



1. General

- 1.1 The contractual relationship between the Contractor and the ordering company of the Rohde & Schwarz group of companies (hereinafter referred to as "R&S") shall be based on the order and on these Conditions of Purchase.
- 1.2 Contractor's conditions of delivery and other terms of contract of the Contractor, as well as any amendments or supplements to the order, shall not become part of the contract unless R&S expressly agrees in writing.
- 1.3 In addition to these Conditions of Purchase, the statutory provisions shall apply if and to the extent the statutory provisions are not amended or explicitly excluded by provisions of these Conditions of Purchase.
- 1.4 The Contractor is aware that the deliveries and services provided (hereinafter jointly referred to as "Delivery") will be distributed worldwide to customers at all stages of distribution and in any form, integrated or non-integrated, and will also be used in safety-critical areas (e.g. in the military or aviation sector).

2. Orders

An order shall be legally binding only if issued by R&S in writing using an R&S order form and an R&S order number unless otherwise agreed (e.g. electronic data interchange (EDI), vendor-managed inventory (VMI) or consignment stock). An order that is not subject to an explicit time limit for acceptance can be revoked by R&S two weeks after receipt of the order, provided that the order was not previously accepted by the Contractor.

3. Invoices / Taxes

- 3.1 The Contractor shall make out a separate, verifiable and clear invoice for each order. Each invoice shall state the order details (R&S order number, date of order, order line item, material number, quantity and price) and shall comply with the statutory provisions governing invoicing in the country in which R&S has its domicile.
- 3.2 All prices are net and shall be payable, plus any value added tax or tax similar to value added tax at the statutory tax rate that applies at the point in time of taxation. The aforementioned taxes shall be borne by R&S irrespective of the country in which they arise. The Contractor shall reimburse R&S for any taxes deducted at source irrespective of the country in which they arise. All other taxes, levies, duties, fees and other charges shall be borne by the Contractor itself or, as the case may be, reimbursed to R&S, irrespective of the country in which they arise.

4. Payments

- 4.1 Payments shall be made within 14 days less 3 % cash discount or net within 30 days. Unless otherwise agreed, R&S shall be entitled to make payments in Euro.
- 4.2 The term of payment commences as soon as the Delivery has been taken or, as the case may be, accepted and an invoice in due form has been received by R&S. If Deliveries are taken or, as the case may be, accepted ahead of schedule, the term of payment shall commence on the agreed date of delivery. Cash discount shall be permissible even if R&S makes a set-off or withholds payments in a reasonable amount due to defects.

5. Delivery Time / Deliveries / Contractual Penalty / Permits

- 5.1 All agreed dates and periods shall be binding. Deliveries prior to the agreed dates or periods shall require the prior written consent of R&S. If Deliveries are effected prior to the agreed dates or periods without the prior written consent of R&S, R&S reserves the right to return such Deliveries at the expense and risk of the Contractor.
- 5.2 As soon as the Contractor is able to realize that it will not meet a date or period, it shall inform R&S 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 R&S shall remain unaffected.
- 5.3 If the Contractor is in delay in delivery, in whole or in part, R&S shall be entitled to claim a contractual penalty for each delay, amounting to 0.3 % of the value of the respective delayed Delivery for each completed working day of such delay, but for each delay not exceeding 5 % of the value of respective delayed Delivery. This shall not affect any claims for performance or damages, however the contractual penalty shall be credited against any claims for damages due to such delay. R&S shall be entitled to claim the contractual penalty until the final payment is made, even if it does not reserve such right at the time of taking or, as the case may be, accepting the respective Delivery.
- 5.4 The Contractor shall obtain any permits necessary for the Delivery in due time and at its own expense.

6. Place of Performance / Transfer of Risk / Dispatch / Transfer of Title

- 6.1 Place of performance shall be the delivery address stated by R&S.
- 6.2 If acceptance is required by law or has been agreed, the risk shall pass to R&S at the time of acceptance, otherwise at the time of taking the respective Delivery at the place of performance.
- 6.3 Delivery shall be effected DDP, Incoterms 2010 to the delivery address stated by R&S. R&S shall be entitled to choose the carrier and the mode of transport.
- 6.4 Each Delivery shall be accompanied by packing or delivery notes specifying the contents and the necessary order details (R&S order number, date of order, order line item, material number, quantity).

- 6.5 Title to the respective Delivery shall pass to R&S upon delivery at the place of performance.

7. Acceptance

- 7.1 If acceptance is required by law or has been agreed, the Delivery shall be made available by the Contractor in due time for acceptance by R&S. The results of the acceptance test shall be documented in an acceptance test record within a reasonable period of time.
- 7.2 If the acceptance test reveals no, or only minor, defects, R&S will declare acceptance in writing without undue delay after finishing the acceptance test. The Contractor's obligation to remedy minor defects without undue delay shall remain unaffected.
- 7.3 If the acceptance test reveals defects which are not only minor defects, R&S will refuse acceptance without undue delay after finishing the acceptance test.
- 7.4 The taking, commissioning, use, or resale of the Delivery or any payments shall not be considered as acceptance.
- 7.5 If partial acceptance has been agreed, the aforementioned acceptance provisions shall apply to such partial acceptance mutatis mutandis; all partial acceptances shall be preliminary and subject to overall acceptance.

8. Obligation to Examine and Give Notice of Defects

- 8.1 Once the goods have been delivered, R&S is obliged to examine, on the basis of the delivery documents and an external inspection of the packaged goods, whether the goods received correspond to the quantity and type ordered and whether there are any external recognizable transportation damages. Furthermore, R&S is obliged to take representative samples of the overall goods and to 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 R&S is obliged to give notice of any defects which could be discovered by means of the aforementioned examination within 14 days of the goods being delivered.
- 8.3 R&S is obliged to give notice of any defects discovered at a later date within 14 days of identifying them.
- 8.4 Sections 8.1 to 8.3 above shall not apply if and to the extent an acceptance of the Delivery is required by law or has been agreed.
- 8.5 R&S shall have no further obligations to examine and give notice of defects.
- 8.6 Late defect notification shall not affect any warranty rights based on fault.

9. Rights to the Delivery

- 9.1 The Contractor grants R&S the non-exclusive, irrevocable, transferable, worldwide and perpetual right, to use the Delivery. In particular, R&S is entitled to integrate the Delivery or parts thereof into other products, to distribute the Delivery or parts thereof worldwide, either integrated or non-integrated, and – insofar as this is necessary in order to achieve the purpose of the contract, to adapt or otherwise alter the Delivery or parts thereof and to distribute the results of such activities as aforementioned. R&S is also entitled to sublicense this right of use.
- 9.2 If and to the extent that the Delivery or parts thereof is developed for R&S, the Contractor grants R&S the exclusive, irrevocable, transferable, worldwide, and perpetual right, unrestricted in terms of content, to use the Delivery or parts thereof in all known and unknown ways. In particular, R&S is entitled to its discretion to reproduce the Delivery or parts thereof, to distribute (also by renting) and to communicate to the public (in particular by making available to the public) the Delivery or parts thereof and reproductions thereof. This also includes the right to adapt or otherwise alter the Delivery or parts thereof by any means and to use the results thereof as aforementioned. R&S is also entitled to sublicense this right of use. With regard to any software developed for R&S, this right of use relates to the object and source code and the Contractor shall also make this software available in source code form. When it makes the source code available, the Contractor 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 the Contractor.
- 9.3 If and to the extent that the results of the development can be protected by industrial property rights, the Contractor hereby already irrevocably gives its prior consent to R&S to file an application for industrial property rights in the country of R&S' domicile and abroad and herewith already assigns all rights to, and resulting from, this invention to R&S, especially its right to file applications for, or to be granted, patents or utility models in the country of R&S' domicile and abroad. The Contractor shall provide R&S, at its own expense and within a reasonable period, with all information, documents and declarations necessary for the registration, conduct of in and out of court disputes and maintenance of such industrial property rights by R&S. The Contractor 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. Condition of the Delivery / Defects in Material and Defects of Title

- 10.1 The Delivery shall be in accordance with the agreed specifications. The Delivery shall comply with the state of the art, the applicable statutory provisions, and the relevant regulations and directives of authorities, trade associations and professional associations.
- 10.2 Unless the statutory provisions do not provide for any longer limitation periods, the limitation period for defects in material shall be 24 months and the limitation period for defects of title shall be 36 months. If acceptance is required by law or has been agreed, the limitation period shall commence at the time of acceptance, otherwise at the time of taking the respective Delivery at the place of performance.
- 10.3 The place of performance for subsequent performance is, at R&S' option, either the place where the Delivery is located at the time the defect is discovered or the delivery address stated by R&S.
- 10.4 If the Contractor fails to fulfil its subsequent performance obligations within a reasonable period to be set by R&S, R&S shall be entitled, in addition to any statutory and contractual rights R&S may have, to remedy the defect itself or have it remedied by third parties and to claim compensation from the Contractor for the expenses incurred in this respect or demand a reasonable advance payment. No period for subsequent performance has to be set in advance if the respective Delivery was effected after the Contractor was in delay in delivery or if the statutory provisions do not require to set a period for subsequent performance.
- 10.5 In other respects, the statutory provisions shall apply to defects in material and/or defects of title.

11. Liability

In other respects, Liability shall be governed by the statutory provisions.

12. Audit

R&S shall be entitled to perform audits on the Contractor's premises that are relevant to the Delivery 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. R&S shall announce each audit at least one (1) working day in advance.

13. Environmental Protection

- 13.1 Wherever commercially and technically feasible, the Contractor shall make sure that environmentally compatible products and processes are used for the production or provision of the Delivery, its packaging as well as for supplies and additional services rendered by third parties.
- 13.2 At the request of R&S, the Contractor shall take back free of charge any electrical and electronic equipment for which an obligation to take them back exists, as well as any packaging at the place of performance and shall dispose of the aforementioned in line with the statutory provisions. Electrical and electronic equipment can also be taken back by means of providing a local return facility. If the equipment or packaging is not taken back, R&S shall be entitled to have it properly disposed of or, as the case may be, recycled at the Contractor's expense.
- 13.3 The Contractor shall fulfil its information obligations under the environment protection and occupational health and safety acts. This shall apply, in particular, to the information obligations under REACH Article 33 – Duty to communicate information on substances in articles.

14. Nondisclosure / Provision of Materials

- 14.1 The content of this order and all information received from R&S, or from third parties on behalf of R&S, in connection with the performance of the contract shall be treated as confidential by the Contractor. R&S does not grant the Contractor any rights whatsoever to this information, other than the right to use it for the performance of the contract. Disclosure to third parties is only permitted with the prior written consent of R&S and, in the event that such consent is granted, the Contractor 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 end five (5) years after the start of the limitation period for claims based on defects, but shall not apply to information that is generally known or becomes generally known without any breach of this contract, was already known to the Contractor before it is passed on without being subject to confidentiality obligations towards any third party, or is lawfully obtained by a third party later on without being subject to confidentiality obligations towards such third party, or to information developed by the Contractor independently 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 The Contractor may only disclose its business relations with R&S after having obtained the prior written consent of R&S to do so.
- 14.3 Objects and documents of any kind provided by R&S or third parties on behalf of R&S, as well as any objects or documents created on the basis of such objects and documents, shall not be passed on to third parties without the prior written consent of R&S and R&S does not grant the Contractor any rights whatsoever to such objects and documents, other than the right to use them for the performance of the contract. The objects provided shall be reasonably insured by the Contractor, at its own expense, to cover loss and damage, shall be stored separately, maintained if necessary and shall be marked as the property of R&S. The objects and documents provided shall be reasonably protected to prevent unauthorized inspection or use, and shall be returned to R&S as soon as they are no longer required for the performance of the contract; the Contractor shall have no right of retention in this respect.

15. Foreign Trade Law / Security in the Supply Chain

- 15.1 The Contractor 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"). The Contractor shall provide to R&S in writing at the latest two weeks

after ordering or, in the case of modifications, without undue delay all information and data that R&S 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 R&S, suppliers' declarations regarding the preferential origin or certificates of origin.

- 15.2 The Contractor shall take the necessary measures to ensure the security in the supply chain according to the requirements of the AEO initiative of the EU. On request of R&S, the Contractor shall provide evidence of the aforementioned by presenting an AEO S or AEO F certificate.

16. Third-Party Rights

- 16.1 The Contractor guarantees that the Delivery does not infringe any patent rights, utility model rights, trademarks, design rights, copyrights or other third-party rights that exclude or restrict the intended use by R&S and/or its customers.
- 16.2 If the use of the Delivery or parts thereof is restricted or prohibited due to an asserted infringement of third party rights, or if there is the risk that such use will be restricted or prohibited, the Contractor shall indemnify R&S and/or its customers on first demand against all in and out of court third-party claims. In addition, the Contractor shall reimburse R&S for any expenses incurred for legal defence and for any damage incurred as a result of such claims for infringement of third party rights.
- 16.3 In order to ensure effective defence against such claims, the contracting parties shall inform each other without undue delay if they become aware of any alleged infringement of third party rights.

17. Product Discontinuation / Post-Contractual Repair

- 17.1 The Contractor shall inform R&S 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, the Contractor shall submit to R&S a binding offer for a last stockpiling order based on reasonable conditions.
- 17.2 The Contractor shall ensure that the repair and maintenance of the Delivery remains possible for a period of at least ten (10) years following delivery, subject to no restrictions and within a reasonable period, in return for reasonable remuneration to be agreed between the contracting parties.

18. Place of Jurisdiction / Applicable Law / Miscellaneous

- 18.1 The contractual relationship between the Contractor and R&S shall be governed exclusively by German law, 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 The courts of Munich shall have exclusive jurisdiction for any disputes arising directly or indirectly from the contractual relationship, provided that the Contractor is a businessman, a legal entity under public law or a special fund under public law. R&S shall also have the right to take legal action at the Contractor's domicile.
- 18.3 English shall be the language of contract. If the contracting parties use another language in addition to English, the English wording shall prevail.
- 18.4 The Contractor shall only have the right to set off or a right of retention in respect of counterclaims that have become res judicata or are undisputed. What is more, a right of retention can only be asserted by the Contractor in respect of counterclaims under the same contractual relationship. The exclusion of the right of retention under Section 14.3 shall remain unaffected.
- 18.5 If one or more of the aforementioned provisions is or becomes invalid, this shall not affect the validity of the remaining provisions. The contracting parties are obliged to replace the invalid provision with a provision that most closely approximates its economic effect.