



# Terms & Conditions of Purchase

Version: November 2023

## 1. Exclusive Terms & Conditions.

- 1.1 Rohde & Schwarz USA, Inc.'s ("**RSA**") purchase order ("**Order**") together with these Terms & Conditions of Purchase attached thereto constitute RSA's legally-binding, firm offer (collectively, the "**Offer**") concerning the provision of products, including hardware and software, services, or a project for a custom set of products and services comprising a system or solution (collectively, the "**Deliverables**") to the Supplier identified on the Order ("**Supplier**").
- 1.2 RSA expressly limits Supplier's acceptance of this Offer to the terms and conditions hereof. Supplier's order acknowledgement ("**Order Acknowledgement**") shall constitute Supplier's acceptance of such Offer, without modification. RSA objects to and rejects any proposed additional or different terms in Supplier's quote or Order Acknowledgement or in any other communications from Supplier.
- 1.3 Proposed terms by Supplier shall only apply to the Offer if RSA, in its sole discretion, expressly accepts them in writing. RSA's silence shall not be deemed to constitute acceptance of Supplier's proposed additional or different terms. Upon RSA's receipt of Supplier's Order Acknowledgement or upon Supplier's performance in furtherance of the Offer, this Offer and any proposed additional or different terms agreed to by RSA in writing, if any, shall constitute the parties' legally binding contract (the "**Agreement**"). Supplier acknowledges that the Deliverables will be distributed worldwide to customers at all stages of distribution and in any form, integrated or non-integrated, and may also be used in safety-critical areas (e.g., in the military or aviation sector).

## 2. Orders.

- 2.1 An Order shall be legally binding only if issued by RSA in writing using an RSA purchase order form and an RSA order number unless otherwise agreed (e.g., electronic data interchange (EDI), vendor-managed inventory (VMI) or consignment stock).
- 2.2 RSA may at any time, by written instructions and/or drawings issued to Supplier (each a "**Change Order**"), request changes to the Deliverables. Supplier shall within five business days of receipt of a Change Order submit to RSA a firm cost proposal for the Change Order. If RSA accepts such cost proposal, Supplier shall proceed with the changed Deliverables subject to the cost proposal and the terms and conditions of the Agreement as amended by the Change Order. Seller acknowledges that a Change Order may or may not entitle Supplier to an adjustment in Supplier's compensation or the performance deadlines under the Agreement.

## 3. Invoices / Taxes.

- 3.1 Supplier shall issue a separate, verifiable, and clear invoice to RSA for each Order on or after the delivery and/or performance of the Deliverables. Each invoice shall state the Order details (RSA order number, date of order, order line item, material number, quantity, and price). Invoices shall be sent via email to [APRSA@rsa.rohde-schwarz.com](mailto:APRSA@rsa.rohde-schwarz.com).
- 3.2 Except as otherwise provided below, the prices to be paid by RSA to Supplier do not include taxes. RSA is not liable for any taxes that Supplier is legally obligated to pay, including without limitation net income or gross receipts taxes, franchise taxes, and property taxes. RSA will pay Supplier for any sales, use or value-added taxes it owes due to this Order and which the law requires Supplier to collect from RSA.
- 3.3 RSA will not be involved in the importation of the Deliverables, and import taxes are the responsibility of Supplier.
- 3.4 If RSA provides Supplier a valid exemption certificate, Supplier will not collect the taxes covered by such certificate.
- 3.5 If the law requires RSA to withhold taxes from payments to Supplier, RSA may withhold those taxes and pay them to the appropriate taxing authority.

## 4. Payments.

- 4.1 Payments shall be made within Net 30 days, in U.S. Dollars.
- 4.2 The term of payment commences on the later date of RSA's acceptance of the Deliverables or RSA's receipt of an invoice in due form.
- 4.3 Without prejudice to any other right or remedy it may have, RSA reserves the right to set off at any time any amount owing to RSA by Supplier against any amount payable by RSA to Supplier. Supplier shall continue performing its obligations under the Agreement notwithstanding any such set-off. Cash discount shall be permissible even if RSA makes a set-off or withholds payments in a reasonable amount due to non-conforming or defective Deliverables.
- 4.4 During the term of the Agreement and for four (4) years after, Supplier agrees to keep all usual and proper books and records of account and all usual and proper entries related to its costs and expenses pertinent to the Agreement. During the above referenced period RSA may audit and/or inspect the applicable records and facilities to verify statements or invoices issued by Supplier and confirm Supplier's compliance with the Agreement. Any such audit will be conducted by RSA corporate internal audit personnel or by a certified public accountant firm selected by RSA. RSA will provide reasonable notice to Supplier before the audit or inspection and Supplier agrees to provide RSA's designated audit or inspection team reasonable access to Supplier records and facilities.

## 5. Delivery Date / Notice of Delay / Permits.

- 5.1 Supplier shall provide the Deliverables in the quantities and on the date(s) specified in the Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). Time is of the essence with respect to Supplier's obligations hereunder and the timely delivery and/or performance of the Deliverables. All agreed dates and periods shall be binding. Delivery and/or performance of the Deliverables prior to the Delivery Date shall require the prior written consent of RSA. If Supplier provides the Deliverables prior to the Delivery Date without the prior written consent of RSA, RSA reserves the right to return such Deliverables at the expense and risk of Supplier.
- 5.2 As soon as Supplier is able to realize that it will not meet a Delivery Date, it shall inform RSA without undue delay in writing of the period of the delay, indicating the reasons for the delay and the planned corrective measures. The assertion of any rights due to the delay by RSA shall remain unaffected.
- 5.3 If Supplier fails to provide the Deliverables by the Delivery Date, in whole or in part, RSA may terminate the Agreement in whole or in part immediately by providing written notice to Supplier and, in addition to any rights or remedies available to RSA at law or in equity, Supplier shall indemnify RSA against any losses, claims, damages, and reasonable costs and expenses attributable to Supplier's failure to provide the Deliverables on the Delivery Date.

5.4 Supplier shall timely obtain and maintain any permits necessary for the Deliverables at its own expense.

**6. Delivery Point / Transfer of Risk / Transfer of Title.**

6.1 Place of performance or delivery shall be the address stated by RSA in the Order (the **“Delivery Point”**).

6.2 Supplier will bear all risk of loss, damage, or destruction to the Deliverables, in whole or in part, occurring before acceptance by RSA at the Delivery Point.

6.3 Unless otherwise agreed, Deliverables will be delivered: (a) FOB to the Delivery Point if the Deliverables originate in the same jurisdiction as the Delivery Point; and (b) DDP (Incoterms® 2020) to the Delivery Point for cross border delivery of Deliverables to the Delivery Point. RSA shall be entitled to choose the carrier and the mode of transport.

6.4 Deliverables shall be accompanied by packing or delivery notes specifying the contents and the necessary Order details (RSA order number, date of order, order line item, material number, quantity).

6.5 Title to the respective Deliverables shall pass to RSA upon acceptance by RSA at the Delivery Point.

**7. Inspection and Testing of Deliverables Prior to Acceptance.**

7.1 RSA reserves the right to inspect and test the Deliverables at any time and place, including the period of manufacture and before acceptance by RSA. If RSA inspects or tests at Supplier’s premises, Supplier, without additional charge, will provide all reasonable facilities and assistance for the safety and convenience of RSA’s inspectors. Regardless of whether inspection or testing is done or not done before acceptance, Supplier will not be relieved from responsibility for defects or for other failure to meet the specifications or requirements of the Agreement.

7.2 RSA shall be entitled to perform quality and/or process audits on Supplier’s premises that are relevant to the Deliverables during regular business hours to check the due execution of the contract or to have the audit performed by third parties who are bound to secrecy. RSA shall announce each audit at least seven (7) days in advance.

**8. Examination of Deliverables upon Receipt of Delivery.**

8.1 On or after the Delivery Date, RSA shall have a reasonable opportunity to examine the Deliverables including but not limited to on the basis of the delivery documents and an external inspection of the packaged goods, whether the Deliverables received correspond to the quantity and type ordered and whether there is any externally visible transportation damage. Furthermore, RSA may take representative samples of the overall Deliverables and examine the samples taken for defects. The level of examination applied to the samples taken will be dependent on the extent to which an examination in the respective individual case is practicable in the orderly course of business.

8.2 Should RSA identify any non-conforming or defective Deliverables, in addition to any rights or remedies available to RSA at law or in equity, RSA may at its election, effective upon notice to Supplier: (a) reject all or a portion of the Deliverables without correction for a full refund, (b) reject the Deliverables and require prompt replacement of the rejected Deliverables, or (c) accept the Deliverables at a reasonably reduced price.

8.3 If RSA elects replacement of the Deliverables, Seller shall, at its expense, promptly replace the non-conforming or defective Deliverables and in any case pay for all costs and related expenses, including, but not limited to, labor and material costs of deinstallation, removal, transportation charges for the return of the defective Deliverables to Supplier, repair, delivery charges of repaired or replacement Deliverables to RSA, acceptance testing, and installation costs.

8.4 If Seller fails to timely replace the Deliverables, RSA may replace them with goods or services from a third party and charge Supplier the cost thereof and terminate the Agreement for cause.

8.5 Any inspection, testing, examination, or other action by RSA under Section 7 or Section 8 shall not reduce or otherwise affect Supplier’s obligations under the Agreement, and RSA shall have the right to conduct further inspection, testing or examinations after Supplier has carried out its remedial actions.

**9. Rights to the Deliverables.**

9.1 Supplier grants RSA the non-exclusive, irrevocable, transferable, worldwide, and perpetual right, to use the Deliverables. In addition, RSA is entitled to integrate the Deliverables or parts thereof into or with other products, to distribute the Deliverables or parts thereof worldwide, either integrated or non-integrated, and insofar as this is necessary in order to achieve the purpose of the Agreement, to adapt or otherwise alter the Deliverables or parts thereof and to distribute the results of such activities as aforementioned. RSA is also entitled to sublicense the foregoing rights of use.

9.2 If and to the extent that the Deliverables or parts thereof are developed for RSA, Supplier grants RSA the exclusive, irrevocable, transferable, worldwide, and perpetual right, unrestricted in terms of content, to use the Deliverables or parts thereof in all known and unknown ways. In particular, RSA is entitled at its discretion to reproduce the Deliverables or parts thereof, to distribute (also by renting) and to communicate to the public (in particular by making available to the public) the Deliverables or parts thereof and reproductions thereof. This also includes the right to adapt or otherwise alter the Deliverables or parts thereof by any means and to use the results thereof as aforementioned. RSA is also entitled to sublicense this right of use. With regard to any software developed for RSA, this right of use relates to the object and source code and Supplier shall also make this software available in source code form. When providing the source code, Supplier shall also provide an explanation of the source code enabling the software to be understood, after a reasonable familiarization period, in such a way that alterations can be made to the software without having to inquire with Supplier.

9.3 If and to the extent that the result or a partial result of the development of the Deliverables can be protected by industrial property rights, Supplier hereby irrevocably gives its prior consent to RSA to file an application for industrial property rights in the country of RSA’s domicile and abroad and hereby assigns all rights to, and resulting from, this invention to RSA, especially its right to file applications for, or to be granted, patents or utility models in the country of RSA’s domicile and abroad. Supplier shall provide RSA, at its own expense and within a reasonable period, with all information, documents, and declarations necessary for the registration, conduct of in-court and out-of-court disputes and maintenance of such industrial property rights by RSA. Supplier shall, at its own expense, arrange for all of the necessary steps to be taken vis-à-vis its employees and others involved in the invention to make this assignment of rights possible; in particular, it shall validly claim inventions of its employees in accordance with the provisions of the applicable employee’s invention law.

9.4 The consideration for the aforementioned granting and/or assignment of rights is included in the agreed remuneration.

**10. Warranty from Defects in Workmanship, Material, Design and Title.**

10.1 Unless a longer warranty period is expressly stated on the Order, Supplier warrants to RSA that for a period of thirty-six (36) months from the later of the Delivery Date or the applicable acceptance date, all Deliverables will (a) be free from any defects in workmanship, material, design and title; (b) conform to the requirements of the Agreement (including without limitation all applicable descriptions, performance criteria, specifications, drawings, designs and samples) and any applicable certification requirements of governmental and non-governmental regulatory bodies; (c) be fit for their particular purpose and operate as intended; (d) be merchantable; (e) not infringe or misappropriate any third party’s patent rights, utility model rights, trademarks, design rights, copyrights, trade secret or other third-party intellectual property rights; (f) not contain any viruses or other malicious code that will degrade or infect any Deliverables, products, services, or any other software or RSA’s network or systems; (g) be free and clear of all

- liens, security interests, and other encumbrances; and (h) be performed using personnel of required skill, experience and qualifications, and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services.
- 10.2 Supplier shall also ensure that the software and hardware supplied or used within the framework of the Deliverables is free of any security gap. A security gap shall be deemed to exist if the software and hardware supplied or used within the framework of the Deliverables does not correspond to the state of the art and/or contains functionalities or programs not agreed upon (e.g., viruses, trojans, worms, etc.) or vulnerabilities, programming gaps/bugs or other errors, which endanger the integrity, confidentiality, or availability of the Deliverables or other software, hardware or data. The software and hardware supplied or used within the framework of the Deliverables may therefore in particular not contain any communication functions to third parties or functionalities for modifying data or programs, nor may it transmit any information about RSA's IT systems, its data or user behavior to third parties or store it in such a way that third parties could access it, unless this has been requested or approved by RSA or expressly offered by Supplier as part of the Deliverables with a concrete description of the mode of operation.
- 10.3 In addition to the warranties and indemnities set forth in the Agreement, Supplier assigns and passes through to RSA all of the third-party manufacturers' and licensors' warranties and indemnities for the Deliverables.
- 10.4 When RSA provides notice to Supplier of a warranty claim under this Section 10, Supplier shall, at its own cost and expense, promptly (a) replace or repair the defective or nonconforming Deliverables, and/or (b) re-perform the applicable services. Supplier shall pay all costs to perform warranty work, including without limitation, labor and material costs of deinstallation, removal, transportation charges for the return of the defective Deliverables, repair, delivery charges of repaired or replacement Deliverables to RSA, acceptance testing, and installation costs. The place of performance for Supplier's warranty performance is, at RSA's option, either the place where the Deliverables are located at the time the defect is discovered or the Delivery Point.
- 10.5 If Supplier fails to fulfil its warranty performance obligations within a reasonable period to be set by RSA, RSA shall be entitled, in addition to any rights or remedies available to RSA at law or in equity, at its sole election: (a) to remedy the defect itself or have it remedied by third parties and to claim compensation from Supplier for the expenses incurred in this respect and demand a reasonable advance payment, (b) without further notice terminate the Agreement for default, return the rejected Deliverable to Supplier at Supplier's expense, and Supplier will promptly refund any amounts paid by RSA for the returned item, or (c) require a reduction in price in the form of a reimbursement payment from Supplier.
- 10.6 The warranties set forth in this Section 10 are cumulative and in addition to any other warranty provided by law or equity, transferable, and shall survive any delivery, inspection, acceptance, or payment of or for the Deliverables by RSA. Any applicable statute of limitations runs from the date of RSA's discovery of the defect or noncompliance of the Deliverables with the foregoing warranties.

#### **11. Compliance with Laws.**

All Deliverables supplied to RSA shall comply with, and Supplier agrees to be bound by, all applicable foreign, United States federal, state and local laws, orders, rules, regulations, guidelines, standards, limitations, controls, prohibitions or other requirements contained in, issued under, or adopted pursuant to such laws (collectively, "**Laws**"), including, without limitation, product content and labelling Laws (e.g., the U.S. Toxic Substances Control Act and applicable European Union (EU) Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) and Restriction of Hazardous Substances (RoHS) regulations, Conflict Mineral prohibition and Conflict Mineral disclosure requirements), data protection and privacy Laws, anti-corruption Laws (i.e., all applicable Laws against fraud, bribery, corruption, inaccurate books and records, inadequate internal controls, money-laundering, including the U.S. Foreign Corrupt Practices Act and the Anti-Kickback Act of 1986), the Fair Labor Standards Act of 1938, the Occupational Safety and Health Act of 1970, the U.S. Department of Transportation regulations on hazardous materials, and any other pertinent health, safety and environmental Laws. Supplier further agrees that neither it nor any of its subcontractors will utilize child, slave, prisoner, or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the production or provision of Deliverables. Delivery of any Deliverables shall constitute Supplier's representation to RSA that there has been and will be full compliance with all applicable Laws and, at RSA's request, Supplier shall certify in writing its compliance with the foregoing.

#### **12. Liability.**

Nothing in the Agreement shall exclude or limit Supplier's liability hereunder. In addition, Supplier shall be responsible for faults of its contractual partners, direct or indirect subcontractors or suppliers, including the manufacturers of the Deliverables, to the same extent as for fault on its own part.

13. **Insurance.** Unless otherwise expressly stated on the Order and during the term, Supplier shall, at its own expense, maintain and carry insurance in full force and effect which includes, at least: (a) worker's compensation with minimum statutory limits; (b) employer's liability with minimum limits of \$1,000,000 each occurrence; (c) automobile liability, if the use of motor vehicles is required hereunder, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence; (d) commercial general liability insurance (including product liability), ISO 1988 or later occurrence form of insurance, including, without limitation blanket contractual liability and broad form property damage, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence. Upon RSA's request, Supplier shall provide RSA with a certificate of insurance from Supplier's insurer evidencing the insurance coverage specified herein. The certificate of insurance shall name RSA (and if specified on the Order, its customer) as an additional insured. Supplier shall provide RSA with thirty days' advance written notice in the event of a cancellation or material change in Supplier's insurance policy or the above-specified coverage. Insurance companies providing coverage under the Agreement must be rated by A.M. Best with at least an A-rating. Except where prohibited by law, Supplier shall require its insurer to waive all rights of subrogation against RSA's insurers and RSA. Supplier's obligation to obtain the foregoing insurance does not waive or release Supplier from liability or duties to indemnify RSA under the Agreement.

#### **14. Nondisclosure / Provision of Materials / Information Security / Audit.**

- 14.1 Supplier shall treat the contents of the Order and all information received from RSA, or from third parties on behalf of RSA, in connection with the performance of the Agreement as confidential. RSA does not grant Supplier any rights whatsoever to this information, other than the right to use it for the performance of the Agreement. Disclosure of such information to third parties is only permitted with the prior written consent of RSA and, in the event that such consent is granted, Supplier shall subject these third parties to confidentiality obligations no less stringent than the provisions set out herein prior to disclosure. The aforementioned confidentiality obligations shall survive the termination or expiration of the Agreement and end five (5) years after the date of the Order, but such obligations shall not apply to information that Supplier can demonstrate: is generally known or becomes generally known without breaching any confidentiality obligation, was already known to Supplier before it was received from RSA, or is lawfully obtained by a third party later on without being subject to any confidentiality obligations, or which it is under a legal obligation to disclose, or has been ordered to disclose by a competent court or competent authority.
- 14.2 Supplier may only disclose its business relations with RSA after having obtained the prior written consent of RSA to do so.
- 14.3 Supplier shall not disclose or share any objects or documents of any kind provided by RSA or third parties on behalf of RSA, as well as any objects or documents created on the basis of such objects and documents, to third parties without the prior written consent of RSA and RSA does not grant Supplier any rights whatsoever to such objects and documents, other than the right to use them for the performance of the Agreement. The objects

provided shall be reasonably insured by Supplier, at its own expense, to cover loss and damage, shall be stored separately, maintained if necessary and shall be marked as the property of RSA. The objects and documents provided shall be reasonably protected to prevent unauthorized inspection or use and shall be returned to RSA as soon as they are no longer required for the performance of the Agreement; Supplier shall have no right of retention in this respect.

- 14.4 Supplier shall protect data relating to RSA and/or RSA's direct or indirect customers to which it has access, in particular data received from RSA ("**RSA Data**") and own data necessary within the framework of the Deliverables, by means of state-of-the-art technical and organizational security measures, which are appropriate to the risks associated with the processing, e.g. against accidental or unlawful destruction or loss, alteration, unauthorized disclosure or access ("**Information Security**"). Furthermore, Supplier shall ensure that the Information Security is appropriately secured throughout its supply chain.
- 14.5 Supplier shall manage and regulate the access rights to RSA Data and own data necessary within the framework of the Deliverables. Upon request, Supplier shall inform RSA of the persons authorized to access, their access rights and the locations of the data processing. Supplier shall regularly inform and train the personnel authorized to access on the requirements of Information Security.
- 14.6 Supplier shall inform RSA of a central contact person for Information Security and shall inform RSA immediately of any changes with regard to this contact person.
- 14.7 If Supplier becomes aware of an incident involving a breach of Information Security (e.g. security gaps, data loss, incidents, threats, infestation by damaging software, data misuse), notably in form of an unauthorized access or disclosure to RSA's information or RSA Data (e.g. data leakage or cyber-attack) or if there are indications for Supplier which, upon reasonable assessment, give rise to the suspicion of such an incident, Supplier shall immediately inform RSA thereof and take all necessary steps and measures (in particular to clarify the facts and mitigate the damage).
- 14.8 RSA may at any time request evidence of an appropriate level of Information Security at all of Supplier's premises relevant for the Deliverables, for example by requesting suitable certificates (e.g., ISO/IEC 27001).
- 14.9 RSA shall be entitled to conduct audits at all of Supplier's premises relevant to the Deliverables during regular business hours to check Supplier's compliance with the Agreement, in particular the compliance with the aforementioned Information Security obligations and the obligations mentioned in Sections 19.1 to 19.3, or to have such audits conducted by third parties bound to confidentiality. RSA shall announce each audit at least one (1) working day in advance.

#### **15. Foreign Trade Law / Security in the Supply Chain.**

- 15.1 Supplier shall comply with all requirements and provisions of the applicable national and international customs law, export control law and other foreign trade and payments law (hereinafter jointly referred to as "**Foreign Trade Law**"). Supplier shall provide to RSA in writing at the latest two weeks after ordering or, in the case of modifications, without undue delay all information and data that RSA requires in order to comply with the Foreign Trade Law in the event of export, import and re-export, including, without being limited to the following: all applicable numbers of the EC Dual Use-List or export list including the Export Control Classification Number (ECCN) in accordance with the US Export Administration Regulations (EAR) or – in case the provisions of the US International Traffic in Arms Regulations (ITAR) are applicable – including the US Munitions List Number (USML); the statistical goods number pursuant to the current goods classification of the foreign trade statistics or the Harmonized System (HS) code; and, the country of origin and, if required by RSA, suppliers' declarations regarding the preferential origin or certificates of origin.
- 15.2 Supplier shall take the necessary measures to ensure the security in the supply chain according to the requirements of the Customs-Trade Partnership Against Terrorism (CTPAT).

#### **16. Indemnification.**

- 16.1 Supplier shall, at its expense, defend, indemnify and hold harmless RSA and RSA's parent company, their subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees (collectively, "**Indemnitees**") from and against any and all claims, loss, injury, damage, liability deficiency, action, judgment, interest, award, penalty, fine, cost or expenses, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers (collective, "**Losses**") arising out of or occurring in connection with (a) the Deliverables purchased from Supplier, (b) Supplier's negligent acts or omissions or willful misconduct, (c) any bodily injury or death to any person or loss, disappearance or damage to tangible or intangible property, or (d) any allegation or claim that the use or possession of the Deliverables by any Indemnitee or its customers infringes or misappropriates any patent rights, utility model rights, trademarks, design rights, copyrights, trade secret or other intellectual property rights of a third party.
- 16.2 In order to ensure effective defense against such claims, the parties shall inform each other without undue delay if they become aware of any alleged infringement of third-party rights. In no event shall Supplier enter into any settlement without RSA's or Indemnitees' prior written consent.
- 16.3 Supplier's obligation to indemnify under this Section 16 shall survive the expiration or termination of the Agreement.

#### **17. Product and Service Change Notification / Product Discontinuation / Post-Contractual Repair.**

- 17.1 Until the expiry of the limitation periods for defects, Supplier shall inform RSA by email to [pcn@rsa.rohde-schwarz.com](mailto:pcn@rsa.rohde-schwarz.com) no later than ninety (90) days before the occurrence of any of the following events: change of a product included in the Order (e.g. replacement of the product or change in the product itself); relocation of the production site or qualification of an additional production site for the Deliverables; change in the production process, sourcing or service provision that may affect the form, fit, function, quality or reliability of the Deliverables or the Information Security. However, the aforementioned duty to inform does not entitle Supplier to unilaterally change the products included in the Order or the specifications agreed for the Deliverables.
- 17.2 Supplier shall inform RSA of the intended discontinuation of a product included in the Order, six (6) months prior to such discontinuation, in writing and in detail and, if available, including information on replacement products. Moreover, Supplier shall submit to RSA a binding offer for a last stockpiling order based on reasonable terms and conditions.
- 17.3 Supplier shall ensure that the repair and maintenance of the Deliverables remains possible for a period of at least ten (10) years following acceptance of Deliverables, subject to no restrictions and within a reasonable period, in return for reasonable remuneration to be agreed between the parties.

#### **18. Applicable Law / Arbitration.**

- 18.1 The Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without reference to its conflict-of-law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 18.2 Any controversy or claim arising out of or relating to the Agreement, the breach hereof, or the Deliverables shall be finally and exclusively resolved by arbitration administered by the American Arbitration Association (AAA) using its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Claims shall be heard by a panel of three (3) arbitrators unless the parties agree upon a single arbitrator. The place of arbitration shall be the State of Maryland. The costs of the arbitration proceedings shall be borne by the unsuccessful party or by both parties according to their win/loss ratio. The aforementioned costs of the arbitration proceedings include the costs of the AAA and the arbitrators' fees.

18.3 Notwithstanding the requirement to arbitrate, as to any controversy or claim arising under Section 9 or Section 14, RSA shall have the right to seek injunctive and other temporary relief that will remain in effect until the final enforcement of the arbitration award, for which each party unconditionally submits to the exclusive jurisdiction and venue of the federal or state courts of Maryland.

**19. Code of Conduct / Human Rights.**

- 19.1 Supplier ensures that it will comply with all statutory provisions applicable to it (e.g., in the area of corruption, money laundering and export control) as well as with the human rights related and environmental expectations and other requirements set out in the “Code of conduct for R&S suppliers” (“**R&S Code**”). The R&S Code can be accessed at [www.purchasing.rohde-schwarz.com](http://www.purchasing.rohde-schwarz.com) and will be made available to Supplier by RSA without undue delay upon request.
- 19.2 Supplier shall require its suppliers to comply with the R&S Code. It shall ensure that its suppliers also contractually pass on the requirements from the R&S Code in the supply chain.
- 19.3 Supplier ensures unrestricted access of the employees employed by it to the complaint procedure established at RSA. It shall oblige its suppliers to comply with this requirement and shall ensure that its suppliers also contractually pass on this requirement in the supply chain.
- 19.4 In case of violations of the R&S Code by Supplier, RSA shall be entitled to suspend the performance of the contract or to withdraw from the contract or to terminate the contract, if the violation is not remedied despite the setting of an appropriate period of time. In addition, in case of a culpable violation by Supplier of the human rights related and environmental expectations set out in the R&S Code which has not been remedied despite the setting of an appropriate period of time, RSA shall be entitled to claim a contractual penalty to be determined by RSA at its reasonable discretion and, in case of dispute, to be reviewed by the competent court for its appropriateness.
- 19.5 Supplier shall carry out at its own expense appropriate trainings according to type, scope, and number for the enforcement of the human rights related and environmental expectations set out in the R&S Code and prove this to RSA. If Supplier does not comply with this obligation, it shall participate at its own expense in any trainings appropriate in type, scope, and number by RSA or a third party commissioned by RSA for the enforcement of the human rights related and environmental expectations of RSA or enable these in any case.
- 19.6 In the event of a violation of the human rights related and environmental expectations set out in the R&S Code, Supplier shall take immediate remedial action and cooperate with RSA in the development and implementation of concepts to prevent, minimize or end violations in its area of responsibility. It shall commit its suppliers to comply with this requirement and shall ensure that its suppliers also contractually pass on this requirement in the supply chain.
- 19.7 Supplier confirms that it is willing to have compliance with the human rights related and environmental expectations set out in the R&S Code monitored by participating in an external CSR performance assessment (risk assessment) adapted to Supplier’s industry, geography, and size, based on international standards. In the interest of harmonization and comparability of the results, Supplier shall, at RSA’s request, commission the service provider EcoVadis at its own expense to conduct such a risk assessment and to cooperate in this risk assessment within the framework of a loyal cooperation. In justified exceptional cases, Supplier may, with RSA’s consent, also commission another service provider named by RSA (CSR rating provider) to carry out the risk assessment and shall cooperate in this risk assessment within the framework of a loyal cooperation. Supplier shall provide RSA with the assessment of the CSR rating provider upon request. Supplier undertakes to carry out continuous optimizations in the areas for improvement identified by the risk assessment in order to improve its assessment result.
- 19.8 RSA shall be entitled to audit Supplier’s compliance with the obligations mentioned in Sections 19.1 to 19.3 in accordance with Section 14.9, e.g. if the risk assessment mentioned in Section 19.7 has led to an unsatisfactory result.

**20. Miscellaneous.**

- 20.1 If one or more of the aforementioned provisions is or becomes invalid, this shall not affect the validity of the remaining provisions. The parties are obliged to replace the invalid provision with a provision that most closely approximates its economic effect.
- 20.2 Supplier shall not assign, transfer, delegate, or subcontract any of its rights or obligations under the Agreement without the prior written consent of RSA. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Supplier of any of its obligations hereunder. RSA may at any time assign or transfer any or all of its rights or obligations under the Agreement without Supplier’s consent.
- 20.3 In addition to any rights or remedies available to RSA at law or in equity or that may be provided under the Agreement, RSA may terminate the Agreement with immediate effect upon written notice to Supplier, either before or after the acceptance of the Deliverables, if Supplier has not performed or complied with any of the terms of the Agreement, in whole or in part. If RSA terminates the Agreement for any reason, Supplier’s sole and exclusive remedy is payment for the Deliverables received and accepted by RSA prior to the date of termination.
- 20.4 No waiver by RSA of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by RSA. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from the Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**Rohde & Schwarz USA, Inc.**  
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