

GENERAL TERMS AND CONDITIONS FOR OFFERS, DELIVERIES AND OTHER SERVICES

<p>1. General</p> <p>1.1 All offers, deliveries and other services rendered by Funkwerk Enterprise Communications GmbH (hereinafter referred to as "Supplies") are governed solely by the following terms and conditions, except where these terms and conditions are amended in writing or expressly excluded in writing by Funkwerk Enterprise Communications GmbH. These terms and conditions shall not apply to maintenance services of hardware and software, which shall be covered by separate agreements. Any contrary or deviating general terms and conditions of the Customer shall have no binding effect on Funkwerk Enterprise Communications GmbH, unless expressly consented to in writing by Funkwerk Enterprise Communications GmbH.</p> <p>1.2 There are no other oral promises or additional agreements. Amendments, deviations or alterations of these terms and conditions, orders and notices must be documented in writing to provide proof thereof.</p> <p>1.3 These terms and conditions shall apply only to entrepreneurs within the meaning of Sec. 310 of the German Civil Code (BGB).</p> <p>2. Confidentiality - Information</p> <p>2.1 Funkwerk Enterprise Communications GmbH herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, images, drawings, calculations and other documents (hereinafter referred to as "Documents") and technical information. The Documents and technical information shall not be made accessible to third parties without the prior written consent of Funkwerk Enterprise Communications GmbH and must only be made accessible to third parties who are rightfully involved in performing this contract. The confidentiality obligation ends, if the information contained in Documents and technical information becomes publicly known.</p> <p>2.2 In any event of a breach of the provisions under No. 2.1 the breaching party shall pay the non-breaching party the amount of EUR 10.000,00 as liquidated damages for each such breach without the opportunity to argue that it was a continuation of the offence ("Fortsetzungszusammenhang"). Funkwerk Enterprise Communications GmbH reserves the right to claim higher damages.</p> <p>3. Offer - Acceptance of Order</p> <p>3.1 Particulars stated in catalogues, images, brochures, cost estimates and offers are subject to confirmation, unless expressly identified as being binding.</p> <p>3.2 A valid contract based on Funkwerk Enterprise Communications GmbH's offer exists only where a written confirmation of the order has been sent by Funkwerk Enterprise Communications GmbH or where the goods have been delivered.</p> <p>3.3 The scope of deliveries and/or services shall be determined by the written confirmation of the order by Funkwerk Enterprise Communications GmbH - which</p>	<p>in case of individual services or development solutions may refer to a specification of services - or in the event such confirmation does not exist by the order of the Customer.</p> <p>3.4 When the Supplies are expected to meet special needs of the Customer, such special purposes and the requirements to fulfil have to be expressly mentioned in the Customer's order and must be confirmed by Funkwerk Enterprise Communications GmbH in the written confirmation or the specification of services.</p> <p>4. Time for Delivery or Performance</p> <p>4.1 Dates and times set for Supplies are binding only if they have been confirmed by Funkwerk Enterprise Communications GmbH explicitly in writing.</p> <p>4.2 Dates and times set for Supplies can only be observed if all Documents and information to be supplied by the Customer, necessary permits and releases, especially plans, are received in time and if agreed terms of payment and other obligations of the Customer are fulfilled. Unless these conditions are fulfilled in time, times set shall be extended and dates shall be postponed appropriately; this shall not apply where Funkwerk Enterprise Communications GmbH is responsible for the delay.</p> <p>4.3 Times set or binding dates for Supplies may be postponed up to two weeks in case a delivery of a primary supplier has not been made by this time. Funkwerk Enterprise Communications GmbH is obliged to immediately inform the Customer about such an event in writing.</p> <p>4.4 In the event of a change requested by the Customer subsequently the times set for delivery agreed upon shall begin to run anew from the date the agreement about the requested alteration is closed and an agreed date shall be postponed respectively.</p> <p>4.5 If Funkwerk Enterprise Communications GmbH is responsible for the delay and the Customer demonstrably suffered a loss therefrom, the Customer may claim a compensation as liquidated damages of 0,5 % for every completed week of delay, but in no case more than a total of 5 % of the price of that part of the Supplies which because of the delay could not be used properly pursuant to the contract.</p> <p>4.6 Customer's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in No 4.5 above shall be excluded in all cases of delayed Supplies even upon expiry of a time set to Funkwerk Enterprise Communications GmbH to effect the Supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. Cancellation of the contract by the Customer based on statute shall be limited to cases where Funkwerk Enterprise Communications GmbH is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Customer.</p> <p>4.7 If the non-observance of the time set or dates is due to</p>
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force majeure such as break down, riots, official regulations, or any other course beyond the sole control of Funkwerk Enterprise Communications GmbH, such time shall be extended accordingly.

5. Delivery - Transfer of Risk

- 5.1 Partial Supplies shall be allowed, unless they are unreasonable to accept for the Customer.
- 5.2 If the parties agree upon customary delivery clauses, e.g. fob, cif etc., the transfer of risk, the delivery, the freight and assurance shall be regulated pursuant to the regulations of the INCOTERMS, unless otherwise expressly agreed upon. Concerning the content and meaning of such clauses the parties have to refer to the INCOTERMS 2000 edition issued by the International Chamber of Commerce.
- 5.3 Even where delivery has been agreed freight free, the risk shall pass to the Customer as follows, unless the parties agreed upon customary delivery clauses:
- a) If the Supplies do not include assembly or installation, the risk shall pass at the time when the deliveries are shipped or picked up by the carrier. Upon the Customer's request, Funkwerk Enterprise Communications GmbH shall insure the Supplies against the usual risks of transport at the expense of the Customer;
 - b) If the deliveries include assembly or installation, the risk shall pass at the day of taking over in the own works or, if the Parties have agreed so, after a fault-free trial run.
 - c) Where the goods to be supplied are to be collected by the Customer following an agreement, the risk shall pass to the Customer when the goods are separated out of other goods and the Customer is informed of the possibility to collect the goods.
- 5.4 The risk shall pass to the Customer if dispatch, shipping, the start or performance of assembly or installation, the taking over in the own works or the trial run is delayed for reasons for which the Customer is responsible or if the Customer has otherwise failed to accept the Supplies.
- 5.5 If Funkwerk Enterprise Communications GmbH loans or hires supplied goods to the Customer or delivers goods on a trial basis, the Customer bears all risk of loss and damage and the Customer must take an insurance policy covering fire, water and other dangers for such goods and shall store the goods appropriate.

6. System Installation - Assembly and Erection

- 6.1 Where the parties agreed on the system installation, the assembly or erection the Customer shall be responsible for the possibility of installation or assembly on his place pursuant to the preconditions set by Funkwerk Enterprise Communications GmbH. He shall provide all required permissions (e.g. Deutsche Telekom AG, public authorities, others) and shall provide at its own expense the equipment and materials necessary according to the specifications set by Funkwerk Enterprise Communications GmbH.
- 6.2 The Customer shall provide at its own expense required energy and water, including connections, workplace, heating and lighting necessary for installation or assembly.

6.3 The Customer shall inform Funkwerk Enterprise Communications GmbH about the kind of technical equipment which is used while using the Supplies and which system conditions do exist.

- 6.4 If assembly, installation or initial operation is delayed due to circumstances which Funkwerk Enterprise Communications GmbH is not responsible for, the Customer shall bear the reasonable costs incurred for idle times and any additional travelling of Funkwerk Enterprise Communications GmbH's personal.
- 6.5 Funkwerk Enterprise Communications GmbH and the Customer shall designate a responsible contact person.

7. Receiving - Acceptance

- 7.1 The Customer must not refuse to receive Supplies due to minor defects.
- 7.2 If Funkwerk Enterprise Communications GmbH demands acceptance of the Supplies after completion provided that assembly or installation took place, the Customer shall comply therewith within a period of two weeks. In default thereof, acceptance is deemed to have taken place. Acceptance is also deemed to have been affected if the Supplies are put to use - where applicable after completion of an agreed test phase.

8. Prices - Invoices - Terms of payment

- 8.1 Prices shall be ex works and exclude packaging, installation, freight, customs duties and insurance; value added tax shall be added at the then applicable rate.
- 8.2 If Funkwerk Enterprise Communications GmbH is responsible for assembly or installation the Customer shall pay the agreed remuneration and any incidental costs required, e.g. travel costs, costs for the transport of tools and equipment and personal luggage as allowances, unless otherwise agreed.
- 8.3 Funkwerk Enterprise Communications GmbH reserves the right to reasonably adjust prices due to the occurrence of higher or lower costs after the conclusion of the agreement, especially in the event of the conclusion of collective labour agreements or changes in prices for material, up to 4 weeks before the date of delivery. Proofs are provided upon Customer's request.
- 8.4 The Customer may set off only those claims that are undisputed or against which no legal recourse is possible.
- 8.5 Payments shall be made without deduction within 14 calendar days after date of invoice, at least 30 days after the delivery, free Funkwerk Enterprise Communications GmbH's paying office (banking account).
- 8.6 Checks and bills of exchange, if accepted by Funkwerk Enterprise Communications GmbH, shall be deemed to constitute payment only after they have been cashed. Expenses and bank charges must be paid by the Customer.
- 8.7 In case of delayed payment of these amounts interest at a rate of 8 % above the base rate of the European Central Bank will be charged. Funkwerk Enterprise Communication GmbH's right to claim higher damages is not excluded.

- 8.8 If Funkwerk Enterprise Communications GmbH receives information about the Customer's inability to pay or has reasonable doubts about the ability to pay (e.g. filing for an insolvency procedure, non-encashment of a check) at the option of Funkwerk Enterprise Communications GmbH all amounts payable shall at once become due and payable without requirement of any prior notice and/or Funkwerk Enterprise Communications GmbH may withdraw of all agreements.

9. Retention of title

- 9.1 The items delivered ("retained goods") shall remain the property of Funkwerk Enterprise Communications GmbH until each and every claim Funkwerk Enterprise Communications GmbH has against the Customer on account of the business connection has fulfilled. The Customer may resale the retained goods in the ordinary course of its business. For the duration of the retention of title, the Customer may not pledge the retained goods or use them as security.
- 9.2 Any processing or modification of the retained goods is performed for the Funkwerk Enterprise Communications GmbH. The Funkwerk Enterprise Communications GmbH requires the ownership or joint ownership of the new item in proportion to the value of the retained goods to they processed or mixed items at the time of processing. The Customer will keep safe the new items at his own account for Funkwerk Enterprise Communications GmbH.
- 9.3 The Customer herewith assigns to Funkwerk Enterprise Communications GmbH all claims against third parties, which accepts the assignment of claims. In case the retained goods are resold together with other goods not owned by Funkwerk Enterprise Communications GmbH, the claims arising from such sales will be assigned to Funkwerk Enterprise Communications GmbH in the amount of the value of invoice for the retained goods. The Customer is authorized to collect the claims despite assignment. The Funkwerk Enterprise Communications GmbH may restrict the right of collection for legitimate reason or may withdraw the right to collect the claims for important reason, especially in case of delay in payment. The Funkwerk Enterprise Communications GmbH can demand that the Customer notifies the assigned claims and there adaptors, gives us all necessary information to collect them and hands over all necessary documents in informs the debtors of the assignment.
- 9.4 The Customer has without undue delay to notify Funkwerk Enterprise Communications GmbH in writing in case of the pledging, confiscation or other distraint or intervention by third parties concerning the retained goods.
- 9.5 In the event of essential breach of contractual obligations by the Customer, especially in the case of delay in payment, the Funkwerk Enterprise Communications GmbH is entitled to reset the retained goods. The Customer is obliged to release the retained goods. This reset of the retained goods or the assertion of the retention of title will not be regarded as cancellation of the contract, unless expressly otherwise agreed upon. If the goods are returned Funkwerk Enterprise Communications may exploit it after a written notice and setting a reasonable period of time under setting off the proceeds of sales after deduction of expenses related to the exploitation against the price as agreed per contract at the highest possible price by private sale.

- 9.6 The Funkwerk Enterprise Communications GmbH is obliged to release their securities on request of the Customer when the value of such securities exceed 20 % of the debts to be covered by securities not only temporarily; the choice of securities to be released is incumbent on Funkwerk Enterprise Communications GmbH.

10. Right to Use Software - Computer Software Ownership

- 10.1 The ownership and/or all other rights to the software shall stay with the Funkwerk Enterprise Communications GmbH. The Customer is obliged to mark the software in case of alterations or connections, especially to apply a notation of copyright. He is not allowed to disassembly, request or translate software and may not unhinge parts of the software.
- 10.2 The Customer receives a non-exclusive, timely unlimited, non-withdrawable and not transferable right to use the software delivered together with devices (hardware) by Funkwerk Enterprise Communications GmbH.
- 10.3 The Software may only be used in connection with one certain terminal or device; any use outside this scope is excluded, unless a right to a multiple use of the software (e.g. the use in networks) is agreed upon.
- 10.4 The software may only be transferred for utilization to a third party in combination with a device delivered by Funkwerk Enterprise Communications GmbH. The Customer shall conclude a written agreement with the third party, requiring the third party to assume the obligations of the agreement with Funkwerk Enterprise Communications GmbH.
- 10.5 The software may only be duplicated or altered with written approval by Funkwerk Enterprise Communications GmbH. The Customer is allowed to back up the software without express written agreement.
- 10.6 The right to use ceases in the event the Customer loses the ownership or the possession of the hardware.
- 10.7 The maintenance of software has to be agreed within a maintenance contract or a service contract separately. This shall include, pursuant to specification of services, all measures which will be regarded by Funkwerk Enterprise Communications GmbH as required for the maintenance of the security of the system, especially technical alterations and improvements (software-updates).

11. Conditions - Defects as to quality - Warranty

- 11.1 All parts or services where a defect becomes apparent within the limitation period shall, at the discretion of Funkwerk Enterprise Communications GmbH, be repaired, replaced or provided again free of charge irrespective of the hours of operation elapsed, provided that the reason for the defect had already existed at the time when the risk past.
- 11.2 Even by providing careful creation of software it is not possible based on state-of-art to exclude all software defects under all conditions of application. The Customer shall have no claim based on defects of software arising from non-producible software errors or in case of modifications or repair work carried out by the Customer or third parties.

- 11.3 Claims based on defects are subjects to limitation periods of 24 months commencing in the case of deliveries of goods with their transfer, in the case of contracts of work and services with acceptance, in each case at the time of the passage of risk. This provision shall not apply in cases of injury of life, body or health or where Funkwerk Enterprise Communications GmbH intentionally or grossly negligently fails to fulfil its obligation or fraudulently conceals a defect.
- 11.4 The Customer shall notify defects to Funkwerk Enterprise Communications GmbH in writing and without undue delay. In so far as the defect is officially the Customer has to notify Funkwerk Enterprise Communications GmbH at least 8 calendar days after receiving the delivery. The same shall apply as soon a hidden defect becomes known to the Customer.
- 11.5 The Funkwerk Enterprise Communications GmbH shall first be given the opportunity to supplement its performance ("Nacherfüllung") within a reasonable period of time. If the supplementary performance is unsuccessful, the Customer shall be entitled to cancel the contract or reduce the remuneration, irrespective of any claims for damages it may have.
- 11.6 There shall be no claims based on defect in cases of insignificant deviations from the agreed quality and of only minor impairment of usefulness.
- 11.7 Furthermore there shall be no warranty for defects or damages arising from:
- natural wear and tear,
 - defective workmanships, assembly, commissioning or faulty or negligent handling, excessive strain by the Customer or third parties
 - unsuitable equipment or inappropriate foundation soil,
 - non-observance of the regulations and provisions for installation, assembly and commissioning, use or operation given by Funkwerk Enterprise Communications GmbH.
- 11.8 In case of defects as to quality Funkwerk Enterprise Communications GmbH is obliged to bear all costs required for removal of defects, including costs of travel and transport, labour and material, but not to the extent that expenses are increased because the subject matter of the deliveries was subsequently brought to another location then the Customers branch office, unless doing so complies with the intended use of the deliveries.
- 11.9 For the time of repair or replacement the recommencement of limitation periods will be suspended beginning on the date Funkwerk Enterprise Communications receives the defect goods.
- 11.10 Funkwerk Enterprise Communication GmbH's expenses arising from unjustified complaints about quality or quantity of Supplies will be charged, e.g. for investigation of the goods.
- 11.11 The Customer's right of recourse against Funkwerk Enterprise Communications GmbH pursuant to Sec. 478 BGB (German Civil Code) is limited to cases where the Customer has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on defects. Moreover No. 11.6 and 11.7 above shall apply of an

mutatis mutandis to the scope of the right of recourse the Customer has pursuant to Sec. 478 para. 2 BGB.

- 11.12 Funkwerk Enterprise Communications GmbH strives towards an unbroken availability of the download area for firmware on its homepage, but will not be held liable for the constant availability of the online-connection and for damages resulting from a temporary inaccessibility.

12. Industrial Property Rights and Copyright - Defects in Title

- 12.1 Unless otherwise agreed, Funkwerk Enterprise Communications GmbH shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination. If a third party asserts a justified claim against the Customer based on an infringement of an IPR with respect to the Supplies made by Funkwerk Enterprise Communications GmbH and than used in conformity with the contract, Funkwerk Enterprise Communications GmbH shall be liable to the Customer within the time period for warranty stipulated in No. 11.3 as follows.
- a) Funkwerk Enterprise Communications GmbH shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the deliveries such that they no longer infringe the IPR or replace them. If this would be unreasonable to demand from Funkwerk Enterprise Communications GmbH, the Customer may cancel the contract or reduce the remuneration pursuant to the applicable statutory provision.
 - b) The liability of Funkwerk Enterprise Communications GmbH to pay damages shall be governed by Art. 14.
 - c) The above obligations of Funkwerk Enterprise Communications GmbH shall only apply if the Customer immediately notifies Funkwerk Enterprise Communications GmbH of any such claim asserted by the third party in writing, does not concede the existence of an infringement and leaves any protective measures and settlement negotiations to the discretion of Funkwerk Enterprise Communications GmbH. If the Customer stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party, that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
- 12.2 Claims of the Customer shall be excluded, if it is itself responsible for the infringement of an IPR.
- 12.3 Claims of the Customer shall also be excluded if the infringement of the IPR is caused by specifications made by the Customer, to a type of use not foreseeable by Funkwerk Enterprise Communications GmbH or to the deliveries being modified by the Customer or being used together with products not provided by Funkwerk Enterprise Communications GmbH.
- 12.4 In addition, with respect to claims by the Customer pursuant to No. 12.1 a) above, No. 11.5 and 11.11 shall apply mutatis mutandis in the event of an in-

fringement of an IPR.

12.5 Where other defects in title occur, Art. 11 shall apply mutatis mutandis.

12.6 Any other claims of the Customer against Funkwerk Enterprise Communications GmbH or any such claims exceeding the claims provided for in this Article, based on a defect in title, shall be excluded.

13. Impossibility of Performance - Adaptation of contract

13.1 To the extent that deliveries are impossible to be carried out, the Customer shall be entitled to claim damages, unless Funkwerk Enterprise Communications GmbH is not responsible for the impossibility. The Customer's claim for damages shall, however, be limited to an amount of 10 % of the value of the part of the deliveries which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury of live, body or health, this does not imply a change in the burden of proof to the detriment of the Customer. The right of the Customer to cancel the contract shall remain unaffected.

13.2 Where unforeseeable events within the meaning of Art. 4.7 substantially change the economic importance or the contents of the deliveries or considerably affect the business of Funkwerk Enterprise Communications GmbH, the contract shall be adapted taking into account the principals of reasonableness and good faith. Where doing so is economically unreasonable, the Funkwerk Enterprise Communications GmbH shall have the right to cancel the contract. If Funkwerk Enterprise Communications GmbH intends to exercise its right to cancel the contract it shall notify the Customer thereof without undue delay after having realised the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the Customer.

14. Other Claims for Damages

14.1 Any claims for damages and reimbursement of expenses the Customer may have, based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded.

14.2 The above shall not apply in the case of mandatory liability, e.g. under the German Product Liability Act ("Produkthaftungsgesetz"), in the case of intent, gross negligence, injury of live, body or health, or in case of breach of an essential term of contract ("wesentliche Vertragspflichten"). However, claims for damages and reimbursement arising from an essential breach of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury of live, body or health. The above provision does not imply a change in the burden of proof to the detriment of the Customer.

14.3 To the extent that the Customer has valid claims for damages or reimbursement according to this Art. 14, it shall be time-barred upon expiration of the limitation period applicable to defects as stipulated in Art. 11.3. In the case of claims for damages under the German Product Liability Act the statutory provisions

governing limitation periods shall apply.

15. Venue and applicable law

15.1 If the Customer is a business person, so venue for all disputes arising directly or indirectly out of the contract shall be the place of business of Funkwerk Enterprise Communications GmbH. However, Funkwerk Enterprise Communications GmbH may also bring a legal action at the Customers' place of business.

15.2 Legal relations existing in connection with this contract shall be governed by German substantive law.

16. Miscellaneous

16.1 The legal invalidity of one or more provisions of this terms and conditions shall in no way effect the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to continue the contract.

16.2 Rights and obligations arising from the mutual relationship between the Customer and Funkwerk Enterprise Communications GmbH must neither partially nor wholly be transferred to any third party without the prior written consent of Funkwerk Enterprise Communications GmbH.

