

## **A SCOPE OF APPLICATION, CONTRACT CONCLUSION**

### **1 Scope of Application**

- 1.1 These Rheinmetall Air Defence AG ("RAD") general terms and conditions of supply and services ("GTC") shall govern the conclusion, content and performance of contracts regarding:
- (a) the supply of goods as well as the performance of work (the term "Scope of Supply" shall mean the goods to be delivered and/or the work to be performed); and/or
  - (b) the provision of services, such as, but not limited to, the rendering of technical training or assistance.
- 1.2 These GTC shall be considered accepted if the contractual partner ("Customer") orders from RAD and reference is made to these GTC in the offer or in the order confirmation of RAD.
- 1.3 General terms and conditions of the Customer (such as general terms and conditions of purchase) are explicitly excluded.

### **2 Contract Conclusion**

- 2.1 The term "Contract" means the terms and conditions contained herein, together with (i) such additional terms as are stated within RAD's written offer, (ii) such specifications, drawings or other documents as are incorporated by reference within RAD's offer, (iii) the Customer's order to the extent confirmed in writing by RAD, and (iv) any documents related to a change of the Contract.
- 2.2 RAD's offer is valid during the period mentioned therein.
- 2.3 The Contract is deemed to be concluded with the receipt by the Customer of a written order confirmation of RAD stating that RAD accepts the order of the Customer (order confirmation).

## **B SALE OF GOODS, PERFORMANCE OF WORK**

### **3 Delivery Terms**

- 3.1 Delivery shall be made in accordance with the agreed commercial term, whose interpretation shall be subject to the Incoterms' edition applicable at the time the Contract is concluded.
- 3.2 If no specific Incoterms' concept has been stated in the Contract or subsequently agreed by the parties, delivery will be made (a) EXW (ex works; RAD's works or RAD's sub-supplier's works) for domestic deliveries (delivery within the country in which the Scope of Supply is performed), or (b) it will be made FCA (free carrier, RAD's or RAD's sub-supplier's works) for international transactions.

### **4 Packaging**

- 4.1 If no specific packaging has been agreed, RAD shall package the goods in an appropriate manner at its own expense.
- 4.2 Packaging shall be marked appropriately.
- 4.3 Packaging shall not be returnable. However, if the packaging is declared as RAD's property, it shall be returned by the Customer, carriage paid, to the place of dispatch. If the Customer fails to do so, RAD is to be reimbursed for the value of such packaging.

### **5 Authorizations, Customs Formalities**

- 5.1 With regard to official authorizations, such as, but not limited to, export, import and transit licences, as well as custom formalities, the provisions of the agreed upon commercial term shall be applicable in terms of responsibilities, allocation of costs etc.
- 5.2 The Customer shall, upon first request and at its own expense,

provide to RAD support with respect to any information or documentation (e.g. end-user certificates) that RAD may request in order to obtain necessary official authorizations. The Customer is responsible for any delay caused by the fact that it does not comply with its obligations to cooperate in this respect.

- 5.3 The Customer recognizes that the supplies may be subject to Swiss and/or international export regulations (e.g. International Traffic in Arms Regulations; ITAR) and may not be allowed to be exported without an export or re-export permit of the competent authority. The Customer undertakes to comply with all applicable export regulations and to obtain the required permits.
- 5.4 Insofar as the Customer provides goods for the performance by RAD, it keeps itself informed at all times about national and international export regulations (e.g. ITAR) and notifies RAD if the goods provided are subject to these provisions in whole or in part.

## **6 Regulations and Safety Devices**

- 6.1 The Customer shall, at the latest when placing the order, draw the attention of RAD to the standards and regulations applicable to the execution of the supplies and works, to the operation of the supplies as well as to the health and safety of persons.
- 6.2 Unless otherwise agreed, the supplies and works shall comply with the regulations and standards at RAD's place of business; additional or other safety devices shall be supplied to the extent as having been expressly agreed upon by the parties.

## **7 Delivery Time**

- 7.1 RAD shall make commercially reasonable efforts to deliver the Scope of Supply on the agreed delivery date.
- 7.2 The agreed delivery date will be accordingly extended if any delay is due to one or more of the following: (i) Changes, (ii) Force Majeure, (iii) Customer's failure to fulfill any contractual obligation, (iv) delay caused by end-user or any party engaged by Customer or end-user, (v) Customer's delay in providing any information or documentation required by RAD for the performance of the Contract.
- 7.3 RAD shall have no responsibility for any delay caused by its sub-suppliers if such sub-suppliers have been designated by Customer or end-user or any party engaged by Customer or end-user.
- 7.4 Except in the case of Force Majeure, Customer shall reimburse RAD for costs of extra transportation, storage and/or administration fees incurred as a result of any delay resulting from reasons not attributable to RAD.
- 7.5 If RAD fails to meet the delivery date for more than four (4) weeks Customer may require RAD to pay Liquidated Damages at the rate stated in the Contract provided that (i) the Contract expressly provides Liquidated Damages for such failure, (ii) the delay has been caused through the fault of RAD or its sub-supplier(s) and (iii) the Customer has suffered a loss as a result of such delay. "Liquidated Damages" shall mean an expressly stated amount in the Contract to be paid by RAD as compensation for estimated damage that the Customer may incur in the event of a failure to meet delivery date. Such expressly stated amount is agreed to be a pre-estimate of such damages and is not to be considered a contractual penalty. If substitute material can be supplied to accommodate the Customer, the latter is not entitled to any Liquidated Damages.
- 7.6 Any delay in delivery does not entitle the Customer to any rights and claims other than those expressly stipulated in this Section 7 (Delivery Time). Other or further claims related to delay in delivery are excluded to the extent permitted by law.

## 8 Transfer of Title

- 8.1 Title to the Scope of Supply shall be transferred no earlier than upon receipt of the full payment in accordance with the Contract.
- 8.2 The Customer shall be obliged to cooperate in any measures necessary for the protection of RAD's title. Upon entering into the Contract Customer authorizes RAD to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with the relevant national laws, and to fulfill the relevant formalities, at the Customer's expense.
- 8.3 During the period of the reservation of title, the Customer shall, at its own cost, maintain the Scope of Supply and insure it for the benefit of RAD against destruction, loss and damage. Moreover, the Customer shall take all necessary measures to protect RAD's property against destruction, loss or damage.

## 9 Transfer of Risk

- 9.1 Risk of destruction, loss and damage to the Scope of Supply shall pass to the Customer upon delivery as per the applicable Incoterms.
- 9.2 If a delay in delivery is caused by Customer, end-user or any party engaged by Customer or end-user, the risk to the Scope of Supply shall pass to the Customer at the time originally foreseen for its delivery. From then on, the supplies shall be stored and insured on the account and at the risk of the Customer.

## 10 Price and Taxes

- 10.1 Unless otherwise agreed, the contract price shall be deemed to be net, excluding any taxes and duties, without any deductions.
- 10.2 The Customer shall bear any and all current and future applicable taxes, such as, but not limited to, value added taxes, excise duties, withholding taxes, individual taxes for RAD's employees, import taxes, trade taxes, stamp duties and other taxes and duties of similar kind, which are levied out of or in connection with the Contract and its fulfilment. The same applies to related administrative costs, such as, but not limited to, interest, penalties, tax consultancy costs as well as costs for the registration and management of permanent or fixed establishments. All taxes, duties and the related administrative costs shall be considered as a gross up to the total Contract price payable by the Customer. If such taxes and duties or related administrative costs are charged to RAD or to persons employed or appointed by RAD to perform any of its obligations under the Contract, they shall be fully refunded by the Customer.
- 10.3 If the cost to RAD of performing its obligations under the Contract should be increased after the date of RAD's offer by reason of the making of any amendment of any law, order, or regulation, the amount of such increase shall be added to the Contract price or refunded by the Customer.

## 11 Terms of Payment

- 11.1 RAD is entitled to receive payment of the Contract price according to the agreed terms of payment.
- 11.2 Unless otherwise agreed, RAD shall be entitled to issue the invoices as follows: for one third ( $\frac{1}{3}$ ) of the Contract price after receipt of its order confirmation by the Customer, for one third ( $\frac{1}{3}$ ) of the Contract price after expiration of half of the delivery time, and for one third ( $\frac{1}{3}$ ) of the Contract price after delivery.
- 11.3 The payment shall be made net, without any deductions, within thirty (30) days after the date of RAD's respective invoice.
- 11.4 If the Customer does not adhere to the agreed terms of payment, it shall be in default without any reminder notice and shall be liable for default interest at a rate of five per cent (5%) per annum with effect from the agreed date on which payment was due. RAD's right to claim further damages is expressly reserved.
- 11.5 If the parties agreed on providing a Letter of Credit by Customer in favor of RAD, such Letter of Credit shall be irrevocable, extendable

and confirmed by a first class bank acceptable for RAD. Payments under such letter of credit shall be made on sight against presentation of RAD's invoice together with the relevant shipping documents, warehouse receipts or other documents agreed between Parties. Customer shall bear all costs associated with the issuance, notification and confirmation of the Letter of Credit.

- 11.6 If the contractually agreed advance payment or the Letter of Credit are not provided in accordance with the terms of the Contract, RAD shall be entitled to adhere to or withdraw from the Contract, and shall in both cases be entitled to claim damages.

If the Customer, for any reason whatsoever, is in delay with a further payment, RAD, without being limited in its rights provided for by law, shall be entitled to refuse further performance of the Contract and to retain the supplies ready for dispatch until new terms of payment and delivery will have been agreed and until RAD will have received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or if RAD does not receive adequate securities, RAD shall be entitled to withdraw from the Contract and to claim damages.

## 12 Inspection and Acceptance

- 12.1 Upon delivery, the Customer shall inspect the Scope of Supply. Any claims for damage, deficiencies, errors in shipping or rejection of the Scope of Supply, or portion thereof, must be made by Customer in writing and in sufficient detail within fourteen (14) days following the date of delivery or such claims are waived and the Scope of Supply shall be deemed to be irrevocably accepted by Customer. The Customer's sole remedy for such claims shall be the repair or the replacement of the Scope of Supply by RAD. After expiration of the fourteen (14) day period, the Customer shall only be entitled to warranty claims in accordance with Section 13 (Warranty).
- 12.2 The execution of a specific acceptance test as well as the stipulation of the respective terms and conditions related thereto (acceptance criteria etc.) requires a special written agreement in the Contract.

## 13 Warranty

- 13.1 Subject to Section 13.2 RAD warrants that:
- the Scope of Supply will be of the kind and quality as described in the Contract; and
  - will be free of defects in workmanship and material; and
  - to the extent required for the functioning of the Scope of Supply, will be free of defects in design.
- 13.2 RAD provides no warranty for material and design to the extent that it has been provided or determined by the Customer, the end-user, or a third party engaged by Customer or end-user.
- 13.3 Unless otherwise agreed, the warranty period ends on the earliest of the following dates: (i) after twelve (12) months from delivery of the Scope of Supply, or (ii) in the event that delivery is delayed or impeded for reasons beyond RAD's control, after eighteen (18) months from the date of RAD's notification that the Scope of Supply is ready for dispatch.
- 13.4 The warranty applies to defects which the Customer notifies during the warranty period in accordance with this Section 13.4. If the Scope of Supply fails to meet the requirements set out in Section 13.1, then the Customer shall give written notification to RAD. Such notification must be made within fourteen (14) days following the detection of the defect and state the reasons therefor in sufficient detail. If the Customer fails to notify a defect as stated above, it shall lose its right to have the respective defect remedied.
- 13.5 If the Scope of Supply fails to meet the requirements set out in Section 13.1, RAD shall be obliged, at its own choice, to repair or replace the faulty or defective part of the Scope of Supply. Repair shall be carried out at RAD's place of business unless RAD finds it appropriate to have the repair carried out where the Scope of Supply is located. The Customer shall make the Scope of Supply, or the

defective part thereof, available for correction.

RAD shall be liable for RAD's own costs incurred as a result of such repair or replacement only. In no event shall RAD be responsible for the cost of providing access to the Scope of Supply, or costs of disassembly, removal or re-installation of any items. Any transportation of the supplies to and from RAD in connection with the remedying of defects shall be at the risk and cost of the Customer; the Customer shall follow RAD's instructions in this regard.

- 13.6 Replaced parts shall become the property of RAD unless RAD expressly foregoes this.
- 13.7 The warranty period of parts repaired or replaced in accordance with Section 13.5 shall commence on the date of completion thereof and shall continue for a period of six (6) months or until the end of the initial warranty period established in Section 13.3, whichever is the later. In any event such extended warranty period shall not exceed six (6) months after the end of the initial warranty period established in Section 13.3.
- 13.8 If the Customer has given notice of a defect and no defect is found for which RAD is liable, RAD shall be entitled to compensation for the costs and expenses it has incurred.
- 13.9 The warranty shall terminate if Customer or end-user, in a warranty case, does not immediately take all appropriate steps to mitigate damage and give RAD the possibility to remedy the defect.
- 13.10 The warranties shall not apply if the faults or defects cannot be proved to be a failure to meet the requirements set out in Section 13.1. Such exclusions from warranty shall include, without limitation, the incorrect use, faulty installation, start-up or failure to observe operating instructions, failure to carry out proper maintenance, modifications or repairs by Customer, end-user or parties other than RAD, normal wear and tear, incorrect or negligent handling, unsuitable service products or replacement materials, conditions more severe than or different from those specified or deficiencies resulting from other reasons beyond RAD's control.
- 13.11 With respect to defects of any kind, the Customer shall not be entitled to any rights and claims other than those expressly stipulated in this Section 13 (Warranty). Other or further claims related to defects are excluded to the extent permitted by law.

## **C PROVISION OF SERVICES**

### **14 Execution of Services**

- 14.1 RAD shall render the services in accordance with the agreed statement of work and the generally accepted professional standards.
- 14.2 RAD is entitled to enlist third parties for the execution of the services. In the event RAD enlists third parties, RAD remains responsible towards the Customer for the provision of the services.
- 14.3 Customer agrees that RAD shall have the right, in its sole discretion, to replace its personnel or subcontractors who are assigned to provide the services. RAD agrees to notify Customer before such replacement if such notice is possible. In the event Customer believes that any of RAD's personnel or subcontractors are failing to perform the services in a satisfactory manner, Customer shall notify RAD immediately as to the reasons for such failure. Upon receipt of such notice, the parties shall mutually determine an appropriate solution which may include the replacement of personnel or subcontractors.
- 14.4 If services are to be executed in the Customer's country, the Customer shall keep such locations in a safe condition and observe the applicable health and safety regulations. Customer shall give RAD's personnel all instructions necessary, and RAD shall make sure that its personnel will follow such instructions reasonably given.

### **15 Cooperation**

- 15.1 The Customer shall, at its own costs and in good faith, be obliged to support RAD in the execution of the services.

- 15.2 In particular the Customer undertakes to provide RAD timely and completely with all documents, information, approvals, rights of access and use required for the provision of the services.

## **16 Place and Time of Performance**

- 16.1 Unless otherwise agreed, the place of performance of the services shall be at the registered office of RAD.
- 16.2 The agreed time of performance is considered kept if until its expiry, the services agreed upon have been provided by RAD. In all other respects Section 7 (Delivery Time) applies correspondingly.

## **17 Remuneration and Expenses**

- 17.1 The type and amount of remuneration to be paid for the provision of services is determined by the Contract. Unless otherwise agreed, remuneration shall be owed on a time and material basis at the usual rates applicable at RAD at the time of invoicing.
- 17.2 In addition to the remuneration pursuant to Section 17.1, Customer shall reimburse RAD for its reasonable expenses in connection with the provision of the services, including, without limitation, accommodation-, board-, travel- and out-of-pocket expenses.
- 17.3 The remuneration shall be deemed to be net, excluding any taxes and duties, without any deductions; Section 10 (Price and Taxes) applies correspondingly. Unless otherwise agreed, RAD is entitled to receive payment at once after performance of the services; in all other respects Section 11 (Terms of Payment) shall apply.

## **D COMMON PROVISIONS**

### **18 Changes**

- 18.1 Each party may at any time request the other party in writing to amend the Contract, in particular with regard to design, drawings, specifications, delivery modalities, delivery times as well as additions, replacements or reductions of the Scope of Supply or the service to be provided (hereinafter "Changes").
- 18.2 Within a reasonable time after receipt of a request for a Change by Customer, RAD will advise Customer what amendments to the Contract, if any, may be necessitated by such requested Changes.
- 18.3 The parties shall agree in writing on an equitable amendment to the Contract as soon as possible. In case such agreement should not be possible within ninety (90) days after a Change has been requested by one of the parties, RAD shall be entitled to continue with the performance of the Contract without the requested Change.

### **19 Force Majeure**

- 19.1 RAD shall not be liable for, or be deemed to be in breach of the Contract as a result of, any delay in performing or failure to perform its obligations under the Contract where that delay or failure is caused by any event of Force Majeure.
- 19.2 "Force Majeure" shall mean any event or circumstance which is beyond the reasonable control of RAD, including, but not limited to, epidemics, mobilisation, war, civil war, acts of terrorism, riots, political unrest, revolutions, sabotage, serious breakdown in the works, accidents, strikes or labour conflicts, actions or omissions by domestic or foreign authorities or state or supranational bodies (such as non-issuance or revocation of export, import, or transit licences, trade restrictions including embargoes), acts of God, acts of the Customer or the end-user, delays in transportation, or inability to obtain necessary labor or materials from usual sources.
- 19.3 In the event of delay in performance due to an event of Force Majeure, the agreed delivery date, or the agreed time of performance of services respectively, will be extended to reflect the length of time lost by reason of such delay (includes recovery therefrom). Payment obligations of the Customer shall not be affected by events of Force Majeure.

19.4 If the grounds for Force Majeure continue for more than six (6) months, either RAD or Customer may terminate the Contract upon seven (7) days written notice to the other party. RAD shall be entitled to be compensated for the extra costs caused by the interruption, or, in case of termination, for the work done prior to termination, and the expenses for non-cancelable procurements. Customer is entitled to receive the work and supplies paid for by him.

## 20 Technical Documentation of Customer

20.1 RAD shall not be responsible for the completeness, correctness, plausibility or suitability of technical documentation (manufacturing documents, drawings etc.) provided by the Customer, the end-user or a third party engaged by the Customer or the end-user.

20.2 Accordingly, RAD shall not be obliged to examine such documentation and to notify the Customer of any shortcomings.

## 21 Intellectual Property

21.1 Know-how as well as patents, copyrights and other intellectual property rights owned by RAD and provided by RAD or used or developed by RAD in the performance of the Contract shall remain or become the sole property of RAD. They shall not be transferred to the Customer or the end-user.

21.2 The end-user shall be granted the non-exclusive right to use such know-how and such patents, copyrights and other industrial property rights, however, strictly limited to commissioning, operation, maintenance and repair of the Scope of Supply. Use for the reproduction of the Scope of Supply or parts thereof is excluded. With regard to the provision of services, the end-user may only use the respective rights within the scope of the contractual purpose.

21.3 RAD's copyrighted material shall not be copied by the Customer except for archiving purposes.

## 22 Exclusion of Further Liability

22.1 All remedies of the Customer, irrespective on what ground they are based, are exhaustively covered by these GTC. In particular, any claims not expressly mentioned for damages, price reduction, termination of, or withdrawal from the Contract, are excluded.

22.2 The maximum liability of RAD shall not exceed fifty percent (50%) of the total price of the specific Contract. Unless otherwise expressly mentioned in these GTC, the Customer is not entitled to claim damages, neither based on contractual or non-contractual liability nor based on any other reason whatsoever. This refers to all types of damages that may be suffered by the Customer, such as, but not limited to, loss of profit, interruption or loss of production, loss of use, loss of business or opportunity, punitive damages, special damages, incidental damages, consequential damages, and any other direct or indirect damages, whatsoever.

22.3 This limitation or exclusion of further liability does not apply to gross negligence or willful misconduct on the part of RAD but does apply to gross negligence or willful misconduct of persons employed or appointed by RAD to perform any of its contractual obligations.

## 23 Confidentiality

23.1 Each contracting party (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information.

23.2 "Confidential Information" shall mean proprietary or confidential data (including pricing, terms, specifications, plans, drawings or other technical information) of the Disclosing Party that are not generally known to the public. Confidential Information shall not include information which (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, or (ii) is or becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party when such source is not subject to a confidentiality obligation to

the Disclosing Party, or (iii) has been or is subsequently independently developed by the Receiving Party without reference to the Confidential Information, or (iv) is required to be disclosed by order of a competent court or government agency.

23.3 The Receiving Party agrees (i) to use the Confidential Information only in connection with the performance of the Contract or the installation, operation, maintenance and repair of the Scope of Supply sold thereunder, (ii) to maintain it as confidential, and exercise reasonable precautions to prevent unauthorized disclosure, access or use, and (iii) not to disclose it to any third party without the prior written consent of the Disclosing Party; however, the Receiving Party's shall be allowed to disclose such Confidential Information to its employees and consultants for the purpose of performance of the Contract, or the installation, operation, maintenance or use of the Scope of Supply sold thereunder but only under the condition such employees and consultants are bound by obligations that are at least as protective as the restrictions in this Section 23.

## 24 Miscellaneous

24.1 In case of an inconsistency between the documents within the Contract, the following order of priority shall apply:

- (a) latest version of the documents constituting a Change within the meaning of Section 18;
- (b) version of the Customer's order which has been confirmed by RAD in writing as defined in Section 2.3 and all documents incorporated therein by reference;
- (c) RAD's offer (as mentioned in Section 2) and all documents incorporated therein by reference;
- (d) these GTC.

24.2 In the event that individual provisions of the Contract are or become invalid, this shall not affect the validity of the other provisions. Such provision shall be replaced by a valid provision covering the original commercial intention as far as legally possible.

24.3 Unless otherwise agreed in writing, amendments to the Contract shall be made in writing.

24.4 Each party will not assign or transfer any of its rights or obligations under the Contract to a third party without the prior written consent of the other party. RAD's affiliated companies shall not be considered third parties. However, such restriction shall not apply in instances where RAD requires part of its work to be undertaken or supplied by subcontractors or sub-suppliers.

## 25 Jurisdiction and Applicable Law

25.1 The exclusive place of jurisdiction for both the Customer and RAD shall be at the registered office of RAD. RAD shall, however, be entitled to sue the Customer at the latter's registered office.

25.2 The Contract shall be governed by the laws of Switzerland to the exclusion of its rules on conflict of law. The application of the United Nations Convention on the International Sales of Goods (CISG) dated April 11, 1980, is expressly excluded.