



## Conditions of Purchase of the Rohde & Schwarz Group of Companies

Issued January 2023

### 1. General

- 1.1 The contractual relationship between the Contractor and the ordering company of the Rohde & Schwarz group of companies (hereinafter referred to as "R&S") shall be based on the order and on these Conditions of Purchase.
- 1.2 Contractor's conditions of delivery and other terms of contract of the Contractor, as well as any amendments or supplements to the order, shall not become part of the contract unless R&S expressly agrees in writing.
- 1.3 In addition to these Conditions of Purchase, the statutory provisions shall apply if and to the extent the statutory provisions are not amended or explicitly excluded by provisions of these Conditions of Purchase.
- 1.4 The Contractor is aware that the deliveries and services to be provided by it (hereinafter jointly referred to as "Delivery") will be distributed worldwide to customers at all stages of distribution and in any form, integrated or non-integrated, and may also be used in safety-critical areas (e.g. in the military or aviation sector).

### 2. Orders

An order shall be legally binding only if issued by R&S in writing using an R&S order form and an R&S order number unless otherwise agreed (e.g. electronic data interchange (EDI), vendor-managed inventory (VMI) or consignment stock). An order that is not subject to an explicit time limit for acceptance can be revoked by R&S two weeks after receipt of the order, provided that the order was not previously accepted by the Contractor.

### 3. Invoices / Taxes

- 3.1 The Contractor shall make out a separate, verifiable and clear invoice for each order. Each invoice shall state the order details (R&S order number, date of order, order line item, material number, quantity and price) and shall comply with the statutory provisions governing invoicing in the country in which R&S has its domicile.
- 3.2 All prices are net and shall be payable, plus any value added tax or tax similar to value added tax at the statutory tax rate that applies at the point in time of taxation. All other taxes (including withholding taxes), levies, duties, fees and other charges shall be borne by the Contractor itself or, as the case may be, reimbursed to R&S, irrespective of the country in which they arise.

### 4. Payments

- 4.1 Payments shall be made within 14 days less 3 % cash discount or net within 30 days. Unless otherwise agreed, R&S shall be entitled to make payments in Euro.
- 4.2 The term of payment commences as soon as the Delivery has been taken or, as the case may be, accepted and an invoice in due form has been received by R&S. If Deliveries are taken or, as the case may be, accepted ahead of schedule, the term of payment shall commence on the agreed date of delivery. Cash discount shall be permissible even if R&S makes a set-off or withholds payments in a reasonable amount due to defects.

### 5. Delivery Time / Deliveries / Contractual Penalty / Permits

- 5.1 All agreed dates and periods shall be binding. Deliveries prior to the agreed dates or periods shall require the prior written consent of R&S. If Deliveries are effected prior to the agreed dates or periods without the prior written consent of R&S, R&S reserves the right to return such Deliveries at the expense and risk of the Contractor.
- 5.2 As soon as the Contractor is able to realize that it will not meet a date or period, it shall inform R&S without undue delay in writing of the period of the delay, indicating the reasons for the delay and the planned corrective measures. The assertion of any rights due to the delay by R&S shall remain unaffected.
- 5.3 If the Contractor is in delay in delivery, in whole or in part, R&S shall be entitled to claim a contractual penalty for each delay, amounting to 0.3 % of the value of the respective delayed Delivery for each completed working day of such delay, but for each delay not exceeding 5 % of the value of respective delayed Delivery. This shall not affect any claims for performance or damages, however the contractual penalty shall be credited against any claims for damages due to such delay. R&S shall be entitled to claim the contractual penalty until the final payment is made, even if it does not reserve such right at the time of taking or, as the case may be, accepting the respective Delivery.
- 5.4 The Contractor shall obtain any permits necessary for the Delivery in due time and at its own expense.

### 6. Place of Performance / Transfer of Risk / Incoterms / Shipping Documents / Transfer of Title

- 6.1 Place of performance shall be the delivery address stated by R&S.
- 6.2 If acceptance is required by law or has been agreed, the risk shall pass to R&S at the time of acceptance, otherwise at the time of taking the respective Delivery at the place of performance.
- 6.3 Delivery shall be effected DDP, Incoterms 2020 to the delivery address stated by R&S. R&S shall be entitled to choose the carrier and the mode of transport.
- 6.4 Each Delivery shall be accompanied by packing or delivery notes specifying the contents and the necessary order details (R&S order number, date of order, order line item, material number, quantity).
- 6.5 Title to the respective Delivery shall pass to R&S upon delivery at the place of performance.

### 7. Acceptance

- 7.1 If acceptance is required by law or has been agreed, the Delivery shall be made available by the Contractor in due time for acceptance by R&S. The results of the acceptance test shall be documented in an acceptance test record within a reasonable period of time.
- 7.2 If the acceptance test reveals no, or only minor, defects, R&S will declare acceptance in writing without undue delay after finishing the acceptance test. The Contractor's obligation to remedy minor defects without undue delay shall remain unaffected.
- 7.3 If the acceptance test reveals defects which are not only minor defects, R&S will refuse acceptance without undue delay after finishing the acceptance test.
- 7.4 The taking, commissioning, use, or resale of the Delivery or any payments shall not be deemed to be acceptance.
- 7.5 If partial acceptance has been agreed, the aforementioned acceptance provisions shall apply to such partial acceptance mutatis mutandis; all partial acceptances shall be preliminary and subject to overall acceptance.



**8. Obligation to Examine and Give Notice of Defects**

- 8.1 Once the products have been delivered, R&S is obliged to examine, on the basis of the delivery documents and an external inspection of the packaged products, whether the products received correspond to the quantity and type ordered and whether there is any externally visible transportation damage. Furthermore, R&S is obliged to take representative samples of the overall products and to examine these samples for defects. The level of examination applied to the samples taken will be dependent on the extent to which an examination in the respective individual case is practicable in the orderly course of business.
- 8.2 R&S is obliged to give notice of any defects recognisable during the aforementioned examination within 14 days of the products being delivered.
- 8.3 R&S is obliged to give notice of any defects discovered at a later date within 14 days of identifying them.
- 8.4 Numbers 8.1 to 8.3 above shall not apply if and to the extent that acceptance of the Delivery is required by law or has been agreed.
- 8.5 R&S shall have no further obligations to examine and give notice of defects.
- 8.6 Late defect notification shall not affect any warranty rights based on fault.

**9. Rights to the Delivery**

- 9.1 The Contractor grants R&S the non-exclusive, irrevocable, transferable, worldwide and perpetual right to use the Delivery. In particular, R&S is entitled to integrate the Delivery or parts thereof into other products, to distribute the Delivery or parts thereof worldwide, either integrated or non-integrated, and – insofar as this is necessary in order to achieve the purpose of the contract, to adapt or otherwise alter the Delivery or parts thereof and to distribute the results of such activities as aforementioned. R&S is also entitled to sublicense this right of use.
- 9.2 If and to the extent that the Delivery or parts thereof is developed for R&S, the Contractor grants R&S the exclusive, irrevocable, transferable, worldwide and perpetual right, unrestricted in terms of content, to use the Delivery or parts thereof in all known and unknown ways. In particular, R&S is entitled at its discretion to reproduce the Delivery or parts thereof, to distribute (also by renting) and to communicate to the public (in particular by making available to the public) the Delivery or parts thereof and reproductions thereof. This also includes the right to adapt or otherwise alter the Delivery or parts thereof by any means and to use the results thereof as aforementioned. R&S is also entitled to sublicense this right of use. With regard to any software developed for R&S, this right of use relates to the object and source code and the Contractor shall also make this software available in source code form. When providing the source code, the Contractor shall also provide an explanation of the source code enabling the software to be understood, after a reasonable familiarization period, in such a way that alterations can be made to the software without having to inquire with the Contractor.
- 9.3 If and to the extent that the result or a partial result of the development can be protected by industrial property rights, the Contractor hereby already irrevocably gives its prior consent to R&S to file an application for industrial property rights in the country of R&S' domicile and abroad and herewith already assigns all rights to, and resulting from, this invention to R&S, especially its right to file applications for, or to be granted, patents or utility models in the country of R&S' domicile and abroad. The Contractor shall provide R&S, at its own expense and within a reasonable period, with all information, documents and declarations necessary for the registration, conduct of in-court and out-of-court disputes and maintenance of such industrial property rights by R&S. The Contractor shall, at its own expense, arrange for all of the necessary steps to be taken vis-à-vis its employees and others involved in the invention to make this assignment of rights possible; in particular, it shall validly claim inventions of its employees in accordance with the provisions of the applicable employee's invention law.
- 9.4 The consideration for the aforementioned granting and/or assignment of rights is included in the agreed remuneration.

**10. Condition of the Delivery / Defects**

- 10.1 The Delivery shall be free from defects, in particular it shall be in accordance with the agreed specifications. Furthermore, the Delivery shall comply with the state of the art, the applicable statutory provisions, and the relevant regulations and directives of authorities, trade associations and professional associations. The Contractor shall also ensure that the software and hardware supplied or used within the framework of the Delivery is free of any security gap. A security gap shall be deemed to exist if the software and hardware used or supplied does not correspond to the state of the art and/or contains functionalities or programs not agreed upon (e.g. viruses, trojans, worms, etc.) or vulnerabilities, programming gaps/bugs or other errors, which endanger the integrity, confidentiality or availability of the Delivery or of other software and hardware or of data. The software and hardware used or supplied may therefore in particular not contain any communication functions to third parties or functionalities for modifying data or programs, nor may it transmit any information about R&S' IT systems, its data or user behaviour to third parties or store it in such a way that third parties could access it, unless this has been requested or approved by R&S or expressly offered by the Contractor as part of the Delivery with a concrete description of the mode of operation.
- 10.2 Unless the statutory provisions do not provide for any longer limitation periods, the limitation period for defects shall be 36 months. If acceptance is required by law or has been agreed, the limitation period shall commence at the time of acceptance, otherwise at the time of taking the respective Delivery at the place of performance.
- 10.3 The place of performance for subsequent performance is, at R&S' option, either the place where the Delivery is located at the time the defect is discovered or the delivery address stated by R&S.
- 10.4 If the Contractor fails to fulfil its subsequent performance obligations within a reasonable period to be set by R&S, R&S shall be entitled, in addition to any statutory and contractual rights R&S may have, to remedy the defect itself or have it remedied by third parties and to claim compensation from the Contractor for the expenses incurred in this respect or demand a reasonable advance payment. No period for subsequent performance has to be set in advance if the respective Delivery was effected after the Contractor was in delay in delivery or if the statutory provisions do not require to set a period for subsequent performance.
- 10.5 In other respects, the statutory provisions regarding defects shall apply.

**11. Liability**

- 11.1 In other respects, liability shall be governed by the statutory provisions.
- 11.2 In addition to the statutory provisions, the Contractor shall be responsible for faults of its contractual partners, direct or indirect subcontractors or suppliers, including the manufacturers of the Delivery, to the same extent as for fault on its own part.

**12. Information Security / Audit**

- 12.1 The Contractor shall protect data relating to R&S and/or R&S' direct or indirect customers to which it has access, in particular data received from R&S (hereinafter referred to as "**R&S Data**") and own data necessary within the framework of the Delivery, by means of state-of-the-art technical and organizational security measures, which are appropriate to the risks associated with the processing, e.g. against accidental or unlawful destruction or loss, alteration, unauthorized disclosure or access (hereinafter referred to as "**Information Security**"). Furthermore, the Contractor shall ensure that the Information Security is appropriately secured throughout its supply chain.
- 12.2 The Contractor shall manage and regulate the access rights to R&S Data and own data necessary within the framework of the Delivery. Upon request, the Contractor shall inform R&S of the persons authorised to access, their access rights and the locations of the data processing. The Contractor shall regularly inform and train the personnel authorized to access on the requirements of Information Security.
- 12.3 The Contractor shall inform R&S of a central contact person for Information Security and shall inform R&S immediately of any changes with regard to this contact person.



- 12.4 If the Contractor becomes aware of an incident involving a breach of Information Security (e.g. security gaps, data loss, incidents, threats, infestation by damaging software, data misuse), notably in form of an unauthorized access by third parties to R&S Data (e.g. data leakage or cyber-attack) or if there are indications for the Contractor which, upon reasonable assessment, give rise to the suspicion of such an incident, the Contractor shall immediately inform R&S thereof and take all necessary steps and measures (in particular to clarify the facts and mitigate the damage).
- 12.5 R&S may at any time request evidence of an appropriate level of Information Security at all of the Contractor's premises relevant for the Delivery, for example by requesting suitable certificates (e.g. ISO/IEC 27001).
- 12.6 R&S shall be entitled to conduct audits at all of the Contractor's premises relevant to the Delivery during regular business hours to check the due execution of the contract, in particular the compliance with the aforementioned Information Security obligations and the obligations mentioned in numbers 14.1 to 14.3, or to have such audits conducted by third parties bound to confidentiality. R&S shall announce each audit at least one (1) working day in advance.

**13. Environmental Protection**

- 13.1 Wherever commercially and technically feasible, the Contractor shall make sure that environmentally compatible products and processes are used for the production or provision of the Delivery, its packaging as well as for supplies and additional services rendered by third parties.
- 13.2 At the request of R&S, the Contractor shall take back free of charge at the place of performance any electrical and electronic equipment for which an obligation to take them back exists, as well as any packaging and shall dispose of the aforementioned in line with the statutory provisions. Electrical and electronic equipment can also be taken back by means of providing a local return facility. If the equipment or packaging is not taken back, R&S shall be entitled to have it properly disposed of or, as the case may be, recycled at the Contractor's expense.
- 13.3 The Contractor shall fulfil its information obligations under the environmental protection and occupational health and safety acts. This shall apply, in particular, to the information obligations under REACH Article 33 – Duty to communicate information on substances in articles. With regard to the Waste Framework Directive, the Contractor is in particular obliged to provide R&S with the SCIP numbers of the SCIP database operated by the European Chemicals Agency for all substances of very high concern contained in the Delivery by email to [material-compliance@rohde-schwarz.com](mailto:material-compliance@rohde-schwarz.com).

**14. Code of Conduct / Human Rights**

- 14.1 The Contractor ensures that it will comply with all statutory provisions applicable to it (e.g. in the area of corruption, money laundering and export control) as well as with the human rights related and environmental expectations and other requirements set out in the Code of conduct for R&S suppliers. The Code of conduct for R&S suppliers is attached to the purchase order or can be accessed at [www.purchasing.rohde-schwarz.com](http://www.purchasing.rohde-schwarz.com) and will be made available to the Contractor by R&S without undue delay upon request.
- 14.2 The Contractor shall require its suppliers to comply with the Code of conduct for R&S suppliers. It shall ensure that its suppliers also contractually pass on the requirements from the Code of conduct for R&S suppliers in the supply chain.
- 14.3 The Contractor ensures unrestricted access of the employees employed by it to the complaint procedure established at R&S. It shall oblige its suppliers to comply with this requirement and shall ensure that its suppliers also contractually pass on this requirement in the supply chain.
- 14.4 In case of violations of the Code of conduct for R&S suppliers by the Contractor, R&S shall be entitled to suspend the performance of the contract or to withdraw from the contract or to terminate the contract, if the violation is not remedied despite the setting of an appropriate period of time. In addition, in case of a culpable violation by the Contractor of the human rights related and environmental expectations set out in the Code of conduct for R&S suppliers which has not been remedied despite the setting of an appropriate period of time, R&S shall be entitled to claim a contractual penalty to be determined by R&S at its reasonable discretion and, in case of dispute, to be reviewed by the competent court for its appropriateness.
- 14.5 The Contractor shall carry out at its own expense appropriate trainings according to type, scope and number for the enforcement of the human rights related and environmental expectations set out in the Code of conduct for R&S suppliers and prove this to R&S. If the Contractor does not comply with this obligation, it shall participate at its own expense in any trainings appropriate in type, scope and number by R&S or a third party commissioned by R&S for the enforcement of the human rights related and environmental expectations of R&S, or enable these in any case.
- 14.6 In the event of a violation of the human rights related and environmental expectations set out in the Code of conduct for R&S suppliers, the Contractor shall take immediate remedial action and cooperate with R&S in the development and implementation of concepts to prevent, minimize or end violations in its area of responsibility. It shall commit its suppliers to comply with this requirement and shall ensure that its suppliers also contractually pass on this requirement in the supply chain.
- 14.7 The Contractor confirms that it is willing to have compliance with the human rights related and environmental expectations set out in the Code of conduct for R&S suppliers monitored by participating in an external CSR performance assessment (risk assessment) adapted to the Contractor's industry, geography and size, based on international standards. In the interest of harmonization and comparability of the results, the Contractor shall, at R&S' request, commission the service provider EcoVadis at its own expense to conduct such a risk assessment and to cooperate in this risk assessment within the framework of a loyal cooperation. In justified exceptional cases, the Contractor may, with R&S' consent, also commission another service provider named by R&S (CSR rating provider) to carry out the risk assessment and shall cooperate in this risk assessment within the framework of a loyal cooperation. The Contractor shall provide R&S with the assessment of the CSR rating provider upon request. The Contractor undertakes to carry out continuous optimizations in the areas for improvement identified by the risk assessment in order to improve its assessment result.
- 14.8 R&S shall be entitled to check or have checked the Contractor's compliance with the obligations mentioned in numbers 14.1 to 14.3 in accordance with number 12.6, e.g. if the risk assessment mentioned in number 14.7 has led to an unsatisfactory result.

**15. Nondisclosure / Provision of Materials**

- 15.1 The content of this order and all information received from R&S, or from third parties on behalf of R&S, in connection with the performance of the contract shall be treated as confidential by the Contractor. R&S does not grant the Contractor any rights whatsoever to this information, other than the right to use it for the performance of the contract. Disclosure to third parties is only permitted with the prior written consent of R&S and, in the event that such consent is granted, the Contractor shall subject these third parties to confidentiality obligations no less stringent than the provisions set out herein prior to disclosure. The aforementioned confidentiality obligations shall end five (5) years after the start of the limitation period for claims based on defects, but shall not apply to information that is generally known or becomes generally known without breach of a confidentiality obligation, was already known to the Contractor prior to its receipt without being subject to a confidentiality obligation, or is subsequently lawfully obtained from a third party without being subject to a confidentiality obligation, or to information developed by the Contractor independently, or which it is under a legal obligation to disclose, or which it has been ordered to disclose by a competent court or competent authority.
- 15.2 The Contractor may only disclose its business relations with R&S after having obtained the prior written consent of R&S to do so.
- 15.3 Objects and documents of any kind provided by R&S or third parties on behalf of R&S, as well as any objects or documents created on the basis of such objects and documents, shall not be passed on to third parties without the prior written consent of R&S and R&S does not grant the Contractor any rights whatsoever to such objects and documents, other than the right to use them for the performance of the contract. The objects provided shall be reasonably insured by the Contractor, at its own expense, to cover loss and damage, shall be stored separately,



maintained if necessary and shall be marked as the property of R&S. The objects and documents provided shall be reasonably protected to prevent unauthorized inspection or use, and shall be returned to R&S as soon as they are no longer required for the performance of the contract; the Contractor shall have no right of retention in this respect.

**16. Foreign Trade Law / Security in the Supply Chain**

- 16.1 The Contractor shall comply with all requirements and provisions of the applicable national and international customs law, export control law and other foreign trade and payments law (hereinafter jointly referred to as "**Foreign Trade Law**"). The Contractor shall provide to R&S in writing at the latest two weeks after ordering or, in the case of modifications, without undue delay all information and data that R&S requires in order to comply with the Foreign Trade Law in the event of export, import and re-export, including, without being limited to the following:
- all applicable numbers of the EC Dual Use-List or export list including the Export Control Classification Number (ECCN) in accordance with the US Export Administration Regulations (EAR) or – in case the provisions of the US International Traffic in Arms Regulations (ITAR) are applicable – including the US Munitions List Number (USML);
  - the statistical goods number pursuant to the current goods classification of the foreign trade statistics or the Harmonized System (HS) code; and
  - the country of origin and, if required by R&S, suppliers' declarations regarding the preferential origin or certificates of origin.
- 16.2 The Contractor shall take the necessary measures to ensure the security in the supply chain according to the requirements of the AEO initiative of the EU. At the request of R&S, the Contractor shall provide evidence of the aforementioned by presenting an AEO-Security and Safety (AEOS) authorisation or a combined AEO-Customs Simplifications/Security and Safety (AEOC/AEOS) authorisation.

**17. Third-Party Rights**

- 17.1 The Contractor guarantees that the Delivery does not infringe any patent rights, utility model rights, trademarks, design rights, copyrights or other third-party rights that exclude or restrict the intended use by R&S and/or its customers.
- 17.2 If the use of the Delivery or parts thereof is restricted or prohibited due to an asserted infringement of third-party rights, or if there is the risk that such use will be restricted or prohibited, the Contractor shall indemnify R&S and/or its customers on first demand against all in-court and out-of-court third-party claims. In addition, the Contractor shall reimburse R&S for any expenses incurred for legal defence and for any damage incurred as a result of such claims for infringement of third-party rights.
- 17.3 In order to ensure effective defence against such claims, the parties shall inform each other without undue delay if they become aware of any alleged infringement of third-party rights.

**18. Product and Service Change Notification / Product Discontinuation / Post-Contractual Repair**

- 18.1 Until the expiry of the limitation periods for defects, the Contractor shall inform R&S by email to [pcn@rohde-schwarz.com](mailto:pcn@rohde-schwarz.com) no later than ninety (90) days before the occurrence of any of the following events:
- change of a product included in the order (e.g. replacement of the product or change in the product itself);
  - relocation of the production site or qualification of an additional production site for the Delivery;
  - change in the production process, sourcing or service provision that may affect the form, fit, function, quality or reliability of the Delivery or the Information Security.
- However, the aforementioned duty to inform does not entitle the Contractor to unilaterally change the products included in the order or the specifications agreed for the Delivery.
- 18.2 The Contractor shall inform R&S of the intended discontinuation of a product included in the order, six (6) months prior to such discontinuation, in writing and in detail and, if available, including information on replacement products. Moreover, the Contractor shall submit to R&S a binding offer for a last stockpiling order based on reasonable conditions.
- 18.3 The Contractor shall ensure that the repair and maintenance of the Delivery remains possible for a period of at least ten (10) years following delivery, subject to no restrictions and within a reasonable period, in return for reasonable remuneration to be agreed between the parties.

**19. Applicable Law / Arbitration / Miscellaneous**

- 19.1 The contract between R&S and the Contractor, including its interpretation, shall be governed exclusively by German law, excluding Sections 305 to 310 of the German Civil Code and the rules of conflict of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 19.2 All disputes, differences of opinion, rights or claims arising under, or in connection with, the contract between R&S and the Contractor 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 arbitration rules of the International Chamber of Commerce (ICC), Paris, France, as amended.
- 19.3 The number of arbitrators shall be three (3), unless the parties agree upon a single arbitrator. The place of arbitration shall be Munich, Germany. The language of arbitration shall be English.
- 19.4 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.
- 19.5 English shall be the language of contract. If the parties use another language in addition to English, the English wording shall prevail.
- 19.6 The Contractor shall only have the right to set off or a right of retention in respect of counterclaims that have become res judicata or are undisputed. Furthermore, a right of retention can only be asserted by the Contractor in respect of counterclaims under the same contractual relationship. The exclusion of the right of retention under number 15.3 shall remain unaffected.
- 19.7 If one or more of the aforementioned provisions is or becomes invalid, the validity of the remaining provisions shall remain unaffected. The parties are obliged to replace the invalid provision with a provision that most closely approximates its economic effect.