



1. SCOPE OF THESE TERMS

These General Terms and Conditions ("**Terms**") govern the rights and obligations concerning the provision of certain digital software solutions and related services offered by any legal entity of the Rohde & Schwarz group of enterprises ("**R&S**") through its Website ("**Webshop**") to the customer ("**Customer**").

These Terms are an integral part of any Order (as defined below) placed for the relevant services as described hereinafter. In case of conflicts between the provisions of an Order and these Terms, the relevant provisions of the Order shall take precedence.

The Services (as defined below) and these Terms are aimed only at natural and/or legal persons or partnerships, Corporations and other business entities that use the Services in exercise of their commercial or self-employed professional activities.

R&S may update these Terms from time to time. In the event that changes to these Terms affect an ongoing Order between R&S and the Customer, R&S will notify the Customer about the intended changes in advance by appropriate means (e.g. by e-mail or an in-service notification). The amended Terms are deemed to be accepted by the Customer if the Customer does not object within 14 days upon receipt of the change notification. This will be pointed out to the Customer in the change notification.

R&S does not accept terms and conditions of the Customer or any other terms, which deviate from these Terms. Any deviating terms and conditions not approved in writing by R&S shall not apply, regardless of whether or not R&S expressly objects to them in a particular case.

2. CONCLUSION OF THE CONTRACT AND CORRECTION OF ERRORS

2.1 The presentation of the Services in the Webshop does not constitute a legally binding offer, but an invitation to place orders (invitatio ad offerendum).

2.2 Within the Webshop you may select the Services you wish to purchase in your shopping cart via clicking the respective button on the product pages. To place an order, you have to enter the shopping cart and login to your user account. From there you will be guided through the remaining order process. On the final step of the order process, you will be able to review all Services of your current purchase and any terms and conditions applicable to such Services. Until you place your order by clicking the button labelled "Order now", you may correct input errors regarding the content of your shopping cart or cancel the Order process as follows:

- i) You may change the quantity of the respective items of your shopping cart by clicking on the drop-down menu and select the quantity you may wish to order.
- ii) You may delete items from you shopping cart by clicking on the hyperlink "Remove" on the respective item.
- iii) You may cancel the Order process by closing the browser window or by clicking the Hyperlink labelled "Edit cart".

2.3 By clicking the button labelled "Order now" in the final step of the order process, you submit a binding offer for purchase of the products and services in the order overview ("**Order**"). Immediately after submitting the Order by clicking the button labelled "Order now", you will within the Webshop website either see a confirmation of your purchase or a webpage stating that an error occurred (meaning that your order was not accepted) and asking you to contact the R&S Customer Support. A contract is concluded between you and R&S as soon as (i) R&S accepts your Order by displaying a confirmation of purchase webpage within the Webshop, (ii) upon provision of respective Services or access thereto or (iii) by separate email message expressly accepting your Order (whichever occurs earlier). In case you have seen a webpage expressly stating that an error occurred, no contract was concluded. You may contact the R&S Customer Support for further help in such cases.

3. LANGUAGE OF THE CONTRACT

The exclusive language available for the conclusion of the contract shall be English.

4. STORAGE OF CONTRACT TEXT

The contractual provisions applicable to your purchase will not be stored for you by us. You may download the contractual provisions applicable at the time of your purchase via the Webshop during the Order process.

5. DEFINITIONS

"**Acceptable Use**" has the meaning given to it in Sub-Clause 9.3.

"**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control", for purposes of this definition, means (i) direct or indirect ownership or control of more than 50% of the voting interests of the subject entity and/or (ii) the ability to direct or cause the direction of the management and policies of the subject entity.

"**Authorized Users**" means individuals authorized to access and use the Software Solutions. Unless agreed otherwise in writing, the Authorized Users may include employees, representatives and agents of the Customer who have a legitimate interest to access and use the Software Solutions on behalf and under the control and responsibility of the Customer in accordance with the respective Order.

"**Contractual Year**" means any rolling period of twelve (12) months commencing on the respective Order Commencement Date and any anniversary thereof, provided that the last such Contractual Year shall be considered to end on the date of termination (howsoever arising) whether or not that date is an anniversary of the Order Commencement Date.

"**Customer Data**" means all electronic data or information submitted by or on behalf of the Customer or Authorized Users to or through the Software Solutions.

"**Enhancement**" means any new release or version of the Software Solutions, including any error corrections, updates, bug fixes, patches, and/or modifications.

"**Fees**" means any remuneration agreed in the respective Order that R&S is entitled to claim from the Customer in consideration for providing the Services. The prices and rates for the various Services are set forth in the respective Service Description or a price list, as applicable and as amended by R&S from time to time.

"**Free Trial Software Solution**" has the meaning given to it in Sub-Clause 6.3.

"**Infringement Claim**" means a third party claim that arises from a violation of third party Intellectual Property Rights by Customer's use of the Software Solutions in accordance with the respective Order.

"**Intellectual Property Rights (IPR)**" are any and all rights in and with respect to inventions, patents, copyrights, database right, designs, know-how, trade secrets, moral rights, confidential and/or proprietary information, trade names, domain names, trade dress, logos, animated characters, trademarks, service marks, and other similar rights or interests in intellectual property, in any case whether arising by registration or operation of law (and in the case of registered rights including all rights to apply and applications), wherever in the world arising, whenever arising and including all present and (where capable of present ownership) future rights.

"**Order**" means an order of the Customer for certain Services via the designated R&S digital customer platform, provided such order is duly accepted by R&S.

"**Order Commencement Date**" means the date on which an Order comes into force. The Order Commencement Date is the date on which R&S accepts Customer's order for the respective Services.

"**Pay-as-you-go model**" payment method for the Services that charges based on usage.

"**Services**" means collectively the services of R&S as specified in the applicable Service Description which are subject to a valid Order. The Services encompass

- i) the "**Software Solutions**", meaning web-based applications provided by R&S on a Software as a Service basis, i.e. hosted and operated by R&S and/or its subcontractors and accessible by the Customer via Internet under a password-protected account, including any Enhancements;
- ii) the "**Support Services**", meaning the correction of errors, making available of Enhancements and technical user support provided by R&S for the Software Solutions.

For the avoidance of doubt, Services do not include Third-Party-Services. Such Third-Party Services are governed by separate agreements between the Customer and the respective third party.

"**Service Description(s)**" means the descriptions and technical specifications of the Services, accessible at <https://www.rohde-schwarz.com> as amended from time.

"**Service Term**" means (i) if the Parties have agreed on a pay-as-you-go model, an indefinite period of time commencing on the Order Commencement Date and expiring at the effective date of a termination by either Party in accordance with these Terms, or (ii) in case the Parties have agreed on a fixed-term-model, the fixed term as set forth in the respective Order.

"Software Solutions Availability" is the average percentage of total time during which the respective Software Solution is available to the Customer during any given month of the Service Term, excluding planned downtimes for maintenance services and any other exclusions, if any, described in the Service Description.

"Third-Party Services" means services offered by third parties that may be accessed by the Customer from within the Services, including web-based applications and offline software products that are provided by third parties, and/or interoperate with the Services.

6. SCOPE OF SOFTWARE SOLUTIONS AND GRANT OF RIGHTS

6.1 Provision of Software Solutions

6.1.1 Subject to Customer's due payment of the Fees, R&S grants to the Customer for the duration of the Service Term a non-exclusive, non-transferable, non-sublicensable right to access and use the Software Solutions by its Authorized Users only and solely for Customer's business purposes in accordance with these Terms and the applicable Service Description. As the Software Solutions are provided on a Software as a Service basis, the Customer will not be provided with any physical or digital copy of any Software Solution.

6.1.2 Except as set forth in sub-clause 6.1.1, any grant of access rights to third parties is strictly prohibited and the Customer is not entitled to sell, lease, rent, (re-)distribute, (re-)market, make available to the public, use for service bureau purposes or on a timesharing basis, or otherwise make the Software Solutions available to third parties.

6.1.3 During the Service Term, R&S will make the Software Solutions available to the Customer as described in the applicable Service Description. R&S assumes no warranty or liability that the Software Solutions meet the expectations of the Customer with regard to individual requirements and purposes of the Customer unless explicitly agreed between the Parties in the respective Order. The Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by R&S regarding future functionality or features.

6.1.4 The Customer will be given logins and passwords for its Authorized Users to use in connection with the Software Solutions. The Customer shall change the logins and passwords on a regular basis in accordance with appropriate password policies. The Customer, and each Authorized User, is entirely responsible for maintaining the confidentiality and security of Customer's passwords, and is solely responsible for any and all activities that occur under its account(s) to the extent such activities have been authorized by the Customer and/or an Authorized User, or have not been authorized by Customer and/or an Authorized User but could have been prevented by it when exercising due care. Passwords may not be used by more than one Authorized User and the Customer is prohibited from transferring or sharing passwords with any person that is not an Authorized User. The Customer shall ensure that Authorized Users exit or log-off from their account at the end of each session of use.

6.2 Software Solutions Availability

R&S will make the Software Solutions available with a Software Solutions Availability set forth in the applicable Service Description or a specific Service Level Agreement, as applicable, during any calendar month of the Service Term. Any availability of the Software Solutions exceeding the aforesaid period of time is not part of the Software Solutions and R&S is under no obligation to provide the Software Solutions for such additional time. The demarcation point, at which the Software Solutions Availability will be measured, shall be the WAN-sided router output of the data center in which the Software Solutions are hosted. Further details regarding Software Solutions Availability, including its calculation are set forth in the applicable Service Description or Service Level Agreement, as applicable.

6.3 Trial License

6.3.1 As per trial license which is intended for internal trial and evaluation purposes, R&S will make certain programmes of Software Solution available to the Customer free of charge ("Free Trial Software Solution"). The trial period is limited as set forth in the applicable Service Description. The Customer can terminate the trial license at any time by ceasing use of the Free Trial Software Solution. Upon the expiry of the trial period unless otherwise extended by R&S in its sole discretion, the Customer's access to the Free Trial Software Solutions ends automatically unless the Customer has placed a valid Order for a productive-use version of the Software Solution and the Customer and R&S have entered into a subsequent license agreement under these Terms.

6.3.2 The Customer is not permitted to use the Free Trial Software Solution other than expressly permitted in accordance with these Terms. The trial license incorporates by reference any and all use restrictions and notices with respect to the applicable Service Description. If the Customer use the Free Trial Software Solution other than the approved usage this will be considered a breach of the trial license and the Customer's access to the Free Trial Software Solution will be suspended immediately.

6.3.3 R&S shall only be liable for damages caused by intent or gross negligence and in the event of fraudulent intent for damages due to defects occurred in connection with the Free Trial Software Solution. R&S will supply the Free Trial Software Solution "AS IS", WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE FREE TRIAL SOFTWARE SOLUTION AND ANY DOCUMENTATION REMAINS WITH THE CUSTOMER.

7. UPDATES TO THE SERVICES

7.1 General

Notwithstanding sub-clause 7.2, R&S may (i) make changes or updates to the Services including Enhancements or other changes (such as functionality, infrastructure, security, technical configurations, application features, etc.), and (ii) make the corresponding changes or updates to the applicable Service Description to reflect such changes or updates to the Services, provided however that any such changes will not result in a material reduction of functions and functionalities or in the level of performance, security or availability of such Services that the Customer has already purchased under a valid Order prior to the point in time at which such changes become effective.

7.2 Changes due to applicable laws

If R&S, in its reasonable discretion, is required to make changes to the Services due to changes to applicable laws, R&S will make the appropriate changes and notify the Customer accordingly without undue delay.

8. SYSTEM REQUIREMENTS

The Service Description may set forth certain system requirements to be fulfilled by the Customer for the proper performance of the Services, including without limitation hardware and operating system. The Services will be rendered in a manner that will support those specified system requirements. R&S assumes no warranty and shall not be liable for any consequences to the extent they are caused by a failure of the Customer to use the Services in accordance with any such defined system requirements.

9. SPECIFIC CUSTOMER DUTIES

9.1 Customer Cooperation

The Customer shall render to R&S any cooperation that is reasonable and appropriate for the proper performance of the Services. The Customer acknowledges that R&S' Service performance may depend on Customer's timely and proper performance of its cooperation obligations. In particular the Customer shall (i) make available to R&S, in a reasonable format and in a timely manner, the data and information that is necessary for rendering the agreed Services, (ii) use reasonable measures to ensure that the personnel involved in receiving and using the Services is adequately qualified, and (iii) provide timely instructions, approvals and sign-offs, as appropriate. Further, Customer's cooperation obligations may include ensuring performance of the necessary cooperation by Customer's agents, contractors, consultants or third-party providers involved by the Customer in connection with Customer's use of the Services. If the Customer fails to cooperate in accordance with these Terms, R&S shall not be responsible for any consequences caused by such failure. In particular, any deadlines or Service Levels affected by such failure to cooperate shall be suspended for a period that equals the duration of Customer's failure to cooperate plus a reasonable time to resume.

9.2 Customer Compliance

The Customer shall (i) comply, and shall ensure that the Authorized Users comply, with these Terms, including but not limited to the Acceptable Use set forth in sub-clause 9.3; (ii) be solely responsible for the accuracy, quality, integrity and legality of Customer Data and of the means by which it acquired Customer Data; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify R&S promptly of any such unauthorized access or use; (iv) use the Services only in accordance with the Service Descriptions and applicable laws and government regulations, (v) not interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, and (vi) not attempt to gain unauthorized access to the Software Solutions or their related systems or networks.

9.3 Acceptable Use

The Customer acknowledges and agrees that R&S does not monitor or police the content of communications or data of the Customer or its Authorized Users uploaded in or transmitted through the Software Solutions and that R&S shall not be responsible for the content of any such communications or transmissions. The Customer shall use the Software Solutions exclusively for authorized and legal purposes, consistent with all applicable laws. The Customer agrees not to load into the Software Solutions any content or data which (i) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (ii) contains viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (iii) violates the rights of others, such as data which infringes on any Intellectual Property Rights or violates any right of privacy or publicity; or (iv) otherwise violates any applicable laws (including, without limitation, the laws and regulations governing unfair competition). R&S reserves the right to delete, move or edit any Customer Data that it may determine, in its reasonable discretion, violates these Terms and/or applicable laws.

- 9.4 **Monitoring**
Subject to applicable laws, R&S reserves the right to monitor Customer's compliance with these Terms. This may include without limitation license management measures which control whether the Software Solutions are accessed by Authorized Users only.
- 10. THIRD-PARTY SERVICES**
- 10.1 **Purchase of Third-Party Services**
Any purchase by the Customer of Third-Party Services and any exchange of data between the Customer and any third-party provider, is solely between the Customer and the applicable third-party provider. R&S assumes no warranty for Third-Party Services, whether or not they are authorized by R&S.
- 10.2 **Third-Party Services and Customer Data**
If the Customer installs, accesses and/or enables Third-Party Services, the Customer acknowledges that R&S may allow providers of those Third-Party Services to access Customer Data as required for the interoperation of such Third-Party Services with the Software Solutions. R&S shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third-Party Service providers. The Software Solutions shall allow the Customer to restrict such access by restricting Authorized Users from installing or enabling such Third-Party Services for use with the Services.
- 11. FEES AND PAYMENT**
- 11.1 **Fees**
The Customer shall pay all Fees specified in the respective Order. Except as otherwise specified herein, (i) Fees are quoted and payable in the currency stated in the R&S Webshop plus statutory VAT, sales, use or other transactional taxes or levies which may apply. (ii) payment obligations are non-cancellable and Fees paid are non-refundable, except in case the Customer terminates an Order for cause.
- 11.2 **Invoicing and Payment**
Invoices are due without any deduction within 30 days from the invoice date. The Customer is responsible for maintaining complete and accurate billing and contact information in the Services.
- 11.3 **Overdue Fees, Suspension of Services**
If any Fees invoiced in accordance with these Terms and the respective Order are not received by R&S by the due date, then the Customer shall pay an interest on any outstanding amount overdue at the rate of five percent (5%) per annum or the highest statutory rate permitted under applicable laws, whichever is higher. If the Customer is in payment delay for a period of ten (10) days or longer, R&S may, without liability to the Customer and without limiting R&S' other rights and remedies, suspend the Services under the respective Order to the Customer until such amounts are paid in full, provided that R&S grants the Customer a cure period of at least ten (10) days by means of prior written notice (email being sufficient) and the Customer fails to settle the outstanding amount within that period.
- 11.4 **Taxes**
- 11.4.1 **Unless otherwise stated, the Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales and use, or withholding taxes, assessable by any local, state, federal or foreign jurisdiction ("Taxes"). R&S will invoice the Customer, and Customer shall reimburse R&S for, any such Taxes charged to R&S by any governmental authority in connection with providing the Services to the Customer.**
- 11.4.2 **Where applicable laws require the Customer to withhold and pay any withholding taxes or similar levies, the Customer may do so, provided that Customer's obligation to pay the net prices as invoiced by R&S shall remain unaffected. Therefore, as between the Parties, the Customer shall pay to R&S the net amount remaining after the respective deduction plus the amount that was deducted, in order to ensure that R&S receives the full net price as contractually agreed.**
- 11.5 **Withholding and Set-Off**
The Customer may not withhold or offset any Fees, unless and until the corresponding counterclaims of the Customer are undisputed by R&S or established by a competent court of final jurisdiction.
If the Customer withholds or offsets any Fees in violation of the afore provision, then, without prejudice to R&S's other rights or remedies, upon 15 days' prior notice R&S may suspend the Services on a temporary basis until the Customer has fully settled the withheld amount.
- 11.6 **Acceptance of Invoices**
Notwithstanding sub-clause 11.5, the Customer may only dispute an invoice within 30 days upon invoice date. Any invoice not disputed by the Customer within the aforesaid period shall be deemed accepted by the Customer and may not be disputed afterwards.
- 12. PROPRIETARY RIGHTS**
- 12.1 **Reservation of Rights**
R&S reserves all rights, title and interest in and to the Services, in particular to the Software Solutions, including all related Intellectual Property Rights. No rights are granted to the Customer hereunder other than as expressly set forth herein.
- 12.2 **Restrictions**
The Customer shall not (i) permit any third party to access the Services except as permitted in these Terms, (ii) create derivative works based on the Services, (iii) reverse engineer the Services, unless this is permitted by mandatory applicable laws, or (iv) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.
- 12.3 **Ownership of Customer Data**
As between R&S and the Customer, the Customer exclusively owns all rights, title and interest in and to all Customer Data. The Customer grants R&S and its subcontractors a limited, personal, transferable, non-exclusive license to use the Customer Data for the sole purpose to and solely as required to perform the Services. R&S may create copies of Customer Data in anonymized form (i.e. without information identifying the Customer, Authorized Users or any other individuals) and evaluate such anonymized data aggregated with anonymized data of other customers, including for statistical purposes as well as for improving and further developing the Services.
- 12.4 **Suggestions**
R&S shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by the Customer, including Authorized Users, relating to the operation of the Services.
- 13. CONFIDENTIALITY**
- 13.1 **Definition of Confidential Information**
As used herein, "**Confidential Information**" means any and all information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of the Customer shall include Customer Data; Confidential Information of R&S shall include the Services, in particular the Software Solutions in any form or expression, any non-public Service Description, documentation or user manual, and any other information concerning the Services and its underlying technology; Confidential Information of each Party shall include the existence of these terms and conditions and the respective Orders, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party lawfully in possession of such information and without being subject to any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without any use of the Confidential Information of the Disclosing Party and by employees of the Receiving Party who have not had access to the Confidential Information, as demonstrated by files created at the time of such independent development.
- 13.2 **Protection of Confidential Information**
Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees who need such access for purposes consistent with these Terms and who are bound by confidentiality obligations materially comparable to the terms of this clause 13. The Parties agree that R&S may use and have used and disclose Confidential Information by or to (i) its Affiliates, subcontractors and/or technical service providers, e.g. of hosting or outsourcing services, (ii) legal counsel, tax advisors, auditors and/or accountants, or (iii) third parties that are involved in corporate transactions or restructuring activities concerning R&S to the extent this is reasonably required to conduct such activities, provided that such third party is bound by legal or professional confidentiality duties or has agreed to confidentiality obligations materially comparable to the terms of this clause 13.
- 13.3 **Marketing**
The Customer agrees that R&S may use and disclose to third parties Customer's name and logo (a) on its customer list; and (b) with Customer's prior approval, not be unreasonable withheld or delayed, in other R&S marketing materials.
- 13.4 **Protection of Customer Data**
Without limiting the above, R&S shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. R&S shall not (i) modify Customer Data except to delete, block, move or edit any Customer Data that it may determine, in its reasonable discretion, violates these Terms and/or applicable laws, (ii) disclose Customer Data except as compelled by law in accordance with clause 13.5 below or as expressly permitted by the Customer, or (iii) access Customer Data except to provide the Services and prevent or address service or technical problems, or at Customer's request in connection with customer support matters.

13.5 Compelled Disclosure

The Receiving Party may disclose Confidential Information of the Disclosing Party where (i) such disclosure is in response to a valid order of a court or any other governmental body having jurisdiction over the Disclosing Party or (ii) such disclosure is required by the Receiving Party, at its discretion, to defend the position of the Receiving Party in any criminal, civil or public proceeding/litigation or (iii) such disclosure is otherwise required by law. The Receiving Party shall give the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

14. WARRANTIES

14.1 R&S Warranties

R&S warrants that the Software Solutions are free from material defects. The Software Solutions are free from material defects if they perform materially in accordance with the applicable Service Description. Minor deviations from the Service Description which do not materially impact the usability of the Services do not constitute a material defect.

14.2 Material Defects

In case of a material defect, R&S will, in its sole discretion, remedy the material defect either by repair or replacement. The Customer shall notify R&S immediately in writing (email being sufficient) of all material defects that the Customer becomes aware of. The Customer agrees to cooperate with R&S by providing any required information and documentation and to provide all other assistance that might be reasonable in order for R&S to remedy the material defect.

14.3 Third Party Rights

If the Services become, or in R&S's opinion are likely to become, the subject of an Infringement Claim, R&S may, at its option and expense, either (i) procure for the Customer the right to continue using the allegedly infringing materials or (ii) replace or modify the same so that they become non-infringing, or (iii) if both option (i) and (ii) are not reasonably possible in the particular case, terminate the respective Order and refund the Customer any related pre-paid Fees on a pro-rata basis for the remainder of the Service Term.

14.4 Reimbursement for Efforts

In the event R&S proves that there was no material defect for which R&S is responsible according to this clause 14, R&S is entitled to request reimbursement for the efforts to remedy the alleged material defect on a time and material basis based on the standard rates of R&S.

14.5 Customer's Warranties

Customer represents and warrants that (i) the performance of Customer's obligations under the respective Order and use of Services will not violate any applicable laws, (ii) the Customer is authorized and has completed all required corporate actions necessary to execute the respective Order and (iii) the Customer shall not carry out any act or omission that results in R&S breaching any applicable laws.

14.6 Disclaimer

UNLESS EXPLICITLY STATED OTHERWISE, NOTHING IN THESE TERMS IS TO BE UNDERSTOOD AS A NO-FAULT GUARANTEE.

Warranty obligations of R&S shall not apply to the extent that a claim is based on (i) specifications or materials provided by the Customer, (ii) use of, or access to, Services by any person or entity other than Authorized Users, (iii) use of Services after R&S notifies the Customer to discontinue its use due to an Infringement Claim, (iv) faulty or abnormal usage, overuse, improper production facilities or an inappropriate installation site, (v) any alteration of the Services by or on behalf of the Customer, (vi) incompatibility of the Services with the IT environment used by the Customer (unless such compatibility is explicitly agreed in the Service Description and/or the respective Order); and/or (vii) Customer's use of the Services together with software supplied by third parties unless this is expressly provided for in the Service Description or is otherwise permitted by R&S in writing.

The Customer acknowledges that R&S does not control the transfer of data over telecommunications facilities, including the Internet. R&S does not warrant secure operation of the Services or that it will be able to prevent third party disruptions of the Services. The Customer acknowledges further that the Services may be subject to limitations, delays, and other issues inherent in the use of the internet and electronic communications outside of R&S' reasonable control. R&S is not responsible for any delays, delivery failures, or other damage resulting from such issues.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, R&S DOES NOT MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

15. INDEMNIFICATION

The Customer will (i) indemnify and hold harmless R&S from and against any and all third party claims finally awarded by a court of final jurisdiction or settled/acknowledged with Customer's prior written approval, and (ii) defend such claims at Customer's own cost, both in and out-of court, to the extent this is related to a claim of a third party alleging that the Customer Data, or Customer's use of the Services in violation of the agreed Service subscription, infringes any third-party rights, in particular but without limitation third-party Intellectual Property Rights, or violates applicable laws. R&S will (a) promptly give to the Customer written notice of the claim, (b) give the Customer sole control of the defense and settlement of the claim, and (c) provide to the Customer all reasonable assistance, at Customer's cost.

16. LIABILITY

16.1 FULL LIABILITY

UNLESS OTHERWISE PROVIDED FOR IN THIS CLAUSE 16, R&S IS LIABLE FOR (I) DAMAGES CAUSED BY WILLFUL INTENT, (II) DAMAGES CAUSED BY GROSS NEGLIGENCE, (III) NEGLIGENCE OR WILLFULLY CAUSED DAMAGES DUE TO INJURY TO LIFE, BODY OR HEALTH (IV) CLAIMS UNDER APPLICABLE PRODUCT LIABILITY LAW OR AS OTHERWISE PROVIDED FOR BY APPLICABLE MANDATORY LAW.

16.2 CONSEQUENTIAL AND INDIRECT DAMAGES

EXCEPT FOR CASES OF 16.1 (I), (III) AND (IV), R&S SHALL NOT BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OR COMPENSATIONS FOR EXPENSES, LOSS OF PROFIT, LOSS OF PRODUCTION, LOSS OF REVENUE, LOSS OF ANTICIPATED SAVINGS, BUSINESS INTERRUPTION, LOSS OF OR CORRUPTION OF CUSTOMER DATA, CONTRACTUAL CLAIMS OF THIRD PARTIES, LOST USAGE, FINANCING EXPENDITURE, INTEREST LOSS AND CLAIMS UNDER A COVERING PURCHASE, LOSS OF GOODWILL AND LOSS OF REPUTATION. NOTWITHSTANDING THE AFORESAID, IN NO EVENT SHALL R&S BE LIABLE TOWARD THE CUSTOMER FOR ANY CONTRACTUAL PENALTIES, LIQUIDATED DAMAGES, CREDITS OR ANY SIMILAR AMOUNTS AGREED BETWEEN THE CUSTOMER AND ANY THIRD PARTY (E.G. CUSTOMER AFFILIATES).

16.3 LIMITATION OF LIABILITY

EXCEPT AS OTHERWISE PROVIDED FOR IN SUB-CLAUSE 16.1, AND NOTWITHSTANDING SUB-CLAUSE 16.2, THE TOTAL AGGREGATE LIABILITY OF R&S, ITS LEGAL REPRESENTATIVES, EMPLOYEES AND VICARIOUS AGENTS FOR ALL CLAIMS OUT OF OR IN CONNECTION WITH ANY ORDER SHALL, IN NO EVENT, EXCEED

I) IF THE PARTIES HAVE AGREED ON A PAY-AS-YOU-GO MODEL, 15% OF THE FEES PAID BY THE CUSTOMER UNDER THE RESPECTIVE ORDER IN THE CONTRACTUAL YEAR PRECEDING THE CONTRACTUAL YEAR IN WHICH THE DAMAGING EVENT OCCURS; OR

II) IF THE PARTIES HAVE AGREED ON A FIXED-TERM MODEL, 15% OF THE FEES TO BE PAID BY THE CUSTOMER UNDER THE RESPECTIVE ORDER IN WHICH THE DAMAGING EVENT OCCURS.

IF THE RESPECTIVE DAMAGING EVENT OCCURS IN THE FIRST CONTRACTUAL YEAR UNDER THE PAY-AS-YOU-GO MODEL, THE LIABILITY CAP SHALL BE CALCULATED BY EXTRAPOLATING THE FEES PAID BY THE CUSTOMER UNDER THE RESPECTIVE ORDER AT THAT GIVEN POINT IN TIME TO TWELVE (12) MONTHS.

THE LIABILITY CAP IS AN AGGREGATE LIMIT, AND NOT A PER-VENT OR ANNUAL CAP, BUT MAY VARY DURING THE SERVICE TERM DEPENDING ON THE FEES PAID UNDER THE RESPECTIVE ORDER IN THE RELEVANT CONTRACTUAL YEAR OR PERIOD, RESPECTIVELY. IF R&S IS LIABLE FOR DAMAGES ON SUCCESSIVE OCCASIONS, ON EACH OCCASION THE LIMIT IS INITIALLY DETERMINED AS DESCRIBED AFORE, BUT IS THEN REDUCED BY ANY DAMAGES FOR WHICH R&S HAS BEEN LIABLE ON PREVIOUS OCCASIONS.

17. TERM AND TERMINATION

17.1 Term

Each Order commences on the Order Commencement Date and shall continue (i) if the Parties have agreed on a pay-as-you-go model, for an indefinite period of time unless and until terminated by the Customer upon thirty (30) days' prior written notice or by R&S upon fifteen (15) days' prior written notice, or (ii) if the Parties have agreed on a fixed-term model, for the agreed fixed period.

17.2 Termination for Cause

17.2.1 Without prejudice to any other rights or remedies which the Parties may have, either Party may terminate the respective Order for a material breach of the other Party upon thirty (30) days' prior written notice if such breach remains uncured at the expiration of such period. Without limiting R&S' other rights and remedies, any payment delay by the Customer exceeding thirty (30) days or any material breach of a provision in relation to R&S' Intellectual Property Rights (in particular but without limitation clause 6) shall be deemed a material breach of the respective Order.

17.2.2 R&S may terminate any Order for cause if it receives any direction, notification or instruction from any competent governmental authority to terminate the provision of the Services to the Customer.

17.2.3 The right of either Party to terminate for cause as provided for by applicable mandatory law remains unaffected.

17.3 Refund or Payment upon Termination

Upon any termination by R&S for Customer's material breach, the Customer shall pay to R&S as a compensation any Fees for the remainder of the Service Term after the effective date of termination that would have become payable without such termination. Upon any termination for cause by the Customer, R&S shall refund the Customer any prepaid Fees covering the remainder of the Service Term after the effective date of termination, if any. In no event shall any termination relieve the Customer of the obligation to pay any Fees payable to R&S for the Services prior to the effective date of termination.

17.4 Return of Customer Data

R&S shall have no obligation to maintain or provide any Customer Data and shall, unless otherwise required by applicable laws, delete all Customer Data in its systems or otherwise in its possession or under its control.

18. GENERAL PROVISIONS

18.1 Export and Import Compliance

The Customer is responsible for ensuring that it may use and access the Services as provided by R&S in compliance with any applicable import or export laws. The Customer shall not import or (re-)export the Services in violation of any national or international law, in particular any export or import regulation of the European Union or the United States of America. Without limiting the foregoing, (i) each Party represents that it is not named on any government list of persons or entities prohibited from receiving exports, and (ii) the Customer shall not permit Authorized Users to access or use Services in violation of any export embargo, prohibition or restriction.

18.2 Statute of Limitation

Unless otherwise provided for by applicable mandatory law, all claims of the Customer shall become time-barred within six (6) months from the date of accrual.

18.3 Relationship of the Parties

The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

18.4 No Third-Party Beneficiaries

This Agreement is for the benefit of the Parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party, including any employee of a Party, any client of a Party, or any employee of a client of a Party.

18.5 Notices

Except as otherwise specified in these Terms, all notices, permissions and approvals in relation to an Order shall be in English and in writing. Notices to R&S shall be addressed to the attention of [R&S Customer Support](#).

18.6 Waiver and Cumulative Remedies

No failure or delay by either Party in exercising any right under these Terms or any Order shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

18.7 Severability

If any provision of these Terms or an Order is held by a court of competent jurisdiction to be contrary to law, invalid or unenforceable, then, notwithstanding such illegality, invalidity or unenforceability, the remaining provisions of these Terms and the affected Order shall continue in full force and effect and the application of that invalid or unenforceable provision shall be enforced to the extent permitted by law.

18.8 Subcontracting

R&S may subcontract any part of its obligations under this Agreement to reliable subcontractors.

18.9 Assignment

The Customer may not assign any of its rights or obligations out of or in connection with this Agreement without the prior written consent R&S (not to be unreasonably withheld). Notwithstanding the foregoing R&S may assign any Order to any of its Affiliates, or to a third party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets unless such third party is a direct competitor of the Customer. The Customer hereby grants its consents to such assignment.

18.10 Governing Law

These Terms and all Orders, and any disputes arising out of or related hereto, shall be governed exclusively by the laws of Switzerland, without regard to its conflicts of laws rules. The U.N. Convention on the International Sale of Goods (CISG) of April 11, 1980 as well as all related agreements shall not apply.

18.11 Venue

18.11.1 All disputes arising out of or in connection with these Terms or any Order shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by three (3) arbitrator(s) appointed in accordance with the said Rules. The place of the arbitration proceedings shall be Zurich, Switzerland. The language to be used in the arbitration proceedings shall be English. The award shall be final and binding on the Parties. The Expedited Procedure Provisions shall not apply. Nothing herein, however, shall be deemed or construed to limit or delay a Party's right to seek or obtain injunctive relief in any court of competent jurisdiction.

18.11.2 Both Parties waive the right to cross examinations, discovery stages and requests for document production unless this waiver violates mandatory law.

18.11.3 The costs for the arbitration are to be borne by the unsuccessful Party or by both Parties according to their win/loss ratio. Cost shall include, beside the cost of the ICC and the arbitrators' fees, appropriate cost for counsel and expenses of the Parties.

18.11.4 All arbitral proceedings conducted pursuant to this chapter all information disclosed and all documents submitted or issued by or on behalf of any of the disputing Parties or the arbitrators in any such proceedings as well as all decisions and awards made or declared in the course of any such proceedings shall be kept strictly confidential and may not be used for any other purpose than these proceedings nor be disclosed to any third party without the prior written consent of the Party to which the information relates or, as regards to a decision or award – except for enforcement purposes – the prior written consent of all the disputing Parties. Each Party shall cause its participants, including witnesses, in the arbitration to agree to abide by the provisions of this paragraph.

18.12 Entire Agreement

These Terms, together with the respective Order and the applicable Service Description, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision shall be effective unless made in writing.

Last update: July 2021