



ROHDE & SCHWARZ

General Conditions for Deliveries and Services

for Use in Transactions with Business Customers

Issued July 2018

1 Scope of Deliveries or Services

1.1 These General Terms and Conditions of Business ("these Terms") shall govern the rights and obligations concerning the provision of items (e.g. products, devices, overall systems; the "Delivery Items") and services (e.g. installation, assembly, calibration, repair; the "Services") by Rohde & Schwarz India PVT. LTD. ("RSINDIA") to business customers (the "Customer"). These Terms form part of the contract which is formed by the dispatch by RSINDIA of RSINDIA's order confirmation following the Customer's order. In case of any conflict between the provisions of the order confirmation and these Terms, the provisions of the order confirmation shall take precedence. Any deviating or supplementing contractual terms of the customer shall be excluded and shall not apply even if RSINDIA does not explicitly object to them.

1.2 All arrangements which are to be legally binding on RSINDIA, including collateral agreements, must be made in writing in order to become effective. This requirement can be waived only in writing.

1.3 RSINDIA may provide documents, e.g. illustrations, drawings, weights, performance specifications in brochures, cost estimates and data sheets etc., but these shall not constitute a guaranteed specification, which must instead be identified in an order. RSINDIA reserves the right to make any alterations to such documents due to and justified by technical advancements, even after an order acknowledgement has been issued to the Customer.

1.4 RSINDIA retains the right and title, as well as copyright. In the same, in all cost estimates, drawings, technical information, data, manuals and other documentation (hereinafter referred to as "Documents"). Except with the express prior written consent of RSINDIA, the Customer shall not be entitled to reproduce, copy, make available to third parties or otherwise disclose the documents mentioned in Section 1.3 above or to use them in any manner conflicting with RSINDIA's interests. If the order is not placed with RSINDIA, the documents shall be returned to RSINDIA immediately upon request. The preceding sentences of this paragraph shall apply correspondingly to the Customer's documents provided to RSINDIA; the documents provided to RSINDIA may, however, be made available to those third parties whom RSINDIA has rightfully subcontracted to perform any Deliveries and/or Services.

2 Prices

2.1 Prices are for deliveries of standard catalogue equipment without the performance of Services (for Services see Clause 8) CIP destination basis within India according to INCOTERMS 2010, ICC Publication Section 715 ED, unless these Terms provide differently.

2.2 Prices, including commercial packing, shall be in the currency stated in RSINDIA's order confirmation excluding the applicable VAT. To be added are any and all taxes, customs duties or charges as well as applicable consular or legalisation fees levied. Any costs arising for packing of antennae, installations and systems as well as special packaging requested by the Customer will be charged separately.

2.3 Prices reflect the cost incurred by RSINDIA at the time of conclusion of the contract. If any costs change before the day of delivery/performance of Service, RSINDIA reserves the right to adjust the prices provided that the Deliveries and/or Services are to be carried out as agreed more than four (4) months after the formation of the contract.

3 Reservation of Title

3.1 Title to Delivery Items is retained by RSINDIA ("Retained Goods") until all payments due from the Customer under any and all accounts between the parties (including any current account receivables) are satisfied in full. The Customer commits to support all measures taken in order to protect the title to or security interests in the Retained Goods.

3.2 Insofar as the title of RSINDIA to the Retained Goods expires through combination with another item, RSINDIA shall acquire co-ownership to the new item on proportional basis, i.e. at the ratio the value of the combined Retained Goods (final invoice amount including VAT) bears to the other combined items at the time of combination. If the Retained Goods are combined in such a manner that the items of the Customer are to be regarded as the main item, RSINDIA and the Customer hereby agree that the Customer assigns to RSINDIA proportionate co-ownership to such item and RSINDIA hereby accepts such assignment. Any costs arising from action required to be taken by RSINDIA to protect its security interests shall be borne by the Customer.

3.3 The Customer shall be entitled to collect any and all receivables relating to the assigned goods as long as the Customer satisfies its payment obligations vis-à-vis RSINDIA. In case of the Customer's payment default, RSINDIA will be entitled to revoke this power of collection. The Customer may not assign such rights, however, in order to have them collected by way of factoring, unless the Customer obligates the factor irrevocably to effect the counter-performance directly to RSINDIA for as long as RSINDIA is still owed monies by the Customer.

3.4 The Customer shall immediately inform RSINDIA in the event of any seizures, attachments or other dispositions or interventions by third parties. If the third party is unable to reimburse RSINDIA for the court or out-of-court costs incurred by RSINDIA in this connection, the Customer shall be liable for them.

3.5 RSINDIA shall have the right to terminate any order and take back the Delivery Items if the Customer violates an obligation, especially in the case of delay in payment. In such event, the Customer shall be obligated to return the property and hereby grants RSINDIA an irrevocable right of access to its premises to retake possession of the Delivery Items and safeguard its security interests.

3.6 If the Delivery Items contain software, the Customer shall not acquire title to the software, but only the rights stipulated in Clause 9.

4 Terms of Payment

4.1 For **Government Organisation**, 100% payment shall be made against proof of dispatch or as per agreed tender terms, whichever is applicable, without any deductions and without any costs arising to RSINDIA

4.2 For **Private Organisation**, 100% advance payment shall be made by way of demand draft or through electronic fund transfer at Delhi/Bangalore office, without any deductions and without any costs arising to RSINDIA. RSINDIA shall not be obliged to pay any interest on the advance payment.

4.3 RSINDIA reserves the right to demand security for payment and/or advance payments.

4.4 The Customer may set off payments only against such claims, or assert a right of retention, as relate to the same contract as the corresponding counterclaim of RSINDIA.

4.5 If the Customer is late in payment, RSINDIA reserves the right without waiving any other rights, to charge annual interest (compounded weekly) of 10%.

4.6 All agreed price discounts on the prices shown in the contract and all agreed rebates of any kind whatsoever will cease to apply entirely if the Customer is fully or partially in default to RSINDIA with its payment and acceptance obligations.

5 Periods of Delivery or Service

5.1 Compliance by RSINDIA with the periods for Deliveries and/or Services requires that all obligations of the Customer are fulfilled properly and in due time. In particular, the Customer must ensure that all documents, approvals and releases to be furnished by the Customer are received by RSINDIA in time, and that such other obligations are satisfied as are required for the Deliveries and/or Services by RSINDIA to be carried out properly and in due time. If such requirements are not satisfied in time, the periods shall be extended accordingly, plus a reasonable restart period.

5.2 If the prices quoted are without customs duty (WOCD), the Customer should provide Customs Duty Exemption Certificate (CDEC), as per valid custom's notifications properly and in due time. If the Delivery Items are subject to an export license, the Customer shall provide appropriate End-User Certificate for presentation to the concerned authorities properly and in due time.

5.3 If the obligations of RSINDIA according to the INCOTERMS applicable according to Section 2.1 above are fulfilled, the periods for performance will be deemed complied with.

5.4 If the Deliveries and/or Services are delayed for reasons attributable to Customer's responsibility, the periods shall be deemed complied with upon notification of the readiness for dispatch and service within the agreed periods.

5.5 If non-compliance with the periods for Deliveries and/or Services is due to force majeure, e.g. mobilisation, war, riot or similar events such as, but not limited to, strike, lockout or the occurrence of other unforeseen events, the periods will be extended accordingly, plus a reasonable restart period. The events of force majeure shall include any sovereign acts, such as, but not limited to, the refusal of a required governmental approval in spite of an application having been properly filed, transport restrictions and restrictions on energy consumption, but also general shortage of raw materials and common supplies as well as other reasons, such as non-delivery or late delivery by suppliers, beyond the control of RSINDIA.

5.6 In the event that RSINDIA's performance is delayed solely as a result of its own fault, the Customer may – if it can prove that it suffered damage owing to the delay – demand, with effect from the third full week, liquidated damages equal to zero point five percent (0.5%) of the value of the delayed part of the Deliveries and/or Services ("**the Relevant Value**") for each further full week of delay up to a total of five percent (5%) of the Relevant Value.

5.7 The Customer's sole and exclusive remedy for delayed delivery of any Delivery Items or Services shall be as set out in Clause 5.7. Any Customer claims for damages due to delayed delivery that in total exceed such limit are hereby excluded, even after the expiry of any extension granted to RSINDIA. If the Delivery Items or Services are not provided within six (6) months of the due date (as may be extended by agreement between the parties) then the order shall be deemed terminated, and this Clause 5.8 shall apply.

5.8 At the request of RSINDIA, the Customer shall state within a reasonable period whether it will withdraw from the contract due to delayed Deliveries and/or Services and/or whether it will claim damages in lieu of performance or damages in addition to performance or will insist on the Delivery and/or Service. Claims

based on default by way of delay will be excluded unless brought within six (6) months from their accrual and knowledge, or grossly negligent lack of knowledge, of the same by the Customer.

5.9 If the dispatch or delivery is delayed at the Customer's request (or for other reasons within the Customer's scope of responsibility), the Customer may be charged storage costs equal to zero point five percent (0.5%) of the invoice amount for each commenced month, starting on the first day after notification of the readiness for dispatch; the storage charge shall be limited to a maximum of five percent (5%) of the invoice amount. The parties shall be entitled to prove higher or lower storage costs.

6 Acceptance

6.1 If acceptance is agreed, the contractual Deliveries and/or Services must be accepted/received by the Customer, even if they show minor defects.

6.2 Early delivery and partial delivery shall be permissible insofar as reasonable for the Customer.

6.3 If acceptance is agreed and RSINDIA demands the acceptance of the contractual Deliveries and/or Services after completion, the Customer shall make such acceptance immediately, but no later than within two (2) weeks. If the Customer fails to make acceptance in due time or refuses acceptance without justification, the acceptance shall be deemed made. The acceptance shall likewise be deemed to be made if the Deliveries – as applicable after completion of an agreed trial period – have been put to use.

7 Transfer of Risk

7.1 The risk shall pass to the Customer:

7.1.1 for (partial) Deliveries in accordance with the INCOTERMS as stipulated in Section 2.1;

7.1.2 for any period by which the dispatch, delivery, beginning or performance of

- the agreed services is delayed at the request of the Customer or for reasons within its responsibility (default of acceptance).

- RSINDIA is prepared, however, to undertake the required safeguards at the request and cost of the Customer.

8 Services

8.1 Prices for repairs or calibration services will be on 'return to R&S Service Centre' basis. Prices quoted for service/module/spares are exclusive of any taxes or government levies (VAT/Service Tax/other tax, cess or surcharge). These taxes will be charged on the basis of tax rates applicable at the time of invoicing.

8.2 For the provision of any kind of Services as part of Deliveries, the R&S Supplementary Conditions for Services in R&S Service Centers and On-Site at the Customer, as amended, shall apply with priority.

8.3 Cost estimates are non-binding and will be made by separate agreement. Unless agreed otherwise, the costs for preparation hereof are included in the price and will be charged separately if the order for the Services is not placed.

8.4 Prior to commencing the performance of Services, the items to be provided by the Customer must be available completely, i.e. including the accessory parts and, if products of a third party are concerned, also including the operating instructions, descriptions and part lists. The shipment and return shall be at the cost and risk of the Customer. All preparatory work to be provided by the Customer must have been fulfilled before the beginning of the installation to such extent that the Services can be carried out immediately upon arrival of the staff assigned by R&S and without interruption.

8.5 All supporting personnel, ancillary work outside R&S' industry, articles and substances of consumption, operating power, water, connections and supply lines, protective gear and protective devices, suitable rooms (including those for storage of material) must be procured and provided in the required quality and suitability by the Customer in due time and at its own cost. Official approvals, including those for the stay of persons, must

also be obtained by the Customer in due time and at its cost, and any site-specific accident prevention regulations must be communicated.

8.6 Before the beginning of the performance of Services, the Customer must provide without request all necessary information regarding the position of hidden lines and the required structural data.

8.7 R&S shall be free to decide where the Services shall be performed insofar as the Services cannot be performed at one place only.

8.8 If performance of the Services is delayed by circumstances, especially at the construction site or at the place of performance, without the fault of R&S, the Customer shall reimburse R&S for all cost resulting from this, including the costs for waiting time and additional required travels of staff.

9 Software

9.1 RSINDIA grants the Customer the non-exclusive right to use the contractual computer programmes and the related documentation (computer programmes and related documentation are collectively referred to as the **"Software"**) exclusively for the operation of the hardware on which it is intended to run or for which it is supplied. The right of use is limited to the agreed period of time; in the absence of such an agreement, the right of use shall be unlimited in time. Subject to clause 9.2, in particular, the right to use the Software shall not include the right to translate, lease, lend, sublicense or the right to distribute, publicly reproduce or make the Software available online to third parties outside the Customer's company. Furthermore, the right to use the Software shall not include the right to reproduce the Software unless such reproduction is necessary for the operation of the hardware on which it is intended to run or for which it is supplied or to produce a backup copy. Save as provided otherwise by mandatory law or written contractual regulations, the Customer shall not be authorised to modify, de-compile, disassemble or otherwise reverse engineer the Software, whether in whole or in part, in order to acquire the source code.

9.2 RSINDIA grants the Customer the right, which may be revoked in case of good cause, to transfer to third parties the right to use the Software granted to the Customer. The Customer may transfer the right to use the Software to third parties only together with the hardware which the Customer acquired together with the Software from RSINDIA or for which the Software of RSINDIA is intended. In that case, the Customer will impose the above obligations and restrictions on the third party.

9.3 The Software will be provided solely in machine-readable form (object code) and without source code or source code documentation.

9.4 All other rights to the Software shall remain with RSINDIA.

9.5 Insofar as Software is provided to the Customer for which RSINDIA owns only a derived utilisation right and which is not open source software (third-party software), the terms of use agreed between RSINDIA and its licensor shall – also with regard to the relationship between RSINDIA and the Customer – apply additionally take precedence over the provisions of this Section 9. If and to the extent that open source software is provided to the Customer, the terms of use governing such open source software shall apply prior-ranking to the provisions of this Section 9. RSINDIA will provide the source code to the Customer at least upon request if such terms of use for the open source software require disclosure of the source code to a third party. RSINDIA will make reference at a suitable place to the existence and the terms of use of third-party software so provided, including open source software, and will make the terms of use available.

10 Liability for Material Defects

10.1 If Deliveries and/or Services show a material defect, RSINDIA shall at its option and free of charge for the Customer repair, replace or reperform ("**subsequent performance**") such Deliveries and/or Services if the cause of such defect was present at the time of the transfer of the risk according to Section 7.

10.2 Claims by the Customer based on material defects must be brought within twelve (12) months from the date of delivery identified in Sections 2.1 and 5.4 or acceptance according to Section 6. This time limit shall not apply as far as the law provides for extended periods in cases of fraudulent concealment of the defect or non-compliance with any guaranteed quality.

10.3 The Customer shall immediately give detailed written notice of any material defects to RSINDIA. If the defect notification was unjustified, RSINDIA shall be entitled to demand reimbursement from the Customer for any expenses incurred.

10.4 RSINDIA shall always be afforded two opportunities to make subsequent performance within a reasonable period. If such subsequent performance fails, the Customer may withdraw from the contract or reduce the amount payable for the defective Deliveries, notwithstanding any claims for damages according to Section 12.

10.5 Claims based on material defects shall not arise where the deviation from the agreed quality is only minor and/or where the usability is impaired only insignificantly. Furthermore:

10.5.1 claims based on material defects shall not arise in case of damage occurring after the passing of the risk (e.g. following incorrect or negligent handling, excessive stress, unsuitable operational facilities, deficient construction work, inappropriate construction site) or in case of usual wear and tear of the objects;

10.5.2 the Customer cannot make any claims based on material defects for damage which results from particular external influences (e.g. chemical, electrochemical, electrical or atmospheric) after transfer of risk which are not provided for in the contract; and

10.5.3 Claims based on material defects shall also be excluded for any modifications or repairs carried out by the Customer or by third parties, and for the resulting consequences.

10.6 Expenses necessary for the purpose of the subsequent performance, in particular transportation, travel, labour and material costs, will be borne by RSINDIA only if the delivered item has not been taken, contrary to its intended use, to a place other than the place of delivery. If the delivered item, following its intended use, was taken to a place other than the place of delivery, RSINDIA will be responsible only for those expenses that would have been incurred if the Customer had not transferred the item; in such case, any additional costs of the subsequent performance caused by such transfer shall be borne by the Customer.

10.7 Software

Software is considered to have a material defect only if the Customer can prove that there are reproducible deviations from the specifications. A material defect shall not be deemed to exist, if it does not manifest itself in the latest version of the Software supplied to the Customer and the use of such latest version by the Customer can reasonably be required. Furthermore, the Customer may not bring a claim based on material defects if the material defect is based on any of the following circumstances: (i) incompatibility of the Software with the data processing environment used by the Customer, (ii) use of the Software together with software supplied by third parties unless this is expressly provided for in the documentation of RSINDIA or is otherwise permitted by RSINDIA in writing; (iii) improper maintenance of the Software by the Customer or third parties.

10.8 Calibration

Calibration consists of ascertaining the connection between the values shown by a measuring instrument or measuring installation and the corresponding values – specified by standards – of a measurable variable under given conditions. The scope of the measurements is determined by the technical data and/or the related product description. Depending on the specific instruction, measured values will be documented in a test report and confirmed as correct at the time of measurement. The Customer shall have the right to satisfy itself of the proper performance of the calibration on the premises of RSINDIA at the time of the calibration. The Customer cannot assert any further claims based on defects.

10.9 Any additional claims based on material defects are excluded.

11 Liability for defects of title / infringement of intellectual property rights

11.1 RSINDIA shall be obliged to perform the Deliveries and/or Services free from defects of title, e.g. industrial property rights and copyrights of third parties ("**Intellectual Property Rights**"), only in the country of the place of delivery. If a third party asserts justified claims against the Customer due to the infringement of Intellectual Property Rights resulting from the contractual use of RSINDIA Deliveries and/or Services, RSINDIA shall be liable to the Customer within the period stipulated in Section 10.2 as follows:

11.1.1 RSINDIA shall, at its option and cost, either obtain a right to use the concerned Deliveries and/or Services, or modify them to prevent an infringement of the Intellectual Property Right, or replace them.

11.1.2 If this is not possible for RSINDIA under reasonable conditions, the Customer shall have the right to withdraw from the contract or to reduce the contract price as well as the right to claim damages according to Section 12.

11.1.3 The above obligations of RSINDIA shall apply only on the condition that the Customer promptly informs RSINDIA in writing about any claims asserted by third parties, that the Customer does not acknowledge any infringements, and that the right of RSINDIA to conduct any defence measures or settlement negotiations shall be unaffected. If the Customer ceases to use the Deliveries or Services on the ground of claims by third parties, the Customer shall make sure, such as by express notice to the third party, that the cessation of use does not constitute an acknowledgement of an infringement of Intellectual Property Rights.

11.2 Claims of the Customer based on defects of title shall be excluded insofar as the Customer is responsible for the infringement of the Intellectual Property Rights.

11.3 Claims of the Customer shall also be excluded insofar as the infringement of the Intellectual Property Rights is caused by specific Customer requirements, through any use which was not foreseeable for RSINDIA or because of the Customer modifying the Deliveries and/or Services or using them together with products not delivered by RSINDIA.

11.4 Any further claims based on defects of title shall be excluded.

12 Limitation on Liability

12.1 Save as set out in this Clause 12, the Customer agrees that the rights and remedies expressly set out in these Conditions are the exclusive remedies available to it. As such RSINDIA hereby excludes all liability for any and all direct and indirect (including special or consequential) losses, each of which shall include but not by way of limitation, loss of profit, loss of production, interruption of business, contractual claims of third parties, lost usage, financing expenditure, interest loss and claims under a covering purchase as well as for loss of data, information and programmes as a result of a software error, arising under these Conditions. The Customer agrees that

under the circumstances, this provision is fair and does not operate harshly upon it.

12.2 The exclusion of liability in Clause 12.1 shall not apply to Claims:

12.2.1 for actual loss sustained by the Customer as a result of the Delivery Items infringing third party IPR in which case RSINDIA's aggregate liability for all claims relating to any one order under this Clause 12.2.1 shall be limited to a sum equal to 10% of the order value (in addition to the remedies identified in Clauses 10.4 and 11.1.1); and

12.2.2 liability for death or personal injury caused by negligence, fraud or breach of mandatory law (but only to the extent that any exclusion or limitation of liability is unlawful) in which case no limit or exclusion shall apply.

12.3 The Customer releases RSINDIA from any obligations based on third-party claims, insofar as the Customer is responsible for such claims.

12.4 Subject to liability under mandatory law (Section 12.2.2), the limitation period for any liability claims (other than for delay (Section 5.9)) shall be twelve (12) months from accrual and knowledge, or grossly negligent lack of knowledge, of the Customer. Section 10.2 remains unaffected thereby.

12.5 Subject to Clause 12.1, 12.2 and 12.3 above, RSINDIA's aggregate liability for all claims relating to any one order including, but without limitation, any Claims under Clause 5.6 shall be limited to 15% of that order value (in addition to the remedies identified in Clauses 10 and 11).

13 Applicable Law / Place of Jurisdiction

13.1 All contractual relations between RSINDIA and the Customer shall be governed exclusively by Indian law. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

13.2 The courts of New Delhi shall have exclusive jurisdiction in case of any disputes arising directly or indirectly from the contractual relationship.

14 Validity of Contract

14.1 In the event that individual terms of these Conditions become invalid, the remaining parts shall continue to be effective. This shall not apply if adherence to these Conditions simply constitutes an unreasonable hardship for one of the parties.

15 No waiver

15.1 The failure to exercise or delay in exercising a right or remedy provided by these Conditions or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of these Conditions or of a default under these Conditions will not prevent a party from subsequently requiring compliance with the waived obligation.

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