for previously concluded Orders shall not be changed.
- 11.2. Defenselayers reserves the right to change the Terms of Service, particularly in the following instances:
  - should the changes to the Terms of Service be required to ensure conformity with the law;
  - should the changes to the Terms of Service be required to ensure conformity with the recommendations, orders, rulings, interpretations, guidelines or decisions of public authorities, including supervisory bodies;
  - should the changes be required due to the expansion or change to Service functionality, including the introduction of new Services or changes made to existing services;
  - should the changes be required to remove vagueness, and errors, including typographical errors from the Terms of Service;
  - should the contact details, names, identifying numbers, or electronic addresses or links contained in the Terms of Service change;
- 11.3. Defenselayers undertakes to inform the Client of the changes to the Terms of Services via the Defenselayers Website.

**11.4.** Changes to the Terms of Service shall apply to the Client based on the provisions above as of the date of conclusion of a new Service Order. The changes shall not be applied to Orders concluded before the changes to the Terms of Service came into force.

**11.5.** Changes to the Terms of Service do not require written form.

## **12. ORDER TERM. TERMINATION OF SERVICES,**

**12.1.** The Client shall be granted access to the Services in the term established in the Order, or until the Order is terminated in accordance to the provisions below ("**Order Term**"). The Client can stop using the Services at any time, this however shall have no bearing on the Fees for the Order Term.

**12.2.** Defenselayers is authorized to terminate the Order immediately as of the day of issuing a termination statement, should:

- the Client infringe the Terms of Service or the Order in a meaningful and repetitive manner, provided that should the infringement be removable, access can be suspended only upon previously giving notice of the infringement and the demand of its removal with a deadline no shorter than 14 days. Termination can only occur upon the expiration of the deadline;
- the Client consciously engage in or accept the engagement of Users in any illegal or dishonest trade practices or other activities contrary to the provisions of the law or forbidden by the Terms of Service;
- The Client fail to rectify the Client's infringement which caused the suspension of Service in accordance to chapter 9 of the Terms of Service within 30 days of Service suspension;
- the providing of the Service be impossible due to force majeure.

**12.3.** Should the Order Term be completed, the Client shall no longer be provided access to the Services rendered based on the Order.

## **13. COMPLAINTS RELATED TO SERVICES**

**13.1.** Any reservations to the manner in which the Order is executed can be reported by the Client via a Complaint report sent to the following email: [support@defenselayers.com](mailto:support@defenselayers.com) or through a ticket system (should one be implemented by Defenselayers)

**13.2.** The complaint report should include, in particular, information about the reporting Party, the subject of the Complaint and any circumstances explaining the reasoning for the Complaint.

**13.3.** The Complaint should be issued within 1 month of the last day of the Order Term during which the cause occurred. Any claims related to the Complaint cannot be reported after the expiration of the term established above.

**13.4.** The Complaint shall be reviewed by Defenselayers immediately, no longer than 14 days since receiving it. Defenselayers undertakes to inform the Client about the method of Complaint review via email to the address from which the Complaint was received, unless the Complaint included a different address.

**13.5.** The Client undertakes to cooperate with Defenselayers during Complaint review, in particular by providing information required for an effective review.

**13.6.** Issuing a Complaint does not have any bearing on paid Fees.

## 14. LIABILITY

**14.1.** Defenselayers' liability for any damages incurred by the Client in relation to the Client's use of the Services, Software or the execution of the Order by Defenselayers, shall be limited by the sum of all Fees paid by the Client in the 6 months preceding the Damages. Unless the Terms of Service states otherwise, Defenselayers' liability shall be based on the fault principle.

**14.2.** Defenselayers shall not be liable to the Client for:

- any damages that the Client or a third party will have sustained in relation to the use of the Software, unless the damage is caused by intentional actions from Defenselayers;
- any benefits lost, unrealised savings or intermediary damages;
- warranty damages;
- any damages related to a Service suspension based on the Terms of Service;
- any damages related to an Order termination based on the Terms of Service;
- damages to the Client's business reputation.

**14.3.** Any exclusions and limitations to liability in these Terms of Service apply to any form of damages (including actual damages and benefits lost) as well as bases for said liability (delict basis, contract basis other bases).

**14.4.** The exclusions and limitations of liability in these Terms of Service shall not apply if explicitly forbidden by commonly applicable laws, in particular in the case of Defenselayers causing the damages intentionally.

**14.5.** Neither Party shall be liable towards the other party due to damages caused by force majeure. The Party damaged by the effects of force majeure undertakes to inform the other party of the damages immediately, including its causes and the length of its effect on the undertakings as related to the Terms of Service or Contract.

## 15. FINAL PROVISIONS

**15.1.** Any dispute related to the Terms of Service shall be resolved amicably via bilateral talks and negotiations. Should the Parties be unable to reach a consensus, the case can be directed to be resolved by the common court territorially assigned to the seat of Defenselayers.

## 16. ATTACHMENTS

The following Attachments are an integral part of the Terms of Service:

Attachment no 1 – Service

Attachment no 2 – License Terms

Attachment no 3 – Order Template