ROHDE&SCHWARZ

General Conditions for Deliveries and Services
for Use in Transactions with Business Customers
May 2019

《交付货物与服务一般交易条款》

用于与商业客户的交易

2019年5月

1. General 条款范围

The quotation is subject to these Conditions only. Any conditions of the Customer which are in conflict with these Conditions are not binding unless they have been confirmed by Beijing Rohde & Schwarz Communication Technology Co. Ltd. ("**RSCT**") in writing.

报价单应仅适用本条款。除非经北京罗博施通信技术有限公司（"**RSCT**"）事先书面确认，任何客户提出的与本条款存在冲突的合同条款均不具有约束力。

2. Prices 价格

Prices for Deliveries within P.R. China are DAP to the place of destination stated in the quotation according to INCOTERMS 2010, ICC Publication Section 715, if not otherwise indicated in quotation. The prices quoted are net prices in Chinese RMB including standard commercial packing. Prices exclude any sales, value added or similar tax and exclude any customs, charges, duties as well as any consular or legalization fees.

除非报价单另有要求，交付货物的价格为《2010年国际贸易术语解释通则》（国际商会第715号出版物）规定的中国境内DAP目的地交货价格。报价价格是以人民币计算的净价，并包含标准商业包装费用。价格不含任何消费税、增值税或其他相似税种，且不含任何关税、费用、税费以及领事公证或认证费用。

3. Transfer of Risk/ Reservation of Title 风险转移 / 所有权保留

The risk shall pass to the Customer in accordance with the agreed INCOTERMS. Title to the Deliveries is retained by RSCT until full payment.

风险应根据约定的国际贸易术语转移至客户。直至RSCT收到全部付款，交付货物的所有权仍由RSCT保留。

4. Terms of Payment 付款条件

100% payment by telegraphic transfer (T/T) before delivery according to agreed Incoterms. RSCT shall not be obliged to pay any interest on the payment.

根据约定的国际贸易术语，100%的定金应最迟不晚于发货前电汇付款。RSCT不应承担任何由付款产生的利息。

5. Periods of Deliveries 交付期限

Compliance by RSCT with the periods for Deliveries 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 RSCT in time, and that such other obligations are satisfied which are required for the Deliveries by RSCT 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 non-compliance with the periods for Deliveries and/or Services is due to force majeure, 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 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 RSCT.

RSCT遵守交付期限的前提是客户已经恰当、及时地履行了其所有义务，尤其是确保RSCT已及时收到客户应提供的所有文件、批准和信息，并确保RSCT就完成交付所要求履行的其他义务也已恰当、及时地履行。如果该等要求未及时满足，则交付期限应相应延长，并应增加合理的重启期限。如果未遵守交付货物和/或服务的期限是由于不可抗力造成，则交付期限应相应延长，并应增加合理的重启期限。不可抗力事件应不仅包括任何主权行为，包括但不限于应取得的政府审批已正确提交申请但未获批准、运输限制以及能源消耗限制，还应包括原材料和供应物资的一般性短缺、以及其他RSCT控制之外的原因，如供货商未能供货或推迟供货。

If RSCT is in delay the Customer can claim, from the third full week of delay, liquidated damages to the amount of 0.5% for each full week of delay up to a total of 5% of the value of the delayed part of the delivery. In case the delay exceeds 12 (twelve) weeks, the Customer has the right to withdraw from the contract. Any further claims due to delayed delivery shall be excluded. If the Customer is in delay with payment RSCT reserves any rights, including the right to charge interest.

如果由于RSCT延迟交付，客户可从交付延迟的第三整周结束起要求赔偿违约金，违约金标准为每迟延一整周延迟交付货物价值的0.5%，但违约金总额不超过迟延交付货物价值的5%。如果迟延交付超过12（十二）周，则客户有权解除本合同。因迟延交付产生的其他任何索赔应被排除。如果客户迟延付款，则RSCT保留包括要求支付利息的所有权利。

6. Software 软件

RSCT grants the Customer the non-exclusive right to use the contractual computer programs and associated documentation jointly ("Software") exclusively for the operation of the hardware intended or supplied therefore. The right to use is limited to the agreed period of time; in the absence of such agreement, the right to use shall be unlimited in time. The Software will solely be provided in machine-readable format (object code) and without source code and source-code documentation. The Customer shall in particular not be entitled to modify, decompile, disassemble or otherwise reverse engineer the Software in whole or in part unless stipulated otherwise by mandatory law. The Software may only be copied for archiving purposes or if it is required for its intended use. The Software and the right to use the Software may not be sublicensed and may only be transferred, leased or lent to a third party together with the according hardware; in such a case the Customer undertakes to impose the above obligations on the third party. RSCT may also deliver third party programs (including, but not limited to open source programs) to the Customer; in this event the respective third party license terms which will be made available by RSCT shall take precedence over this Section 6 as far as the third party programs are concerned.

RSCT 授予客户非排他性权利，即仅以提供该硬件或者使其运行为目的而使用同时合同项下的电脑程序和相关文件资料（电脑程序和相关文件资料统称为"软件"）。使用权应限于约定期限内；如果没有此类约定，则使用权在时间上不受限制。软件将仅以机读格式(目的码)提供，而不提供源代码和源代码文件资料。除非有法律强制性规定，客户尤其无权对全部或部分软件进行修改、反编、分解或者以其他方式进行转换。除非因存档或预期用途的需要，软件不能被复制。客户不得向第三方分许可软件及软件使用权，且应在转让、出租或出借软件及软件使用权时，将相关硬件一并转予第三方；在此情形下，客户应承诺将上述义务同时转予第三方。RSCN 亦可向客户提供第三方软件（包括但不限于开放源代码软件)，则在此情形下，RSCT 提供的第三方许可条款与第三方软件有关的问题上应优先适用于本第6项规定。

7. Warranty 保证

RSCT warrants that the Deliveries are free of defects in materials and workmanship and conform to agreed specifications. RSCT shall, at its option and free of charge, remedy any defects within 12 months from delivery (the "Warranty Period") if the cause of the defect was present at the time of the transfer of risk. The Customer shall immediately give detailed written notice of any defects to RSCT. Claims based on defects shall not arise 1) where the deviation from the agreed quality is only minor and/or where the usability is impaired only insignificantly; 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; 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; 4) where the material defect is caused either by use not foreseeable to RSCT or by the Customer or third parties modifying or repairing the Deliveries and/or Services or using them together with products not delivered by RSCT. .Software shall be considered to be defective only there are reproducible deviations from the specifications. Should RSCT fail to remedy the defect within a reasonable period of time, the Customer can withdraw from the contract or reproduce the agreed remuneration. Further claims are excluded.

RSCT 保证交付货物**不存在材料和工艺的瑕疵**，且与约定规格相一致。，**如瑕疵**产生的原因于风险转移时已**存在**，则在交付后的 12（十二）个月内（"**保修期**"），RSCT 可自行选择**并无偿**修补任何瑕疵。对于任何瑕疵，客户应立即详细书面通知 RSCT。RSCT 对**于如下瑕疵不承担**维修责任：

1）与约定规格仅存微小偏差**和/或非**严重损坏的**瑕疵**；2）风险转移后，**因错误使用、疏忽操作、过度挤压，非正常的运行条件，缺乏建造条件，建造条件不足或是一般正常耗**损导致；3）风险转移后，由特殊的外部因素导致，比如化学，电气化学，大气环境等；4）**或者由未按** R&S **期望的方式使用，或**客户或第三方所作更改或修理而导致的，**及因跟第三方产品共同使用而导致的瑕疵。**

软件仅当存在与规格不一致的可复制偏差时，软件应被视为存在瑕疵。如果 RSCT **未在合理**时限内修补瑕疵，则客户可解除合同或要求重新定价。其他任何索赔应被排除。

8. Intellectual Property Rights 知识产权

The delivery shall be free of defects of title such as third-party industrial property rights and copyrights (hereinafter "Property Rights") in the country of the place of delivery. Within the Warranty Period RSCT shall, at its option and cost, either obtain a right to use the delivery items concerned, or modify them to prevent an infringement of Property Rights, or replace them. If this is not possible for RSCT under reasonable conditions, the Customer shall have the right to withdraw from the contract or reduce the agreed remuneration. The above obligations of RSCT shall only be in force on condition that: (i) the Customer immediately informs RSCT in writing about any claims asserted by third parties, (ii) the Customer does not acknowledge any infringements, and (iii) the right of RSCT to conduct any defense measures or settlement negotiations shall remain unaffected. Further claims are excluded.

货物交付应在交付地所在国家免于任何权利瑕疵，所指权利包括第三方工业产权和著作权（以下简称"知识产权"）。在保修期内，RSCT 应自负费用选择获得使用相关交付货物的权利，或对交付货物进行改动以避免侵犯相关知识产权，或者对其进行更换。如果 RSCT 在合理条件下无法采取上述措施，那么客户有权解除合同或减少合同价款。上述 RSCT 的义务仅在满足以下条件时适用：(i) 客户立即书面通知 RSCT 任何第三方提出的赔偿要求；(ii) 客户未承认任何侵权；以及 (iii) RSCT 采取任何防范措施或和解谈判的权利未受影响。其他任何索赔应被排除。

9. Liability 责任

RSCT shall be liable without limitation for damage caused with intent and in case of culpable damage to life, body or health. The liability under the mandatory provisions of product liability law applicable from time to time shall remain unaffected. Otherwise, the liability of RSCT towards the Customer, no matter on what legal ground, including delay, shall be limited in aggregate to an amount equal to fifteen percent (15%) of the agreed remuneration. RSCT shall not be liable for financial loss or consequential damages, 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 as well as for loss of data, information and programs as a result of a software error. Subject to the liability by mandatory law 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. Any further liability of RSCT shall be excluded.

RSCT对故意造成的损失以及对生命、身体或健康造成的有罪伤害承担无限责任。适用产品责任法下不时调整的、强制性规定的责任应不受影响。其他情形下，RSCT对客户的无论基于何种法律基础产生的责任（包括延迟），其赔偿金总额应限制在约定合同价款的百分之十五（15%）以内。RSCT不应对财务损失或间接损失、利润损失、生产损失、经营中断、第三方合同索赔、使用利益缺失、融资开销、利息损失、代替购买请求权承担责任以及因软件错误造成的数据、信息和程序损失承担责任。根据强制性法律规定，客户对责任的索赔请求权期限为12个月，自请求权产生且知晓或因重大疏忽而未知晓时起算。RSCT的任何其他责任应被排除。

10. Applicable Law / Jurisdiction 适用法律 / 管辖

All contractual relations between the parties shall be governed exclusively by Chinese law. The application of the UN Convention for the International Sales of Goods (CISG) shall be excluded. Any dispute shall be finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The Tribunal shall consist of three arbitrators. The language of the arbitration shall be English.

各方的合同关系应仅适用中国法。《联合国国际货物销售合同公约》应被排除适用。任何争议应依据届时有效的《新加坡国际仲裁中心仲裁规则》，在新加坡进行最终仲裁解决，新加坡国际仲裁中心的规则应被视为本款的一部分。仲裁庭应由三名仲裁员组成。仲裁语言为英语。

11. Language 语言

The Chinese version of these General Conditions shall prevail 上述条款以中文版本为准。

BEIJING ROHDE & SCHWARZ COMMUNICATION TECHNOLOGY CO. LTD. •

BUILDING 1, 18 ZIYUE ROAD, CHAOYANG DISTRICT, BEIJING, P.R. CHINA 100012

北京罗博施通信技术有限公司

中国北京市朝阳区紫月路18号院1号楼 100012