

TERMS AND CONDITIONS - ROHDE & SCHWARZ FRANCE S.A.S (RSF)

1. GENERAL PURPOSE AND SCOPE

- 1.1. In accordance with the laws currently in force, this document defines the Terms and Conditions applicable to the sale of ROHDE & SCHWARZ FRANCE (RSF) products and services. Specific Terms and Conditions may be agreed where appropriate for certain transactions.
- 1.2. Except where otherwise specified in a written agreement signed by RSF, any order issued to RSF implies that the Customer accepts these Terms & Conditions in full and without reservation, and waives his own Purchasing Terms and Conditions. RSF reserves the right to modify or refuse any Customer order in part or in whole.
- 1.3. The nature or scope of the products or services (e.g. installation, assembly, calibration, repair) are defined in written agreements between the parties. If a contract has been entered into without such written agreements, the written order acknowledgement by RSF will be considered as authoritative. All contractual agreements, including any additional clauses appended thereto, are only valid if in writing.
- 1.4. RSF's commitment is only binding once RSF sends an order acknowledgement, and after receipt of advance payment when called for by the contract.
- 1.5. Should any provisions in the contract be unenforceable, the remainder of the contract shall continue in full force and effect.
- 1.6. All designs and quotations (drawings, illustrations, weights, performance, etc.) prepared by RSF or appearing in leaflets, data sheets, or other documents are approximations only. Their purpose is solely to assist the Customer in selecting the product, and they do not exempt the Customer from verifications, notably concerning their fitness for the purpose. Only the RSF order acknowledgement, in particular following an offer or a quotation, commits RSF to the technical specifications of the equipment or services sold.
- 1.7. The Customer's purchase order shall specify the quantities, types, and technical references as they appear in RSF catalogs and price lists.
- 1.8. RSF reserves the right to transform or modify its range, even after confirming an order, to incorporate advances in technology and new developments.
- 1.9. When RSF products and services are purchased, exported or re-exported (outside the EU) or transferred (between countries within the EU), the Customer shall obtain all prior necessary authorizations, and bears the responsibility for compliance with the French, European Union (EU) and foreign laws and regulations applicable to:
 - The products, services, technologies and the tangible and intangible technical data concerned,
 - The restrictions related to controlling the final destination: the country of destination, the end use, the end user or entity.
- 1.10. RSF undertakes not to sell or lease to a third party the Customer's personal data in RSF's possession.

2. PRICING

- 2.1. Prices for product deliveries, excluding services, appearing in our price lists are in euros. They are for products ready to ship to the agreed destination and including shipping charges (Incoterm ICC 2010 - CIP – Carriage and Insurance Paid), excluding VAT at the rate in effect when the tax becomes due. Prices do not include any taxes, customs duties, or fees which may be due under other legislation. The Customer undertakes to pay or reimburse the taxes, customs duties, or adjustments as well as all consular fees and legislative charges which may be charged to RSF.
- 2.2. List prices may be revised at any time. The prices specified in our offers, quotations, and order acknowledgements are fixed and not subject to adjustment, provided that:
 - RSF receives the order before the end of the validity period indicated on the proposal. If no period is specified, the validity period shall be 30 days.
 - The schedule for delivery or completion of services requested by the Customer is not more than 4 months beyond the order date.

3. TERMS OF PAYMENT

- 3.1. For all orders, the Customer shall pay RSF 30% of the total order value on account, by cheque or bank transfer, unless waived by RSF in writing. RSF is only committed after receiving the payment on account. RSF shall not be obliged to pay any interest on the down payment.
- 3.2. Invoices are payable to the RSF head office 30 days from the invoice date.
- 3.3. For Customers who are based outside France or who did not meet all their obligations concerning a previous order (e.g. default or late payment), or if the Customer's financial situation should deteriorate, RSF may require full payment in advance, cash payment, or appropriate guarantees. In this case no discount is allowed for cash payment or early payment.
- 3.4. A 1% discount is granted for payments made within 10 days from the invoice date.
- 3.5. Any delay in payment in relation to the contractual dates will give rise by right to a penalty for late payment calculated on the amounts outstanding at a rate equal to the interest rate applied by the European Central Bank to its most recent refinancing operation plus 10 percentage points (10%) without prejudice to the entitlement to recover the debt. These penalties for late payment are payable without the necessity of a reminder.
- 3.6. In addition to the penalties for late payment, any delay in payment will give rise by right the debtor's obligation to pay a lump compensation of 40€ by way of recovery costs (French *Code de commerce* Articles L. 441-6 and D. 441-5).
- 3.7. In default of payment and as a penalty in addition to the purchase price and the late payment fee, the buyer shall pay a lump sum equal to 15% of the outstanding amounts. This penalty will remain vested in RSF, without any need to justify damages and without prejudice to RSF's right to apply the cancellation clause and to claim for compensation in full for the prejudice resulting from breach of contract.
- 3.8. Where payment is by scheduled instalments, the entire balance becomes due immediately should the Customer default on any of those payments.

4. TITLE RETENTION CLAUSE

- 4.1. RSF retains ownership of products until it has received full payment for the principal, incidentals and interest, provided that such title retention is not contrary to any "loi de police" (mandatory rules) in the country where the products are located. If those rules do not accept title retention but grant reservation of similar rights, RSF may assert those rights and the Customer shall support any measures RSF may take to protect its property rights and interests in the product in question.
- 4.2. The Customer, who has custody of the products, undertakes to keep the products in perfect condition until they have been fully paid, to inform RSF of their location, and to make them readily available to RSF.
- 4.3. On no account may the Customer use the product as collateral or assign it by way of security until the Customer has paid in full the principal, incidentals, and interest.
- 4.4. The Customer shall immediately inform RSF in the event of seizure or requisition, or of any other measures or third party intervention.
- 4.5. The Customer undertakes not to incorporate or transform the products if that might be an impediment to this title retention clause.
- 4.6. This clause is applicable in the event of bankruptcy or winding up of the company. In that event the claim to the products may be asserted under the terms set forth in articles L. 624-9, 624-16 et seq. as well as by article R. 624-13 of French Commercial Law.

5. DELIVERY OF PRODUCTS/ PROVISION OF SERVICES AND DEADLINES

- 5.1. This article applies in a similar manner to the delivery lead times for products and/or services. In order for RSF to meet its delivery and/or service schedules, the Customer must provide in good time all necessary documents, authorisations, permits and licenses; drawings must have been verified and approved in good time; and the Customer must meet the agreed terms of payment and its other obligations. Any delays attributable to the Customer in meeting its contractual obligations shall extend the delivery lead time and/or service deadline by the same amount. Non-compliance shall release RSF from any commitment concerning lead times.
- 5.2. Deadlines shall be considered to be met when the product has been placed at the Customer's disposal at the agreed location and/or the service has been provided within the agreed period. In the event of late delivery or rendering of services for reasons attributable to the Customer, deadlines shall be considered to be met when the Customer has been informed in writing via any channel that product is ready for delivery and/or the services are ready to be provided within the agreed period.
- 5.3. Unless stipulated otherwise in writing, deliveries shall be made or services rendered in continental France.
- 5.4. The lead times for delivery and/or providing a service shown in our price lists or specified on any document issued by RSF are understood to run from the date the order is confirmed or the date the payment on account is received, whichever is the later.
- 5.5. If RSF 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 Deliveries and/or Services.
- 5.6. The compensation for late delivery in article 5.5. above is the sole remedy for any prejudice caused by late delivery and/or late accomplishment of services.
- 5.7. Should the damages owed to the Customer for late delivery of the supplies and/or accomplishment of the services reach the ceiling of five percent (5%) provided for in article 5.5., the Customer may ask for the contract to be terminated. In this event, termination is by right.
- 5.8. RSF reserves the right to deliver and invoice according to the terms agreed in the order, including partial deliveries as items become available.
- 5.9. The Customer shall verify products on receipt and services when they are provided. This verification shall include quality, quantities, and the Part Numbers of products and/or services, as well as their compliance with the order. No claims shall be accepted more than 48 hours after the time of delivery or receipt.
- 5.10. Any request to defer delivery or performance made by a Customer on a product or service which is ready to be delivered or performed entitles RSF to require payment of 50% of the value of the delivery or service deferred, payable at the invoice date.
- 5.11. The Customer shall pay for any storage expenses resulting from its failure to accept delivery or from a delivery deferred at its request.
- 5.12. RSF reserves the right to invoice expenses for interim storage and preservation of any product deposited by the Customer. For any product deposited by the Customer and not recovered within one year, ownership of the product is transferred by the Customer to RSF free of charge, and RSF may dispose of the product without further ado.
- 5.13. All order cancellations are subject to RSF approval. In any event, the instalment payments and payments on account remain vested in RSF.

6. TRANSFER OF RISK

Risk passes to the Customer when the products are delivered to the agreed destination. This includes deliveries involving services.

7. SERVICES

- 7.1. This article is applicable to all the services covered by the agreement whatever their type (e.g. installation and commissioning, repair, corrective and preventive maintenance, adjustment and verification, training, etc.).
- 7.2. Unless stipulated otherwise in writing, the Customer shall provide the following at its expense and in good time to enable RSF to provide the services to schedule/as planned: supply of personnel; preparatory work; supply of energy, water, and scaffolding; security; necessary authorisations; installation drawings, etc. Should this not be the case, RSF is relieved of all liability.
- 7.3. If the service is subsequently deferred or postponed, the Customer shall pay for all travel expenses and standing time. The service shall be priced according to the "service price list" in effect. The supply of additional personnel and/or equipment shall be invoiced over and above according to the going rate, and shall be previously authorised in writing by RSF and accepted by the Customer.
- 7.4. The Customer or its representative shall comply with health and work safety regulations, notably those requiring an outside company to perform a risk identification and accident prevention analysis. The Customer shall provide this information to RSF. It shall take all necessary preventative measures during the RSF intervention, regardless of whether the site is located in France or abroad.
- 7.5. For any on-site intervention accepted by the buyer, RSF reserves the right to invoice all expenses incurred (such as for time spent or travel) should it be impossible to provide the service through the fault of the Customer, e.g. closing, absence, unavailability, etc.
- 7.6. All equipment returned to RSF for maintenance or repair shall include accompanying documents describing the failure, and showing the delivery and invoicing addresses. RSF reserves the right to return (at the Customer's expense) all equipment that does not meet these requirements.

8. USE OF SOFTWARE

8.1. TERMS FOR USING SOFTWARE AND ITS DOCUMENTATION

- 8.1.1. In consideration of the settlement provided herein, RSF grants the Customer, and the Customer accepts, a personal non-exclusive and non-transferable right (user license) to use one copy of the software and for an unlimited time, unless agreed otherwise and according to the terms herein.
- 8.1.2. The software will be made available in machine-readable format only (object code); this excludes the delivery of the source code and the transfer of rights concerning the said source code.
- 8.1.3. All copyright or intellectual property rights of any type whatsoever concerning the software or resulting from changes to the software are the exclusive property of RSF, it being specified that anything which is not expressly authorised in these terms and conditions requires the prior written authorisation of RSF. On these grounds and without limitation, under no circumstances is the Customer authorised to sub-licence the use of the software, nor to sell, modify, translate, decompile or reverse engineer, reproduce or adapt all or part of the software or the related documentation.
- 8.1.4. RSF may also deliver to the Customer software programmes belonging to third parties (including but not limited to open source programs), hereafter called "third-party software". In that case, the terms of the license granted by the third party, which RSF shall make available, take precedence over the provisions in this article concerning third-party software.
- 8.1.5. The following services shall be invoiced separately by RSF, at applicable prices:
 - Assistance in setting up the software.
 - Assistance in analysing and correcting malfunctions caused by incorrect usage or other events not attributable to the software used. The Customer may choose to have the assistance provided either on its premises, via remote services, or by other means.
- 8.1.6. The software and the related documentation are protected by the hereinabove exclusive intellectual property rights. The Customer shall comply with this protection and shall not remove the copyright notices appearing on any material or immaterial medium.

8.2. SOFTWARE WARRANTY

Besides the warranty set forth in article 13 of these terms and conditions, RSF guarantees that the media provided is free of material defects and manufacturing defects and that the documentation is complete and correct. Should such a defect exist, the warranty shall be limited solely to the replacement of the defective product(s).

8.3. SOFTWARE UPDATES

RSF may update the software as part of a separate maintenance agreement. The update may include the supply of new versions of the software.

8.4. SOFTWARE REPRODUCTION RIGHT

- 8.4.1. Subject to the aforementioned provisions, the Customer may make one copy of each software component covered by this agreement; the copy is for backup purposes only, or when required for the legitimate use of the software.
- 8.4.2. The backup copy must include all the registered trademarks and copyright notices contained in the original, and the Customer shall enter the serial number when stipulated by RSF.

8.4.3. The Customer shall justify the location of each copy of the software, providing in each case the name, ID number, and serial number of the copy of the software, as well as the serial number and location of the hardware.

8.4.4. RSF shall provide the Customer with one copy of the software documentation.

8.4.5. For each copy of the software, the Customer may purchase additional copies of the documentation. Reproduction of the documentation is strictly forbidden.

8.5. TERMINATION

In the event of non-compliance with any of the user license provisions, RSF reserves the right to terminate the user license subject to one month's notice. In this case, the software, including all copies, backup copies, and the documentation provided, shall be returned to RSF immediately and in their entirety, without requiring a special request; furthermore, if the software and documentation are stored in the system, they shall be deleted. These provisions shall apply likewise to the source language of the software, if said source language was provided to the Customer. RSF reserves the right to request compensation for any breach of these terms.

9. INTELLECTUAL PROPERTY

9.1. RSF retains all the intellectual property rights in the designs, projects, quotations, drawings, technical information, technical specifications, manuals, and other documents (referred to hereinafter as "documents"). The Customer may not reproduce, copy, disclose, execute, or deliver the documents to any third party without the prior written consent of RSF, nor use the documents against RSF's interests. All documents disclosed in written form shall be returned to RSF upon request.

9.2. The technology and know-how (whether patented or not), included in the products and services, as well as all the industrial and intellectual property rights in the products and services, remain the seller's exclusive property. The Customer is only granted a non-exclusive right to use the products.

9.3. Should any third party assert legitimate rights against the Customer for infringement of an intellectual property right directly related to the use of the products complying with the contract in the country where the product was delivered, or an intellectual property right in all or part of the software, RSF shall be responsible for the defence, and shall manage legal proceedings if need be.

9.4. This right may only be claimed by the Customer within 12 months of the transfer of risks as stipulated in article 6 herein and on the distinct understanding that: (i) the Customer has informed RSF of a claim, a complaint, or a similar action, at the earliest and at all event no later than eight (8) days from the date on which the Customer became aware of it, on penalty of preclusion, and that (ii) RSF is in a position to ensure the management and exclusive control of the defence against the complaint, the right of appeal, or the action and/or to negotiate a transaction to settle the dispute between the parties, and on condition that (iii) the Customer, its representatives, or third parties under its control (such as subcontractors) do not acknowledge any infringement of a disputed intellectual property right. Should the Customer cease to use the products in order to limit the damage or for other reasons, it shall inform RSF as well as the third parties that this shall on no account be construed as an acknowledgement of an infringement of any intellectual property rights.

9.5. As part of the implementation of this guarantee, RSF may, at its option and expense, modify or replace the products, or acquire the necessary licenses, in order to avoid any infringement of intellectual property rights. Should RSF deem none of these options appropriate, the Customer shall have the right to terminate the contract or to reduce the contract price.

9.6. RSF shall not be liable for any infringement of intellectual property rights resulting from ensuring the product complies with the Customer's drawings, specifications, instructions, or technical information; from changes made to the products by the Customer or by a third party, from the misuse of the products; from use of the products with products not provided by RSF; or in general through the fault of the Customer.

9.7. Finally, in the event of a complaint for software infringement, this guarantee is no longer applicable and RSF takes no responsibility should the software have been modified by the Customer; this includes the documentation should the infringement dispute concern the documentation.

9.8. CONFIDENTIALITY

The Customer shall hold confidential all the information provided as part of the services concerning the contract (notably including but not limited to the test reports provided and the technologies implemented).

The Customer undertakes not to disclose this information to any third parties whatsoever for a period of 10 years after the termination of the agreement.

10. RECEIVING INSPECTION/ACCEPTANCE TESTING

10.1. If receiving inspection has been agreed upon, RSF shall notify the Customer in writing by any means when the product is ready for inspection.

10.2. Should the Customer not perform receiving inspection within two weeks, the inspection shall be considered to have taken place.

10.3. Receiving inspection shall also be considered to have taken place when installation and commissioning are complete.

10.4. Where acceptance testing is required, it shall only take place under the following conditions:

- At a supplementary charge which shall be defined in an offer or a quotation.
- An Acceptance Test Procedure defined by common consent between the buyer and RSF and (where relevant) based on tests proposed by RSF shall be forwarded with the purchase order.

10.5. RSF can only accept an acceptance test procedure based on the technical specifications of the equipment covered by the contract.

11. PACKAGING

11.1. RSF reserves the right to determine the most appropriate type of packaging for its equipment. Any special packaging requested by the Customer shall be invoiced.

11.2. For all deliveries in continental France, the cost of standard packaging is included in the sales price. Non-returnable standard packaging is at the Customer's charge and will not be taken back by RSF.

12. INSURANCE

12.1. Pursuant to article 6 (*Transfer of risk*) and unless specified otherwise in writing, the Customer shall bear the cost of insurance from delivery, including any interim storage or warehousing.

12.2. Should delivery or receiving inspection be deferred at the Customer's request, all insurance expenses during the interim storage or warehousing period, including any maintenance fees, will be charged to the Customer.

12.3. Where equipment is loaned by RSF, the Customer shall insure the equipment at its expense in order to cover any possible damage.

12.4. In the event of an on-site installation, the buyer shall be responsible for insurance from the date the products arrive.

13. WARRANTY

13.1. The equipment sold by RSF is guaranteed for 12 months from the delivery and/or the date of the reception/acceptance testing, excepting tubes for which the Customer may only benefit from the warranty RSF obtains from the manufacturer, and excluding consumables.

13.2. The warranty does not cover minor defects concerning the agreed quality; defects with little impact on the usefulness of the product; replacement or repair resulting from normal wear of parts; wear and tear or accidents resulting from negligence, misuse, bad supervision or maintenance, defective installation or use, bad storage or storage in conditions which do not comply with the intended use of the equipment; nor to cases where the Customer makes modifications or repairs without prior authorisation from RSF.

13.3. Should RSF reject a request for repair under warranty, RSF may require the Customer to reimburse any expenses incurred (for expert appraisal or return shipping). On no account shall RSF be liable for products returned without its prior approval.

13.4. Moreover, RSF shall not be liable for any modifications or repairs made by the Customer, any third party, or any other user, nor their subsequent repercussions.

13.5. During the warranty period, RSF shall be liable solely for the repair or replacement, at RSF's option, of any product or part thereof under warranty, excluding compensation for any reason whatsoever.

13.6. Accordingly, the warranty covers only restoration of the product at RSF's premises, as well as the repair or replacement of any failed part. Replaced parts become RSF's property.

13.7. The replacement, swapping out, or modification of parts during the warranty period shall neither extend nor shorten the warranty period. The Customer shall bear all outward shipping expenses. For any on-site intervention requested by the buyer, all travel and accommodations expenses as well as meal allowances shall be paid by the buyer.

13.8. On no account may the Customer claim an annulment of sale or a price reduction based on equipment flaws or defects.

13.9. Should RSF deem it necessary to make modifications or adjustments to equipment already delivered, the Customer shall allow a reasonable time frame and shall facilitate said modifications or adjustments; it shall also facilitate the delivery of spare parts and accessories. Should the Customer refuse, RSF shall be freed of all liability and warranty.

13.10. Any warranty suit for hidden defects shall be brought within six months from the discovery of the defect, and within two years of the delivery, on penalty of preclusion. Under the legal warranty for latent defects, RSF shall be liable solely for the repair or replacement, at RSF's option, of any product or part under warranty, excluding the annulment of sale, a price reduction, or any compensation for any reason whatsoever.

13.11. EXTENDED WARRANTY

Where the Customer orders an extended warranty, the initial warranty is extended under the same conditions and excluding accessories such as software, bags, batteries, consumables, and cables, which are not covered by the extended warranty.

This extended warranty shall be invoiced at the going rate.

14. WASTE OF ELECTRICAL AND ELECTRONIC EQUIPMENT (WEEE)

Provisions applicable to business-to-business sales:

14.1. EEE Falling Outside the Scope of (French) Decree n° 2014-928 of 19 August 2014

Pursuant to Article L. 541-2 of the French Code of environment laws, where the used equipment purchased falls outside the scope of Decree No. 2014-928 on WEEE, it is the responsibility of the holder of the waste to dispose of it or provide for its disposal.

14.2. EEE Falling Within the Scope of (French) Decree n° 2014-928 of 19 August 2014

Pursuant to Articles R. 543-172 et seq. of the French Code of environment laws on managing the end-of-life of professional WEEE, ROHDE & SCHWARZ France, in its capacity as a producer, subscribes to eco-organisations approved by the French authorities and finances the approved collection and recycling industry for professional electrical waste (*DEEE^{Pro}* in French) placed on the market.

Free collection is available to Customers (direct sales) and/or users (indirect sales) from the threshold set by the eco-entité and notified to the Customer/user when he signs up for or requests it and from a central collection point at the site of use which is accessible to a vehicle with appropriate handling resources. For indirect sales, the successive professional sellers shall pass this information on to the successive buyers.

15. FORCE MAJEURE

15.1. RSF shall be released from all or part of its obligations and shall not be liable for damages in the event of an act of God or case of force majeure.

15.2. The following shall be considered as force majeure circumstances: accidents; partial or total strikes hindering the smooth operation at either RSF or any of its suppliers, subcontractors, or carriers; lock-outs; epidemics; requisitions; war; fire; flooding; import or export bans; tooling or manufacturing accidents; interruption or delay in the transport of energy supplies, raw materials, or spare parts. Those force majeure circumstances shall also include any measures taken by public authorities such as failure to issue a mandatory official authorisation, restrictive measures concerning the transport or consumption of energy, a shortage of raw materials or supplied goods, and in general any event not attributable to RSF. Initially the force majeure circumstances shall suspend the contractual obligations following a registered letter with acknowledgement of receipt sent by the party claiming force majeure. If the force majeure circumstances last more than six months, the contract may be cancelled by either party via registered letter with acknowledgement of receipt.

16. LIABILITY

16.1. Excluding gross negligence on the Seller's part and redress for physical injury, RSF's responsibility is limited to direct material damages, to the exclusion of all consequential damages and non-material damages such as loss of business, loss of profit, loss of production, interruption of operation, financing costs, loss of interest, third-party contractual claims, loss of data, of information or programmes as a result of software failure, loss of image...

16.2. Irrespective of the legal grounds involved, including late performance (article 5.5.), and unless otherwise specified in the contract, RSF's responsibility shall be limited to a maximum of the total (100%) amounts received in payment against the supply of the products or provision of the services concerned on the day the claim is lodged.

16.3. In accordance with Article 2254 of the French "Code Civil" (Code of Civil Law), the time-bar limit for any contract liability proceedings is one year from the delivery date of the products or services.

17. CANCELLATION CLAUSE

Should the Customer not comply with any of its obligations hereunder or in the contract, and should formal notice sent by registered letter with acknowledgement of receipt remain either partially or entirely to no effect after eight days, the contract may be cancelled *ipso jure* by RSF without further ado. In that case the products shall be returned without delay and at the Customer's cost and risk. The Customer agrees to pay a usufruct penalty of 1% of the price of the products sold per day from the date of the formal notice and date on which all the products in question are returned. If the cancellation occurs under the aforementioned conditions, RSF shall retain the amounts paid by the Customer, irrespective of the damages that RSF may claim for the prejudice sustained due to the Customer's default.

18. APPLICABLE LAW- JURISDICTION

18.1. All contracts entered into by RSF are governed by French law, with the exception of the Vienna Convention of April 11, 1980 concerning the international sale of goods.

18.2. The Commercial Court with jurisdiction over the location of RSF's head office or its President, as applicable, shall have sole jurisdiction as the court of first instance for all disputes concerning the validity, interpretation, and/or execution of these terms and conditions and of the contracts entered into in pursuance of them, even in the event of a warranty claim or of multiple defendants, except that RSF is entitled to waive the possibility of invoking this jurisdiction clause.

This document is a translation of the original document in French (RSF-E630/V07-01/07/2016).

In the event of a difference in interpretation between the English and French texts, the French text shall take precedence.

Reference document: RSF-E630-e/V07 - 01/07/2016