General Terms and Conditions and Licence Terms of Institut für Rundfunktechnik GmbH

A. General provisions

1. Scope

(1) The following general terms and conditions shall apply to all deliveries and services performed by the Institut für Rundfunktechnik GmbH (hereinafter referred to as "IRT") and shall exclusively apply to enterprises (industry, craft sector, trade and freelance professions for the use in the course of self-employed, professional or commercial activity), legal entities under public law and special funds under public law in the sense of sec. 310 para. 1 German Civil Code. The provisions set out in this general part A as well as the concluding provisions set out in F shall apply to all deliveries and services performed by the IRT, unless it is agreed something different in the special parts B - E of these general terms and conditions. The special part B shall apply to all purchase contracts on products of the IRT. Additional special provisions with regard to software are set out in special part C. With regard to service contracts of the IRT, special part D shall additionally apply. Provisions with regard to online services are set out in special part E. With regard to the webshop of the IRT, separate general terms and conditions apply.

(2) Deliveries, offers and sales are exclusively subject to the respective applicable general terms and conditions of the IRT. The respective applicable version of the general terms and conditions is available at www.irt.de/agb. By placing your order, you agree to these general terms and conditions.

(3) The inclusion of contractual partner’s general terms and conditions deviating from and/or supplementary to these general terms and conditions is not accepted and is expressly objected. This shall also apply if no such express objection is made by us at the time the contract is concluded.

2. Conclusion of contract

(1) Unless otherwise agreed, offers of the IRT shall be valid for 30 days from the date of issuance.

(2) The contract between the IRT and the contractual partner either is concluded by the contractual partner accepting the offer of the IRT or by the contractual partner receiving an order confirmation for an order the contractual partner submitted with the IRT.
(3) The contractual partner bears the risk that services ordered by the contractual partner correspond to and may be used in accordance with his requests and needs, unless explicitly agreed otherwise. In case of doubts or questions, the contractual partner shall seek advice from IRT personnel in due time.

3. Terms of payment and pricing

(1) Prices shall apply as stated in the offer of the IRT or in the order confirmation of the IRT and are exclusive of applicable statutory VAT, as amended from time to time. Unless otherwise agreed in writing, prices are ex works IRT (corresponding to Incoterms “EXW”). Unless an amount of the remuneration has not expressly determined, the parties shall mutually agree on a conventional price.

(2) Regarding contractual partners from EU countries other than Germany, the contractual partners must indicate their EU tax numbers. We point to the reverse charge procedure, according to which the customers must pay the VAT in accordance with the provisions of their homeland countries.

(3) If the IRT takes into consideration any requests for amendments by the contractual partner after the placement of the order, any additional costs caused will be charged to the contractual partner, unless agreed otherwise in writing.

(4) Unless agreed otherwise in writing, any incidental expenses, such as costs for delivery, packaging or travelling expenses as well as insurance fees, customs and import duties are not included in the prices. Such costs will be additionally charged, unless it is mandatory by law that the IRT will bear such costs.

(5) Invoices become due 30 days from the date of the invoice, unless otherwise agreed in writing. Payment has to be made without any deductions to the bank account stated in the invoice and the invoice number must be indicated.

(6) Starting from delay of payment, the IRT is entitled to charge in accordance with sec. 288 para. 2 German Civil Code statutory default interest in the amount of 8% over the base rate applicable at that time and amended from time to time.

(7) In case of cancellation or not calling ordered services, the IRT charges cancellation costs amounting to the hours of work provided until cancellation in accordance with the agreed hourly fees plus incurred costs such as material and transportation costs as well as travel-
ling costs and costs by third parties. The assertion of further claims for damages remains reserved.

(8) If after conclusion of the contract the costs related to the order substantially change for reasons for which the IRT is not responsible, the parties shall discuss an adaptation of the prices. A substantial amendment is, for example, if the expenses of the IRT change by more than 10%. In case an agreement on such costs cannot be reached, the IRT shall be entitled to withdraw from the contract.

(9) In case the services to be rendered by the IRT extend over a longer period of time (more than 3 months of processing time) or if such services contain an order volume of more than EUR 50,000 net, the IRT shall be entitled to demand advance payments or to make the rendering of services subject to the advance payment of the contractual partner, irrespective of the fact whether a corresponding provision has already been stated in the order of the IRT or in the order confirmation of the IRT.

(10) Should a substantial deterioration of the financial situation of the contractual partner become known or if the contractual partner is in arrears in payment, the IRT shall be entitled to request an immediate payment of any outstanding invoices as well as of invoices which have not yet become due. Furthermore, the IRT shall be entitled to discontinue any works with regard to current orders for the contractual partner for the duration the contractual partner is in arrears. The delivery date will be postponed at least by the length of the above-mentioned duration plus any delays which typically occur in the scope of resumption of the works.

4. Time of delivery and services

(1) Dates and deadlines for deliveries and services of the IRT are only obligatory if expressly agreed upon as obligatory among the parties.

(2) The times of delivery or services are prolonged if the contractual partner delays obligations of cooperation or refrains from doing so with respect to obligations the contractual partner is obliged to comply with, by the time during which the contractual partner refrains from meeting his cooperation obligations or by the time for which the obligation of cooperation is delayed by the contractual partner. Accordingly, the time of delivery or performance is also prolonged in case of delays due to insufficient conditions in the contractual partner’s sphere of responsibility, to the extent to which they were unknown or should not have been known to the IRT. The same applies in case of unforeseen impediments, such
as force majeure like, for example, turmoil, delays in transportation, strikes, lockouts or other interruptions of the performance of the service by the IRT as well as disruptive occurrences beyond the sphere of influence of the IRT.

(3) The IRT shall be entitled to perform partial deliveries or partial services, in particular if this seems to be advantageous and if the partial delivery or partial service is reasonable for the contractual partner. Additional costs incurred by partial delivery or partial service shall not be charged to the contractual partner.

5. Warranty

(1) With regard to purchase contracts, the warranty starts with the delivery of the ordered product to the contractual partner or the download of the software, or with regard to service contracts, with acceptance and is subject to the statutory provisions of the Federal Republic of Germany, unless otherwise agreed in these general terms and conditions.

(2) The period of limitation for warranty claims is one year.

(3) If an attempt of supplementary performance was not successful, the IRT has the right to conduct two more attempts of supplementary performance at IRT’s discretion. Only in case the third attempt of supplementary performance fails, the contractual partner shall be entitled to withdraw from the contract or to reduce the purchase price. However, the IRT cannot refer to a further attempt of supplementary performance in the sense of the above-mentioned if a further attempt of supplementary performance is intolerable for the contractual partner in the individual case.

(4) The handling of unauthorized claims for defects is subject to an additional charge of fees incurred thereby to the IRT.

(5) Obvious defects of the product must be indicated in writing without delay, at the latest within 14 days after receipt of the goods. If the defects are not indicated in due time, the goods are considered as approved. Defects which are notified late shall not be taken into consideration by the IRT. In such a case, any warranty claims are excluded. The same applies if a defect is identifiable at a later point in time.

6. Limitations of liability

(1) The IRT shall pay damages, irrespective of the reason, only to the following extent:
The IRT is in an unlimited manner liable for damage to life, body and health, which is based on a reckless or deliberate breach of obligation of duty, as well as for any damage comprised by the liability in accordance with the product liability act, as well as for any damage due to deliberate or grossly negligent breaches of contract as well as malicious behaviour of its legal representatives or vicarious agents. If the IRT made a quality warranty, the IRT shall be liable also in the scope of this warranty. The IRT shall also be responsible for damage caused by ordinary negligence, if the infringement of such contractual obligations is concerned, the adherence to which is of special importance for the achievement of the contractual purpose (material contractual obligation, “Kardinals-pflicht”). In this case the IRT however is only liable if the damage is connected with the contract in a typical manner and if the damage is predictable. In all other respects the IRT shall not be liable. The limitations of liability contained in this paragraph also apply if the liability for the legal representatives, managers and other vicarious agents is concerned.

(2) In case of a data loss for which the IRT is to be blamed, the IRT shall be liable in an amount which is restricted to the costs which would have been incurred in case of proper and regular backup of data by the contractual partner, in particular the costs for copying the data from the backup copies to be generated by the contractual partner and for the restoring of the data, which would also have been lost in case of proper backup of the data. The IRT shall not be liable for data losses or hardware failures caused by incompatibilities of components present on the computer system of the contractual partner with the hardware or software used by the IRT and for system failures which might occur due to existing misconfiguration.

7. Confidentiality

Unless otherwise provided in the contract, based on the offer from IRT, executed between the contractual partner and IRT or from case to case otherwise agreed-on in writing for specific information, the parties will treat (i) the details of the offer and contract, (ii) the associated conducted work and any and all related reports, developments, code and further results, and (iii) any and all other information received from the other party and identified as being confidential as confidential information during the term of the contractual relationship and further on for a period of five (5) years after termination of this relationship.

Aforementioned shall not apply to information which

- is or subsequently becomes available in the public domain through no fault of the information receiving party, or
- is subsequently lawfully obtained by the information receiving party from a third party or parties without any obligation of confidentiality as shown by documentation sufficient to establish the third party as a source of the confidential information, or
- was known to the information receiving party prior to disclosure by the disclosing party as shown by documentation sufficient to establish such knowledge, or
- is proved to be developed independently by the information receiving party without access to or use of the confidential information of the disclosing party, as evidenced by the receiving party’s business records, or
- is required to be disclosed by law, judicial action, the rules or regulations of a recognized stock exchange or listing authority, government department or agency or other regulatory authority.

8. Cooperation of the contractual partner

(1) The contractual partner shall ensure that any required obligations with regard to support, provision and cooperation are provided in due time, in the required scope and without any charges to the IRT. These obligations include in particular that the contractual partner provides without separate charges appropriate rooms, contact persons and computing time at the EDP equipment in sufficient scope and provides the staff of the IRT with any necessary information without any delay and without charge.

(2) The contractual partner is obligated to backup his data in regular intervals, in particular prior to the installation of the software, in a sufficient manner. If the contractual partner does not have his data sufficiently secured, the IRT shall be liable only for such damage which would have been caused also in case of sufficient backup of the data. In such a case the burden of proof lies with the contractual partner. Moreover, the payment of damages for loss of data or if data are rendered unserviceable is limited in accordance with clause A.6. of these general terms and conditions.

(3) In case of using templates and materials which are provided by the contractual partner, the IRT may assume that these are not subject to rights of third parties and that the contractual partner has the necessary rights required for their use. The IRT is not obliged to undertake a verification. The contractual partner guarantees that he has all rights to the provided materials. Accordingly, the contractual partner indemnifies the IRT from any claims of third parties due to violation of such rights and also will bear any appropriate costs of legal defence against such claims. The IRT is not obliged to legal defence.
9. Grant of rights

(1) Upon complete payment the contractual partner acquires the right to use and exploit the service results of the IRT in the agreed-on scope.

(2) In case also a right of use is granted by the IRT, the contractual partner receives a non-exclusive, non-transferable right for use in the contractual partner's own corporate business, unless otherwise agreed in writing. With respect to software licences, the additional provisions set out under clause C. shall apply.

10. Industrial property rights and copyrights of third parties

(1) The contractual partner is obligated to inform the IRT immediately in writing if he becomes aware of possible infringements of industrial property rights and copyrights by a product supplied by the IRT.

(2) The IRT shall indemnify the contractual partner against any claims (for damages) of the proprietor of the property right in case of an infringement of German industrial property rights (e.g. patents, utility models and designs) or copyrights caused by the use of a product supplied by the IRT and owed under the contract.

(3) In case of a defective title the IRT in the first instance guarantees supplementary performance. For this, the IRT at its sole discretion provides a legally sound possibility of use of the supplied products or the replaced or amended, equivalent products.

(4) The contractual partner is obligated to inform the IRT immediately on claims directed against the contractual partner.

(5) The aforementioned claims are excluded if the contractual partner has caused the infringement of the industrial property right himself by modifying or using a product supplied by the IRT not in accordance with the documentation or the product specification.

(6) The contractual partner is obligated to support the IRT at his best efforts to defend against the property right infringement in an appropriate scope.

(7) Further claims of the contractual partner for culpable behaviour of the IRT remain unaffected in accordance with clause A.6.
11. Our identity

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Floriansmühlstraße 60
D-80939 Munich
Germany

Internet: www.irt.de, email: marketing@irt.de, phone: +49-89 323 99-300

Managing Director: Michael Hagemeyer
Registry court: Munich
Commercial register no.: 5191
VAT ID: DE 129 521 727

12. Privacy policy

(1) Our privacy policy complies with the applicable data protection laws. Detailed information on data protection are available for the contractual partner on the IRT website under the button "privacy".

(2) The e-mail address of the contractual partner is used by the IRT only for information letters with respect to orders and only upon consent of the contractual partner for the IRT newsletters. The contractual partner can object to the use of his e-mail address for advertising purposes by sending an informal e-mail to marketing@irt.de. For this, no other costs are incurred except the costs for transmission of the message in accordance with the base rate.

(3) The IRT will not pass personal data of the contractual partner to third parties. Service partners which need those data for handling the order are excluded from the above. In these cases, the scope of the transferred data, however, is restricted to the necessary minimum.

(4) The contractual partner has a right of information as well as a right of correction, blocking and deletion of his stored data. If legal or contractual retention obligations or other legal reasons conflict with a deletion, the data will be blocked.

(5) The contractual partner agrees that the IRT may include the name of the enterprise of the contractual partner as well as the city and the country of the registered office of the enterprise into the contractual partner reference list of the respective IRT product and may publish the list.
B. Special provisions for purchase contracts

1. Transfer of risk

As soon as the product is handed over to the carrier or as soon as the product is downloaded, the risk of coincidental failure or coincidental damage of the product is transferred to the contractual partner. In case it can be proven that the download was not successful, the IRT shall provide the software again for one more time without charge.

2. Retention of title

(1) All products supplied by us remain property of the IRT until complete payment as well as until fulfilment of any claims of the IRT against the contractual partner existing at the time of delivery.

(2) Access of third parties to the goods in the property or co-ownership of the IRT must be indicated by the contractual partner without delay. Any costs with respect to a third party action or the costs for out-of-court-settlements resulting from such access shall be borne by the contractual partner. Claims arising from resale or other legal reasons concerning the goods subject to title of retention (including any and all account balance claims) are assigned by the contractual partner for good measure to the IRT in full scope. We grant to the buyer/contractual partner a revocable right to collect claims assigned to us on the contractual partner's own account and in contractual partner's own name. This authorization can be revoked if the buyer/contractual partner does not duly comply with his payment obligations.

C. Special provisions for software

1. Subject-matter of the contract / third party software

(1) Subject-matter of the contract is the software of the IRT according to the product sheet. The support for the contractual partner is limited to the response to general questions regarding the installation and operation of software by telephone or by e-mail and is limited to an economically viable extent. Support beyond this scope is subject to a separate agreement. Maintenance which goes beyond the scope of the licensed software version(s) is likewise subject to a separate agreement.

(2) The subject-matter of the contract does not include third party software. The use of third party software takes place on the contractual partner's own responsibility. Providing third
party software by the IRT takes place on a voluntary basis and without legal obligation. Any third party software provided by the IRT is not licensed by the IRT. Licensing third party software is in the sole discretion of the contractual partner. This also applies to the payment of any licence fees, as far as they occur, relating to the third party software or the payment of any third party costs.

(3) In case the supplied product or service includes third party software or in case third party software is required for the use of the supplied product, the use of the supplied product is subject to the acceptance of the licensing conditions of the respective provider of the third party software (Third Party Software/Licensing Conditions). The IRT expressly points the contractual partners by the provided third party software document to this circumstance and informs the contractual partner on the corresponding applicable licensing conditions which have to be accepted.

2. Licensing conditions

(1) Unless otherwise agreed, the contractual partner is granted a non-exclusive, non-transferable right to use the software and the corresponding documentations as well as any amendments and other documents on contractual partner’s computer systems to the extent of the agreed scope. Beyond that the contractual partner has the right to make backup copies of the software. All further rights to the software and the documentations, including copies and subsequent amendments, remain with the IRT. Apart from that the contractual partner must not use the software without prior written consent of the IRT except for the exemptions mentioned under clause C.2.(2).

(2) The statutory exceptions, such as those according to sec. 69 d para. 1 and 2 of the German Copyright Act remain unaffected. Without prejudice to above clause C.2.(1) the contractual partner can observe, examine or test the functioning of the software, in order to determine the ideas and principles underlying the software, if this is performed by actions used for loading, displaying, running, transferring or saving the software, to which the contractual partner is entitled by contract. A separate consent by the IRT is not required for such actions which are necessary in order to obtain the necessary information for the production of the interoperability of an independently created computer program with other programs and if this information is not easily accessible to the contractual partner. These actions must be limited to the parts of the original program, which are necessary for establishing interoperability; the information obtained therefrom must not be used for any other purpose and must not be passed on to third parties (cf. sec. 69 e German Copyright Act). The IRT is entitled to claim appropriate remuneration for providing such information. The contractual partner must make sure that the software and corresponding documentations
are not accessible to third parties without prior written consent of the IRT. In principle, copies must only be made for archiving purposes, for data backup to the necessary extent (cf. sec. 69 d para. 2 German Copyright Act) and for error detection.

(3) Special written agreement is required for the transfer of the source code. In case the originals carry a note referring to copyright protection, this note must be affixed by the contractual partner.

(4) The contractual partner is not permitted (i) to lend, lease, rent or grant sub-licences to the acquired software of the IRT, (ii) to modify or derive contractual partner's own products from the acquired software of the IRT and make those accessible to third parties and/or (iii) to decompile, disassemble or reverse engineer the acquired software of the IRT. The aforementioned use requires the conclusion of a separate licence agreement with the IRT.

(5) Unless otherwise granted by the acquired licence, the contractual partner must not use the software for offering fee-based test services or analysis services for third parties. The aforementioned services require the conclusion of a separate agreement with the IRT.

(6) In the scope of the licensing of the software no rights, legal claims or participation to any trademarks, service marks, logos or trade names of the IRT, its licensors or its suppliers are granted.

3. Supplementary provisions with regard to warranty for the software

(1) The contractual partner knows that the functioning of a software depends on a multiplicity of factors. Therefore, the IRT can only assume warranty for the condition of the ordered product as described in the product specification of the IRT. Unless explicitly agreed otherwise in the contract, the IRT does not assume any warranty that the product corresponds to the operational features and requirements of the contractual partner.

(2) Software errors which may be reproduced by the IRT and which do not affect the intended use in only an insignificant manner, will be eliminated in a way which is at the sole discretion of the IRT, depending on the importance of the fault, either by delivery of an improved software version or by rendering information how to remove or circumvent the effects of the defect.

(3) The IRT does not take over any warranty that a software of a third party required for the use of the product or supplied together with the product is free from any material defects or defects of title. In accordance with clause C.1.(2) such third party software is explicitly
not comprised by the performance due under this contract. The use of third party software takes place on the contractual partner's own responsibility. However, the IRT shall support the contractual partner, if possible, to a reasonable extent to initiate the elimination of defects by the provider of the third party software, in particular shall transmit notices of defects.

(4) The IRT does not take over warranty for defects which occur due to incorrect or negligent treatment or operation or change of the software and unusual operating conditions, respectively.

D. Special provisions for service contracts

1. Acceptance

(1) The IRT shall inform on the completion of services and shall transfer them for acceptance to the contractual partner. If the IRT does not inform on the completion, instead of the time of information, the point in time shall apply at which the contractual partner can be reasonably expected to have gained knowledge of the completion of the services.

(2) The contractual partner shall inspect the services of the IRT within one week from receipt of the information. In case no reaction of the contractual partner is obtained in this period of time or in case the contractual partner uses the services of the IRT without further inspection, the service is supposed to be accepted.

(3) If the work comprises several individual works which may be used independently from each other by the contractual partner, each individual work shall be accepted separately.

(4) In case partial services are defined in a service contract, the IRT may provide partial services for acceptance. With respect to subsequent acceptance procedures, it is merely examined whether the earlier accepted parts correctly interact with the new parts.

(5) Insignificant defects do not entitle to deny acceptance.
E. Special provisions for online services

1. Subject-matter of the contract

(1) With regard to online services, the IRT provides an application software according to the service specification for use by the contractual partner within the scope as contractually agreed.

(2) The IRT is only obliged to provide the online services. The IRT does not have any obligations of saving or safekeeping data transmitted and processed by the contractual partner. The saving of the data is in the contractual partner's sole discretion.

2. Obligations of the contractual partner

(1) The contractual partner is obligated to set up his systems and programs in such a way that neither safety, nor integrity, nor availability of the infrastructure, which is used by the IRT for providing the online services, is affected.

(2) The contractual partner takes care on his own costs that the data connection required for using the online services is available.

(3) Access data (user names and passwords), which are assigned to the contractual partner, must not be made accessible to unauthorized third parties by the contractual partner.

(4) If the contractual partner processes personal-related data when using the online services, the contractual partner shall be responsible for the compliance with the data protection regulations.

3. Availability

(1) There might occur limitations or impairments of the availability of the online services, which are beyond the sphere of influence of the IRT. Among these are in particular actions or services of third parties, technical conditions of the internet which cannot be influenced by the IRT as well as force majeure. Likewise, also hardware and software or technical infrastructure used by the contractual partner may have influences on the online services of the IRT. To the extent to which such circumstances have influence on the availability or functionality of the online services provided by the IRT, this does not have any effect on the contractual conformity of the online service provided by the IRT.
(2) The IRT shall conduct maintenance works from time to time at the systems for safety reasons with regard to the offered online services, for maintenance of the availability, the interoperability of the services and data protection. For this purpose, the IRT is entitled to temporarily stop or limit the services, thereby taking into account the requirements of the contractual partner, if there are objective reasons which justify such action. If possible, the IRT shall carry out maintenance work in low-use periods. In case of prolonged temporary cessation or restriction of services, the IRT shall inform the contractual partner on type, extent and duration of the impairment, to the extent to which this is objectively possible according to the circumstances.

F. Concluding provisions

(1) These general terms and conditions and licence terms regulate all rights and obligations of the contracting parties.

(2) The contractual partner is not entitled to assign his claims arising from the contract to third parties without prior consent of the IRT. This does not apply in cases of pecuniary claims of the contractual partner against the IRT.

(3) Against claims of the IRT the contractual partner can only set off or claim for a right of retention, if the counter claim of the contractual partner is indisputable or has been legally held.

(4) Legal venue is Munich.

(5) German law shall be exclusively applicable and the regulations of the UN Convention on Contracts for the International Sale of Goods shall be excluded.

(6) In case one of the provisions of this contract should be or become ineffective, the effectiveness of the remaining provisions is unaffected. The parties strive to replace ineffective provisions by such effective regulations which are closest to the economic purpose in a legally admissible manner; the same applies if circumstances in need of regulation have not been regulated in an express manner.

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