



General Terms and Conditions

of

**SwissSign AG
Lowenstrasse 1
CH-8001 Zurich
Switzerland**

December 2003



1 Initiation of contractual relationship and Applicability of these General Terms and Conditions

These General Terms and Conditions are applicable to all SwissSign's Services ("Services") rendered to Customer by SwissSign and sets forth Customer's rights and obligations regarding the performance by SwissSign for any such Services.

SwissSign submits to the Customer a quotation containing the content, scope, deadlines and costs of the Services to be rendered to Customer. By signing the quotation, the Customer legally initiates the order of the Services described therein and confirms his or her agreement with the content of the quotation, possible appendices thereto and these General Terms and Conditions.

In case provisions contained in the quotation or in an appendix thereto are contradictory to these General Terms and Conditions the special provision of the quotation, respectively an appendix thereto shall prevail.



2 Description and Scope of Services rendered by SwissSign

2.1 SwissSign Outsourcing Service

The SwissSign Outsourcing Services are designed to provide to the Customer all aspects of a CA/RA environment like creation, management, publication, revocation of digital identities/certificates and are offered to Customer as standard packages according to the terms set forth beneath and in the quotation. The packages embody the delivery of software and/or other services.

Establishment and management of a complete PKI infrastructure for Customer including all aspects of a CA/RA environment and the issuance of SwissSign certificates, enabling the Customer to perform the role of RA for certificates issued by a SwissSign CA.

Establishment and management of a complete PKI infrastructure for Customer including all aspects of a CA/RA environment enabling Customer to issue certificates from a Customer branded own CA, with or without a SwissSign root key, and to perform the role of RA for these certificates.

2.2 License Agreement for SwissSign PKI Software

The SwissSign License Agreement allows the Customer to use the SwissSign PKI software in his premises according to the conditions set forth in the according quotation.

2.3 SwissSign Service Level Agreement

In order to enable Customer to continuously run the PKI environment provided for by SwissSign, SwissSign offers to its Customers different Service Levels. The performance and remedies offered under these Service Levels are set forth in a separate Service Level Agreement. Having a Service Level Agreement is optional. All references to a Service Level Agreement are null and void if Customer decides not to have such agreement.

2.4 SwissSign Consulting and Engineering Services

The SwissSign Consulting and Engineering Services help Customer to establish his own PKI environment or focus on special aspects of a PKI environment, enabling Customer to adjust or improve certain aspects of an existing PKI.

3 Sub-Contractors / Sub-Suppliers

SwissSign is free to involve sub-contractors any time in order to properly carry out the contractual obligations entered with the Customer. SwissSign is responsible for the orderly selection of such sub-contractors and particularly for their commitment to non disclosure of confidential information.



4 Deadlines

Deadlines for any service or any particular performance are only legally binding for SwissSign if mutually agreed upon with the Customer and accepted in writing by SwissSign. The Customer allows for a reasonable period of grace if the first deadline is not met for reasons SwissSign is responsible for. The Customer has the right to rescind from the contractual agreement if SwissSign fails to fulfill within the grace period. SwissSign will then refund any payments already enacted by the Customer for services not rendered. The claim of any further payments e.g. for damages is, as far as legally possible, explicitly excluded.

5 Acceptance of Services

In the absence of a formal protocol of acceptance, any services or any particular performance rendered by SwissSign are regarded as being formally accepted by the Customer if he does not place any complaints regarding volume, execution or visible defects within one week after reception / delivery. The complaint has to be enacted via signed and (optionally) encrypted mail or in a legally signed paper document sent to SwissSign by registered mail.

6 CA/RA Relationship

6.1 Relevance of applicable CPS

If – as part of a SwissSign Outsourcing Service package – the role of RA is assigned to / performed by Customer with SwissSign issuing certificates as CA (see 2.1 a. above), the Customer is obliged to strictly adhere to and fully comply with the according SwissSign CPS. The applicable CPS forms an integral part of the contractual relationship between the Customer and SwissSign. SwissSign namely cannot take any responsibility and/or liability for certificates issued – towards the Customer, its clients or relying parties – if the Customer does not follow all rules and regulations set forth in the applicable CPS. In cases of non compliance with or breach of any CPS rules and regulations SwissSign is entitled to revoke all certificates issued in breach of the CPS and to cancel all services as CA until the breach is mended and compliance with the CPS ensured. SwissSign is further entitled to notify the Swiss governmental agency ([Schweizerische Akkreditierungsstelle \(SAS\)](#)) charged with the control of PKI related services in Switzerland.

6.2 RA Audit

6.2.1 SwissSign Audit

As set forth in the CPS SwissSign may periodically audit the Customer performing the role of RA to verify that the RA (Customer) and its sub-RA's are in full compliance with the applicable CPS.

6.2.2 Failure to conduct an Audit

If SwissSign, or its agent, fails to conduct an audit, Customer can not hold SwissSign responsible for any damages.



6.2.3 Hindrance of Audit

If SwissSign or its appointed agent cannot conduct an audit due to a hindrance which is caused by Customer, SwissSign will report this failure to conduct the audit to the authorities as specified in the CPS.

6.2.4 Liability for additional cost(s) of Audit

SwissSign is not liable for any costs or damages, which may be inflicted upon Customer if additional audits or measures are deemed to be necessary by either:

- SwissSign
- A SwissSign appointed agent
- the authorities
- other accepted authoritative organizations, national or international

7 Intellectual Property Rights

7.1 Brand Protection

SwissSign as well as any other brands used by SwissSign are legally protected and registered trademarks. All according rights are reserved for SwissSign if not explicitly granted to a Customer.

7.2 Rights to Software

All rights to the PKI software developed by SwissSign are the exclusive property of SwissSign. If – as part of the contractual relationship with the Customer – SwissSign delivers the PKI software or certain parts of it to the Customer, the Customer is granted an according non-exclusive and non-transferable license to use the software. Copying and reproducing the software for reasons of alteration, further reproduction, resale or distribution is explicitly forbidden. All rights in connection with the software – other than the limited right of use defined herein – are and remain the sole property of SwissSign.

8 Pricing

8.1 SwissSign Outsourcing Services

Any SwissSign Outsourcing Service package is priced according to the detailed provisions set forth in the quotation.

8.2 License Agreement for SwissSign PKI Software

The payable license fee is set forth in the quotation and in the applicable SwissSign price list.

8.3 SwissSign Service Level Agreement

Pricing of different SwissSign Service levels is set forth in the applicable separate Service Level Agreement.



8.4 Consulting and Engineering Services

Consulting and Engineering services are invoiced according to the fees mentioned in the quotation and in the applicable SwissSign price list. Consulting services in addition to the quotation or requested without quotation are invoiced on a per hour basis according to the following scheme:

• within business Hours	Monday – Friday, 08:30 – 17:30 CET	CHF 250.00
• outside business Hours	Monday – Friday, 17:30 – 08:30 CET	CHF 375.00
• weekend	Friday 17:30 – Monday 08:30 CET	CHF 500.00
• driving expenses	per 50km radius from Zurich, Switzerland	CHF 100.00
• other travel expenses	Air travel, Taxi, hotel accommodation	as incurred
• other expenses		as incurred

9 Payment Conditions

- all prices are excluding VAT
- pricing for other products and services are according to the quotation / the SwissSign Pricelist as published on the SwissSign web site
- hardware and software will be invoiced upon contract signature
- invoices are payable within 15 days
- yearly costs are payable in advance at the start of the yearly period
- shipping, custom and insurance costs for installations outside of Switzerland are not included and will be invoiced separately

10 Warranties, Liability and Remedies

10.1 General Provision regarding Warranties, Liability and Remedies

10.1.1 General limitation of liability

If not set forth explicitly otherwise hereinafter for a specific service or package offered by SwissSign, SwissSign excludes any warranty or liability as far as legally possible.

10.1.2 Viruses

SwissSign makes all efforts to exclude viruses before delivery of services. In case of viruses from uncontrollable external sources, SwissSign shall be excluded from all liability arising thereof.

10.2 Patent and Copyright Indemnification

SwissSign agrees to indemnify Customer and to hold it harmless from any and all claims of infringement of patents, issued as of the effective date of this Agreement, copyrights, trademarks, trade secrets or other proprietary rights of third parties asserted against Customer by virtue of Customer use of the Software as delivered and maintained by SwissSign, provided that SwissSign is given prompt notice of any such claim and the right to control and direct the



investigation, preparation, defence and settlement of each such claim, and further provided that Customer reasonably co-operates with SwissSign in connection with the foregoing and provides SwissSign with all information in Customer's possession related to such claim and further assistance as reasonably requested by SwissSign. SwissSign will have no obligation to indemnify Customer to the extent any such claim is based on the use of the Software with software or equipment not supplied or expressly included within this indemnification in advance and in writing by SwissSign.

Should Software as delivered and maintained by SwissSign become, or in SwissSign's opinion be likely to become, the subject of any such claim, SwissSign may at its option procure for Customer the right to continue to use the software as contemplated hereunder or may replace or modify the software to make its use non-infringing.

10.3 Warranties, Liabilities and Remedies for specific services

10.3.1 SwissSign Outsourcing Services

SwissSign hereby warrants that the Outsourcing Service delivered to Customer will substantially be in accordance with the quotation and/or possible appendices thereto. SwissSign does not provide any guarantee as to any specific result beyond that which has been described in the quotation and/or possible appendices thereto. In the event of substantial shortcomings of the SwissSign Outsourcing Service Customer is entitled to a correction of such problems. If SwissSign determines that it is unable to mend such problems as warranted, using reasonable efforts, Customer shall be entitled to recover a portion no greater than eighty percent of the fees paid to SwissSign for these SwissSign Outsourcing Services.

Any further liability is – within the boundaries of the law – explicitly excluded. Under no circumstances shall SwissSign be liable for special, indirect, incidental and/or consequential damages arising out of or in connection with this agreement.

As CA any liability of SwissSign towards clients of the Customer (persons receiving SwissSign Certificates through Customer as RA) is limited to the amounts set forth in the applicable CPS.

10.3.2 License Agreement for SwissSign PKI Software

SwissSign hereby warrants that the SwissSign PKI Software, as delivered, will be capable of operating substantially in conformance with the published specifications set forth in the according documentation. SwissSign does not provide any guarantee as to any specific result, nor does SwissSign warrant that the operation of the SwissSign PKI Software will be error-free. SwissSign can especially not warrant that SwissSign PKI Software will run error-free in any IT environment and in combination with software and/or hardware components delivered by third parties. In the event of substantial errors of the SwissSign PKI Software Customer is entitled to a correction or replacement of Software. If SwissSign determines that it is unable to make the SwissSign PKI software operate as warranted, using reasonable efforts, Customer shall be entitled to recover a portion of the License fees no greater than ninety percent of the fees paid to SwissSign for the SwissSign PKI Software.

Any further liability is – within the boundaries of the law – explicitly excluded. Under no circumstances shall SwissSign be liable for special, indirect, incidental and/or consequential damages arising out of or in connection with this agreement.

10.3.3 SwissSign Service Level Agreement

Any specific warranties, liabilities and remedies of SwissSign with respect to a Service Level Agreement are set forth therein.



10.3.4 Consulting and Engineering Services

SwissSign is carrying out Consulting and Engineering Services to its best knowledge, ability and professional competence conforming to generally accepted industry standards and practices. Any further warranty or liability, especially regarding a specific success for such services, is – within the boundaries of the law – herewith explicitly excluded.

Any further liability is – within the boundaries of the law – explicitly excluded. Under no circumstances shall SwissSign be liable for special, indirect, incidental and/or consequential damages arising out of or in connection with this agreement.

11 Term and Termination

11.1.1 Start of contractual relationship

The contractual relationship between the Customer and SwissSign shall be effective as of the date of signing the quotation by the Customer.

11.1.2 Termination

The contractual relationship governed by these General Terms and Conditions is generally entered for an indefinite period of time if not set forth otherwise in the quotation. The contractual relationship may be terminated for the first time after 12 months. Afterwards, the mutual period of notice for termination is six months. The termination notice is valid only if it is made via signed and (optionally) encrypted mail or in a legally signed paper document sent to SwissSign by registered mail.

12 Information and Confidentiality

The Customer undertakes to make all information, SwissSign deems necessary for carrying out its contractual obligations towards the Customer available. The Customer defines which information is open to third parties and therefore public information and which information is regarded as confidential and/or secret. Both parties commit themselves to treat non-public information as trade secrets. This commitment of non-disclosure of secret information survives the termination of the contractual relationship of the parties.

13 Jurisdiction

All aspects of the contractual relationship between the Customer and SwissSign shall be governed by the laws of Switzerland. All disputes arising thereof (including disputes regarding its validity, interpretation and termination) shall be decided by the Commercial Court of Zurich (Handelsgericht Zürich).