

**Funkwerk IT Group**  
**General Conditions of Business, Supply and Payment**



**1. Scope of Application**

All sales, supplies and other services of companies of the Funkwerk IT Group to entrepreneurs shall exclusively be governed by the following Conditions unless otherwise agreed upon in each individual case. Any deviating conditions or counter-confirmations of the Customer shall be applicable only if, and to the extent that, we have given our express written consent.

**2. Offers and Acceptances, Scope of Delivery**

- 2.1 Our offers are subject to confirmation. An order shall be deemed to be accepted only if we have acknowledged acceptance in writing or if we have performed the services.
- 2.2 Any side agreements, express warranties and all other arrangements shall be effective only if expressly confirmed by us in writing.
- 2.3 Any reference to standards, similar technical rules, other technical specifications, descriptions and illustrations of the services in offers, sales literature and other documents shall be considered a description only and not an express warranty of certain characteristics of the services. Certain characteristics shall only be deemed expressly warranted by us if expressly confirmed in writing.
- 2.4 Call-ins of delivery as well as amendments and additions shall be in writing.
- 2.5 To the extent that no limits for deviations are expressly stated in the order confirmation, deviations within the scope of customary tolerances and relevant DIN-standards are admissible. For standardized products, tolerances admitted in the standard data sheets apply. We reserve the right of technical modifications, also with respect to the production process, if they do not have any negative impact and the Customer can be reasonably expected to accept them.

**3. Prices**

- 3.1 All prices are ex work (EXW INCOTERMS 2000) and are quoted subject to confirmation plus customary packaging, transport and VAT. Prices in offers are valid 30 days.
- 3.2 If after the coming into effect of the contract, freight or insurance costs or official levies and charges (e.g. customs, import and export duties) are newly introduced or raised, we shall be entitled to add such additional charges to the agreed price, even in case of freight paid or duty paid delivery.
- 3.3 We shall be entitled to charge an increase of the costs with respect to the sourcing of material, especially raw materials costs, labor costs and payroll fringe costs as well as energy costs in our prices if there is a period of at least 2 months between conclusion of the contract and delivery.

**4. Time of Delivery**

- 4.1 Delivery y dates and periods shall be agreed upon expressly and in writing in order to be binding. They shall begin when our confirmation of the order is received by the Customer, however not before all details of the performance of the orders are cleared up and all other preconditions to be fulfilled by the Customer, in particular documentation, permissions and releases are fulfilled and the agreed prepayment has been received. They are extended suitably, if the contract is changed or amended or if the Customer does not carry out his duties of cooperation in due time or manner.
- 4.2 It shall be allowed to effect deliveries prior to expiration of the delivery period. The delivery date shall be the day of our notice that we are ready for services. We are entitled to make partial services; these are invoiced and shall be paid separately.
- 4.3 If we are in default with delivery, the Customer shall be obliged to set a reasonable period of at least 4 weeks, unless it is legally superfluous. After the unsuccessful expiration of this respite period the Customer shall be entitled to withdraw from the contract, if and to the extent that that services have not been declared ready. Any claims for damages and reimbursement of expenses irrespective of the reason therefore may be asserted in accordance with the provisions set out in Sec. 11 only.
- 4.4 We shall not be in default as long as the Customer is in default with the performance of any of his obligations towards us, including obligations arising out of any other contracts.

**5. Reservation of self-supply, force majeure and other obstacles**

- 5.1 In case of non-delivery y, incorrect or delayed delivery y or non-performance, incorrect or delayed performance of any services by our suppliers for reasons beyond our responsibility or in any event of force majeure, we shall be entitled to delay the service for the period of such obstruction or withdraw from the contract, either in whole or in part, with respect to the part yet outstanding. Force majeure shall also be strikes, lock outs, administrative orders and actions, shortage of energy and raw material, shortage of transport capacity, business obstacles beyond our responsibility and any other obstacles that, from an objective point of view, have not been caused by our fault. The above provisions shall also apply if the aforementioned circumstances should arise after we were in default.
- 5.2 If a binding delivery date or period is exceeded because of an event as described in Sec. 5.1 the Customer may require us to declare within a period of 2 weeks whether we want to withdraw from the contract or perform service within a reasonable respite period. If we do not make a declaration, the Customer shall be entitled to withdraw from the part of the contract yet outstanding.

**6. Dispatch, passing of risk**

- 6.1 he goods are dispatched by us without insurance. We cover transportation insurance only on Customer's request at his costs. Upon our request, packaging material and cargo means shall be returned immediately freight free; they are credited with their value of re-use. We reserve the right of choosing the way and the means of transportation. Transport damages shall immediately be notified on the delivery note and shall be acknowledged by the freight carrier or in the case of transportation by rail or mail by the railway company or post office in order to assert claims for damages.
- 6.2 Risk shall pass to the Customer upon delivery of the goods.
- 6.3 Any goods reported ready and due for dispatch have to be called by the customer without undue delay. If goods ready for dispatch are not called and accepted without undue delay, we shall be entitled at our discretion either to dispatch the goods or to stock them at customer's risk and expense.
- 6.4 It is generally excluded to return any ordered goods which have been duly delivered.

**7. Defect Notification**

The Customer or the consignee designated by Customer shall inspect the goods immediately upon receipt and, if necessary, check by way of sample-processing whether they are suitable for the intended use. Open defects—including the absence of any characteristics expressly warranted—shall be immediately notified, but at the latest within a period of 5 days from the receipt of the goods; any hidden defects shall be notified in writing immediately upon their detection, but at the latest within a period of 5 days upon detection. If the Customer refrains from making such notification in due form and time, the goods shall be deemed to have been approved of. The date of our receipt of the notification shall be decisive for the observance of the pre-scribed period.

**8. Warranty**

- 8.1 If complaints of defects are justified, we shall, at our option, be obliged to re-performance by either replacing such defective goods by defect-free ones or by remedying the defects at no cost to the customer. The parts complained about shall become our property. We shall be entitled to refuse re-performance pursuant to the statutory provisions. If complaints of defects are not justified we shall be entitled to invoice all costs incurred herewith to the customer.
- 8.2 If we do not comply with the obligation to re-performance, the Customer may, at his option, either withdraw from the contract, or reduce the purchase price, after he has set a reasonable respite period to us which has expired, unless such respite period is legally superfluous. In case of a withdrawal from the contract the Customer shall be liable for deterioration, destruction and untaken utilisation not only for the own reasonable diligence, but for every negligence.
- 8.3 The Customer shall give us the time and opportunity required for the detection of the default and the necessary re-performance. Upon our request, rejected goods shall be resent to us.
- 8.4 Any other claims for damages and reimbursement of expenses of the Customer because of, or in connection with, defects or consequential damages based on defects, irrespective of their legal basis, shall exist in accordance with the provisions laid down in Sec. 11 only. Also in this case, we shall, however, be liable for the typical and foreseeable damage only.
- 8.5 Our warranty obligation shall not exist if the services are defect-free, in particular if defects are caused by disregard of operating, maintenance or installation instructions, improper handling, defective or negligent handling, natural wear and tear, interventions by the Customer or third parties in the delivered goods or the use of third party spare parts.
- 8.6 Any warranty claims against us shall be barred after the expiry of 12 months after delivery resp. acceptance.
- 8.7 In case of malicious concealment of a defect or the assumption of an express warranty of certain characteristics of the goods any claims of the Customer shall exclusively be subject to the statutory provisions.

**9. Terms of Payment**

- 9.1 Services shall be payable not later than upon the due date of the invoice, postage and any other charges paid, or in the absence of any such invoice, within 30 days without deduction. The date of payment shall be the date when the money is received by us or credited to our account.
- 9.2 We shall accept offered bills of exchange only if expressly agreed upon.
- 9.3 If any of the terms of payment have not been observed or if we learn of circumstances which, in our reasonable business judgement, give rise to justified doubts regarding the Customer's creditworthiness, including any facts already existing upon formation of the contract but not known to us at that time, we shall be entitled, notwithstanding any further legal claims, to require prepayment or a reasonable security before making any further supplies or deliveries then still outstanding. After having set a reasonable respite period for providing any such securities, we may withdraw from the contract or claim for damages. In addition, we shall be entitled to prohibit any resale or processing of any goods in our property or joined property and demand their return to us or the granting of any joint ownership at customer's expense.
- 9.4 The Customer may exercise a right of retention or set-off only with respect to such counter-claims which have not been disputed or finally adjudged.

**10. Retention of Title**

- 10.1 We shall retain title to goods supplied by us until our claims out of the business relationship with the Customer have been duly settled, including all future claims out of subsequent contracts and all claims for recourse or for indemnification in connections with bills of exchange and cheques. This shall equally apply where any or all of our claims have been included in a current account and the balance has been drawn and is in our favour.

- 10.2 The Customer shall insure the goods under retention of title sufficiently, in particular against fire and theft. Any claims against the insurance company regarding the goods under retention of title shall hereby already be assigned to us in the amount of the value of the goods under retention of title.

- 10.3 Any treatment and processing of goods under retention of title shall be effected for us as the producer pursuant to Sec. 950 of the German Civil Code (BGB) without any obligation on our part, however. If our goods are processed or commingled with other objects not being in our property so that they become an integral part of a whole, we shall acquire ownership to the new object in proportion of the invoice value of our goods to the invoice values of the other projects processed or commingled. If our goods are commingled with other movable objects so that they become an integral part of a whole which has to be considered the main object, the Customer shall hereby already assign to us the ownership in the same proportion. The Customer shall keep the new object in our possession or co-possession free of any charge. The rights of co-ownership arising there from shall be deemed as goods under retention of title. Upon our request, the Customer shall be obliged, however, to give us the information required to safeguard our rights of ownership or co-ownership.

- 10.4 The Customer shall be entitled to resell the supplied goods in the ordinary course of business. Any other dispositions, pledging or granting of equitable lien, shall not be allowed to him. If the goods under retention of title are not immediately paid by the third buyer in case of any resale, the Customer in turn shall be obliged to resell the goods only under retention of title. The right to resale or to treatment and processing of the goods under retention of title shall not exist if the customer discontinues payment or is in default with any payment towards us.

- 10.5 The Customer hereby assigns to us all claims against the final consumer or against any third party, including any securities and ancillary rights, rising out of, or in connection with, any resale of the goods under retention of title. He shall not be entitled to enter into any agreement with his customers which might exclude or impair our rights in any manner whatsoever or eliminate the anticipatory assignment of the claim. In case of the sale of goods under retention of title with other objects, the claim against the third buyer is deemed assigned to us in the amount of the delivery price agreed between us and the Customer unless the amounts for the individual goods can be inferred from the invoice. In case of the sale of co-ownership shares as goods under retention of title, the claim out of the resale is deemed assigned in the amount of our co-ownership share.

- 10.6 The Customer shall remain entitled to collect the claim assignment to us until our revocation which shall be allowed at any time. Upon our request, he shall furnish any information and documents required for the collection of claims assigned, and immediately notify his customer of the assignment.

- 10.7 In the event that the claims arising out of the resale of the goods under retention of title are included by the Customer in a current account relationship with his customers, he hereby already now assigns to us any acknowledge or final balance to his favour in the amount equaling the aggregate sum of the claims from the resale of our goods under retention of title included in the current account relationship.

- 10.8 If the Customer has already assigned any claims out of the resale of the goods supplied or to be supplied by us to any third parties, in particular due to factoring with or without recourse, or if he has entered into any other agreements under which our present or future security rights pursuant to Sec. 10 might be impaired, he shall immediately notify us thereof. In case of factoring with recourse, we shall be entitled to withdraw from the contract and to demand the return of the goods already supplied; the same shall apply in case of factoring without recourse if the customer cannot freely dispose of the purchase price of the claim under the contract with the factor.

- 10.9 In case of breach of contract by the Customer, in particular in case of default with any payment, we may withdraw from the contract; in this case, the Customer shall be obliged to return such goods without any further action required by us. We shall be granted access to business premises of the customer at any time during normal business hours in order to determine the inventory of the goods supplied by us. The customer shall immediately inform us in writing of any actions by third parties against the goods under retention of title or against the claims assigned to us.

- 10.10 Should the value of the securities established in our favour by virtue of the foregoing provisions exceed our aggregate secured claims by more than 20%, we shall upon Customer's request release securities at our own choice to the extent of such excess.

**11. Exclusion and limitation of liability**

- 11.1 For any claims for damages and reimbursement of expenses directed against us and based upon breach of duty on the grounds of negligence, irrespective of the legal basis, we may be held liable in case of slight negligence only if major contractual duties are violated and, thus, the purpose of the contract is endangered. Otherwise, our liability for slight negligence shall be excluded.
- 11.2 In the event of liability under Sec. 11.1 hereof and strict liability, we shall be liable for the typical and foreseeable damage only. Claims for vain expenses by the Customer are excluded.
- 11.3 For damages based upon delay we shall be liable in case of slight negligence only up to 5% of the net order value.
- 11.4 The Customer shall decide on the use of our delivered goods and other services in his own responsibility. Unless we have confirmed in writing specific characteristics and suitability of the services for a purpose stipulated by contract, any advice concerning the technical application shall not be binding in any case. Such advice shall only explain to the Customer the best possible use of our services and not relieve him from his obligation to satisfy himself of the suitability of our services for the intended use by own examination. We shall also be liable pursuant to Sec. 11.1 to 11.3 for any advice given or not given.

- 11.5 The exclusion of liability under Sec. 11.1 to 11.4 shall also apply to the same extent with respect to our management, legal representatives, executives and non-executives, employees and other agents.

- 11.6 The provisions laid down in Sec. 11.1 to 11.5 shall not be applicable if we are held liable under the Product Liability Act, if we are held liable for the injury of life, body or health, in case of an express warranty of certain characteristics or in case of a malicious concealment of a defect.

- 11.7 All claims for damages and reimbursement of expenses against us are barred within 12 months following the delivery of the goods resp. acceptance, in the case of a tort liability following the knowledge or grossly negligent ignorance of the circumstances which justify the claim or of the person liable. This does not apply to in case of willful conduct and in cases pursuant of Sec. 11.6.

- 11.8 If the final consumer of the goods is a "Consumer" the legal stipulations apply in respect of the limitation of a possible claim of an recourse of the Customer against us.

**12. Property Rights, Right to Use Software**

- 12.1 The Customer shall use documents, drawings and constructive services rendered by us only for the designated purpose and shall not make them accessible towards third parties nor disclose them without our consent. Copies shall only be made for purposes of archive or as replacement. If copies show a note indicating the protection of copyright, the Customer shall place such note also on the copies.

- 12.2 We grant to the Customer a non-exclusive and non-transferable right to use programs rendered by us and the documentation belonging hereto and later amendments only for use in connection with the products, for which the software was delivered. The purchaser does not receive any rights in the source code of the software delivered under the terms of this contract.

- 12.3 Any change of the marks of our goods, in particular any removal of machine numbers or type plates, as well as any kind of special labelling, which might be considered an original sign of the Customer or a third party, are not allowed.

- 12.4 Our liability for the absence of property rights of third parties is excluded, if services have been delivered upon a specification prescribed by the Customer, or if an infringement of property rights was caused by the use of delivered goods in combination with goods not delivered by us. Furthermore, our liability for infringements of property rights is excluded for uses, of which the Customer has not informed us in advance. For the rest, we shall be held liable according to Sec. 11.

**13. Venue, applicable law**

- 13.1 The competent courts at the seat of the Company of the Vossloh Group shall have exclusive jurisdiction for all disputes. We shall, however, also be entitled to sue the Customer at his general venue.
- 13.2 All legal relation between the customer and us shall exclusively governed by the laws of the Federal Republic of Germany.

**14. Severability**

Should individual provisions of this contract be or become invalid, the remaining provisions shall continue to be in full force and effect. The invalid provision shall automatically be replaced by such other provision coming as close as possible—to the legally permissible extent—to the economic meaning and purpose of the invalid provision.

**15. Prevailing German version**

In case of dispute, the German version of these General Conditions of Business, Payment and Supply shall prevail.

Kiel, 30.03.2007