



General Conditions for Deliveries and Services for Use in Transactions with Business Customers

August 2022

1. Scope of these Conditions

- 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 “**Deliveries**”) and services (e.g. installation, assembly, calibration, repair; the “**Services**”) by Rohde & Schwarz Italia S.p.A. (“**RSI**”) to business customers, legal entities of public law or special funds under public law (the “**Customer**”). These Terms form part of the contract which is brought about through RSI’ order confirmation following the Customer’s order. In case of any conflicts 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 RSI does not explicitly object to them.
- 1.2. Documents, e.g. illustrations, drawings, weights, performance specifications in brochures, cost estimates, data sheets, etc., do not have binding value, but are performance descriptions only. RSI reserves the right to make any alterations due to and justified by technical advancements, even after confirmation of the order.
- 1.3. Except with the express prior written consent of RSI, the Customer shall not be entitled to reproduce, copy, make available to third parties or otherwise disclose the documents mentioned in Section 1.2 above or to use them in any manner conflicting with RSI’ interests. If the order is not placed with RSI, the documents shall be returned to RSI without undue delay upon request. The preceding sentences 1 and 2 shall apply correspondingly to the Customer’s documents provided to RSI; the documents provided to RSI may, however, be made available to those third parties whom RSI has rightfully subcontracted to perform any Deliveries and/or Services.

2. Prices

- 2.1. Prices for Deliveries (for Services, see Section 8) are CIP according to INCOTERMS 2020, to the destination indicated in the offer or elsewhere unless these Terms provide differently.
- 2.2. Prices are in Euro (€), plus VAT, if any, at the statutory rate applicable from time to time. To be added are any and all taxes, customs duties or charges as well as consular or legalisation fees possibly levied even according to the rules of a law other than the law applicable pursuant to Section 13.1. Customary packaging is included in the price; any costs arising for packing of antennas, transmitters, installations and systems as well as special packaging requested by the Customer will be charged separately.
- 2.3. Prices reflect the cost situation for RSI at the time of conclusion of the contract. If any costs change before the day of delivery / performance of service, RSI 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 conclusion of contract.

3. Reservation of Title

The Parties agree that the Deliveries are sold with retention of title in favour of RSI until the integral payment of the delivered items pursuant to article 1523 – 1526 of the Italian Civil Code has been made. The Customer commits to support all measures taken in order to protect the title to or security interests in the retained goods.

4. Terms of Payment

- 4.1. All payments shall be made to RSI within thirty (30) calendar days from the invoice date without any deductions.
- 4.2. For orders amounting to a total value of more than € 50,000 net, a downpayment of thirty percent (30 %) plus proportionate VAT shall be made upon placing of the order. RSI shall not be obliged to pay any interest on the downpayment.
- 4.3. RSI reserves the right to demand securities for payment and/or advance payments.
- 4.4. The Customer may set off payments only against such claims or assert a right of retention only with respect to claims that are uncontested or established with non-appealable effect. The Customer shall be entitled to assert a right of retention only on the ground of claims that derive from the same contract as the corresponding counterclaim of RSI.
- 4.5. If the Customer is in delay of payment, RSI reserves the right, without waiving any other rights, to charge annual interest of eight (8) percentage points above the interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question as published every six months by the Italian Ministry of Economy and Finance.
- 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 RSI with its payment and acceptance obligations.
- 4.7. The place of payment shall be Rome.

5. Periods for Delivery and/or Service

- 5.1. Compliance by RSI with the periods for Deliveries and/or Services requires that all obligations of the Customer are fulfilled properly and in due time, in particular that all documents, approvals and releases to be furnished by the Customer are received by RSI in time, that all plans are clarified and approved in time, that the items and services to be provided by the Customer according to Section 8. are available, and that such other obligations are satisfied which are required for the Deliveries and/or Services by RSI 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. If a downpayment according to Section 4.2 or a corresponding agreement between the contracting parties has to be made, the preceding sentence shall apply correspondingly.
- 5.2. If the obligations of RSI according to the applicable INCOTERMS are fulfilled, the periods will be deemed complied with.
- 5.3. If the Deliveries and/or Services are delayed for reasons attributable to the Customer’s responsibility, the periods shall be deemed complied with upon notification of the readiness for dispatch and service within the agreed periods.

- 5.4. 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, refusal of a required governmental approval in spite of an application having been properly filed, imposition of an embargo, transport restrictions and restrictions of 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 RSI. If an event of force majeure lasts more than six (6) months, each party shall be entitled to withdraw from the contract.
- 5.5. If RSI is in delay exclusively by its own fault, the Customer may – if it can prove that it has suffered damage owing to the delay – demand, from the third full week, liquidated damages equal to zero point five percent (0.5 %) for each further full week of delay up to a total of five percent (5 %) of the value of the delayed part of the Deliveries and/or Services.
- 5.6. Claims of the Customer for compensation of the default damage due to the delayed Delivery and/or Service and any further claims for damages exceeding in total the limit of five percent (5 %) as provided in Section 5.5 shall be excluded in all cases of delayed delivery, even after expiry of any extension period granted to RSI.
- 5.7. The Customer may terminate the contract due to delay only if the default damage has reached the upper limit of five percent (5 %) specified in Section 5.5. At the request of RSI, the Customer shall state within a reasonable period whether it will terminate 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 will become barred within six (6) months from their accrual and knowledge, or possibility of knowledge applying ordinary care.
- 5.8. 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. Delivery / 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 RSI demands the acceptance of the contractual Deliveries and/or Services after completion, the Customer shall make such acceptance without undue delay, 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

The risk shall pass to the Customer:

- 7.1. for (partial) Deliveries without Services in accordance with the applicable INCOTERMS;
- 7.2. for (partial) Deliveries with Services on the day the Customer puts the Deliveries into operation, if a trial run has been agreed, after defect-free trial run. This requires that the trial run or the putting into operation takes place without undue delay after ready-for-operation installation or assembly. Otherwise, the risk shall pass to the Customer upon installation or assembly for operation;
- 7.3. 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). RSI is prepared, however, to undertake the required safeguards at the request and cost of the Customer.

8. Services

- 8.1. As regards the invoicing of Services, the valid RSI Services Price List from time to time shall apply. In addition, the RSI Supplementary Conditions for Services in R&S Service Centers and On-Site at the Customer, as amended, shall apply with priority.
- 8.2. 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.
- 8.3. Prior to commencing the performance of Services, the items to be provided by the Customer must be available completely at the agreed site, 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 be fulfilled before the beginning of the installation to such extent that the Services can be carried out without interruption immediately upon arrival of the staff assigned by RSI.
- 8.4. All supporting personnel, ancillary work outside RSI' 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 own cost, and any site-specific accident prevention regulations must be communicated.
- 8.5. 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.
- 8.6. RSI shall be free to decide where the Services shall be performed insofar as the Services cannot be performed at one place only.
- 8.7. If performance of the Services is delayed by circumstances, especially at the construction site or at the place of performance, without the fault of RSI, the Customer shall reimburse RSI for all costs resulting from this, including the costs for waiting time and additional required travels of staff.

9. Software

- 9.1. RSI grants the Customer the non-exclusive right to use the contractual computer programs and the related documentation (computer programs and related documentation are collectively referred to as the "Software") exclusively for the operation of the hardware intended or supplied therefore. 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. In particular, the right to use the Software shall not include the right to translate, lease, lend, sublicense, distribute or publicly reproduce the Software or make it 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 intended or supplied therefore or to produce a backup copy. Unless provided otherwise by mandatory law or written contractual regulations, the Customer shall not be authorised to modify, decompile, disassemble or otherwise reverse-engineer the Software, whether in whole or in part, in order to acquire the source code.
- 9.2. RSI 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 RSI or for which the Software of RSI 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 RSI.

9.5. Insofar as Software is provided to the Customer for which RSI owns only a derived utilisation right and which is not open source software (third-party software), the terms of use agreed between RSI and its licensor shall – also with regard to the relationship between RSI and the Customer – apply additionally and prior-ranking to 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. RSI 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. RSI 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, RSI 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 of the Customer based on material defects shall become barred after twelve (12) months from the date of delivery according to Sections 2.1 and 5.2 or acceptance according to Section 6.

This shall not apply if the law provides for extended periods as well as in cases of intent, fraudulent concealment of the defect or non-compliance with a guaranteed quality.

10.3. The Customer shall give detailed written notice of any material defects to RSI without undue delay and anyway within eight (8) days in case of Deliveries and 60 days in case of Services. If the defect notification was unjustified, RSI shall be entitled to demand reimbursement from the Customer for any expenses incurred by RSI.

10.4. RSI 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 compensation, notwithstanding any claims for damages according to Section 12.

10.5. Claims based on material defects shall not arise

10.5.1. where the deviation from the agreed quality is only minor and/or where the usability is impaired only insignificantly;

10.5.2. in case of damage occurring after transfer of 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;

10.5.3. in case of damage which results after transfer of risk from particular external influences (e.g. chemical, electrochemical, electrical or atmospheric) after transfer of risk which are not provided for in the contract;

10.5.4. where the material defect is caused either by use not foreseeable to RSI or by the Customer or third parties modifying or repairing the Deliveries and/or Services or using them together with products not delivered by RSI.

10.6. Expenses necessary for the purpose of subsequent performance, in particular transportation, travel, labor and material costs, will be borne by RSI 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, has been taken to a place other than the place of delivery, RSI 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, however, if it does not manifest itself in the latest version of the Software supplied to the Customer and the use thereof by the Customer can reasonably be required. Furthermore, the Customer will not have any claims 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 RSI or is otherwise permitted by RSI in writing; (iii) improper maintenance of the Software by the Customer or third parties.

10.8. Calibrations

Calibration consists of ascertaining the connection between the values shown by a measuring instrument or measuring system 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 RSI 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 Infringement of Intellectual Property Rights

11.1. RSI shall be obliged to perform the Deliveries and/or Services free from rights of third parties, 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 RSI Deliveries and/or Services, RSI shall be liable to the Customer within the period stipulated in Section 10.2 as follows:

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

11.1.2. If this is not possible for RSI under reasonable conditions, the Customer shall have the statutory rights to terminate 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 RSI shall apply only on the condition that the Customer informs RSI without undue delay in writing about any claims asserted by third parties, that the Customer does not acknowledge any infringements, and that the right of RSI to conduct any defense 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 not foreseeable to RSI or because of the Customer or third parties modifying the Deliveries and/or Services or using them together with products not delivered by RSI.

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

12. Liability

- 12.1. RSI shall be liable without limitation for damage caused with intent or gross negligence and in case of culpable damage to life, body or health. The liability under the mandatory provisions of product liability law (legislative decree n. 206/2005) applicable shall remain unaffected.
- 12.2. Otherwise, the liability of RSI towards the Customer, no matter on what legal ground, including delay (Section 5.5), liability for material defects (Section 10), liability for infringement of intellectual property rights (Section 11) and for any guarantees, shall be limited in aggregate to an amount equal to fifteen percent (15 %) of the agreed remuneration.
- 12.3. Notwithstanding the liability according to Section 12.1 and Section 5.5, RSI shall not be liable for financial loss, consequential damage or compensation for expenses, for 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, nor for loss of data, information and programs as a result of a software error.
- 12.4. Subject to the liability by mandatory law (Section 12.1), the limitation period for any liability claims 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. Any further liability of RSI shall be excluded.

13. Applicable Law / Place of Jurisdiction

- 13.1. The contractual relations between RSI and the Customer shall be governed exclusively by Italian law, without reference to its conflict-of-law provisions. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 13.2. The courts of Rome shall have exclusive jurisdiction for any disputes arising directly or indirectly from the contractual relationship, provided that the Customer is a businessman, a legal entity under public law or a special fund under public law. RSI shall also have the right to take legal action at the Customer's domicile.

14. Validity of the Contract

- 14.1. If any provisions of the contract are invalid, the remaining provisions shall continue to be in force. This shall not apply if adherence to the contract would constitute an unreasonable hardship for one of the parties.
- 14.2. All agreements, including covenants, must be made in written form to be valid. This form requirement can be waived only in writing.

ROHDE & SCHWARZ ITALIA S.p.A., VIA TIBURTINA, 109500156 ROMA, ITALY

Customer name:

Place, date:

Signature:

Signature:

Name:

Name:

Title:

Title:

The Customer pursuant to articles 1341 and 1342 civil code, after rereading, specifically authorizes the following clauses of the General Conditions: 5.5., 5.6. (limitation of damages caused by delay), 5.7. (limitation of the right to terminate the contract), 5.8. (time-barring for exercising the rights deriving from delay), 6 (obligation to accept and take delivery, limitation to the possibility of raising exceptions upon delivery), 7 (transfer of risk, referral to the INCOTERMS), 10.2 (time-barring for exercising the rights deriving from the material defects), 10.9. (limitation of the liability for defects), 10.5. (limiting the right to oppose exceptions arising from defects), 11.1 (forfeiture of the right to claim liability for infringement of intellectual property rights), 12 (limitation of liability for damages), 13 (exclusive jurisdiction)

Customer name:

Place, date:

Signature:

Signature:

Name:

Name:

Title:

Title: