

## General Conditions for Deliveries and Services for Use in Transactions with Business Customers January 2017

### 1. GENERAL

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 Rohde & Schwarz (Australia) Pty Ltd ("RSAUS") in writing.

### 2. PRICES / GOODS & SERVICES TAX

Prices for Deliveries are DDP to the destination within Australia indicated in the quotation, according to INCOTERMS 2010, ICC Publication Section 715, unless otherwise stated. The prices are quoted in AUD and are based on,

- a) Export prices of our overseas supplier(s) and are subject to any currency rise or fall as specified in the quotation, unless otherwise stated,
- b) Interpretation of Tariff Item or Tariff Concession Order applicable and on the associated duty rates current at today's date,
- c) Standard commercial packing, and
- d) Inspection and testing is carried in accordance with RSAUS standard procedures before products are dispatched. If standard or additional testing in the presence of the Customer is required, RSAUS may reserve the right to make additional charge for any arrangement of testing.

Capitalised expressions in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning as in that Act. Unless otherwise expressly stated, all amounts, prices, values or other sums payable or to be provided under these Conditions are exclusive of GST.

If GST is payable on any Deliveries:

- a) the Recipient of the Taxable Supply must pay to the Supplier an amount equal to the GST payable on the Taxable Supply in addition to and at the same time as payment for the Taxable Supply is required to be made under these Conditions, and
- b) the Supplier must give the Recipient a Tax Invoice for the Taxable Supply.

If RSAUS becomes subject to any penalties of interest resulting from the late payment of GST because of the Customer's failure to comply with this clause, then the Customer must pay on demand to RSAUS an additional amount equal to the amount of those penalties and interest.

### 3. TRANSFER OF RISK / RESERVATION OF TITLE

The risk shall pass to the Customer in accordance with the agreed INCOTERMS. Title to the Deliveries is retained by RSAUS until full payment is received from the Customer. Failure of the Customer to pay all sums when due shall give RSAUS the right (without prejudice to other remedies) to repossess the products without prior notice. Until title passes, the Customer is required to take all reasonable precautions to protect the product from damage or loss arising from any cause (including maintaining appropriate insurance cover on the product) and to indicate the products are the property of RSAUS. If the Customer sells any such product to a third party before title has passed to the Customer, the Customer must hold all of the proceeds of any sale on trust for RSAUS, and pay such amount to RSAUS on demand. RSAUS reserves the following rights in relation to each Delivery until all amounts owed in respect of the relevant products are fully paid:

- a) legal and equitable ownership of the Deliveries,
- b) to retake possession of the Deliveries, and
- c) to keep or resell any of the Deliveries repossessed.

### 4. TERMS OF PAYMENT

All payments shall be made to RSAUS net within thirty (30) days from the invoice date without any deductions and subject to Customer credit approval.

Prompt payment is the essence of the Contract and RSAUS may suspend Deliveries due under this Contract or where the Customer does not comply with the terms of payment, unless otherwise stated.

### 5. DELIVERY

Delivery times are based on information available on the quotation, are given in good faith and are subject to confirmation at the time of placement of order. RSAUS will use reasonable endeavors to deliver the Deliveries on the dates specified, but in no circumstances shall RSAUS be liable of any delay in delivery, or for consequential loss.

### 6. SOFTWARE

RSAUS 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. RSAUS 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 RSAUS shall take precedence over this Section 6 as far as the third party programs are concerned.

### 7. WARRANTY

RSAUS warrants that the Deliveries are free of defects in materials and workmanship and conform to agreed specifications. RSAUS excludes from these Conditions all conditions, warranties and terms implied by law, international convention or custom, except any implied condition or warranty which would cause this clause to be void.

RSAUS 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 RSAUS. Any defective units shall be returned by the Customer to RSAUS Service Centre, Sydney. Unless required by law, RSAUS shall not be responsible for defects in case of minor deviations from the agreed specifications, misuse, neglect, accident or abnormal condition of operation or in case of modifications or repair carried out by the Customer or by third parties. Software shall be considered to be

defective only if there are reproducible deviations from the specifications. RSAUS shall not be liable for the cost of removal of the broken or defective equipment, or the cost of reinstalling the repaired equipment, except to the extent required by law. Further claims are excluded.

#### 8. INTELLECTUAL PROPERTY RIGHTS

Deliveries shall be free of defects of title such as third-party intellectual property rights and copyrights (hereinafter "Property Rights") in the country of the place of delivery. Within the Warranty Period RSAUS 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 RSAUS under reasonable conditions, the Customer shall have the right to withdraw from the contract or reduce the agreed remuneration. The above obligations of RSAUS shall only be in force on condition that: (i) the Customer immediately informs RSAUS in writing about any claims asserted by third parties, (ii) the Customer does not acknowledge any infringements, and (iii) the right of RSAUS to conduct any defense measures or settlement negotiations shall remain unaffected. Further claims are excluded.

#### 9. LIABILITY

RSAUS 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 RSAUS towards the Customer, no matter on what legal ground, including delay and indemnities, shall be limited in aggregate to an amount equal to fifteen percent (15%) of the agreed remuneration. RSAUS 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 programmes 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 negligent lack of knowledge, of the Customer. Any further liability of RSAUS shall be excluded.

#### 10. APPLICABLE LAW / JURISDICTION

All contractual relations between the parties shall be governed exclusively by Australian law. The application of the UN Convention for the International Sales of Goods (CISG) shall be excluded. The courts of New South Wales, Australia shall have exclusive jurisdiction.

#### 11. OTHER PROVISIONS

Any waiver on the part of RSAUS on any terms herein shall be a waiver on that term only and shall not be construed a waiver of any other terms hereunder.

ROHDE & SCHWARZ (AUSTRALIA) Pty Ltd, Unit 2, 75 Epping Road, North Ryde NSW 2113