

General Terms and Conditions of Business of Riedel Networks GmbH & Co. KG

General terms and conditions of business of Riedel Networks GmbH & Co. KG | Schloßstraße 10 | 33510 Butzbach, Germany (hereinafter referred to as the "Provider")

The business of the Provider is to set up networks for international sites of companies for the purpose of transferring data. To this end, Riedel Networks operates an international MPLS network.

Section 1 Object

- (1) The provisions of these terms and conditions of business (hereinafter referred to as the "Terms and Conditions") shall govern the principles of the legal relationship between the Provider and the customer. All services of the Provider shall solely be carried out on the basis of these Terms and Conditions. For the specific services to be rendered by the Provider, separate individual contracts shall be concluded, to which these Terms and Conditions shall apply. They shall also apply to all future services rendered by the Provider to the customer, even if they are not separately reaffirmed.
- (2) By way of exception, the Terms and Conditions shall not apply when and insofar as a specific contract contains provisions that are expressly designated as having priority over any of the Terms and Conditions within the contractual scope or whose precedence over the provisions of the Terms and Conditions arise from the fact that they are more specific in their substantive content. In cases of doubt, the provisions of the individual contract shall prevail in the event of any contradictions. General terms of purchase or other general terms and conditions of business of the customer shall not apply to the business relationship, unless the Provider has expressly agreed to their applicability in writing. The Terms and Conditions shall apply even if the Provider delivers the service to the customer without reservation in the knowledge of the customer's conflicting or deviating terms and conditions.

Section 2 Formation of the contract

- (1) All offers made by the Provider shall be without obligation and non-binding unless they are expressly marked as binding or include a specific term of acceptance. Even the transmission of a specific contract and the Terms and Conditions and any additional documents by the Provider shall be without obligation and shall not, in itself, constitute a binding contract offer, unless it is expressly agreed otherwise or the documents are expressly designated as a binding offer.
- (2) Only by signing and sending or by delivery of the specific contract/order to the Provider does the customer submit to the Provider one or more offer(s) to conclude a contract. He shall be bound by his offer or offers for a period of four weeks after receipt by the Provider.
- (3) A binding contract shall come into existence only when and insofar as the Provider expressly ac-

cepts the offer in writing or actually starts rendering the services requested by the customer, in particular by providing network access. Express written acceptance shall usually be effected by an order confirmation or by the countersignature of a contract. If the Provider starts rendering the services requested by the customer no further confirmation shall be required, meaning that the contract shall be deemed to have been accepted and concluded at that point. This shall not include services in relation to which it becomes clear during their execution that the product ordered in the individual contract can not be delivered because of infrastructural deficiencies or at the customer's site. In this case no contract shall have been concluded, unless expressly agreed otherwise or unless the service is nevertheless provided to the customer in an operational way. The Provider shall notify the customer of any infrastructural deficiencies without delay. Provided no other agreement has been made, advance and partial payments shall be refunded immediately.

Section 3 Term and termination

- (1) Where the specific order or the individual framework agreement does not contain anything to the contrary, the contract shall have a minimum term of 12 (in words: "twelve") months, starting from the time the goods or services owed have been provided ready for operation. The contract can be terminated by either party giving three months' written notice to expire at the end of the minimum term. Otherwise the contract shall automatically be extended for a period of twelve months each time and can be terminated by either party giving the aforementioned notice of three months to expire at the end of each further term. The contract term for each individual part performance shall start from the time each part has been provided ready for operation.
- (2) Any notice of termination shall be valid only if made in writing.

Section 4 Specification of services

- (1) The nature, content and scope of the goods and services to be rendered by the Provider arise from the individual contract concluded separately or from the written order confirmation of the Provider. Side agreements or modifications shall be effective only upon written confirmation by the Provider.
- (2) Insofar as the Provider expressly agrees, in a given case, to render additional goods and services free of charge, such goods and services can be discontinued at any time with prior notice taking into account the parties' mutual interests. This shall not result in a claim for price reduction or damages by the customer or a right of termination.
- (3) The Provider shall be entitled to change, reduce or supplement the services detailed in the individual contract at any time, or to discontinue access to individual services, if and insofar as this does not affect or only insignificantly affects the purpose of the

contract concluded with the customer and the change is reasonable for the customer. This does not apply insofar as the Provider and the customer have expressly agreed that any specifications regarding the subject of the services shall be binding. In this case, changes made by the Provider shall continue to be allowed, provided they are made due to mandatory legal rules and are reasonable to the customer. If they are unreasonable, the customer shall be entitled to withdraw from the contract. Any further claims shall be excluded.

Section 5 Duties and obligations of the customer

- (1) The customer shall use the Provider's services in the appropriate way and only in the context of the designated purpose. In particular, the customer shall
 - a) notify the Provider promptly in writing about changes to the contractual basis,
 - b) notify the Provider promptly in writing about changes to the conditions for tariff classification,
 - c) not misuse the access rights to the Provider's services and refrain from any unlawful or illegal acts. In particular, the customer shall refrain even from attempting
 - an unauthorized use of other users' access to the Provider's services,
 - to enable other users to use the services the Provider carries out for the customer in an unauthorized way, in particular leaving relays open or failing to adequately secure the mail server in accordance with the state of the art against unauthorized use,
 - to use, without authorization, the Provider's services about which no individual contracts have been concluded,
 - to decrypt passwords of other users of the Provider's services or the system operator,
 - to read the emails of other users of the Provider's services without authorization,
 - to modify files of other users of the Provider's services,
 - to distribute, without authorization, the application software licensed for individual applications regarding the Provider's services,
 - to interrupt or block communication services of the Provider at the expense of other users; to distribute or provide access via the Provider's services to criminal content of any kind, especially pornographic, violence-glorifying or such content that is directed against the free democratic basic order or the concept of international understanding, as well as means of propaganda and trademarks of unconstitutional parties or their replacement organizations,
 - for itself or third parties via the Provider's services to obtain possession of pornographic content which involves the sexual abuse of children or sexual acts with animals.
 - d) ensure compliance with any legal regulations and regulatory requirements addressed to the customer, insofar as these are relevant for the use of the Provider's goods and services,
 - e) to have regard to and observe the data protection provisions from time to time in force and the recognized principles of data security,
 - f) to notify the Provider without delay of any identifiable faults or damage (fault reports) and to take all reasonable measures to allow an identification of the faults or damage and their causes and/or mitigation of the extent of the damage or facilitating and accelerating the removal of the disruption,
 - g) notify the Provider at least 48 hours prior to a foreseeable, unusually high use of the services.
- (2) In the case of a breach by the customer of the obligations referred to in paragraph (1) c) the Provider shall be entitled to terminate the contract without notice and without prior warning, in the case of a breach of the obligations referred to in paragraph (1) a) to b) and d) to f) the Provider shall be entitled to terminate the contract without notice, following an unsuccessful warning, except where the customer has acted without culpability in relation to the breach in question.
 - (3) Details of the interaction among users can be arranged by way of user regulations. Violations of essential provisions of these user regulations shall entitle the Provider, after having unsuccessfully issued a warning, to terminate the contract without notice.
 - (4) If the customer culpably violates the obligations referred to in section 5(1) of these Terms and Conditions, the Provider shall, in addition to the right to terminate the contract without notice, be entitled to suspend access to the services as per the service specifications with immediate effect. The Provider shall also have this right if the customer is involved in a hacking attack or a suspected hacking attack, regardless of the nature of such hacking attack or suspected hacking attack. In this case, the Provider shall immediately notify the customer of the suspension. The duration of the suspension shall be limited to the period that is necessary to defend against a (suspected) hacking attack. For the period of the suspension the customer shall be exempt from its payment obligations for the Provider's services.

Section 6 Use by third parties

- (1) A direct or indirect use of the services by third parties is allowed only after express written permission by the Provider. The Provider shall be entitled to make such permission conditional upon the payment of an additional remuneration which shall be separately agreed upon.
- (2) If the use by third parties is permitted, the customer has to instruct these third parties properly in the use of the services. In relation to the Provider, the customer shall be responsible for the third party's compliance with the contractual provisions in the same way as he would be responsible for his own actions.
- (3) If the use by third parties is not permitted, this shall not result in any claims for price reduction, damag-

es or termination rights on the part of the customer.

- (4) The customer shall also pay the fees incurred in the context of his access and usage rights by the authorized use of the Provider's services by third parties. The same shall apply in the event of unauthorized use of the services by third parties, unless the customer can prove that the unauthorized use was effected by a third party bypassing or breaking through the Provider's security facilities in a way that was beyond the customer's control.

Section 7 Payment terms

- (1) Components of the remuneration to be agreed in the individual contracts can be fixed fees, usage-dependent variable fees, line and communication costs and other fees.
 - a) Fixed fees within the meaning of these Terms and Conditions shall be those remuneration components designated as flat rates, basic rates or one-off charges in the individual contracts.
 - b) Usage-dependent variable fees within the meaning of these Terms and Conditions shall be payments to be made by the customer, the amount of which depends on bandwidth usage or data volume in accordance with the individual contracts.
 - c) Line and communication costs within the meaning of these Terms and Conditions shall be all charges levied to the Provider by Deutsche Telekom AG or any other third party for the connection between the line of the customer and the infrastructure of the Provider or the charges resulting from leaving the network of the Provider and the associated transition to third party facilities.
 - d) Other fees within the meaning of these Terms and Conditions shall be all other payments that the customer has to make either once or on an ongoing basis, in particular for maintenance and services and which do fall within the preceding paragraphs a) to c).
- (2) Line and communication costs shall be borne by the customer. Insofar as separate costs arise for the Provider in relation to the access provided (e.g. terminal adapter, exclusive modem provision), the customer will be charged separately for these.
- (3) All other components and the amount of fees to be paid by the customer shall be laid down in the respective individual contracts. Unless otherwise agreed in writing, any additional or special services shall be charged separately.
- (4) The Provider shall issue monthly invoices to the customer for his services.
- (5) Unless otherwise agreed, the fixed fees and other remuneration components shall become due no later than 10 days after the date of the invoice; the customer shall not be entitled to make any deductions. Unless otherwise agreed, the Provider shall collect the amounts due directly from the customer's bank account by way of direct debit. The customer shall set up a direct debit instruction in favour of the Provider.

- (6) If the fixed fee is not payable for a full calendar month, it shall be calculated pro rata. Depending on the month in question, the fee per day shall be 1/28, 1/29, 1/30 or 1/31 of the agreed monthly fee.
- (7) If, in order to render the services to the customer, the Provider has to make payments or provide goods or services in advance of the contract being signed or if he has already provided such advance payments, goods or services, the Provider shall be entitled to demand payment from the customer of all costs arising in relation to this, on signing of the contract. The same applies to advance payments, goods or services which the Provider is providing or has already provided to third parties on behalf of the customer.

Section 8 Default of payment

- (1) If the customer is in default of payment, the Provider shall have a right to default interest of 8 percentage points above the base rate p.a. from time to time in force. The Provider reserves the right to claim for further loss or damage.
- (2) The Provider shall be entitled to terminate the contract without notice or to exercise a right of retention on the services he owes under the contract, in particular to suspend the line connection of the customer, if the customer is in default of payment of fees or a significant part of the fees for two consecutive months or of payment amounting to two months' worth of fees for a period extending over more than two months.

Section 9 Price change

- (1) The Provider reserves the right to reasonably adapt the prices agreed in the individual contracts for the goods and services to be rendered by him (hereinafter the "Price Change"), particularly with regard to significant changes in market conditions and/or tariff structure which were unforeseeable at the time the contract was concluded. The Provider shall notify the customer of the Price Change in writing and in good time, however, at least three months in advance, unless the parties agree otherwise in the given case. In the case of price reductions, these shall first count against any special rebates which have been granted to the customer, if applicable.
- (2) However, where the Price Change is a price increase, the customer has the right to object, in writing, to such price increase within a period of four weeks after receipt of the notice. If the customer objects to the price increase within the time stipulated and no agreement is reached between the parties, each party shall be entitled to terminate the respective individual contract in connection with which the price change is proposed, by giving six weeks' notice before the end of the month following which the price change was to take effect.
- (3) An objection pursuant to section 9(2) of this contract shall be excluded if and insofar as the price increases by the Provider are related to fee adjustments by public or comparable monopolistic service providers used by the Provider and stay within the scope of these fee adjustments.

Section 10 Right of set-off and right of retention

The customer may only set off such claims against the Provider's claims which are undisputed or have been

finally and bindingly established in law. The customer shall be entitled to assert a right of retention only for such counter-claims as result from the same contractual relationship as those claims against which the right of retention is exercised. This restriction does not apply if the services to be rendered by the Provider, which are based on different individual contracts, are closely and inextricably linked.

Section 11 Confidentiality, data protection

- (1) The customer is hereby notified in accordance with section 33 subsection 1 of the German Federal Data Protection Act [Bundesdatenschutzgesetz] that the Provider stores personal data in machine-readable form and automatically processes the data for functions arising from the contract.
- (2) Insofar as the Provider uses the services of third parties for the provision of its services, he shall be entitled to disclose the subscriber data in compliance with the provisions of section 28 of the Federal Data Protection Act. This permission shall also subsist if the transfer of data is necessary to detect, contain and/or remedy disruptions and faults in the equipment of the Provider as well as third party equipment used by the Provider.
- (3) The Provider represents that his staff, which is involved in the implementation of this agreement, has been obligated to maintain data confidentiality in accordance with section 5 Federal Data Protection Act and that the Provider has taken the necessary technical and organizational measures in accordance with section 9 Federal Data Protection Act to ensure the implementation of the provisions of the Federal Data Protection Act.

Section 12 Availability of the services

- (1) The Provider offers its services 24 hours, seven days a week. Necessary downtime in order to carry out preventive maintenance work shall be announced as early as possible. The Provider shall eliminate disruptions of its technical facilities as quickly as possible, within the limits of the prevailing technical and operational options.
- (2) Incidents of force majeure shall entitle the Provider to suspend the contractually owed service for the duration of the disruption plus a reasonable start-up time, or to withdraw from the contract in full or in part from that part of the contract not yet filled. Equivalent to force majeure shall be strikes, lock-outs, political unrest or unforeseen circumstances, e.g. operational hold-ups, which make it impossible for the Provider to render the contractually owed services despite reasonable efforts. This shall apply even if the aforementioned obstructions occur at one of the service providers within the meaning of section 9(3) of these Terms and Conditions, which the Provider uses. The Provider shall notify the customer immediately if a case of force majeure under this section 12(2) occurs.

Section 13 Liability and limitation of liability

- (1) The Provider shall be liable for injury to life, body and health within the legal requirements. For slightly negligent breaches of essential contractual obligations (material obligations), the Provider shall only be liable for the amount of loss or damage that was foreseeable when the contract was entered in-

to. This shall apply, in particular, for such loss or damage that has occurred

- a) through the use of services of the Provider,
- b) through transfer and storage of data by the Provider,
- c) through the use of programs and data transferred by the Provider,
- d) through a failure to carry out checks in relation to stored or transferred data pages of the Provider or
- e) due to a failure of the Provider to carry out the necessary storage or transfer of data. Contractual obligations shall be deemed to be material obligations if their fulfilment is crucial for the proper performance of the contract and on the fulfilment of which the contractual partner relies and may duly rely.

Apart from the above, the customer shall only be entitled to claim damages if the Provider or its legal representatives, employees and other persons employed in performing a contractual obligation act intentionally or with gross negligence. Insofar as the liability of the Provider is excluded or limited under this agreement, the same shall also apply with regard to the personal liability of the employee, worker, staff member, representative and other person employed in performing contractual obligations of the Provider, who has committed the breach.

- (2) The Provider also accepts no responsibility for content in particular, if it has been left to him by the customer to meet the Provider's obligations under the individual contracts. This also applies to any loss or damage resulting from the use of such content. The customer confirms that the content provided by him may be freely used and processed, in particular, that he has all the necessary rights of use arising from the copyright.
- (3) The customer agrees, upon first demand, to indemnify the Provider against all claims by third parties arising from the culpable breach of his contractual or legal obligations towards the Provider or third parties, particularly those claims based on the illegality or the culpable breach of third party rights through the content provided by the customer.
- (4) The Provider shall not be liable for any third party information which is transferred via his services, nor shall he be liable for its completeness, accuracy or timeliness or that it is free of third party rights or that the sender is acting legally, unless the Provider acts with intent or is grossly negligent.
- (5) Furthermore, the Provider shall not be liable for loss or damage arising from the fact that the services of the Provider cease due to war or military conflict, force majeure or strike action.
- (6) The customer shall be liable for all consequences and harm incurred by the Provider or third parties through the improper or illegal use of the Provider's services or due to the fact that the customer culpably defaults on his other contractual or statutory duties and obligations. This liability shall extend, in particular, to material and staff costs incurred by the Provider and to other expenses.

- (7) If the customer submits a fault report in accordance with section 5(1)(f) of this contract and a subsequent inspection conducted by the Provider shows that the fault lay in the customer's area of responsibility, then the customer shall reimburse the expenses incurred by the Provider for the inspection, if and insofar as the customer has noticed or negligently failed to notice that there was no fault present, but that the cause of the fault lay in the customer's own area of responsibility. If the customer fails to submit a fault report in accordance with section 5(1)(f) he shall be liable to compensate the Provider for the loss or damage resulting therefrom. Insofar as the Provider was unable to remedy the situation due to the omission to provide a fault report, the customer shall not be entitled to claim damages from the Provider.
- (8) The limitation period for damages claims of customers shall be one year from the end of the year in which the claim arose and the customer became aware, or in the absence of gross negligence ought to have become aware, of the circumstances giving rise to the claim and the identity of the liable party. Notwithstanding this, the statutory limitation period shall apply in the event of injury to life, body and health as well as for claims arising from instances of intent or gross negligence or the negligent breach of material contractual obligations in accordance with section 13(1) of these Terms and Conditions by the Provider, his legal representatives, employees or other persons employed in performing contractual obligations.

Section 14 Warranties

- (1) If a disruption of the Provider's services, which is substantial, continues for more than one week and if, taken together, an actual period of disruption of more than 24 hours is reached, the customer shall be entitled to reduce the monthly fees and charges which result from a pre-order of services depending on consumption (bandwidth) for the actual duration of the disruption. A disruption shall be substantial if
- for reasons he is not responsible for, the customer is unable to access the infrastructure of the Provider and can thus no longer use the services set out in the contract and
 - the use of these services overall becomes much more difficult and the use of individual services listed in the contract becomes impossible or similar restrictions occur.
- (2) A price reduction shall be excluded if the reasons for the failure of services lies outside of the Provider's area of responsibility. The same shall apply to the loss of services due to necessary operational disruptions in accordance with section 12 of these Terms and Conditions. A price reduction shall also be excluded if the Provider was unable to take remedial action as a result of a culpable omission by the customer to provide a fault report in accordance with section 5(1)(f). In all other respects, the liability of the Provider shall be determined in accordance with statutory provisions, unless otherwise provided in the terms of individual contracts or in section 13 of these Terms and Conditions.

Section 15 Final provisions

- (1) There shall be no verbal side agreements. Changes or additions to individual contracts, Terms and

Conditions or other documents must be in writing. This shall also apply to the repeal of the requirement for written form.

- (2) Where these Terms and Conditions provide that declarations of intent or notifications must be made in writing, the written form shall also include text form, i.e. by fax or by email.
- (3) The Terms and Conditions, additional documents and individual contracts shall be subject to German law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- (4) Should one or more provisions of the Terms and Conditions be or become void, invalid or incomplete, the validity of the remaining provisions shall remain unaffected. The invalid or unenforceable provision shall be replaced by such a provision, or the gap in the contract shall be closed by means of such a provision, with which the economic purpose pursued by the parties can best be achieved.
- (5) The Provider shall be entitled to designate the customer as a reference customer, without having to pay a fee to the customer in return.
- (6) The place of jurisdiction for all disputes arising from this contract shall be Wuppertal, Germany. The Provider shall, however, also be entitled to bring an action at the customer's place of business.
- (7) For any technical and contractual business matters, the customer shall refer to the address below, unless he has been given a different or additional contact for technical issues in the contract:

Riedel Networks GmbH & Co. KG
Schloßstraße 10
33510 Butzbach
Germany