

## **General Terms and Conditions for the sale of Products and Software of Funkwerk Security Solutions GmbH**

### **I. Basic terms**

#### **1. General provisions**

- 1.1 For any and all deliveries by Funkwerk Security Solutions GmbH (hereinafter referred to as „Funkwerk“) of on the one hand products in the form of in particular chattels (all such products beforehand and hereinafter referred to as „Products“) including any and all services related thereto, and on the other hand software in whatever way provided including thereby the delivery per data media or via electronic means (all such software beforehand and hereinafter referred to as „Software“) towards the contractual partner (hereinafter referred to as “Customer”), solely these General Terms and Conditions of the sale of Products and Software (hereinafter referred to as “General Conditions”) and, if any, specifically concluded contractual agreements shall apply. Unless otherwise explicitly agreed upon in writing, any and all general terms and conditions of the Customer deviating from the General Conditions shall not be applicable. The General Conditions shall also apply solely where Funkwerk despite his knowledge of any general terms and conditions of the Customer performs deliveries or services to the Customer without reservation. The General Conditions, however, shall not apply if and insofar mandatory law provides deviating provisions.
- 1.2 The General Conditions shall also govern likewise all future contractual relations between Funkwerk and Customer which applies even in case that their application is not specifically agreed upon thereto.
- 1.3 The term “delivery of Products” pursuant to these General Conditions shall comprise hereinafter also all related services, if any, unless specific reference is made to either the delivery of Products as such or the rendering of services. Furthermore, the term “delivery” pursuant to these General Conditions shall comprise both the delivery of Products as well as Software unless specific reference is made to either the delivery of Products or Software.
- 1.4 For all contracts for the delivery of Products the provisions as per Sec. II and IV, in addition to this Sec. I., shall apply. For all contracts for the delivery of Software, the provisions as per Sec. II and IV, in addition to this Sec. I., shall apply.

#### **2. Offers / conclusion of contract / cost estimates / rights and titles**

- 2.1 Any and all offer by Funkwerk shall be non-binding and subject to confirmation by Funk-

werk unless explicitly determined by Funkwerk as binding.

- 2.2 The conclusion of a contract is subject to a prior offer by Funkwerk followed either by the acceptance of such offer by the Customer and thereupon an order confirmation made by Funkwerk or a jointly between the parties agreed single contract document, such order confirmation and contract document issued by at least electronic means (“Textform” as per Sec. 126b German Civil Code (“Bürgerliches Gesetzbuch” hereinafter referred to as “BGB”)). In case that Funkwerk has not made a prior offer but Customer has made an offer constituting an offer for conclusion of a contract (Sec. 145 German Civil Code (BGB)) Funkwerk shall be entitled to accept such offer by Customer by, within a two weeks period, either the transmittal of an order confirmation or the execution of the delivery or services.
- 2.3 Any estimate of costs submitted by Funkwerk shall be non-binding unless otherwise agreed upon.
- 2.4 Funkwerk reserves any and all rights to all of his depictions, plans, drawings, sketches, calculations and other technical documentation as well as cost estimates (hereinafter jointly referred to “Supplier’s Documentation”) until the conclusion of a contract, and beyond this without any time limitations in general any and all intellectual property rights embodied in this Supplier’s Documentation. Unless otherwise agreed upon the provisions of Sec. IV.4.1 shall apply correspondingly to the Supplier’s Documentation; thus, in particular, the Customer shall be obliged to keep Supplier’s Documentation confidential towards third parties and solely to make use of them for the execution of the contract with Funkwerk. In case that no contract is concluded between the parties Customer upon request by Funkwerk shall be obliged to return Supplier’s Documentation to Funkwerk. Any and all other or further rights by Funkwerk pursuant to Sec. III with regard to the delivered Software shall remain unaffected.

#### **3. Subject matter of contract / scope of delivery**

- 3.1 The scope of the delivery and service obligations of Funkwerk shall be determined by either the order confirmation issued, or the contract document agreed upon, as per Sec. I.2.2.
- 3.2 In case of any modifications of the Products or the Software of Funkwerk due to and in the course of the steadily technical advances after

conclusion of the contract Funkwerk shall be entitled to deliver also such technically modified versions unless, however, otherwise agreed upon in writing and provided that such modification is reasonable to the Customer taking by this the interests of both sides into account; in this respect, Funkwerk shall be entitled to deviate in particular from a specification including a system or performance specification, illustrations, plans, drawings, sketches, descriptions and specifications for colour, measure, weight and quality and other specification elements.

- 3.3 Any and all permissions required for the performance and operation of the deliveries shall be arranged for by the Customer on its own account. In case of any assistance rendered by Funkwerk, Customer shall reimburse Funkwerk for any costs and expenses incurred by Funkwerk by such assistance.

#### **4. Prices**

- 4.1 Unless otherwise agreed upon in writing, all prices for the delivery of Products shall be prices EXW (Incoterms 2020) Nuremberg (Germany) excluding packaging. For the delivery of Software, unless otherwise agreed upon in writing, in case of a delivery per data media, the prices shall cover the delivery DAP (Incoterms 2020) at the site of performance, or, in case of a delivery via electronic means, the provision for the download by the Customer and a corresponding announcement thereof to it, or in case of a delivery comprising the installation or implementation of the Software by Funkwerk, such installations or implementation works.
- 4.2 Any and all prices shall be net prices exclusive, if any, VAT.
- 4.3 Funkwerk reserves the right to adjust the prices appropriately in case of any cost reductions or increases after the conclusion of the agreement especially due to changes of labour costs, e.g. due to collective agreements, or changes of material prices. Upon Customer's request Funkwerk will prove the requirements of such changes.

#### **5. Terms of payment**

- 5.1 Unless otherwise agreed upon, the Customer shall make the payment of the total price as contractually agreed upon in instalments to Funkwerk as follows.
- a) 30 % upon conclusion of the contract,
  - b) (1) in case of the delivery of Products
    - (a) without the obligation to render additional services: 70 % upon the delivery including the handing-over
    - (b) including the obligation to render services
      - 30 % upon delivery
      - 30 % upon commissioning, and

- 10 % upon acceptance by the Customer.

(2) in case of the delivery of Software

- (a) without the obligation to provide the installation or implementation: 70 % upon delivery including the handing-over

- (b) including the obligation to provide the installation or implementation

- 30 % upon the provision for the download by the Customer and a corresponding notice thereof to it

- 30 % upon commissioning, and

- 10 % upon acceptance by the Customer.

- 5.2 Unless otherwise agreed upon, payment shall be made within a period of 14 days, this period starting with the date of issuance of the invoice; however, Funkwerk reserves the right to perform the delivery subject to concurrent condition with respect to the payment or subject to an advance payment.
- 5.3 The Customer shall not be entitled to a cash discount.
- 5.4 The Customer shall render all payments onto the account of Funkwerk free of charge for the latter.
- 5.5 Unless otherwise agreed upon, all payments shall be made in € (EUR).
- 5.6. The Customer shall only be entitled to offset or make use of its right of retention if the respective counterclaims are uncontested or legally established with final effect.

#### **6. Time of delivery / delays**

- 6.1 Lead times for deliveries shall be non-binding unless expressly agreed upon in writing as binding.
- 6.2 Such binding lead times for deliveries must only be observed by Funkwerk if any and all documentation, necessary permits and releases, especially with respect to plans, all of it owed by the Customer are received by Funkwerk in time and if also the agreed terms of payment and all other obligations of Customer are fulfilled in time. Unless these conditions are fulfilled, any such lead times for deliveries set shall be prolonged appropriately.
- 6.3 In case of deliveries of Products without the obligation to render additional services, the lead times shall be deemed to be complied with if the Products have been dispatched or collected in the agreed lead time; in case of a delayed dispatch or collecting caused by the Customer, the set lead time shall be deemed to be complied with if readiness for the dispatch or the collection has been announced within the agreed lead time. The same shall apply to deliveries of Software per data media without an additional obligation to install or implement the Software into the system of the Customer. In case of deliveries of Software via electronic

- means (also without the obligation to provide the installation or implementation) the lead time shall be deemed to be complied with, if the provision for the download by the Customer as well as the corresponding announcement thereof to the Customer to has been effected in time.
- 6.4 If the non-compliance of the set lead time is due to Force Majeure including in particular but not limited to natural disasters, pandemics, mobilisation, war, riots or other violent conflicts, civil commotions, operational disruptions not being caused by Funkwerk due to at least negligence, or strikes or lock-outs, or sovereign acts, the lead time shall be prolonged appropriately.
- 6.5 In case of any delay of Funkwerk with a delivery due to at least negligence of Funkwerk, the Customer shall at the request of Funkwerk declare within an appropriate period of time whether or not Customer continues to demand the performance of the delivery or wishes to cancel the respective contract.
- 6.6 In case of a delay or an impossibility of the delivery due to, and caused by fault of, Funkwerk for whatsoever reason, any and all claims thereof for whatsoever damages, loss and other harm by the Customer shall be limited to claims and titles as stipulated in Sec. IV.3 of these General Conditions.
- 6.7 Funkwerk shall be entitled to perform the deliveries and services as well as the corresponding invoicing in portions, unless such partial performances are unreasonable to the Customer.

## **II. Special provisions on deliveries of Products by Funkwerk**

- 1. Scope of delivery / delivery / storage / transfer of risk transfer of risk upon Customer's delay / return of Products for other than warranty reasons**
- 1.1 Funkwerk will deliver the Products as contractually agreed upon. Any further obligations by Funkwerk with respect to the rendering also of additional services shall be subject to a corresponding specific agreement either in the contract or otherwise.
- 1.2 Unless explicitly otherwise agreed upon, the deliveries of Products shall be made EXW (Incoterms 2020) Nuremberg (Germany).
- 1.3 At the Customer's request and expenses, Funkwerk will arrange insurance coverage for the deliveries against the usual risks of transport.
- 1.4 Funkwerk shall not to have take-back transport and other packaging material as per the statutory regulation on packaging ("Verpackungsverordnung"). Accordingly, the Customer shall arrange for the disposal of the packaging material at its own responsibility and expenses.

- 1.5 In case of any delay of more than one month of the dispatch or the collection due to the Customer's request or fault, such period starting with the announcement for readiness, Funkwerk provided that he has arranged for a storage of these Products, shall be entitled to claim storage charges of 0.5 % of the purchase price of the delivery for every commenced month from Customer, limited, however, to a total of 5.00 % of the purchase price. However, parties by this are not bound to assert higher or lower storage charges.
- 1.6 Any storage as per Sec. II.1.5 is arranged by Funkwerk at the exclusive risk of the Customer, such transfer of risk taking place already upon the announcement of readiness for the dispatch or collection as per Sec. I.6.3.
- 1.7 In case of the returning of repaired Products, or the delivery of spare parts Funkwerk shall be entitled to charge a reasonable flat rate fee for the shipping and packaging costs in addition to the price for the delivery unless, however, such fees are not covered by a justified warranty claim.

## **2. Take-back / disposal of WEEE equipment**

- 2.1 Unless otherwise compulsory stipulated by the Directive 2012/19/EU („WEEE-Directive“) and its transposition into applicable national law, the Customer hereby accepts responsibility and costs for the take-back and disposal of Funkwerk's end-of-life Products, thereby indemnifying Funkwerk from his obligations in accordance with Sec. 16 (2) of the German Electrical and Electronic Equipment Act ("ElektroG" and from any third-party claims arising out of or in connections therewith.
- 2.2 The Customer shall contractually commit third-parties, to whom it distributes Funkwerk's Products, to duly dispose of those Products at the end of their life in accordance with the legal provisions at the third parties' own expense and to ensure that similar obligations will be imposed by such third parties on the respective follow-up customer in case the Products are re-distributed again. If Customer fails to contractually commit third parties to whom it distributes Funkwerk's Products to accept the obligations for their disposal and to commit follow-up customers in the distribution chain, the obligation for the take-back and disposal of the end-of-life Products according to the legal provisions shall remain with, and be fulfilled by, the Customer.
- 2.3 Funkwerk's claim to have his obligations under the WEEE regulations and applicable national law assumed by the Customer shall expire at the earliest two years after the respective Product has finally put out of service. The two-year term

for expiry suspension shall start, at the earliest, upon receipt by Funkwerk of a written

### **3. Retention of title**

- 3.1 Funkwerk retains ownership on any Products delivered until each and every account and claim against the Customer to which Funkwerk is entitled under the business relationship has been duly satisfied (such Product hereinafter referred to as “Product subject to Retention of Title”). The Customer shall be obliged to treat the Products subject to Retention of Title carefully and shall undertake to effect a reinstatement value insurance for the Products against damages caused by fire, water or theft at its own expense.
- 3.2 The Customer shall be entitled to resell and to use the Products subject to Retention of Title within the normal course of Customer’s business, provided that Customer is not in default of payment; furthermore, Customer for the duration of the retention of title may not pledge said Products or assign them as a security. The Customer hereby assigns to Funkwerk as security any and all claims arising from the resale of or any other legal basis connected to the Products (including, but not limited to claims arising from insurance contracts or on grounds of tortuous acts); Funkwerk hereby accepts the assignment which shall also include any balance claims of current accounts.  
Funkwerk hereby revocably authorizes the Customer to collect any of such assigned claims on the Customer’s own behalf and for its own account; Funkwerk reserves the right to revoke this authorization which applies in particular if the Customer does not fulfil its payment obligations.  
The Customer shall not be entitled to assign such claims, including an assignment for the purpose of collecting the claims by way of factoring.
- 3.3 Any processing and/or transforming of the Products subject to Retention of Title shall take place on the sole behalf of Funkwerk. If said Products are processed so as to form a new product together with goods or items which do not belong to Funkwerk, Funkwerk shall acquire joint ownership in such new products in proportion of the value of the Products subject to Retention of Title (amount of invoice including VAT) to the total value of the other items used (the point of time at which the event occurred is decisive here). The terms under this entire Sec. II.3 applicable to the Products subject to Retention of Title shall apply analogously to the items arising from such processing.
- 3.4 If the Products subject to Retention of Title have been intermixed or mingled with other

items which do not belong to Funkwerk, Funkwerk shall acquire joint ownership in such new products in proportion of the value of the retained goods (amount of invoice including VAT) to the total value of the other items used at the time of intermixing or mingling. If the Products subject to Retention of Title have been combined in such a way, that the item belonging to the Customer is regarded as the main constituent it shall be agreed that Customer shall assign the proportionate ownership to Funkwerk.

- 3.5 It shall be the Customer’s secondary contractual duty to store the products underlying the Funkwerk’s ownership or joint ownership free of any costs and charges for Funkwerk.
- 3.6 Claims against third parties arising from a combination of the Products subject to Retention of Title with a plot of land shall be also assigned to the Funkwerk as security for Funkwerk’s claims mentioned in Sec. II.3.1.
- 3.7 On Funkwerk’s request, the Customer shall inform Funkwerk immediately in writing to whom Customer sold the products underlying Funkwerk’s ownership or joint ownership and which claims may result from the resale, as well as provide Funkwerk at its own expense with an officially authenticated document stipulating the assignment of the claims.
- 3.8 The Customer shall be not allowed to dispose otherwise of the Products subject to Retention of Title or products underlying Funkwerk’s joint ownership. Customer shall inform Funkwerk forthwith of any seizure or other act of intervention by third parties. Customer shall be obliged to reimburse Funkwerk for all costs related to the recovery by third parties of the Products subject to Retention of Title and the claims.
- 3.9 In the event of the Customer’s delay with payment or of a breach of essential contractual obligations both of it due to at least negligence, Funkwerk reserves the right to claim restitution of the products underlying Funkwerk’s sole or joint ownership. The assertion of such claim shall only be considered rescission of the contract if this is expressly declared by Funkwerk.
- 3.10 In case of a court order to institute bankruptcy proceedings, the refusal of a court to institute such proceedings due to lack of sufficient assets or a justified petition in bankruptcy, Funkwerk shall be entitled to rescind the contract and to demand instant restitution of his Products.
- 3.11 If the combined value of Funkwerk’s security interest exceeds the value of all secured claims by more than 10 %, Funkwerk shall release a corresponding article or item of the security interest if so requested by the Customer.



#### **4. Services in connection to the delivery of Products**

- 4.1 Unless otherwise agreed upon, Funkwerk shall charge time exposures for any and all services in form of erection, assembly and maintenance services in connection to the delivery of Products (such services hereinafter referred to as "Services") on the basis of his established valid rates. Travelling or idle times shall be charged as working time.

Travelling costs and daily allowances incurred by Funkwerk shall be charged separately.

Funkwerk will calculate travelling costs on the basis of costs for public transport. However, Funkwerk shall also be entitled to in his discretion arrange the transport also by way of company cars; in this case, Funkwerk will charge 1.50 € per passed kilometer. Expenditures for transport and storage of luggage and tools as well as communication and messenger services and mailing etc. shall be charged separately in accordance to the costs incurred.

The regular working hours of Funkwerk (workin day only) are as follows.

- Monday until Thursday: 8:00 a.m. until 5.00 p.m.;

- Friday: 8:00 a.m. until 1.00 p.m.

The following general rates per hour shall apply:

- Network consultant: 199.00 €;

- Systems engineer for the network, support and training: 160.00 €;

- Design engineer: 115.00 €;

- Technician for network: 110.00 €;

- Technician for services: 110.00 €.

Overtime, night work and weekend and public holiday working will be additionally charged as follows:

- Overtime (all times outside of regular working time on working days): 50 % surcharge;

- Night work on working days between 8.00 p.m. until 6.00 a.m. (where applicable, in lieu of the overtime surcharge): 60 % surcharge;

- Work on Saturdays and Sundays: 60 % surcharge;

- Work on public holidays or on days which are public holidays at the branch office of Funkwerk being in charge of the business, and on the 24<sup>th</sup> December and 31<sup>st</sup> December (for all such days from 0.00 a.m. until 24.00 p.m.): 100 % surcharge.

Furthermore, in case of works to be performed under substantial impact of dust, grime, fumes, vapour, heat and noise not caused by an at least negligent act or omission by Funkwerk, Funkwerk shall be entitled to, in addition to any other surcharges, charge: 15 % surcharge.

- 4.2 The daily allowance for every accrued and full calendar day shall be 26.50 €. In addition to this daily allow-ance, Funkwerk will charge the

costs incurred for accommodation (without breakfast). The accommodation shall be in a single room of an adequate hotel or in a private lodging.

Costs for the material used for erection, assembly and maintenance will be charged by Funkwerk according to costs accrued by consumption of such material.

- 4.3 The Customer shall attest the personal of Funkwerk the times for work and travel as well as the idle times, and the performance of the works by way of the records submitted by Funkwerk. In case that the Customer refuses such attesting or in case that Funkwerk is unable to receive such attests for other reasons, any and all invoicing shall be made on the basis of the records of Funkwerk.

- 4.4 Unless otherwise agreed upon, the Customer shall arrange for and make available respectively deliver at its expense and in due time the following:

The required back staff, in particular but not limited to bricklayers, carpenters, locksmiths and other skilled staff for the erection and assembly, all in proper time and quantity; any and all earth, construction, bedding and scaffolding works; the required relocation of pipes and cable fanning with respect, in particular, but not limited to the erection and assembly to be performed by Funkwerk; the relocation of high-power lines to the control panel or the single device to be installed by Funkwerk; ancillary equipment for the transport of heavy objects; back staff, ladders, scaffolding and storage space in sufficient quantity and quality; in due time before the beginning of the erection and assembly works the required information about the electricity and telecommunication lines and pipes for gas and water or the alike, and all relevant static information thereto; heating, lighting, energy and water including the required ports; the required dry, lockable and theft-proved rooms for the safe keeping of the tools as well as lounges for the staff of Funkwerk; the protection of the site and material against any harmful effect of which ever nature; information on any dangers (e.g. danger of fire in rooms or of materials) which in particular can appear in connection with cutting, welding and soldering works, and the arrangement of all precautions (in particular but not limited to the arrangement of a fire-watch and material to extinguish fire); special protecting clothing for heavily working conditions in particular due to noxious vapours, gases, acids and fuel-laden air; also special protecting clothes or safety device in case that they are due to special conditions on site necessary but not customary in the particular trade; furthermore the information of the

staff of Funkwerk with respect to security rules and standards of relevance to the works to be performed by Funkwerk.

- 4.5 In case of a delay of the Services not caused by an at least negligent act or omission by Funkwerk, the Customer shall bear all additional accrued costs. Any and all newly set lead times for the performance of the Services are subject to written approval by Funkwerk.

## **5. Warranty / costs due to non-warranty matters**

- 5.1 Any and all warranty claims shall be subject to a limitation period of twelve months, such period starting with the transfer of risk. Such limitation period, however, shall not apply with respect to any claims on damages due to warranty liabilities in the case Funkwerk is compulsively liable for the damage by law either without fault, or in case of intention or gross negligence, or, in case of death or bodily injury or damage to health or breach of essential contractual obligations, all due to at least negligence; in such cases, the limitation periods pursuant to the legal provisions shall apply.
- 5.2 The Customer shall only be entitled to claim for defects if it in accordance with Sec. 377 German Commercial Code (“Handelsgesetzbuch”) has properly fulfilled its obligation to examine the Products and notified Funkwerk in writing of any defects within a period of 7 days and within this period prior to any installation or connection with another item.
- 5.3 Warranty claims shall be excluded in case of only insignificant deviations from the agreed quality or only minor impairment of use, natural wear and tear, and in case of damages arising after the transfer of risk due to faulty or at least negligent treatment or use, treatment or use against the instructions, excessive strain, unsuitable means of operation, improper construction works, inappropriate building ground, particular external influences not assumed under the contract or due to software neither provided by Funkwerk nor, in the case of third-party software, being authorized by Funkwerk. Furthermore, warranty claims including any recourse claims by it are also excluded in case that the Customer or a third party has modified the Products or has carried out or omitted maintenance works improperly or against the instructions of Funkwerk, or in case of lack of required maintenance at all. Funkwerk shall also not be liable for the quality or condition of the Products resulting from the design or material if such design or material has been determined by the Customer. Notwithstanding further exclusions of warranty claims, Customer shall also not be entitled to warranty claims if and insofar

Customer has remedied a defect by a third party not authorized by Funkwerk.

- 5.4 In the event of a justified warranty case Funkwerk shall be entitled to remedy the defect in its sole discretion by either repair or delivery of a substitute Product.
- 5.5 In case that Funkwerk fails to remedy the defect, the Customer shall be entitled in its choice to a reduction of the purchase price or a cancellation of the contract. Funkwerk shall be deemed to have failed to remedy the defect in case that two such attempts have not been successful unless with regard to the contractual object further attempts are suitable and reasonable to the Customer.
- 5.6 Any and all claims raised by Customer for expenses required within the process of remedying of defects, in particular costs of transport, travelling, labour and material, shall be excluded, if such costs have arisen on the ground that the Products after delivery have been transferred to a place different from the place of business of the Customer or, if any, place of installation unless such transfer corresponds to the Product’s intended use.
- 5.7 Any and all warranty claims on damages shall be restricted to direct damages, and, within this limitation, be limited further to an amount equal to the remuneration that is attributable to the defective delivery or service (or only portions thereof, if applicable). Any further warranty claims against Funkwerk including, in particular, any claims on indirect or consequential damages, in particular again loss of profit, shall be excluded.

The above exemptions from, and limitations of, liability do not apply where liability is compulsory by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health or breach of essential contractual obligations due to at least negligence. Notwithstanding the aforesaid, however, the liability for breaching essential duties under a contract shall be limited to the typically foreseeable damage, unless Funkwerk is compulsively liable for the damage by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health due to at least negligence. This provision shall not imply a change in the burden of proof to the detriment of the Customer.

- 5.8 Funkwerk shall be entitled to a remuneration according to his usual fees in case that he has rendered services within the course of the examination and remedy of defects which turn out to be not being covered by his warranty obligations which shall apply in particular that such

defect cannot be detected at all or is not attributable to Funkwerk.

### **III. Special provisions on deliveries of Software by Funkwerk**

#### **1. Scope of delivery / providing of the Software**

- 1.1 Funkwerk will deliver the Software as contractually agreed upon. The term Software pursuant to these General Conditions and, in particular, to the provisions of this Sec. III shall comprise also upgrades or updates unless specific reference is made to upgrades or updates as such.
- 1.2 Any and all obligations by Funkwerk with respect to an installation or implementation of the Software into the system of the Customer shall be subject to a corresponding specific explicit agreement either in the contract or otherwise.
- 1.3 The Software will be delivered as follows.  
In case that Funkwerk has no obligation to install or implement the Software Funkwerk will provide the Software via electronic means in such a way that the Software is made available for the download by the Customer and a corresponding notice is sent to the latter by Funkwerk. Alternatively, and subject to a specific agreement, the Software may be delivered per data media; in such a case Funkwerk will deliver the data media containing the Software DAP (Incoterms 2020) at the point of use.  
In case that Funkwerk is obliged to also install or implement the Software, Funkwerk in his sole discretion may either provide the Software by making the Software available for the download by the Customer or by delivering a data media DAP (Incoterms 2020) at the place of installation or implementation.
- 1.4 In addition to the Software, Funkwerk will provide the Customer also with an application documentation. Unless otherwise agreed upon, the delivery of the application documentation will be made together and in the same manner as the delivery of the Software.

#### **2. Granted rights of use of the Software / further provisions**

- 2.1 Funkwerk hereby grants to Customer a non-exclusive perpetual right to use the delivered Software limited, however to an use within the agreed scope and permitted territory (such territory hereinafter referred to as "Destined Territory") as well as to an only single or multiple use as contractually agreed upon; in case of a lack of such Destined Territory, the permitted territory shall be deemed to be the territory in which the Customer has its place or, if any, its principal place, of business. Unless otherwise agreed upon, any other use, in particular any such not

permitted use for its own purpose, shall not be allowed.

- 2.2 The duplication of the Software shall be permitted solely to the extent which is necessary for the contractually agreed use. In addition, the Customer shall be entitled to make backup copies of the Software in accordance with the state-of-the-art technology to the extent necessary. In case that such backup copies are made on data media, these data media shall be marked as such and shall bear the copyright notice of the original data media. In case of a transfer of the Software pursuant to Sec. III.5, the Customer shall be entitled to copy the Software delivered by Funkwerk by electronic means for the purpose of transferring it onto a data media.
- 2.3 The Customer shall only be entitled to make changes, extensions and other modifications to the Software within the meaning of Sec. 69c No. 2 of the German Copyright Act (Urhebergesetz (hereinafter referred to as "UrhG")) if and to the extent Funkwerk has given its prior consent at least in text form; Funkwerk thereby, in particular, reserves the right to make such changes, extensions or other modifications to the Software by itself. The respective rights of Funkwerk and Customer with regard to any warranty case shall remain unaffected thereby.
- 2.4 The Customer shall be entitled to decompile the Software within the limits of Sec. 69e of the German Copyright Act (UrhG) only under the condition that Funkwerk has not complied with a reasonable deadline set by the Customer in writing to provide necessary data and information for the purpose of furnishing interoperability with other hardware and software.
- 2.5 If Funkwerk provides the Customer with supplements or new editions of the previously delivered Software (the latter hereinafter referred to as "Original Software") due to warranty reasons or within the scope of maintenance, or in the case of updates or upgrades, such supplements or replacements shall also be subject to the provisions of these General Terms. Furthermore, in the event that a new version is provided, the Customer's rights to the Original Software shall end as soon as the Customer uses the new software productively, even without Funkwerk's express request to return the Original Software; Funkwerk shall, however, grant the Customer a transitional period of three months during which both versions of the software may be used side by side. The Customer's right to transfer the software (irrespective of the version) to third parties pursuant to Sec. III.5 shall remain unaffected.
- 2.6 In the event of a cancellation of the contract for the delivery of the Software or any other termination thereof, irrespective of the reason, the

Customer shall be obliged to discontinue the use of the Software at the end of the contract and to delete the Software installed or implemented into its systems and to return all data media containing the Software which have been handed over to it by Funkwerk.

- 2.7 With regard to the application documentation, any reproduction or modification thereof shall not be permitted unless such documentation is integrated into the Software and the Software is reproduced in accordance with and within the scope of Sec. III.2.2 or adapted in accordance with Sec. III.2.3.
- 2.8 Funkwerk shall not be obliged to disclose the source code of the Software.

### **3. Installation / implementation / training / maintenance**

- 3.1 The installation instructions described in the application documentation shall apply to the installation of the Software, including the necessary prerequisites therefore, including in particular the specifications of the hardware and software environment required for the installation of the Software and to be provided by Customer accordingly.

In case that Funkwerk has assumed also the installation of the Software, Funkwerk will perform the installation on the basis of the price lists valid at the time, unless otherwise agreed upon.

- 3.2 In case that Funkwerk has assumed also the implementation of the Software, Funkwerk will perform the implementation on the basis of the price lists valid at the time unless otherwise agreed upon.
- 3.3 Subject to and on the basis of a separate agreement, Funkwerk shall provide training and separate instruction.
- 3.4 Furthermore, subject to and on the basis of a separate agreement, Funkwerk shall assume the maintenance of the Software. In case of such an agreement, the maintenance work shall commence upon delivery of the software, unless otherwise agreed upon.

### **4. Rights to and protection of Software / documentation of use**

- 4.1 Unless the Customer has been expressly granted rights by contract, Funkwerk shall be exclusively entitled to all rights to the Software (comprising all copies made by the Customer), in particular the copyright, as well as the rights to or in inventions and technical property rights. This shall also apply to any processing of the Software by Funkwerk.
- 4.2 The Customer shall carefully store the Software provided in order to exclude any misuse. Customer shall not make the Software (whether unchanged or modified) available to third parties without Funkwerk's prior written consent. Third parties shall not include the Customer's employees or other persons commissioned by the Customer or otherwise involved. The provisions of Sec. III.5 shall remain unaffected.

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- 4.3 The Customer shall not be permitted to modify or remove any copyright notices, marks and/or control numbers or marks of Funkwerk. If Customer modifies or processes the Software, any such markings shall be included in the modified version of the Software.
- 4.4 The Customer shall keep records of any copies of the Software made by it on data media in accordance with the contract and their whereabouts and shall provide Funkwerk with information thereof as well as access thereto upon his request.
- 4.5 In case of a transfer of data media, memory or other hardware on which the Software supplied by Funkwerk is stored (in whole or in part, unchanged or modified) by the Customer to third parties without a transfer pursuant to Sec. III.5 or if it relinquishes direct possession thereof, it shall ensure that the stored Software is completely and permanently deleted beforehand.

### **5. Transfer of Software**

- 5.1 The Customer may only transfer the Software to a third party entirely and with complete and final abandonment of its own use of the Software. The temporary or partial transfer of use to third parties against payment or free of charge is not allowed, regardless of whether the software is transferred by means of data media or by electronic means.
- 5.2 The transfer of the Software shall be subject to Funkwerk's written consent. Such consent shall be granted if the Customer assures Funkwerk in writing that it has passed on all original copies of the software to the third party and has deleted all copies made by itself and that the third party declares in writing its consent to Funkwerk to the terms and conditions of use and transfer agreed upon herein.

### **6 Usability of the Software for the Customer / ensuring functionality / cooperation and information duties of the customer / access to Funkwerk**

- 6.1 The Customer shall have informed itself about the essential functional features of the software and shall bear the risk as to whether the software meets its requirements and needs; in case of any questions or doubt he shall seek advice thereto from Funkwerk or from competent



- tent third parties prior to the conclusion of the contract.
- 6.2 The Customer shall be solely responsible for setting up a functional and sufficiently dimensioned hardware and software environment for the Software in the Customer's system in particular taking into account the additional load caused by the Software.
- 6.3 The Customer shall thoroughly test the Software for freedom from defects and for usability in its system prior to its use, in particular taking into account the existing hardware and software configuration. This shall also apply to software which it receives in the course of rectification and maintenance.
- 6.4 The Customer shall observe the instructions given by Funkwerk for the installation and operation of the Software.
- 6.5 Insofar as Funkwerk is responsible for further performance obligations in addition to the provision of the Software, including, among others, the installation, the implementation, the maintenance as well as the search for and elimination of malfunctions, the Customer shall cooperate to the necessary extent free of charge by providing Funkwerk with personnel including the responsible employees, work rooms, hardware and software, data and telecommunication facilities upon Funkwerk's request. At the same time, Customer shall grant Funkwerk access to the Software at Funkwerk's discretion by means of electronic access or directly on site.
- 6.6 Funkwerk shall be entitled to check at any time whether the Software is being used in accordance with the contractual provisions. For this purpose, Funkwerk shall have the right to request information from Customer, in particular regarding the period and scope of use of the Software, and to inspect Customer's books, documents and other records as well as Customer's hardware and software. For this purpose, Funkwerk shall be granted access to the Customer's business premises during normal business hours as well as access to the Software (at Funkwerk's discretion by means of electronic access or directly on site). This right shall continue to exist even after termination of the contract pursuant to Sec. III.2.6 and after transfer of the Software pursuant to Sec. III.5 for a period of 3 years, calculated from the end of the contract or the transfer.
- 6.7 The Customer shall take reasonable precautions in the event that the Software does not work properly in whole or in part (e.g. by means of daily data backups, fault diagnosis and regular checking of the data processing results).
- 6.8 Unless the Customer expressly indicates otherwise in advance, Funkwerk may assume that all data of the Customer with which it may come into contact are backed up.
- 6.9 The Customer shall bear any disadvantages and additional costs arising from a breach of these obligations pursuant to Sec. III.6.1 to 6.8 whereby any further or other contractual and statutory obligations of the Customer shall remain unaffected thereby.
- 7. Liability for defects / costs incurred outside remedy of defects**
- 7.1 Funkwerk warrants the agreed quality of the Software (hereinafter referred to as "Defects as to Quality" or "Liability for Defects as to Quality") and that the use of the Software by the Customer to the extent contractually agreed does not infringe any rights of third parties (hereinafter referred to as "Defects as to Title" or "Liability for Defects as to Title") (Defects as to Quality and Defects as to Title hereinafter jointly referred to as "Defects" and the liability arising therefrom jointly referred to as "Liability for Defects").
- 7.2 The Customer may only claim for Defects if it in accordance with Sec. 377 German Commercial Code ("Handelsgesetzbuch") has properly fulfilled its obligation to examine the Software and notified Funkwerk in writing of any defects within a period of 7 days.
- 7.3 With respect to the Liability for Defects of Title, furthermore the provisions of Sec. IV.2 and, in addition, the legal provisions shall apply.
- 7.4 With respect to the Liability for Defects of Quality, furthermore the following provisions and, in addition, the legal provisions shall apply.
- a) Warranty claims shall be excluded in case of only insignificant deviations from the agreed quality or only minor impairment of usefulness, and in case of damages arising after the transfer of risk due to faulty or at least negligent treatment or use, treatment or use against the instructions, excessive strain, combination with products other than those supplied or authorized by Funkwerk, unsuitable or insufficient compatible hardware or software of third parties not supplied and authorized by Funkwerk including corresponding hardware and software security systems, or due to special external influences, in particular due to access by third parties, including unauthorized access by third parties such as hacking.
- Furthermore, warranty claims including any recourse claims by it are also excluded in case that the Customer or a third party has made modifications or carried out or omitted maintenance works improperly or against the instructions of Funkwerk, on in case of lack of required maintenance at all. Funkwerk shall also

not be liable if and insofar Customer has remedied a defect by a third party not authorized by Funkwerk.

b) In the event of a justified warranty case Funkwerk shall be entitled to remedy the defect in its sole discretion by either repair or delivery of as substitute Software. If Funkwerk chooses to repair a defect, the repair shall also be deemed to have been duly performed if Funkwerk shows the Customer reasonable possibilities of avoiding the effects of the defect.

In case that Funkwerk fails to remedy the defect, the Customer shall be entitled in its choice to a reduction of the purchase price or a cancellation of the contract. Funkwerk shall be deemed to have failed to remedy the defect in case that two such attempts have not been successful unless with regard to the contractual object further attempts are suitable and reasonable to the Customer.

d) Any and all claims raised by Customer for expenses required within the process of remedying of defects, in particular costs of travelling and labour, shall be excluded, if such costs have arisen on the ground that the Software after delivery has been supplied or transferred to a place different from the place of delivery unless such supply or transfer corresponds to the Software's intended use.

e) Any and all warranty claims on damages shall be restricted to direct damages, and, within this limitation, be limited further to an amount equal to the remuneration that is attributable to the defective delivery (or only portions thereof, if applicable). Any further warranty claims against Funkwerk including, in particular, any claims on indirect or consequential damages, in particular again loss of profit, shall be excluded. The above exemptions from, and limitations of, liability do not apply where liability is compulsory by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health or breach of essential contractual obligations due to at least negligence. Notwithstanding the aforesaid, however, the liability for breaching essential duties under a contract shall be limited to the typically foreseeable damage, unless Funkwerk is compulsively liable for the damage by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health due to at least negligence. This provision shall not imply a change in the burden of proof to the detriment of the Customer.

f) Any and all warranty claims on Defects as to Quality shall be subject to a limitation period of twelve months, such period starting with the transfer of risk. Such limitation period, howev-

er, shall not apply with respect to any claims on damages due to warranty liabilities in the case Funkwerk is compulsively liable for the damage by law either without fault, or in case of intention or gross negligence, or, in case of death or bodily injury or damage to health or breach of essential contractual obligations, all due to at least negligence; in such cases, the limitation periods pursuant to the legal provisions shall apply.

7.5 Funkwerk shall be entitled to a remuneration according to his usual fees in case that he has rendered services within the course of the examination and remedy of defects which turn out to be not being covered by his warranty obligations which shall apply in particular that such defect cannot be detected at all or is not attributable to Funkwerk. In addition, Funkwerk shall be remunerated for any additional expenses incurred due to the Customer's failure to duly comply with its obligations under Sec. III.6.

7.6 For any installation or implementation services commissioned with regard to Software to be supplied by Funkwerk, the provisions of the liability for Liability for Defects as to Quality shall apply accordingly, with the provision that the limitation period shall commence upon acceptance.

#### **IV. Final provisions**

##### **1. Obligation to take deliveries**

The Customer may not refuse receipt of deliveries on account of only minor defects.

##### **2. Intellectual property rights and copyrights**

2.1 Unless otherwise agreed upon, Funkwerk shall be obliged to perform the deliveries of Products free of third parties' intellectual property rights and copyrights (hereinafter referred to as Proprietary Rights) solely in the country of the place of delivery and, in the case of the delivery of Software, free of Proprietary Rights in the country of the place of destination. Thus, any and all Liability for Defects including in particular but not limited to a Liability for Defects as to Title shall be limited with respect to the delivery of Products to the freedom of third parties' Proprietary Rights in the country of the place of delivery and with respect to the delivery of Software in the country of the place of destination.

Even in such case, however, Funkwerk shall not be liable for any claims due to infringement of any third party's Proprietary Rights if the Customer or any legal entity directly or indirectly owned or controlled by Customer through capital or voting shares, holds, or held, title to the Proprietary Rights.

- 2.2 The Customer shall be obliged to immediately inform Funkwerk of any (alleged) infringement of Proprietary Rights of third parties and respective risks becoming known to him and to grant Funkwerk, as far as possible, upon his request the right of action both for judicial and extra-judicial cases in order to refuse any and all claims. In case of any proceedings against the Customer, the Customer shall be obliged to coordinate with Funkwerk and not to take legal action comprising in particular but not limited to acknowledgments or settlements without the consent of Funkwerk.
- 2.3 In case of an infringement of third party's Proprietary Rights, Funkwerk shall at his sole discretion be entitled to either obtain a right to use the delivery, or modify such delivery in such a way that it does not infringe these Proprietary Rights anymore, or to replace such delivery by a delivery which does not infringe these Proprietary Rights anymore. In case of such replacement of Software the Customer shall be obliged to use the Software provided by Funkwerk as replacement if and insofar the new Software covers the contractually agreed scope of functions. In case that Funkwerk cannot exercise such right at adequate conditions or within a reasonable time, the Customer provided, however, that it has enabled Funkwerk to remedy the infringement of the Proprietary Rights, shall be entitled to exercise the statutory rights of rescission. Correspondingly to this, and subject to the fulfilment of the above conditions, also Funkwerk shall be entitled to withdraw from the contract.
- 2.4 In the event that the Customer ceases to use the delivery due to an (alleged) infringement of third party's Proprietary Rights in order to reduce damages or for any other substantial reason, Customer shall be obliged to advise the third party asserting the infringement of the Proprietary Rights that the ceasing of the use shall not be deemed as acknowledgment of the infringement of Proprietary Rights.
- 2.5 Any and all Customer's claims with respect to an infringement of third parties Proprietary Rights shall be excluded insofar as the Customer itself is liable for such infringement of Proprietary Rights. Furthermore, any Customer's claims shall be excluded in the case that the infringement of Proprietary Rights of a third party was caused by a specific instruction by Customer or by any use which was unforeseeable for Funkwerk, or due to a modification effected or joint use with other deliveries not provided by Funkwerk, by Customer.
- 2.6 Any and all warranty claims on damages shall be restricted to direct damages, and, within this

limitation, be limited further to an amount equal to the remuneration that is attributable to the defective delivery (or only portions thereof, if applicable). Any further warranty claims against Funkwerk including, in particular, any claims on indirect or consequential damages, in particular again loss of profit, shall be excluded.

The above exemptions from, and limitations of, liability do not apply where liability is compulsory by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health or breach of essential contractual obligations due to at least negligence. Notwithstanding the aforesaid, however, the liability for breaching essential duties under a contract shall be limited to the typically foreseeable damage, unless Funkwerk is compulsively liable for the damage by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health due to at least negligence. This provision shall not imply a change in the burden of proof to the detriment of the Customer.

- 2.7 Any and all claims with respect to the infringement of Proprietary Rights of third parties shall be subject to as limitation period of twelve months. In case of the delivery of Products, such period shall start with the transfer of the risk. In the case of the delivery of Software per data media, such period shall likewise begin with the transfer of risk and in the case of the delivery via electronic means upon availability for the download by, and Funkwerk's sending of a corresponding notice to, the Customer; in case that the delivery comprises an obligation to install or implement the Software this period shall start upon acceptance. Such limitation period, however, shall not apply with respect to any claims on damages due to a liability of Funkwerk by compulsory law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health due to at least negligence; in such cases, the limitation periods pursuant to the legal provisions shall apply.
- 2.8 Any and all further claims or other claims not stipulated in this Sec. IV 2.1 to 2.7 with respect to the infringement of Proprietary Rights of third parties shall be excluded, unless otherwise determined by compulsory law.

### **3. General liability**

- 3.1 Unless already determined in particular in Sec. II.5 and III.7 as well as IV.2, any and all claims for damages or expenses of the Customer against Funkwerk, irrespective of their legal grounds, in particular arising from faults upon the conclusion of contracts, breach of contractu-

al obligations or unlawful acts, shall be excluded.

- 3.2 The aforesaid does not apply where liability is compulsory by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health or breach of essential contractual obligations due to at least negligence. Notwithstanding the aforesaid, however, the liability for breaching essential duties under a contract shall be limited to the typically foreseeable damage, unless Funkwerk is compulsively liable for the damage by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health due to at least negligence. This provision shall not imply a change in the burden of proof to the detriment of the Customer.

#### **4. Secrecy / limited use**

- 4.1 The Customer shall be obliged to keep all specification including system and performance specifications, illustrations, plans, drawings, sketches and calculations and other technical documentations as well as the know-how and other technical information of Funkwerk strictly confidential and in particular not to disclose or otherwise make available to any third party, and only to make use of it within and for the duration of the respective contract. The obligation to secrecy and limited respective after termination or ceasing of the contract interdicted use shall continue to last and shall only cease if and insofar the technical knowledge embodied in these specifications including system and performance specifications, illustrations, plans, drawings, sketches and calculations and other technical documentations as well as the know-how has become generally known.  
Any and all further rights of Funkwerk pursuant to Sec. III with respect to the delivered Software shall remain unaffected by this.
- 4.2 The existence of the business and contractual relations with Funkwerk as well as all contractual terms and conditions as well as all related commercial and technical details and also all provided deliveries and their details shall be deemed business secrets of Funkwerk. The Customer shall not be entitled to disclose them or make them otherwise available to third parties without prior written approval by Funkwerk.

#### **5. Governing law / place of jurisdiction**

- 5.1 The law of Germany shall apply.
- 5.2 Place of jurisdiction for all disputes between Funkwerk and the Customer shall be Nuremberg (Germany). However, Funkwerk at his option shall also be entitled to institute legal proceedings to any other competent court.

#### **6. Miscellaneous**

- 6.1 Place of performance shall be the place of business of Funkwerk.
- 6.2 For the sake of good order Funkwerk herewith points out that he is bound with respect to the export of goods and services to the domestic and international statutory laws and regulations. Thus all deliveries to be rendered by Funkwerk are therefore subject to the condition that the relevant permits and licenses have been granted and also all other export requirements have been met.