

# General Terms and Conditions of Purchasing

of Funkwerk Aktiengesellschaft



(Date: March 2018)

## 1. General and integrity clause

- 1.1 The present General Terms and Conditions of Purchasing apply to all orders and commissions (deliveries and services) of the Funkwerk Aktiengesellschaft and its associated companies according to section 15 AktG / German Companies Act (hereinafter collectively referred to as "Funkwerk"). By accepting an order referring to these General Terms and Conditions of Purchasing, these General Terms and Conditions of Purchasing become an integral part of the contract. Supplier's general terms and conditions contradicting or deviating from Funkwerk's General Terms and Conditions of Purchasing shall only apply to the extent that Funkwerk has expressly approved their validity in writing. This shall also apply to terms and conditions of business stated by Supplier on the acceptance of order or other confirmations. These General Terms and Conditions of Purchasing shall apply, even if Funkwerk accepts Supplier's deliveries without reservation or pays for the latter despite knowledge of Supplier's terms deviating from these terms and conditions of purchasing.
- 1.2 Individual agreements made between Funkwerk and the Supplier for the purpose of performance of a contract shall take precedence over these General Terms and Conditions of Purchasing and shall be referenced in the order.
- 1.3 References to the validity of statutory provisions are only of clarification. Even without such clarification, the statutory provisions shall apply insofar as they are not directly modified or expressly excluded in these General Terms and Conditions of Purchasing.
- 1.4 Funkwerk as well as Supplier engages to take all necessary measures to avoid corruption and other punishable actions. They shall in particular engage to take all precautionary measures in their companies in order to avoid severe misdemeanours. Independent of the form of participation in offence, instigation or aiding and abetting, severe misconduct are:

- a) severe crimes committed in business dealings. This includes punishable actions portraying deceit (§ 263 German Penal Code), embezzlement (§ 266 German Penal Code), falsification of documents (§ 267 German Penal Code), falsification of technical recordings (§ 268 German Penal Code), falsification of data considerable as evidence (§§ 269, 270 German Penal Code), constructive false certification (§ 271 German Penal Code), suppression of documents (§ 274 German Penal Code) and agreements limiting competition in requests for tender (§ 298 German Penal Code),
- b) offering, promising, granting or demanding benefits towards/from managing directors or other employees of Funkwerk as consideration for unfair preference in competition (for employees or agents see §§ 299, 300 German Penal Code – corruption or corruptibility in business dealings),
- c) unauthorised procurement, securing, exploiting or notifying of business and operational secrets within the meaning of § 17 sub-section 2 Unfair Competition Act (UWG) for purposes of competition, for own benefit, in favour of a third party or in the intention of causing damage to the owner of the operations, unauthorised exploiting or notifying of documents or directives of a technical nature entrusted in business dealings within the meaning of § 18 UWG for purposes of competition or for own benefit and, over and above this, unauthorised exploiting or notifying of documents or directives of a technical nature and of commercial information of Funkwerk entrusted in business dealings, also on disks and other data media, for own benefit, and
- d) breaches of the first part of the Act against Competition Limitations (GWB), amongst other things participation in agreements on prices or price components, forbidden price recommendations, participation in recommendations or agreements about making or not making quotations, about offset of reimbursement for losses and concerning participations in profits and payments to other competitors.

A severe misconduct shall further exist if Supplier offers promises or grants persons close to managing directors or employees of Funkwerk unfair benefits.

- 1.5 If a severe misconduct in the sense of Section 1.4 above is committed by an employee or member of the board/managing director of Supplier to the detriment of Funkwerk in connection with a delivery / service, Supplier shall pay Funkwerk a contractual penalty. The latter amounts
- a) to 6% of the gross invoice total, to the extent that the misdemeanour was committed by a member of the board/managing director of Supplier,
  - b) to 4% of the gross invoice total, to the extent that the misdemeanour was committed by a holder of a commercial power of attorney or general agent of Supplier,
  - c) to 2% of the gross invoice total, to the extent that the misdemeanour was committed by other employees of Supplier,

however at least 3.000,- €. The right to claim further-reaching damages by Funkwerk as a result of a misconduct committed shall remain unaffected by the contractual penalty. A contractual penalty paid shall be deducted from the claim to damages. A contractual penalty caused according to this directive can be claimed separately alongside the contractual penalty from Section 4.2. Funkwerk reserves the right to claim until the final payment.

- 1.6 If a severe misconduct according to Section 1.4 above is committed by a member of the board/managing director or employee of Supplier, Funkwerk shall be entitled to extraordinary termination of the contract without complying with a period of notice.

## 2. Confidentiality – Information – Data

- 2.1 Funkwerk reserves ownership, copyrights and any existing intellectual property right to illustrations, drawings, calculations and other documents; they may not be made accessible to third parties without Funkwerk's express approval. They shall be used exclusively for production on the basis of Funkwerk's order; after handling of the order, they shall be returned to Funkwerk without specific request. They shall be kept secret from third parties. The duty to confidentiality shall expire if the production knowledge contained in the illustrations, drawings, calculations and other documents provided has legally become generally known. Sub-suppliers shall be obligated accordingly.
- 2.2 Funkwerk shall be entitled to process all of Supplier's data complying with the provisions of the Federal Data Protection Act.

### **3. Purchase Order – Conclusion of contract – Performance of contract**

- 3.1 Funkwerk's purchase orders and amendments or supplements shall require written or text form. The Supplier is obliged to confirm Funkwerk's order within one week after receipt in writing or in text form with reference to Funkwerk's order number. Funkwerk is entitled to revoke its order free of charge, where it is not confirmed within one week of receipt and with reference to Funkwerk's purchase order number. A later acceptance by the Supplier constitutes a new offer and requires the acceptance by Funkwerk.
- 3.2 If a contract with the Supplier has been concluded, Funkwerk can order up to 25% more of the quantity of goods at the same delivery price and periods before the expiry of performance of the contract to the extent that this can reasonably be expected of Supplier.
- 3.3 To the extent that the ordered goods have not yet been manufactured, Funkwerk can demand changes in the finish and construction to the extent that plausible reasons exist and this can reasonably be expected of Supplier. Funkwerk shall assume any higher costs caused to the extent that they are notified to Funkwerk without delay and Funkwerk maintains the purchase order with knowledge of the costs.
- 3.4 Supplier engages to supply replacement parts for the period of the prospective technical use, however at least 10 years after delivery, at suitable prices and the terms and conditions of the underlying purchase order.
- 3.5 Supplier may only place sub-orders with Funkwerk's approval to the extent that it is not merely a question of supply of parts customary on the market.
- 3.6 The Supplier has to notify Funkwerk without delay if Supplier has reservations against the nature of finishing of the delivery / service requested by Funkwerk or if Supplier considers itself impeded in the performance of Supplier's service by Funkwerk. The same shall apply accordingly if agreed documents to be provided by Funkwerk which are necessary for the delivery/ performance of the service are not presented in good time. Supplier can only make reference to the lack of such documents if it has given a written reminder for the documents and has not received them within a suitable period.
- 3.7 Force majeure, disturbances of operations through no fault of Funkwerk, official measures and other unverifiable incidents shall entitle Funkwerk, notwithstanding other rights, to withdraw partly or totally from the contract, to the extent that they are not of inconsiderable duration and result in a considerable reduction of Funkwerk's requirements.

### **4. Time of performance and Delay**

- 4.1 The deadlines and/ or dates for deliveries and services stated by Funkwerk in the orders shall be binding. Decisive for compliance with the deadlines/ delivery dates or deliveries period shall be receipt of the goods/ performance at the destination or place of use stated by Funkwerk. If delays are to be expected, the Supplier shall notify Funkwerk in writing and stating the reasons for the delay immediately.
- 4.2 If the Supplier fails to meet the agreed delivery time or dates or falls otherwise into delay, our rights – in particular to withdrawal and damages – shall be determined in accordance with the statutory provisions. Notwithstanding the foregoing, the regulations in 4.3 remain unaffected.
- 4.3 In the event of a delay in delivery/ performance for which Supplier is accountable, Funkwerk shall be entitled to demand a contractual penalty to the amount of 0.25 % of the order value of the delivery/ service which has fallen into such delay per calendar day of delay, limited to a maximum of 5% of the net purchase order value. The right to demand the contractual penalty on account of improper performance shall be reserved – also by an acceptance of the delayed performance – until the final payment. Further-reaching claims and rights shall remain reserved.
- 4.4 In the event of a delivery/ performance before the agreed delivery time or dates (hereinafter referred to as "Premature Delivery"), Funkwerk shall be entitled to refuse the delivery/ performance and send it back at the expense of the Supplier or store the delivery at the cost and risk of the Supplier. In case of storage by Funkwerk, the storage costs are 0.5% of the invoice amount of the goods to be stored per full week (maximum up to the agreed date or 5% of the net purchase order value). The claiming and proof of further or lower storage costs shall be reserved for both parties.

### **5. Delivery and service modalities, place of performance, passage of risk, ownership and provisions**

- 5.1 Deviations from purchase orders shall only be admissible following Funkwerk's prior written approval.
- 5.2 Prior deliveries and/ or part deliveries shall require Funkwerk's written approval. In the event of unapproved premature delivery, Funkwerk can either store the delivery at Supplier's risk and expense or return it at Supplier's expense.
- 5.3 If the Supplier renders deliveries and/or services on Funkwerk's operating premises, Supplier shall be obliged to comply with the information on safety, environmental and fire protections for outsiders, as amended.
- 5.4 The delivery shall be DDP (delivered duty paid, Incoterms 2010) to the delivery address stated in the purchase order in question.  
  
If the purchase order contains no regulation, Funkwerk's headquarters shall be place of performance.
- 5.5 The delivery must be accompanied by a delivery note stating the date (issuing and shipping), the content of the delivery (article number and number) and Funkwerk order code (order number and date). If the delivery note is missing or incomplete, Funkwerk shall not be responsible for resulting delays in processing and payment. Separate from the delivery note, the Supplier has to send a corresponding notification of dispatch with the same content.
- 5.6 The risk of accidental deterioration and accidental destruction shall pass to Funkwerk upon receipt at the place of performance in cases of delivery without erection or assembly. In the event of delivery with erection or assembly the risk of accidental deterioration and accidental destruction shall pass upon successful acceptance. Commissioning or use shall not replace a declaration of acceptance by Funkwerk.
- 5.7 Ownership of the ordered delivery/ service shall pass upon receipt of the goods by Funkwerk. Extended and/ or expanded retention of title have been ruled out.
- 5.8 Provided material shall remain Funkwerk's property. It shall be stored separately as such and may only be used for Funkwerk's purchase orders. Supplier shall be liable for reductions of value or losses even without culpability. The objects produced with the material provided by Funkwerk shall be Funkwerk property in the state of production at the time in question. Supplier shall keep said objects on Funkwerk's behalf; costs for the custody of the objects and materials kept on Funkwerk's behalf have been contained in the purchase price.

## 6. Prices – Invoices – Payments

- 6.1 The prices stated in Funkwerk orders shall be binding. Purchase orders without statement of a price shall only become valid when agreement about the "price" has been achieved between Funkwerk and Supplier in written form.
- 6.2 The invoices shall be sent to Funkwerk at least in duplicate following provision of the goods to the first freight forwarder. For each individual delivery of goods, a separate invoice shall be issued. The invoices shall contain all the information necessary for turnover tax law and necessary according to the contract (purchase order number, contract number, complete designation of goods, material number, the tax number or VAT number of Supplier issued by the Inland Revenue Office).
- 6.3 The agreed prices shall be fixed prices. The turnover tax owed by law shall be contained in the price to the extent that it is not separately stated or the price has not been expressly marked as a net amount. If not agreed otherwise in writing, the prices are DDP (delivered duty paid, Incoterms 2010), including packaging and possible liability insurance.
- 6.4 The agreed price shall be due for payment within 30 calendar days of full delivery and performance (including any agreed acceptance) and receipt of a capable invoice as defined in clause 6.2, but not before expiry of 30 days from the agreed delivery date. If Funkwerk effects payment within 14 calendar days, Supplier grants Funkwerk a 3% discount on the net amount of the invoice. In the case of bank transfer, payment is made in good time if the transfer order is received by Funkwerk's bank before the end of the payment period; Funkwerk is not responsible for delays caused by the banks involved in the payment process.
- 6.5 Funkwerk does not owe due date interest. In relation to the delay of payments, the statutory provisions apply.
- 6.6 Payments shall not mean recognition of the payment or service as being contractual. In the event of defective or incomplete delivery or service, Funkwerk shall be entitled, notwithstanding Funkwerk's other rights, to retain payments on claims from the business relationship to a suitable extent until proper performance.

## 7. Safety and environmental protection

- 7.1 Deliveries and services of the Supplier must fulfil the statutory directives, in particular the safety and environmental protection directives, including the Hazardous Substances Ordinance, the Act Governing the Sale, Return and Environmentally Sound Disposal of Electrical and Electronic Equipment (ElektroG) and the safety recommendations of the responsible German boards or associations, e.g. VDE, VDI, DIN. Relevant certifications, test certificates and proofs shall be provided free of charge.
- 7.2 Supplier shall be obliged to determine and comply with the current status of the guidelines and acts concerned with his deliveries with a view to substance limitation. Supplier shall be obliged not to make use of banned substances. Substances to be avoided and hazardous substances according to the valid acts and guidelines shall be stated by Supplier on the specifications. If applicable, the safety data sheets are to be provided as early as the quotations and with the delivery note in the first delivery in question (at least in German or English). Information on exceeding of material limitations and delivery of banned substances shall be notified to Funkwerk without delay.
- 7.3 For deliveries and in the performance of services, the Supplier shall be alone responsible for complying with accident prevention directives. Protection devices necessary according to them and all and any instructions by the manufacturer shall be supplied free of charge.
- 7.4 Supplier shall in particular ensure that all the substances used covered by the EU REACH chemical directive have been registered and admitted according to said directive and taking the use of the substances forming the subject matter of the contract into due account. This shall also apply to suppliers outside the EU. Sections 7.1 and 7.2 shall remain unaffected.

Supplier shall in particular ensure that all its supplies comply with the provisions of Regulation (EC) No 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH Regulation"). In particular, the Supplier is responsible for ensuring that the substances contained in its supplies have been registered to the extent required under the provisions of the REACH Regulation and that Funkwerk is provided with safety data sheets in accordance with the provisions of the REACH Regulation or the information required under Article 32 of the REACH Regulation ([reach@funkwerk.com](mailto:reach@funkwerk.com)). If the Supplier delivers articles within the meaning of Article 3 of the REACH Regulation, he is also responsible in particular for fulfilling his obligation to pass on sufficient information in accordance with Article 33 of the REACH Regulation to [reach@funkwerk.com](mailto:reach@funkwerk.com). If a claim is made against Funkwerk by a third party for violation of the REACH Regulation, which is attributable to a delivery by the Supplier, Funkwerk shall be entitled to request the Supplier to indemnify Funkwerk from these claims or to claim compensation for the damage caused by the non-existent REACH conformity. The aforementioned obligations shall also apply to Suppliers domiciled outside the European Union.

- 7.5 Supplier shall further in particular ensure that the notification, information, labelling and return duties resulting from the Act on placement on the market, return and environmentally safe disposal of batteries and rechargeable batteries (Batteries Act – BattG) are fulfilled properly or can be fulfilled by us. This shall also apply to suppliers outside the EU. Sections 7.1 and 7.2 shall remain unaffected.

## 8. Import and export directives, customs

- 8.1 For deliveries and services made from a country belonging to the EU outside Germany, Suppliers EU turnover tax identification number is to be stated.
- 8.2 Imported goods shall be supplied customs paid. Supplier shall be obliged to give required declarations and information (in particular *long-term supplier's declaration*), to admit examinations by the customs authorities and to provide required official confirmations within the framework of Regulation (EU) no. 952/2013 and Commission Implementing Regulation (EU) 2015/2447 at Supplier's expense.
- 8.3 Supplier shall furthermore be obliged to inform Funkwerk extensively and in writing of all and any approval duties for (re-)exports according to German, European and American export and customs directives as well as export and customs directives of the country of origin of the goods and services.

## 9. Assignment and offset

- 9.1 Supplier shall not be allowed to assign its claims against Funkwerk to third parties. § 354a German Commercial Code (HGB) shall remain unaffected.
- 9.2 Supplier shall only be entitled to offset with claims which are undisputed or non-appealable.

## **10. Dispatch – Packaging**

- 10.1 All deliveries of goods shall be accompanied by a delivery note in triplicate, on which all the information necessary according to the contract (purchase order number, contract number, complete designation of goods, material number) must have been stated.
- 10.2 Packaging is to be proper/ customary in the trade according the packaging manual of Funkwerk (available at [www.funkwerk.com/downloads](http://www.funkwerk.com/downloads)) and must ensure damage-free transport of the goods, taking the transport conditions with the freight forwarder into account. Upon request by Funkwerk, Supplier shall collect the packaging at its own expense at the delivery address stated in the order and dispose of it.
- 10.3 Funkwerk expressly forbids coverage with damage insurance pursuant to § 29.1.2 General German Freight Forwarding Conditions (ADSp) as well as transport goods insurance and declare himself to be a renouncing and waiver customer.
- 10.4 Funkwerk shall ignore any damage or transport goods insurances stated by Supplier on its invoices.

## **11. Quality – Duty to notify defects and examination expenditure**

- 11.1 Deliveries of goods and services must fulfil the purchase order directives, the state of the art, the agreements and the standardised and generally customary quality features in every regard.
- 11.2 To the extent that certificates of material examination have been agreed, they shall form an integral part of the delivery and shall be transmitted to Funkwerk together with the delivery.
- 11.3 The statutory provisions according the commercial obligation to examine and give notice of defects (§§ 377, 381 HGB) shall apply as follows: Funkwerk's obligation to inspect is limited to defects which become evident in Funkwerk's incoming goods inspection including the inspection of delivery documents as well as in Funkwerk's quality control by random sampling (e.g. transport damages, incorrect and short delivery). If an acceptance is agreed, there is no obligation to inspect. In addition, the extent of an investigation depends on the circumstances of the individual case after the proper course of business.  
Any evident defects and other open defects shall be rebuked within four (4) business days from delivery. Funkwerk will rebuke hidden defects within four (4) business days from the discovery of the defect.
- 11.4 If transport damage is discovered by Funkwerk's incoming goods department, a joint inspection of the situation by Funkwerk's incoming goods department and the freight forwarder or an inspection of the situation by Funkwerk's incoming goods department shall be acknowledged by Supplier as the basis of the notification of defects.
- 11.5 If Funkwerk returns defective goods to Supplier, Funkwerk shall be entitled to debit the invoice amount plus an expenses lump-sum of 5% of the defective goods. Funkwerk reserves the right to prove higher expenditure. The right to prove less or no expenditure shall be reserved for the Supplier.

## **12. Warranty for defects in title and quality**

- 12.1 Unless otherwise stipulated in these General Terms and Conditions of Purchasing, the statutory provisions shall apply to Funkwerk's warranty rights (including incorrect and short delivery as well as improper assembly, faulty assembly, operating instructions) and other breaches of duty by the Supplier.
- 12.2 In accordance with the statutory provisions, the Supplier is particularly liable for the fact that the goods have the agreed quality upon transfer of risk. In any case, the product descriptions which are the subject matter of the respective contract, in particular by means of a description or a reference in the order, or which have been included in the contract in the same way as these General Terms and Conditions of Purchasing, shall be regarded as an agreement on the quality. It makes no difference whether the product description originates from Funkwerk, from the Supplier or from the manufacturer.
- 12.3 By way of derogation from § 442 (1) sentence 2 BGB (German Civil Code), Funkwerk is entitled to claim warranty rights even if the defect at the conclusion of the contract has remained unknown due to gross negligence.
- 12.4 Supplier shall bear the risk of accidental deterioration and accidental destruction in the time in which the object of delivery or service is not in Funkwerk's custody for the purpose of supplementary performance.
- 12.5 If the Supplier fails to fulfil its obligation to subsequent performance – at Funkwerk's discretion by removing the defect (rectification) or by delivering a defect-free product/ performance (subsequent delivery) – within a reasonable period set by Funkwerk, Funkwerk can remedy the defect itself or have it remedied by a third party and demand compensation from the Supplier for the necessary expenses or a corresponding advance. If the subsequent performance by Supplier has failed or is unacceptable to Funkwerk (in particular with special urgency, threat to operational safety or to prevent unusually high damages), an appointment of a date for subsequent performance is unnecessary; Funkwerk will inform the Supplier of such circumstances without delay, if possible beforehand. This also applies if the Supplier delivers or performs delayed, and Funkwerk must immediately remedy any defects in order to avoid an own delivery delay.
- 12.6 Apart from this, Funkwerk's statutory rights shall remain unaffected.
- 12.7 The statute of limitations is 36 months from the passing of risk. Insofar as Funkwerk is entitled to non-contractual claims for damages due to a defect, the statutory limitation period (§§ 195, 199 BGB) shall apply to this extent, unless the application of the aforementioned limitation periods for contractual deficiency claims leads to a longer limitation period.
- 12.8 In the case of acceptance of a Premature Delivery (as defined in Section 4.4) by Funkwerk, the statute of limitations for all contractual claims for defects shall be extended by the period between acceptance of the Premature Delivery and the agreed performance / delivery date.

## **13. Product liability – Indemnification**

- 13.1 To the extent that Supplier is responsible for a product error, it shall be obliged to indemnify Funkwerk against claims to damages by third parties at first request to the extent that the cause can be found in its sphere of control and organisation and it is liable itself in the external relationship.
- 13.2 Within the framework of its liability for damage within the meaning of sub-section 1, Supplier shall also be obliged to reimburse all and any expenditure resulting from or in connection with any recall action held by Funkwerk pursuant to §§ 683, 670 BGB and also pursuant to §§ 830, 840, 426 BGB.

To the extent possible and reasonable, Funkwerk shall notify Supplier of the contents and the scope of the recall measures to be held and grant it the opportunity of commenting. Any further statutory claims remain unaffected.

13.3 The Supplier must have a product liability insurance with an amount of coverage of at least one (1) million euro per person / property damage.

#### **14. Protective rights**

14.1 The Supplier guarantees that no rights of third parties are infringed in connection with its delivery or performance.

14.2 If claims are made against Funkwerk by a third party on account of alleged breaches of protective rights, Supplier shall be obliged to indemnify Funkwerk against said claims at first written request, unless it is not responsible for the breach of the protective rights. The indemnification duty shall cover all expenditure incurred by Funkwerk in connection with the claim made by third parties.

14.3 Funkwerk shall not be entitled to make any agreements with the third parties without Supplier's approval, in particular not concluding any settlements.

14.4 The statute of limitations for the claim to indemnification shall be two years from Funkwerk's knowledge or gross negligent lack of knowledge of the circumstances substantiating the claim. Apart from this, the claim to indemnification shall expire ten years from its origination without regard to the knowledge.

#### **15. Regulations in relation to the Minimum Wage Law (Mindestlohngesetz – MiLoG)**

15.1 Funkwerk may be held liable according to § 13 MiLoG in connection with § 14 AEntG (Code on the Posting of Workers), if and insofar as the Supplier or its subcontractors do not or not fully pay minimum wage. Therefore Supplier guarantees, that it and its subcontractors fully pay at the due dates at least the minimum wage to their employees according to § 1 MiLoG. Supplier accepts to reimburse Funkwerk for any damages occurring in relation to any claims resulting from Suppliers' or its subcontractors' non-compliance with the above provisions. § 774 BGB remains unaffected.

15.2 Funkwerk is entitled to demand from Supplier at any time evidence of payment of the minimum wage by the Supplier and its subcontractors. In case Supplier does not provide evidence within 3 weeks from the demand or in case indications suggest that Supplier or its subcontractors are not paying the minimum wage, Funkwerk is entitled to terminate the contractual relationship with immediate effect.

15.3 Supplier is obliged to agree the right to demand evidence as referred to above with its subcontractors in its and Funkwerk's favour, provided that such subcontractors do involve own employees in the execution of the contractual relationship. The same applies for the obligation to have granted respective rights in relation to subcontractors of the subcontractors.

15.4 To secure the claims referred to above, Funkwerk retains 5 % of the order amount, provided that the aforementioned evidence has not consistently and completely been provided. In relation to contracts for the performance of continuing obligations, the order amount of a year at most will be taken as the basis for the calculation of the amount to be retained. If and when the security interests do not longer exist, Funkwerk will release the retained amount. If the contract concluded contains the obligation to conduct an acceptance, the retained amount will be released at the end of the third year following the year, where the acceptance has occurred, unless Funkwerk indicates to Supplier claims according to § 13 MiLoG. The same applies in case of § 646 BGB. In case no acceptance is agreed, the retained amount will be released at the end of the third year after the year, where the contract expires, unless Funkwerk indicates to Supplier claims according to § 13 MiLoG. Supplier is entitled has the right to replace the retained amount by a directly enforceable guarantee of a national financial institution with an equivalent terms. The retained amount will be yielded interest of 1 % above the base interest rate according § 247 BGB.

#### **16. Place of jurisdiction – Applicable law – Separability clause**

16.1 To the extent that Supplier is a merchant according the provisions of the German Commercial Code or an entrepreneur according § 14 BGB, the registered offices of Funkwerk shall be the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship. Funkwerk shall also be entitled to sue Supplier at its registered office as well. Prior statutory provisions, in particular to exclusive place of jurisdictions, remain unaffected.

16.2 The legal relationships existing in connection with this General Terms and Conditions of Purchasing and the respective contract shall be governed by German substantive law, to the exclusion of the United National Convention on contracts for the International Sale of Goods (CISG) and to the exclusion of the rules of conflict of the German International Private Law.

16.3 If individual provisions of these General Terms and Conditions of Purchasing are partly or totally ineffective, this shall not affect the effectivity of the remaining provisions or the remaining parts of such provisions.