



## General Conditions of Delivery and Services

### for Use in Transactions with Business Customers

March 2021

#### 1. Scope of these Terms and 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 “**Delivery Items**”) and services (e.g. installation, assembly, calibration, repair; the “**Services**”) by Rohde & Schwarz UK Limited (“**RSUK**”) to business customers or public authorities and related entities (the “**Customer**”). These Terms form part of the contract which is formed by the dispatch by RSUK of RSUK’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.
- 1.2. All arrangements which are to be legally binding on RSUK, including collateral agreements, must be made in writing in order to become effective. This requirement can be waived only in writing.
- 1.3. RSUK may provide documents, e.g. illustrations, drawings, weights, performance specifications in brochures, cost estimates, data sheets, etc., but these are merely performance descriptions and do not have any binding value. RSUK reserves the right to make any alterations to such documents due to and justified by technical advancements, even after order acknowledgement has been issued to the Customer.
- 1.4. RSUK retains the right and title as well as copyright in the same, in all cost estimates, drawings, technical information, data manuals and other documents (the “**Documents**”). Except with the express prior written consent of RSUK, 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 RSUK’s interests. If the order is not placed with RSUK, the documents shall be returned to RSUK immediately upon request. The preceding sentences 1 and 2 of this section shall apply correspondingly to the Customer’s documents provided to RSUK; the documents provided to RSUK may, however, be made available to those third parties whom RSUK has rightfully subcontracted to provide any Delivery Item and/or Services.

#### 2. Prices

- 2.1. Prices for Delivery Items (for Services, see Section 8) are CIP according to Incoterms 2010, ICC Publication Section 715 ED, to the destination indicated in the offer or elsewhere unless these Terms provide differently.
- 2.2. Prices, including commercial packing, shall be in the currency stated in RSUK’s quotation or order confirmation, plus applicable VAT, at the statutory rate applicable from time to time. 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 antennas, transmitters, installations and systems as well as special packaging requested by the Customer will be charged separately.
- 2.3. Prices reflect the cost incurred by RSUK at the time of conclusion of the contract. If any costs change before the day of delivery / performance of Service, RSUK reserves the right to adjust the prices provided that the Delivery 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 delivered items is retained by RSUK (“**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 RSUK to the Retained Goods expires through combination with another item, RSUK shall acquire co-ownership to the new item on a proportional basis, i.e. at the ratio the value of the combined Retained Goods (final invoice amount including VAT) bears to the value of 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, RSUK and the Customer hereby agree that the Customer assigns to RSUK proportionate co-ownership to such item. RSUK hereby accepts such assignment. Any costs arising from action required to be taken by RSUK 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 RSUK. In case of the Customer’s payment default, RSUK 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 RSUK for as long as RSUK is still owed monies by the Customer.
- 3.4. The Customer shall immediately inform RSUK in the event of any seizures, attachments or other dispositions or interventions by third parties. If the third party is unable to reimburse RSUK for the court or out-of-court costs incurred by RSUK in this connection, the Customer shall be liable for them.
- 3.5. RSUK shall have the right to terminate any contract 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 RSUK 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 Section 9.

#### 4. Terms of Payment

- 4.1. All payments shall be made to RSUK within thirty (30) calendar days from the date of invoice without any deductions and without any costs arising to RSUK.
- 4.2. For orders amounting to a total value of more than £40,000 or €50,000 a down payment of thirty percent (30%) plus proportionate VAT shall be made upon placing of the order. RSUK shall not be obliged to pay any interest on the down payment.
- 4.3. RSUK 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 RSUK.

- 4.5. If the Customer is late in payment, RSUK reserves the right without waiving any other rights, to charge annual interest (compounded weekly) of eight percent (8%) above the official base rate of the Bank of England.
- 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 RSUK with its payment and acceptance obligations.
- 4.7. The place of payment shall be Fleet, UK.

## **5. Periods of Delivery or Service**

- 5.1. Compliance by RSUK with the periods for Delivery 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 RSUK 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 as required for the Delivery Items by RSUK 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 down payment has been made pursuant to Section 4.2 or a corresponding agreement is required between the contracting parties, the preceding sentence shall apply correspondingly.
- 5.2. If the obligations of RSUK according to the applicable INCOTERMS are fulfilled, the periods will be deemed complied with.
- 5.3. If the delivery and/or performance of Services is 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.
- 5.4. If the provision of Delivery Items and/or performance of Services is unduly delayed 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, imposition of an embargo, transport restrictions and restrictions of energy consumption, epidemic, pandemic, 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 RSUK or any of its subcontractors or sub-suppliers. 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 RSUK 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 Delivery Item and/or Services.
- 5.6. Claims of the Customer for compensation of the default damage due to the delayed Delivery Item and/or 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 RSUK.
- 5.7. The Customer may withdraw from the contract due to delay in accordance with the statutory provisions only if the default damage has reached the upper limit of five percent (5 %) specified in Section 5.5.
- 5.8. At the request of RSUK, the Customer shall state within a reasonable period whether it will withdraw from the contract due to delayed Delivery 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 may not be commenced more than six (6) months after their accrual and knowledge, or grossly negligent lack of knowledge, of 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. Delivery Items showing minor defects shall not be grounds for the Customer to refuse to accept or reject them.
- 6.2. Early delivery and partial delivery shall be permissible insofar as reasonable for the Customer.
- 6.3. If acceptance is agreed and RSUK demands the acceptance of the contractual Delivery Items 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 Delivery Items – 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) Delivery Items without Services in accordance with the applicable INCOTERMS
- 7.2. for (partial) Delivery Items with Services on the day the Customer puts the Delivery Item 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 take 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).
  - RSUK 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 RSUK Services Price List from time to time shall apply. In addition, the RSUK 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 RSUK.
- 8.4. All supporting personnel, ancillary work outside RSUK' 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. RSUK 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 RSUK, the Customer shall reimburse RSUK for all costs resulting from this, including the costs for waiting time and additional required travels of staff.

## 9. Software

- 9.1. RSUK 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 in conjunction with the hardware on which it is intended to run. 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 Section 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 or, 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, decompile, disassemble or otherwise reverse engineer the Software, whether in whole or in part, in order to acquire the source code.
- 9.2. RSUK 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 RSUK or for which the Software of RSUK 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 RSUK.
- 9.5. Insofar as Software is provided to the Customer for which RSUK owns only a derived utilisation right and which is not open source software (third-party software), the terms of use agreed between RSUK and its licensor shall – also with regard to the relationship between RSUK and the Customer – apply additionally and 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. RSUK 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. RSUK will refer 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 Delivery Items and/or Services show a material defect, RSUK shall at its option and free of charge for the Customer repair, replace or re-perform ("Subsequent Performance") such Delivery Item 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 actual delivery or deemed delivery according to Sections 2.1 and 5.2 or acceptance according to Section 6, failing which they shall be invalid. 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 RSUK. If the defect notification was unjustified, RSUK shall be entitled to demand reimbursement from the Customer for any expenses incurred.
- 10.4. RSUK 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 Delivery Items.
- 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 third parties and for the resulting consequences.
- 10.6. Customer claims pertaining to reasonably incurred expenses incurred in particular transport, travel, labor and material costs shall be excluded insofar as expenses increase due to the Delivery Items being subsequently taken to a location other than the Customer's premises, except where otherwise agreed.
- 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 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 RSUK or is otherwise permitted by RSUK 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 RSUK at the time of the calibration, following which the Customer cannot assert any further claims based on defects relating to calibration.
- 10.9. Any additional claims based on material defects are excluded.

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

- 11.1. RSUK shall be obliged to provide the Delivery Item 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 RSUK Delivery Items and/or Services, RSUK shall be liable to the Customer within the period stipulated in Section 10.2 as follows:

- 11.1.1. RSUK shall, at its option and cost, either obtain a right to use the concerned Delivery Item 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 RSUK 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 RSUK shall apply only on the condition that the Customer informs RSUK 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 RSUK to conduct any defence measures or settlement negotiations shall be unaffected. If the Customer ceases to use the Delivery Item 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 RSUK or because of the Customer or third parties modifying the Delivery Item and/or Services or using them together with products not delivered by RSUK.
- 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 Section 12, the Customer agrees that the rights and remedies expressly set out in these Terms are the exclusive remedies available to it. As such RSUK 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 Terms. 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 Section 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 RSUK' aggregate liability for all claims relating to any one order under this Section 12.2.1 shall be limited to a sum equal to ten percent (10%) of the order value (in addition to the remedies identified in Sections 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 RSUK 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 5.7)) 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 Section 12.1, 12.2 and 12.3 above, RSUK's aggregate liability for all claims relating to any one order including, but without limitation, any Claims under Section 5.3 shall be limited to 15% of that order value (in addition to the remedies identified in Section 10 and 11).

## **13. Applicable Law / Place of Jurisdiction**

- 13.1. All contractual relations between RSUK and the Customer shall be governed exclusively by English law. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 13.2. The courts of England and Wales shall have exclusive jurisdiction in case of any disputes arising directly or indirectly from the contractual relationship. RSUK shall also have the right to take legal action at the Customer's domicile.

## **14. Validity of Contract**

- 14.1. In the event that individual provisions of these Terms, the remaining parts shall continue to be effective. This shall not apply if adherence to these Terms simply constitutes 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.

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