

# General Terms and Conditions of Sale, Delivery and Lease

RIEDEL Communications GmbH & Co. KG

## § 1 Scope

(1) These Terms and Conditions of Sale, Delivery and Lease (hereinafter „Terms and Conditions“) apply – with the exception of purchase of deliveries and services – for any legal transaction with RIEDEL Communications GmbH & Co. KG, Uellendahler Straße 353, 42109 Wuppertal, Germany (hereinafter “RIEDEL”).

(2) Differing provisions of the contractual partner (hereinafter “Customer”) or his general conditions and terms shall not apply, except if explicitly agreed upon in writing.

## § 2 Offer, Conclusion of a Contract

(1) All offers from RIEDEL are subject to change. A contract is only concluded if and when RIEDEL confirms the Customer’s request in writing. The scope and due date of delivery are only bindingly determined by RIEDEL’s written order confirmation.

(2) Drawings, dimensions, weights and other performance data stated in brochures or any other information provided to the Customer are only binding if explicitly agreed in writing. Such specifications are no warranty of features, not even if they are standard specifications such as the DIN standard.

## § 3 Prices, Payment Terms

(1) Unless otherwise stipulated in the order confirmation, the prices specified within the order confirmation are valid as per current price list of RIEDEL plus value added tax at the applicable statutory rate, any other possible taxes (withholding tax etc.), customs or any other applicable fees, and costs for packaging and freight. These costs, taxes, customs and other duties shall be borne by the Customer.

(2) Any information provided by RIEDEL in an offer respectively the order confirmation regarding expenses for personnel and material depend on the timeline specified in the offer or order confirmation, respectively. The Customer is aware that any changes to the timeline may lead to an adaption of personnel and material costs.

(3) The daily rate for personnel covers a maximum of 10 working hours, including any travel and break times. Overtime hours are billed separately.

(4) If the delivery time specified by RIEDEL in the offer may only be met by way of express delivery due to delayed commissioning by the Customer, any additional costs arising for such express delivery shall be borne by the Customer. The same applies if RIEDEL is only able to meet the agreed delivery time by way of express delivery due to unforeseen or inevitable difficulties, such as powers of nature, or strikes. Such additional costs will be billed separately.

(5) RIEDEL reserves the right to adjust prices to a reasonable extent in the event of cost reductions or cost increases occurring following conclusion of the contract, in particular as a result of tariff agreements or increase in material prices. Evidence of changed costs shall be provided to Customer upon request.

(6) The price is due and payable net within 10 days from the date of the invoice.

(7) In the event Customer exceeds the due date for payment, interest in the amount of 9 percentage points above the respective base interest rate p.a. shall accrue. RIEDEL reserves all rights to claim further damages for delay as well as the statutory lump sum compensation for collecting delayed payments in the amount of 40,00 EUR.

(8) Customer shall be entitled to offset only insofar as the Customer’s counterclaim is undisputed or assessed in a legally binding judgment and if such claim is based on the same transaction.

## § 4 Date of Delivery, Sub-Contractors

(1) The date of delivery is non-binding, unless otherwise explicitly stipulated as fixed date in the order confirmation.

(2) Delivery is conditioned upon timely and proper performance of all duties of the Customer and upon clarification of all technical questions.

(3) RIEDEL is authorized to employ subcontractors to provide its services.

## § 5 Passing of Risk

Unless otherwise stipulated in the order confirmation, delivery shall be performed ex works Wuppertal (INCOTERMS 2010). Therefore, Customer will be responsible for possibly required import, export and freight licenses.

## § 6 Retention of Title

(1) RIEDEL retains title to the goods until all payments due in the on-going business relation with the Customer have been settled.

(2) Customer is obliged to handle the goods with due care. Customer has to insure all goods against fire and water damages as well as theft on his own expense.

(3) Customer shall immediately inform RIEDEL in writing if the goods become subject of distraint or any other encum-

brances of third parties. In this event, RIEDEL is entitled to immediately claim repossession of the goods.

(4) Customer shall be authorized to resell goods in course of his regular business. In case of conclusion of a contract with a third party the Customer hereby assigns all claims arising out of such resale in the sum of the final invoice amount (including value-added tax). RIEDEL hereby accepts such assignment. Notwithstanding RIEDEL’s right to claim direct payment, Customer shall be entitled to receive the payment on the assigned claims. RIEDEL agrees not to demand payment on the assigned claims to the extent the Customer complies with all his obligations for payment.

(5) RIEDEL undertakes to release securities upon Customer’s request insofar as the securities exceed the security claim by more than 10 %.

## § 7 Warranty (in case of sale)

(1) In case of material defects RIEDEL will, at RIEDEL’s sole discretion, remedy the defects or deliver a conforming good.

(2) In case RIEDEL and Customer agreed upon an additional Service Level Agreement (SLA), all provisions therein are considered to be specific regarding the supplementary performance (the SLA shall not exclude secondary claims such as compensation for damages).

(3) The warranty period is two years starting from the day of delivery.

## § 8 Liability

(1) In case of damages to life, body or health as well as damages under the terms of the German Product Liability Act RIEDEL shall be liable according to statutory law.

(2) For any other damages in case of breach of any contractual obligations RIEDEL shall be liable as provided below:

(2.1) In case of fraudulent intent, intent or gross negligence of RIEDEL’s legal representatives or executive employees, RIEDEL shall be liable according to statutory law.

(2.2) In case of damages caused by negligent breach of fundamental contractual obligations (1. alternative) as well as for damages caused by intent or gross negligence of RIEDEL’s vicarious agents without breach of fundamental contractual obligations (2. alternative) RIEDEL’s liability shall be limited to the typically predictable damage. Fundamental contractual obligations are duties being a prerequisite for enabling the proper fulfilment of the contract.

(2.3) RIEDEL shall not be liable for any loss of profit, indirect damages, consequential damages and any other possible claims of third parties, e.g. in case of a breakdown of data lines.

(3) For any other damages not due to a breach of contractual obligations, RIEDEL’s liability shall be limited to damages caused by intent or gross negligence of RIEDEL’s legal representatives or executive employees.

(4) Any liability not expressly provided for above shall be disclaimed.

## § 9 Force Majeure

RIEDEL shall be relieved from its contractual obligations in cases of force majeure. Force majeure applies in particular, but not limited to, in cases of war, flood, natural catastrophes as well as in any other cases where incidents are beyond control of RIEDEL, e.g. water ingress, power blackout and disconnection or destruction of data-carrying conductions.

## § 10 Jurisdiction, Applicable Law

(1) Exclusive place of jurisdiction and place of performance is Wuppertal, unless otherwise stipulated in the order confirmation.

(2) The relationship between RIEDEL and Customer shall be governed by the laws of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG), the Hague Uniform Laws on the Sale of Goods and the Vienna Convention on Contracts for the International Sale of Goods.

## Special Provisions applicable to Leases and the Provision of Additional Services.

In addition to the Terms and Conditions provided for above the following provisions shall apply to the lease of equipment (hereinafter “Leased Equipment”) and (when applicable) to the provision of additional services:

### § 11 Terms of Lease

RIEDEL reserves the right to provide the Customer with a functionally equivalent Lease Equipment instead of the ordered Lease Equipment.

### § 12 Careful Handling of Leased Equipment

(1) Customer shall treat the Leased Equipment diligently and carefully and shall retain the original case used for delivery of the Leased Equipment.

(2) Customer is only entitled to sublet or otherwise cede the Leased Equipment to any third party with the prior written consent of RIEDEL. Even if such consent has been obtained, the customer remains responsible for any fraudulent or negligent behavior of the third party when using the Leased Equipment.

(3) Customer is obliged to inform RIEDEL without undue delay about any damage or outage of the Leased Equipment.

(4) Repairs by Customer or his authorized representative regarding the Leased Equipment are only allowed upon prior written consent of RIEDEL.

(5) Customer shall not be allowed to carry out alterations of any kind to the Leased Equipment. In case of an alteration any costs for restoration to the original site shall be borne by the Customer.

### § 13 Device-Specific Provisions

(1) If the Leased Equipment is about radio equipment these radio sets will be delivered with pre-selected frequency unless otherwise agreed.

(2) Transfer and use of Leased Equipment abroad shall only be allowed upon RIEDEL’s prior written consent.

(3) Fees and costs according to the fulfilment of governmental requirements shall be borne by Customer.

(4) Customer shall be responsible for all aspects of an event where the Leased Equipment is used and shall obtain all necessary official approvals if required.

### § 14 Term of Lease and Return of Leased Equipment

(1) The term of the contract is stipulated in the order confirmation.

(2) Either party may terminate the contract with immediate effect for cause by way of written declaration to the respective other party. Good cause is given for RIEDEL in particular in case of repeatedly delayed payments by the Customer, if the Customer enters into insolvency proceedings or otherwise fails to fulfil his obligations under the contract despite having received a warning by RIEDEL.

(3) The Customer undertakes to return at his own expense the Leased Equipment cleaned, in original condition and in the original case in which the Leased Equipment was initially delivered, after the lease ends. The return is only possible during RIEDEL’s business hours at RIEDEL’s place of business in Wuppertal.

(4) If the Customer does not return the Leased Equipment upon the end of lease RIEDEL reserves the right to claim the stipulated rent as loss-of-use indemnification for the duration of the delayed return.

(5) If the customer loses or breaks the Leased Equipment or for any other reason is not able to return it to RIEDEL upon the end of the lease, the applicable list price will be invoiced to the Customer.

### § 15 Warranty (in case of Lease)

(1) Warranty and liability for damages which were present at handover (Sec. 536a of the German Civil Code) shall be disclaimed unless RIEDEL acted deliberately or with gross negligence.

(2) Warranty period is one year starting from the end of the year when the entitlement was established and the Customer became aware of the circumstances justifying the claim or was able to acquire such knowledge without gross negligence.

### § 16 Additional Services (e.g. Provision of Personnel and Assembling)

(1) In case RIEDEL takes on additional services according to the order confirmation, e.g. the provision of personnel or assembling, RIEDEL shall only provide the services explicitly stipulated in the order confirmation.

(2) In case of assembling and setup, Customers must duly perform all preliminary works at the place of performance that are necessary for RIEDEL to fulfil its services without undue delay and under adequate working conditions. RIEDEL shall not be obliged to check equipment made available by Customer.

(3) If assembling, setup and start-up are delayed due to reasons beyond RIEDEL’s control, Customer undertakes to bear any costs incurred according to the current price list of RIEDEL.

(4) RIEDEL shall provide its services with the diligence of a prudent businessman and according to the state-of-the-art. As a basic principle, contractual work services are not subject to the contract.

(5) Unless otherwise agreed, RIEDEL shall be free to appoint any individual to provide the required services. While choosing the personnel RIEDEL will reasonably take the Customer’s interests into account.

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