



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

July 2023

## 1. Subject Matter of the Conditions

- 1.1 These General Conditions (hereinafter referred to as "**General Conditions**") shall govern the rights and obligations concerning the provision of products, including hardware and software and services such as installation, assembly, calibration and corrective maintenance (hereinafter collectively referred to as "**Deliveries**") by Rohde & Schwarz Japan K.K.(hereinafter referred to as "**RSJ**") to business customers, legal entities under public law or special funds under public law (hereinafter referred to as "**Customer(s)**"). The Customer's terms and conditions only apply if and to the extent that RSJ explicitly acknowledges them in writing. In particular, silence on the part of RSJ with regards to such deviating terms and conditions shall not be deemed to constitute acknowledgment or consent, even in the case of future contracts.
- 1.2 Unless otherwise agreed, Deliveries shall be made pursuant to Incoterms® 2020 CIP to the destination specified in the offer or elsewhere.
- 1.3 Any documents, including, but not limited to illustrations, drawings, weights, performance specifications in brochures, cost estimates and data sheets shall not constitute a guaranteed specification regarding the quality of the Deliveries.
- 1.4 As a result of developments, it is possible that RSJ may replace individual products ordered by the Customer or components of such products explicitly referred to in the offer or order acknowledgement issued by RSJ with other products or components, even after the conclusion of the agreement. The parties agree that such successor products or components can be supplied by RSJ in performance of the agreement, provided that such successor products or components comply with the specifications of the product ordered by the Customer and that the price remains unchanged.
- 1.5 After a quotation is issued RSJ shall be entitled to make (further) checks and requests regarding (i) the creditworthiness and financial standing of the Customer, (ii) the applicable "know your customer" rules and regulations and (iii) the applicable embargo and sanction lists. Depending on the result RSJ reserves the right, until the order acknowledgement is issued, to amend (e.g. by demanding payment securities and/or advance payments) or to cancel the quotation or, as the case may be, the respective agreement. Such amendment or cancellation shall be without any liability, whatsoever, towards the Customer.

## 2. Prices and Terms of Payment

- 2.1 Prices are stated net in Japanese Yen (JPY) and exclude any and all taxes (e.g. applicable consumption tax), customs duties or charges as well as applicable consular or legalization fees which may also be levied in accordance with the provisions of a law other than the law that applies under Section 14.1.
- 2.2 Prices reflect the cost incurred by RSJ at the time of conclusion of the agreement. If any costs change before the date of delivery, RSJ reserves the right to adjust its prices, provided that the Deliveries are to be carried out as agreed more than four (4) months after the formation of the agreement.
- 2.3 Cost estimates shall not be binding and shall be made upon separate agreement. The costs for preparing these estimates are included in the price unless otherwise agreed, and will only be invoiced separately if no order is placed for the service in question.
- 2.4 The Customer shall make all payments to RSJ by bank transfer without any deductions to RSJ by the end of the month following the month for which the invoice has been issued, unless agreed otherwise between the RSJ and the Customer in writing. If the Customer is in delay of payment, RSJ reserves the right, without waiving any other rights, to charge annual interest of eight (8) percent (prorated on the basis of a 365-day year) levied on the delayed payment.
- 2.5 If requested by RSJ, thirty percent (30%) of the total value plus the pro rata consumption tax shall be due as an advance payment upon placement of the order. RSJ shall not be obliged to pay any interest on the advance payment. This provision shall not affect any rights of RSJ under Section 1.5.
- 2.6 The Customer can only offset claims or assert a right of retention with respect to claims, that are undisputed or have been so established in a final and non-appealable judgement. The Customer shall only be entitled to assert a right of retention for claims arising under the same agreement as the relevant RSJ counterclaim.
- 2.7 The place of payment shall be Japan.

## 3. Retention of Title

- 3.1 The title of the products delivered hereunder shall remain with RSJ until the full price agreed for the products has been received by RSJ.
- 3.2 RSJ is entitled, on the basis of the retention of title, to demand that products subject to the retention of title be returned to RSJ if the Customer is in default on payment of the agreed price for the products. The request for the products to be returned shall not be deemed to include a declaration of rescission of the agreement. The provisions governing rescission of the agreement shall remain unaffected.
- 3.3 The Customer shall handle the products subject to the retention of title with due care and notify RSJ immediately, in writing, in case of any loss and/or damage to such products. The Customer shall insure the products at its own expense against any loss and/or damage caused to the products for any reason, including, but not limited to, fire, water, theft and natural hazards etc., with the sum insured being adequate to cover the replacement value of the affected product. If maintenance, calibration and/or inspection work becomes necessary, the Customer shall carry out such work in a diligent manner and in good time and at its own expense.
- 3.4 In the event of attachments, seizure and/or any other restrictions imposed on the products that are subject to the retention of title hereunder by third parties, the Customer shall notify such third party without delay that the products are the property of RSJ and shall further notify RSJ, in writing, without delay so that RSJ may enforce its ownership rights.
- 3.5 The Customer shall have the right to resell the products that are subject to the retention of title hereunder in its ordinary course of business insofar as it is not in default of payment. In relation thereto, the Customer agrees to assign, by way of security, any subsequent claims for payment that the Customer may have against its customers arising from such resale of the products that are subject to the retention of title to RSJ in full. If the products subject to the retention of title are resold by the Customer together with other products, without an individual price being agreed for the products subject to the retention of title, the Customer further assigns, by way of security, the portion of its total price claim that corresponds to the price agreed with RSJ for the products subject to the retention of title to RSJ. RSJ accepts such assignment.
- 3.6 The Customer shall be authorized to collect the claims assigned to RSJ as mentioned above until such authorization is revoked by RSJ. If the Customer acts in breach of contract – in particular in cases involving payment default – or if there are reasonable grounds to suspect the Customer's over-indebtedness or imminent insolvency, RSJ may revoke the authorization to collect such claims and demand that the Customer promptly disclose to RSJ the assigned claims and the individual debtors and notify the individual debtors of the assignment and provide RSJ with all documents and information required by RSJ to assert the claims directly.
- 3.7 The assignment of claims in Section 3.5 and the provisions set forth in Section 3.6 shall apply even if the retention of title provided for in Section 3.1 is invalid in accordance with the mandatory provisions of law that apply in the country in which the product is located.
- 3.8 The Customer shall notify RSJ in writing without delay if an application for the opening of insolvency proceedings has been filed against it.



#### 4. Delivery Timelines

- 4.1 Compliance by RSJ with the agreed-upon delivery timelines (hereinafter collectively referred to as "**Delivery Timelines**") for Deliveries shall require the timely, due and proper performance of all obligations and duties by the Customer, in particular (i) the Customer's timely payments to RSJ; (ii) the Customer's timely delivery of all documents, authorizations and approvals to RSJ; and (iii) the Customer's due and proper provision of materials pursuant to Section 8; this shall also include, by way of example, the submission of a duly signed end-user certificate, to the extent this is required for RSJ to apply for an export license. If such Customer obligations and duties are not fulfilled in time, the Delivery Timelines for the Deliveries by RSJ shall be extended accordingly, plus a reasonable ramp-up period.
- 4.2 If the Deliveries are delayed for reasons for which the Customer is responsible, RSJ shall be deemed to have met the Delivery Timelines if notification that the products are ready for delivery is made within the agreed Delivery Timelines.
- 4.3 In the event of any damage suffered by the Customer from a delay in delivery for which RSJ is solely responsible, the Customer may demand liquidated damages equal to one-half percent (0.5%) of the value of the delayed part of the Deliveries from the third full week of delay 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.
- 4.4 Claims of the Customer for any additional damage and/or loss exceeding the maximum of five percent (5%) referred to in Section 4.3 shall be excluded, even following the expiration of any additional period set for RSJ for delivery.
- 4.5 The Customer may only rescind this agreement in accordance with the statutory provisions due to delay, if the liquidated damages have reached the maximum of five percent (5%) referred to in Section 4.3.
- 4.6 At the request of RSJ, the Customer shall state within a reasonable period of time whether it intends to rescind the agreement due to the delay or insist on performance. Claims based on default shall become statute-barred within six (6) months of them arising or becoming known, or at the time which they would have become known had the Customer not been grossly negligent.
- 4.7 If Deliveries are delayed at the Customer's request, or for other reasons that fall within the Customer's scope of responsibility, RSJ may, subject to any further rights and claims, charge the Customer with storage fees in an amount equal to one-half percent (0.5%) of the value of the Deliveries concerned for each month or part thereof, starting on the first day after notification of readiness for delivery. The parties shall have the right to furnish evidence of higher or lower storage costs.

#### 5. Force Majeure

- 5.1 The term "Force Majeure Event" shall include, without being limited to, mobilization, war, riot, strike, lockout, acts of terrorism, nuclear accidents, government or sovereign acts or omissions (including, but not limited to, the failure to grant, restricted granting, or any delay in the granting of any governmental or official approvals, permits, licenses or allowances, as well as the full or partial cancellation or suspension of such approvals, permits, licenses or allowances, a stoppage imposed by customs authorities, imposition of an embargo or sanctions by an authority or by an international, multinational or supranational body), epidemics, pandemics, transport restrictions and restrictions of energy consumption, general shortage of raw materials and common supplies, non-delivery or late delivery by sub-suppliers or sub-contractors, natural catastrophes and cases of unavoidable events (e.g. volcanic activity, earthquakes, thunderstorms, floods, fire, storms and other adverse weather conditions), as well as all other events that lie beyond the control of the party or its sub-suppliers or sub-contractors that are affected by such a Force Majeure Event.
- 5.2 The party affected by a Force Majeure Event shall inform the other party of the event within a reasonable period. The contractual obligations affected by a Force Majeure Event shall be suspended and the periods for the performance of such contractual obligations shall be extended accordingly, together with a reasonable ramp-up period.
- 5.3 If the suspension of the contractual obligations due to a Force Majeure Event lasts longer than six (6) months, each party shall be entitled to terminate the agreement without incurring any liability in respect of the Force Majeure Event or the aforementioned termination.
- 5.4 This Section 5 shall not apply to the monetary obligation of the parties.

#### 6. Delivery / Acceptance

- 6.1 If acceptance has been provided for, the Customer shall accept all received contractual Deliveries even if minor defects are identified.
- 6.2 Early delivery and partial deliveries shall be permitted insofar as the Customer can be reasonably expected to accept such deliveries.
- 6.3 If acceptance has been provided for and RSJ requests the acceptance of the Deliveries after completion, the Customer shall accept those Deliveries without undue delay, but not later than two (2) weeks from the date of delivery. If the Customer fails to accept the Deliveries in due time or refuses acceptance without justification, the Deliveries shall be deemed to have been accepted. The Deliveries shall also be deemed to have been accepted if they are resold or – where a test phase has been agreed, following the completion of such agreed test phase – have been put to use.

#### 7. Transfer of Risk

- 7.1 The risk shall be transferred to the Customer in accordance with the applicable Incoterms® 2020, even if installation or assembly on the Customer's premises has been agreed. However, this shall not apply to Deliveries for which acceptance has been provided for.
- 7.2 For those Deliveries in which acceptance has been provided for, the risk shall be transferred to the Customer upon acceptance. However, in the event that RSJ delivers or otherwise hands over the Deliveries prior to acceptance, then the risk associated with such Deliveries shall be transferred to the Customer at such time.
- 7.3 If delivery, assembly, installation, handover/acceptance is delayed at the Customer's request, because the Customer is in default in taking delivery, or for other reasons which the Customer is responsible for, the risk associated with the Deliveries affected by the delay shall be transferred to the Customer prior to the point in time specified in Sections 7.1 or 7.2 for the period of this delay. RSJ is, however, prepared to take the precautionary measures requested by the Customer at the Customer's expense.

#### 8. Provision of Materials and Other Obligations to Cooperate

- 8.1 If the Deliveries to be made by RSJ include either in full or in part, performance of services such as, but not limited to, installation, assembly, calibration or corrective maintenance, then the Customer shall ensure that all Customer-furnished items required by RSJ to perform such services, including, but not limited to, accessories and, in cases involving third-party products, instructions for use, descriptions, and data sheets, shall be timely provided to RSJ at the agreed location and in their entirety before RSJ's commencement of such services. Transport of the Customer-furnished items in both directions from the Customer to RSJ or the other agreed location and from such a place to the Customer shall be at the cost and risk of the Customer.
- 8.2 All preparatory work required to be performed by the Customer shall be at such a stage, prior to the commencement of services, that allows RSJ to immediately commence the provision of services upon the arrival of the personnel deployed by RSJ and to continue without interruption.
- 8.3 The Customer shall procure timely and at its own expense and shall provide timely, all supporting personnel, ancillary work to be performed by third parties, consumer goods and materials, power supply, water, outlets and supply lines, protective clothing and protective devices, suitable premises (including premises on which to store materials) in the required quality and suitability. Official authorizations, other than those governed by the agreed Incoterm shall also be obtained by the Customer timely and at its own expense, and any site-specific rules for the prevention of accidents must be communicated to RSJ. Prior to the commencement of services, the Customer shall make all necessary information available to RSJ including, but not limited to, information on the location of hidden lines, the design of the Customer's own wireless network infrastructure, the necessary structural data etc., without having to be requested to do so.



- 8.4 If RSJ has justified doubts regarding the quality and suitability of the materials supplied by the Customer or the latter's cooperation, RSJ reserves the right to refuse performance of services or to refuse to assume any liability.
- 8.5 If there is more than one place where the services can be performed, it is up to RSJ to decide on the place of performance.

#### 9. Customer's Rights of Use (in particular to Software)

The Customer has the right to use Deliveries or parts thereof, protected by industrial property rights or copyrights (hereinafter referred to as "Property Rights") as follows:

- 9.1 RSJ grants the Customer the non-exclusive and non-sublicensable right to use the Deliveries in accordance with the agreement. This 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. The Customer shall not, however, have the right to process, rework, redesign or publicly reproduce the Deliveries or parts thereof (in particular making it publicly available). The Customer is also not authorized to reproduce the Deliveries or parts thereof, unless this is necessary for their intended use or to create a backup copy.
- 9.2 Where the right of use is unlimited in time, the Customer has the right to transfer such rights of use to third parties. The Customer may only, however, rent out or lend Deliveries to third parties with the written consent of RSJ. If the Customer transfers the right of use to a third party, it is obliged to impose the obligations and restrictions set out in Sections 9.1 to 9.5 on the third party.
- 9.3 The Deliveries may contain parts that are subject to separate terms of use of third parties (for example, any third-party standard software or open source software) that take precedence over the provisions set out in this Section 9. RSJ shall refer at a suitable place to such parts and their separate terms of use and shall make these separate terms of use available to the Customer.
- 9.4 RSJ shall provide the Customer with software solely in machine-readable format (object code) and without source code or source code documentation. This shall apply even if RSJ grants the Customer a right to process, rework or redesign the Deliveries elsewhere. If, however, the separate terms of use of third parties (Section 9.3) provide for the provision of source code, RSJ shall, at the Customer's request, provide the Customer with the source code that is to be made available or make it available for download.
- 9.5 Subject to any mandatory statutory or written contractual provisions to the contrary, the Customer is not authorized to decompile, disassemble or otherwise reverse engineer the software to obtain the source code.

#### 10. Liability for Defects

- 10.1 If the Deliveries show a defect, the Deliveries shall be repaired or replaced free of charge at the discretion of RSJ (hereinafter referred to as "Subsequent Performance").
- 10.2 Claims and rights of the Customer due to defects shall become barred after twelve (12) months, calculated from the time of the transfer of risk pursuant to Section 7. This shall not apply if longer periods are required by law or in cases of willful intent or fraudulent concealment of the defect.
- 10.3 The Customer shall provide detailed written notice of any defects to RSJ. If the defect notification was unjustified, RSJ shall have the right to claim reimbursement of the expenses incurred by RSJ from the Customer.
- 10.4 RSJ shall always be afforded the opportunity of Subsequent Performance twice within a reasonable period. Without prejudice to any claims for damages in accordance with Section 12, the Customer is only entitled to rescind the agreement or reduce the remuneration only if the Subsequent Performance fails.
- 10.5 In particular, the Customer shall have no rights or claims due to defects: (i) where the deviation from the agreed quality is only minor and/or where the usability is only insignificantly impaired; (ii) in cases involving damage that occurs after the transfer of risk (e.g. as a result of incorrect or negligent handling, excessive strain, unsuitable equipment, defective construction work) or in cases of natural wear and tear regarding the products; (iii) in cases involving damage insofar as this is due to external – e.g. chemical, electrochemical, electrical and atmospheric – influences which have not been provided for in the agreement; or (iv) if the defect is caused by the Deliveries being modified or repaired by the Customer or third parties or being used contrary to the specifications or instructions of RSJ.
- 10.6 If the item has been taken to a location other than the place of delivery, RSJ shall, in the context of its Subsequent Performance, only bear those expenses – in particular transportation, travel, labor and material costs – that would have been incurred if the Customer had not taken the items to another location; in such cases, the Customer shall bear the additional costs of Subsequent Performance resulting from the fact that the items were taken to a different location.
- 10.7 Only reproducible deviations from the specifications shall be deemed to constitute defects in the case of software. A defect shall not, however, be deemed to exist if it does not occur in the latest version of software supplied to the Customer and if the Customer can be reasonably expected to use such latest version. Furthermore, the Customer shall have no claims based on defects if the defect is due to one of the following circumstances: (i) incompatibility of the software with the data processing environment used by the Customer, unless this is explicitly provided for in the RSJ documentation or has been otherwise permitted by RSJ in writing; (ii) use of the software together with software supplied by third parties, unless this is explicitly provided for in the RSJ documentation or has been otherwise permitted by RSJ in writing; or (iii) improper maintenance of the software by the Customer or third parties.
- 10.8 Any additional rights and claims based on defects shall be excluded.

#### 11. Liability for Defects of Title / Infringement of Third-Party Property Rights

- 11.1 RSJ shall be obliged to perform the Deliveries free from defects of title, e.g. conflicting third-party property rights in Japan. In the event that a third party asserts justified claims against the Customer due to defects of title resulting from the contractual use of the Deliveries in Japan, RSJ shall be liable to the Customer within the period set out in Section 10.2 as follows:
- 11.1.1 RSJ shall, at its own option and expense, either obtain the corresponding right (of use) for the Deliveries concerned within a reasonable period of time, or modify or replace these Deliveries such that there is no longer any defect of title. If this is not possible for RSJ under reasonable conditions, the Customer shall have the right to rescind the agreement or reduce its remuneration, notwithstanding any claims for damages pursuant to Section 12.
- 11.1.2 The Customer shall only have rights and claims due to defects of title if the Customer (i) informs RSJ without delay and in writing of the claims asserted by the third party; (ii) does not acknowledge any infringement; (iii) does not preclude any defense against the claims asserted by the third party by taking specific action or failing to take specific action; and (iv) informs RSJ in writing within a reasonable time in advance of all planned defense measures and settlement negotiations involving RSJ in this process upon request. If the defect notification was unjustified, RSJ shall have the right to claim reimbursement of the expenses incurred from the Customer.
- 11.2 In particular, the Customer shall have no rights or claims due to defects of title insofar as the Customer is responsible for the infringement of the property rights. Furthermore, the Customer shall have no rights or claims due to defects of title insofar as the infringement of the property rights is caused (i) by special specifications of the Customer; (ii) by an application that was not foreseeable by RSJ; (iii) by the fact that the Deliveries are modified by the Customer or by third parties; or (iv) by the fact that the Deliveries are used together with products not supplied by RSJ.
- 11.3 Any additional rights and claims based on defects of title shall be excluded. Section 10 (except Section 10.2) shall not apply to the defects in title.



## 12. Liability

- 12.1 The liability of RSJ to the Customer for all claims, regardless of the legal basis therefor (including any indemnification obligations and any guarantees) and including any liquidated damages and any contractual penalties, shall be limited in total aggregate to an amount equal to fifteen percent (15%) of the net order value.
- 12.2 RSJ shall not be liable, regardless of the legal basis therefor (including any indemnification obligations and any guarantees), for incidental, indirect or consequential damage, financial losses, reimbursement of expenses, recourse claims with respect to contractual claims of third parties, or claims for loss of profit, loss of use, loss of production, business interruption, financing expenses, loss of interest, covering purchase, or the software-related loss of data, information or programs.
- 12.3 The limitation period for claims based on default shall be governed by Section 4.6, while the limitation period for claims based on defects shall be governed by Sections 10.2 and 11.1. Other claims will become statute-barred within twelve (12) months of them arising or becoming known, or of the time at which they would have become known had the Customer not been grossly negligent.
- 12.4 The sub-sections above shall not apply (i) in the event of willful intent, (ii) to damage resulting from injury to life, body or health, or (iii) to the extent that they are contrary to mandatory law (e.g. an applicable product liability act).

## 13. Non-Disclosure

- 13.1 If a non-disclosure agreement has already been concluded between RSJ and the Customer, this non-disclosure agreement shall remain in force and shall take precedence over the provisions set out in this Section 13 below. The obligations under the aforementioned non-disclosure agreement shall apply mutatis mutandis to the agreement concluded that includes these General Conditions, the offer, the order acknowledgement as well as all information disclosed to the Customer in connection with the performance of the agreement by RSJ, an affiliated company of RSJ or by third parties on behalf of RSJ, in whatever form.
- 13.2 The agreement concluded that includes these General Conditions, the offer, the order acknowledgement as well as all information disclosed to the Customer in connection with the performance of the agreement by RSJ, an affiliated company of RSJ or by third parties on behalf of RSJ (e.g. knowledge, experience, documents, inventions, production processes, mechanical designs, prices and other business and trade secrets) – in whatever form – (hereinafter referred to as "**Confidential Information**"), shall be treated as confidential by the Customer and shall be used exclusively for the purpose for which the information was provided. Disclosure to third parties is only permitted with the prior written consent of RSJ and, in the event that such consent is granted, the Customer shall subject these third parties to non-disclosure obligations that are at least as stringent as the provisions set out in this Section 13 prior to disclosure.
- 13.3 The aforementioned obligations shall not, however, apply to information (i) that is generally known; (ii) that becomes generally known without any breach of this non-disclosure obligation; (iii) that was already lawfully known to the Customer without the latter being obliged to treat it as confidential prior to its transmission; (iv) that is lawfully made available to the Customer by a third party; (v) that is developed by the Customer independently and without recourse to the Confidential Information; or (vi) that the Customer is required to disclose under a mandatory statutory obligation or whose disclosure is required by a competent court or authority.
- 13.4 Confidential Information received shall be returned or destroyed, at the discretion of RSJ, immediately upon request. The abovementioned obligations to return and destroy the information shall not apply to (i) Confidential Information in electronic form (e.g. email) that is copied as part of routine back-up procedures; and (ii) cases in which the Customer is obliged to retain the Confidential Information on the basis of mandatory legal provisions. This is, however, subject to the provision that the Confidential Information is treated as confidential in accordance with the provisions set out in this Section 13 until the period specified in Section 13.5 has expired.
- 13.5 The aforementioned non-disclosure obligations shall apply for a period of five (5) years from the conclusion of the agreement.

## 14. Applicable Law / Arbitration

- 14.1 The agreement between RSJ and the Customer, including its interpretation, shall be governed exclusively by Japanese law, excluding the rules of conflict of laws. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 14.2 All disputes, differences of opinion, rights or claims arising under, or in connection with, the agreement between RSJ and the Customer or its violation, termination or invalidity shall – unless settled amicably by the parties – be exclusively and definitively settled in arbitration proceedings conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC), Paris, France, as amended. Either party's right to apply for a dunning procedure or temporary relief from the competent state courts shall, however, remain unaffected.
- 14.3 The number of arbitrators shall be three (3), unless the parties agree upon a single arbitrator. The place of arbitration shall be Tokyo, Japan. The language of arbitration shall be English.
- 14.4 The costs of the arbitration proceedings shall be borne by the unsuccessful party or by both parties according to their win/loss ratio. The aforementioned costs of the arbitration proceedings include the costs of the ICC, the arbitrators' fees and also appropriate legal fees and expenses.

## 15. Final Provisions

- 15.1 In the event that individual aspects of the agreement are legally invalid, the remaining parts shall continue to be binding. This shall not apply if adherence to the agreement constitutes an unreasonable hardship for one of the parties.
- 15.2 Any contractual agreements, including amendments, supplements and other collateral agreements shall be made in writing in order to be effective. This formal requirement can only be dispensed with by way of a written declaration.

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