

Standard Terms and Conditions of Purchase

§ 1 Scope of application

1.1) These Standard Terms and Conditions of Purchase shall apply to Rheinmetall Electronics GmbH - hereinafter referred to as the "Customer" - as the ordering party in all contracts for work and services, contracts for work and materials, and purchase contracts as well as software and license agreements with its subcontractors and suppliers, hereinafter referred to as "Suppliers". However, these Standard Terms and Conditions of Purchase shall only apply if the Supplier is an enterprise (as defined in section 14 German Civil Code ("BGB")), a public law entity or a public fund.

1.2) These Standard Terms and Conditions of Purchase shall apply exclusively in this case. Deviating, conflicting or supplementary standard terms and conditions of the Supplier shall only become part of the contract to the extent that the Customer has expressly given its consent to their application in writing. This consent is required in any event, i.e., also in cases where the Customer has accepted the Supplier's performance without reservation while being aware of the Suppliers standard terms and conditions.

§ 2 Information regarding export regulations; certified undertakings

2.1) The order is placed both in connection with the execution of public defense contracts and on the basis of defense export contracts. As a precaution, it is pointed out that a Supplier domiciled in the Federal Republic of Germany who has the ordered goods manufactured (in whole or in part) abroad (including EU countries) is subject to the provisions of the Foreign Trade and Payments Act ("AWG") / Foreign Trade and Payments Ordinance ("AWV"). This applies to the export or shipment (even temporarily) of hardware as well as for the transfer of production or design drawings and parts lists. Only DIN parts and standard parts are exempt from the provisions of the AWG/AWV.

2.2) Furthermore, also as a precaution, the Supplier is hereby made aware of the fact that deliveries from abroad may also be subject to additional import and export regulations of various countries, which must be complied with by the Supplier without any restriction and on the Supplier's own responsibility. The Supplier agrees to fill out the form "Fragebogen zur Exportkontrolle" in German or the "Questionnaire on Export Controls" in English* for each order involving re-export regulations of third countries (in particular those of the USA).

2.3) The Customer is certified in accordance with Art. 9 of Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 "simplifying terms and conditions of transfers of defence-related products within the Community" (Official Journal EU of 10 June 2009, L 146, 1 et seq.; "ICT Directive"). According to the ICT Directive and the German legislation implementing it, the supply of certain defense equipment to the Customer is allowed under relaxed conditions.

2.4) The Supplier hereby declares that it complies with all legal requirements of the country where it is domiciled or from which the goods are transferred in order to be allowed to supply ICT-certified undertakings; the Supplier bears the sole responsibility for this commitment. The delivery documentation must specify the basis of the general permit (Supplier's national law) under which the delivery is carried out.

2.5) The Supplier further undertakes to provide the required re-export permits where re-export regulations of third countries (in particular the USA) are concerned. In these cases, the Customer will specify the name of the end customer upon request. The Supplier shall bear full responsibility for compliance with re-export regulations of other countries.

2.6) The Customer draws the Supplier's attention to the fact that the export/transfer of almost all goods (merchandise, technology, software) the Customer is dealing with is subject to a permit under the export regulations of the Federal Republic of Germany. The Supplier therefore agrees that it will not pass on to third parties any goods of any kind it received from the Customer or from third parties on the Customer's behalf without the Customer's written and legally binding approval. This applies in particular to information relating to the specific technical knowledge of the development, manufacture, or use of military equipment (Part I Section A of the Export List - Annex to the Foreign Trade and Payments Ordinance - AWV), hereinafter "Technology", regardless of the form of its embodiment. The Supplier undertakes to impose the same obligation upon all of its contracting parties to whom the Customer's goods are passed on (in particular sub-suppliers) and their contracting parties. In cases of doubt, please consult with the Customer.

§ 3 Offer, offer documents

3.1) In its offer, the Supplier must adhere exactly to the Customer's inquiry with regard to quantity and quality, and, in the event of deviations, expressly point them out or inquire about them. Prior to entering into any contract that incorporates these Standard Terms and Conditions of Purchase as an integral part, the Supplier has the obligation to expressly notify the Customer if the goods to be delivered are not unconditionally suitable for the use communicated to the Supplier or implied under the contract. This shall also apply in the event that special health, safety or environmental risks or an atypical potential for, or extent of, damage may be associated with the handling of the delivery.

3.2) The Supplier's offer must be submitted free of charge and be binding.

3.3) Any orders placed as well as supplements, amendments and side agreements made by telephone or orally shall not be legally binding for the Customer unless confirmed in text form. Delivery call-offs may also be made by remote data transmission. Cancellation of this text form also requires text form. The order must be promptly reviewed as to whether the technical documentation required for the execution is complete; otherwise, any missing documents must be requested immediately.

3.4) Where the Customer has the right of extraordinary termination (effective immediately), Section 10 Standard Terms and Conditions for Procurement Contracts of the German Federal Ministry of Defense ("ABBV") shall apply accordingly; see home page at <http://www.baainbw.de> > Vergabe > Formulare > Vertragsbedingungen.

§ 4 Order confirmation, acceptance, content of contracts

4.1) Except for call-offs, the Supplier is obligated to confirm the order in writing without undue delay, at the latest within two (2) weeks from the date of issue. Should the order confirmation fail to reach the Customer within this period, the Customer reserves the right to cancel the order. If the Supplier does not receive a written cancellation from the Customer, the order shall still be valid. Delivery call-offs shall become binding at the latest if the Supplier does not object to them within two weeks of receipt thereof. In addition to the order confirmation, the execution of the order, in particular the delivery or partial delivery of goods or the acceptance of payments shall be deemed to constitute unconditional consent to these Terms and Conditions of Purchase.

4.2) Acceptance requires an express statement to this effect by the Customer. Any acceptance of services performed late or the taking delivery of late deliveries shall not be deemed a waiver of further rights and claims to which the Customer is entitled. Unless provided otherwise herein, the statutory provisions regarding defects in quality and in title shall apply in all other respects. A notice of defect shall be deemed to have been given in due time if given within two weeks, in the case of apparent defects from the date of handover, and in case of hidden defects from the date of discovery. Any curtailment of the claims and rights of the Customer pursuant to these Standard Terms and Conditions of Purchase or based on the law, or any exclusion of legal warranty rights or of the type and extent of examinations, test runs, etc., to be conducted by the Customer require in any event the express confirmation of the Customer.

4.3) Where contracts and their amendments are concerned that (also) include software and consulting services, the Supplier shall immediately agree with the Customer on a requirements specification that specifies the deliveries and/or services to be provided by the Supplier in detail. The parties to the contract shall clarify before entering into the contract whether the requirements specification is to be drawn up by the Supplier prior to or after entering into the contract.

4.4) The Supplier agrees to hand over the program documents, including but not limited to the source code, in cases where the user software was developed specifically for the Customer. In this respect, the Supplier's right of retention and/or right to refuse performance shall be excluded.

4.5) The Supplier agrees to place subcontracts only with express written consent. The Supplier further undertakes that it will put its subcontractors and their subcontractors under the same kind of obligation.

4.6) The Supplier warrants upon entering into each contract that includes these Standard Terms and Conditions of Purchase as an integral part that it will comply with the provisions of the Minimum Wage Act and will put any subcontractor engaged by it under the same obligation and monitor their compliance with the Minimum Wage Act. Upon the Customer's request, the Supplier must ensure that the Customer will also be in a position to monitor compliance with the minimum wage requirement both at the Supplier's premises and those of any subcontractor engaged by it. Upon first request, the Supplier shall indemnify the Customer against all costs, damages and expenses arising from the non-compliance by the Supplier with the obligations specified above.

4.7) The Customer shall be entitled to change after the conclusion of the contract the specifications for the deliveries/services to be provided and/or to partially cancel the contract entered into against reimbursement of the Supplier's proven reasonable expenses triggered thereby.

§ 5 Prices and terms of payment

5.1) Unless agreed otherwise, the prices stated in the order are fixed prices. They also include the costs of copyable operating, maintenance and storage instructions as well as spare parts lists and other written, visual and electronic documents relating to the contractual goods to be delivered, which are required for the use, preservation, maintenance and cataloguing of the contractual goods.

5.2) The Supplier undertakes that the conditions offered to the Customer will not be less favorable than those offered to other defense contractors.

5.3) The Supplier shall submit its invoices to the Customer separately in triplicate for each order after having performed the contractual delivery and/or service, stating the order number, order date, call-off number, date and copy of the delivery slip and all other information required under Section 14(1) No. 1-10 German Value Added Tax Act. If this information is missing or if it is incorrect or incomplete, the Supplier's claim for payment against the Customer shall not become due, so that default in payment will not occur.

Payments made by the Customer shall not imply acknowledgment of the contractual conformity of the performance or correctness of the charge. Warranty claims to which the Customer is entitled shall not be affected thereby. Payment shall be made by bank transfer to the financial institution commissioned.

5.5) For the purpose of rationalization, payment runs will encompass a 14-day payment cycle. This will include the settlement of liabilities that fall due within 3 days after the respective payment run. The Customer shall be entitled to avail itself to agreed cash discount conditions if payment under these modified modalities falls on the payment date following the due date for cash discount.

5.6) Unless deviating provisions regarding payment terms are specified in the orders, payments shall be made by the Customer as follows:

Upon receipt of the goods and invoicing: within 60 days without deduction.

§ 6 Delivery, delivery periods, packaging

6.1) Unless agreed otherwise, the delivery shall be made for the account and at the risk of the Supplier with all ancillary costs paid by it, including but not limited to customs duties, transport insurance costs, and including packaging.

6.2) To the extent possible, the contractual goods to be delivered shall be packed on EURO/DIN pallets for shipment. The delivery of goods shall always be accompanied by delivery slips or packaging slips indicating the order number, designation/description, number of items, dimensions (where applicable, in liters, kilograms, meters, etc.), and the type of packaging; in addition, shipping notices containing the same level of detailed information shall be forwarded by separate mail to the Customer, in duplicate, at the latest on the date of shipment. Otherwise, the Customer shall be entitled to refuse acceptance of the goods without having to assume the costs incurred thereby. The Supplier shall clearly state the Customer's order number on the outer packaging of the parts to be delivered, if possible, in two places on the packaging. The Supplier shall be liable for any loss or damage and for all costs, e.g., storage errors, that occur if this rule is not observed.

6.3) Fixed delivery periods or specific delivery days as well as the respective place of delivery must be strictly observed under all circumstances. The agreed delivery date in accordance with the Incoterms clause that has been agreed upon shall form the basis for compliance with the delivery date. Unless "ex works" has been agreed, the Supplier shall make the goods available in due time, taking into account the usual time for loading and dispatch.

6.4) If the Supplier is not able to deliver on time, it must inform the Customer accordingly at the earliest possible time (immediately). The timeliness of the delivery shall be determined by the receipt of the goods at their destination. Any new delivery date then communicated by the Supplier to the Customer shall be - even if not expressly referred to as such - a fixed delivery date within the meaning of Section 376 German Commercial Code ("HGB").

6.5) Only the occurrence of force-majeure events would release the Supplier from complying with the agreed delivery period. The Supplier shall notify the Customer of any obstacles immediately upon their occurrence or foreseeability, and, at the same time, state the (expected) duration of the delay so that timely alternative measures can be taken, if necessary. The stated obstacles must be proven to the Customer upon request without undue delay.

6.6) Unless agreed otherwise, packaging shall not be reimbursed. If the costs for packaging are not included in the price, the packaging will be returned if so requested, at the charge of the Supplier. Packaging, if returned, must be credited at the full value charged.

6.7) The packaging must be suitable for the protection of the goods to be carried as well as for any stress during carriage. Another function of packaging is to facilitate handling. The packaging must take into account the latest findings in environmental protection, i.e., only reusable, recyclable materials may be used for transport packaging. In addition, the packaging must serve as a visual barrier to unauthorized third parties.

6.8) The packaging must be selected in a manner to accommodate the stress during carriage and must be suitable for the type of transport in each case (truck, air cargo, or carriage by sea).

6.9) Independent of any incoming inspection incumbent on the Customer, the Supplier shall be obligated to verify compliance with the quantity, type, and packaging owed by the Supplier of the goods to be delivered and their freedom from easily detectable defects in quality and title prior to delivery. The Supplier shall notify the Customer without undue delay of any deficiencies identified in this context.

§ 7 Reservation of title and ownership of ordered goods

7.1) The Customer accepts only a simple reservation of title on the part of the Supplier.

7.2) If the item provided by the Customer is inseparably mixed or combined with other items not belonging to the Customer, the Customer shall acquire co-ownership pursuant to Section 948(1) BGB in conjunction with Section 947 BGB of the new item in proportion of the value of the reserved goods to the other mixed objects at the time of mixing/combination. If the mixing/combination is effected such that the Supplier's item is to be considered the main item, it is understood that the Supplier shall transfer a proportionate share of co-ownership to the Customer; the Supplier shall keep the solely owned or co-owned item in safe custody for the Customer.

7.3) Supplies provided by the Customer as well as materials or assemblies provided for processing as well as all other materials delivered to the Supplier for the preparation and execution of the order as well as the Customer's know-how embodied herein shall remain the sole property of the Customer and may neither be disclosed to third parties nor used for purposes other than the contractual purposes without the Customer's written consent. They must be kept strictly confidential and must be returned immediately upon the Customer's request. In this respect, the Supplier's right of retention and/or right to refuse performance shall be excluded. Any supplies provided by the Customer must be properly maintained, kept in safe custody, and insured against loss or damage by the Supplier at its expense. All repairs and modifications are subject to a written consent.

§ 8 Warranty

8.1) It is always the Customer who has the right to choose the type of cure of defective performance; it may leave such choice to the Supplier at its discretion.

8.2) The warranty period shall start to run on the date of delivery of the subject matter of the contract to (or the date of acceptance where one is required, by) the end customer (the Customer's customer) and shall end 24 months later.

In any event, the warranty ends at the latest 36 months after delivery to the Customer (or acceptance by the Customer where one is required).

8.3) For components repaired or replaced as part of the cure, the periods stated above shall start to run again upon completion of the repair or replacement.

8.4) The Customer's warranty claims shall not be affected by the quality inspection, the determination or modification of the design status, or by technical or other instructions. The Supplier is liable for compliance with the rules and regulations on procurement and execution and warrants the unrestricted similarity and interchangeability of its contractual goods. The necessary expenses occasioned by the cure include, among other things, the costs of installation and dismantling related to the defective contractual good. All contractual goods must be brand-new.

8.5) If the Supplier fails to meet its obligation to provide a cure in due time despite having been granted a reasonable period of grace, the Customer shall be entitled to assert its statutory warranty rights without having to set another grace period. Regardless of sentence 1 above, the Customer shall be entitled to withhold an amount of at least twice that of the expected costs for remedying the defect.

8.6) A notice of defect may still be given even if the goods have already been processed or delivered directly to the end customer. Any contractual goods objected to shall be returned - to the extent that there is an obligation to return them in the first place - at the risk and for the account of the Supplier.

8.7) Without prejudice to any further claims and rights, the Customer shall be entitled, depending on the legal nature of the contract that incorporates these Standard Terms and Conditions of Purchase as an integral part, to rescind or terminate the contract if performance thereunder is or becomes prohibited by law, if the Supplier's assets are subjected to the filing of a (justified) insolvency petition or insolvency proceedings are instituted, or if there is good cause in any other respect that would make it unconscionable for the Customer to continue to adhere to the contract. If, in any such case, the Customer rescinds or terminates the contract that incorporates these Standard Terms and Conditions of Purchase as an integral part, the Supplier must compensate the Customer for any and all costs, damages, and expenses resulting from such termination of the contract. The Supplier shall be entitled to a potential claim of payment of the purchase price or remuneration in this case only to the extent that the goods have been delivered or services performed until such termination of the contract and that the Customer is able to use them.

§ 9 Contractual penalty

The Customer shall be entitled to claim a contractual penalty from the Supplier in the amount of 0.1% of the (net) total order value per calendar day of default, but no more than 5% of the (net) total order value if and to the extent that the date of delivery/performance of service agreed upon with the Supplier has been exceeded due to the Supplier's default. The contractual penalty may be asserted by the Customer until the time of the final payment. The contractual penalty incurred shall be applied to any claims for further damages to which the Customer is entitled against the Supplier due to default.

§ 10 Industrial property rights and product liability

10.1) The Supplier shall be liable for claims arising from the infringement of industrial property rights and industrial property rights applications ("Industrial Property Rights") upon the contractual goods being used in accordance with the contract. The Supplier warrants that at the time of delivery of the goods or performance of the service, there are no claims and rights of third parties with regard to the goods or the work performed, including but not limited to those based on ownership or industrial or other intellectual property, which could affect the free use by the Customer of the goods and/or the work performed in the course of the performance of the contract.

10.2) The Supplier shall indemnify the Customer and its end customer against all claims arising from the use of such Industrial Property Rights.

10.3) To the extent that the Supplier is responsible for damage arising from product liability, it shall be obligated to indemnify the Customer against claims for damages by third parties upon first request, if the cause lies within the Supplier's sphere of control and/or organization and the Supplier itself is liable in relation to third parties. In this context, the Supplier shall also be obligated to reimburse the Customer for any expenses arising from or in connection with a recall or repair campaign carried out by the Customer. The Customer shall inform the Supplier about any recall or repair measures to be carried out so that the Supplier can comply with its obligations. The Supplier is obligated to take out sufficient insurance against the consequences of defective deliveries/services (product liability insurance with at least EUR 5.0 million blanket coverage for personal injury and property damage).

§ 11 Environment, European Chemicals Regulation REACH

11.1) The Supplier undertakes to always perform its services in compliance with the relevant environmental protection regulations and standards and in accordance with the state of the art. For this purpose, the Supplier shall select environmentally friendly and recyclable input materials, low-emission, low-pollutant, dismantling- and deconstruction-friendly designs as well as solutions that save energy and resources.

11.2) The Supplier undertakes to comply at all times with all applicable provisions of national or European law, including but not limited to the requirements of Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH).

11.3) The Supplier undertakes to comply with all obligations applicable to it with regard to market access and marketability of the substances, mixtures and/or products supplied by it. This includes specifically the obligations involving registration, restriction and authorization according to the REACH Regulation. The Supplier warrants that it will not deliver any goods to the Customer which may not be placed on the market pursuant to the REACH Regulation. The Supplier is obligated to ensure by suitable contractual arrangements with its contracting parties that they, too, comply with all relevant obligations.

11.4) If the Supplier has not obtained or does not intend to obtain a required registration or authorization itself, it warrants to have satisfied itself that the necessary registration or authorization obligations are fulfilled in due form and on time by another company in its supply chain. The Supplier further undertakes to inform the Customer without undue delay as soon as it becomes apparent to the Supplier that a substance will not be registered or authorized within the applicable period for that substance, or that a registration or authorization obtained by another company will cease to apply.

11.5) The Supplier shall comply with its duty to provide information under Article 31 (provision of a safety data sheet) or Article 33 (information on REACH Candidate List substances contained in the product) without being prompted to do so and shall automatically provide the relevant information to the Customer directly after entering into the contract unless requested otherwise by the Customer. It is emphasized in this context that the duty to provide information under Article 33 of the Regulation must be fulfilled in relation to each individual component article of a delivered product (ECJ judgment C-106/14 of Sept. 10, 2015). Furthermore, each delivery must be accompanied by a current version of the safety data sheet or the Art. 33 information, even if this is not mandatory under the REACH Regulation.

11.6) The obligations and duties of the Supplier specified under § 11.2) to § 11.5) are essential contractual obligations, also referred to as fundamental obligations, compliance with which is indispensable for the performance of the contract. Should the Supplier fail to fulfill its respective obligations and duties or should such fulfillment not be sufficient or not on time, the Supplier shall indemnify the Customer against all costs, expenses and damages incurred by the Customer as a result of the Supplier's failure to fulfill these obligations and duties.

§ 12 Stockage and testing

12.1) If necessary and requested in the order, acceptance tests or initial-sample inspections shall be performed by the Customer's quality assurance department. They must be carried out in a timely fashion prior to the delivery date. The Supplier shall arrange acceptance tests or initial-sample inspections with the quality assurance department to be carried out at the latest one week prior to the delivery date.

12.2) If irregularities occur during external processing with regard to identifiability, allocation and/or quality, the Supplier shall immediately inform the Customer accordingly. This shall apply both to materials provided by the Customer to the Supplier and materials procured directly by the Supplier, as well as to errors in subsequent work processes of the Supplier. Production shall then be stopped immediately by the Supplier after consultation with the Customer. The continuation of production requires the release by the Customer.

12.3) The object of the contract may be subject to a quality inspection by a quality inspector of the German Federal Armed Forces at the Supplier's facility. Should this be required, the order will include the Customer's explicit instruction to this effect. In this case, delivery to the Customer is subject to the prior acceptance based on a successful quality inspection. The scheduling and performance of the quality inspection shall be agreed between the Customer and the Supplier.

§ 13 Delivery of spare parts

13.1) The obligation to supply spare parts shall end 20 years after delivery of the last contractual good.

13.2) If the Supplier intends to discontinue the manufacture of such parts, it shall be obligated to notify the Customer and the Customer's end customer accordingly at least 2 years in advance. In this case, the Supplier shall be obligated to carry out a package order intended to cover the spare parts requirements until the expected end of the service life of the (defense) system. Once the order has been executed, the Supplier's obligations shall end on condition that the Supplier delivers to the Customer free of charge the drawings and technical documents necessary for the manufacture of the spare parts. In this respect, the Supplier's right of retention and/or right to refuse performance shall be excluded.

§ 14 Rights of use

14.1) Drawings, models, matrices, templates, samples, tools, software, and other means of production as well as confidential information made available to the Supplier by the Customer or paid for in full by the Customer may not be used for purposes other than the performance of the contract with the Customer unless the Customer has given its prior written consent.

14.2) The Supplier grants the Customer the exclusive, unrestricted right of use of the works commissioned by the Customer and created by the Supplier on the basis of the drawings, models, matrices, templates, samples, tools, software and other means of production or confidential information of the Customer. The Customer shall be entitled to use the work, to the exclusion of all other persons, within the scope of the permission granted to it and to grant rights of use thereto.

14.3) The provisions under § 14.2 shall apply mutatis mutandis if the Supplier mixes the Customer's drawings, models, matrices, templates, samples, tools, software, and other means of production with the Supplier's drawings, models, matrices, templates, samples, tools, software, and other means of production, thereby creating a new work.

14.4) The Supplier shall grant the Customer a non-exclusive right of use for works produced by the Supplier without the Customer's drawings, models, matrices, templates, samples, tools, software, and other means of production.

The Customer shall be entitled to use the work for the contractual purpose, unless provided otherwise by the parties; i.e., use of the work for the Customer's own production.

14.5) If the Supplier develops new software or advances previously developed software on behalf of the Customer, the Customer shall acquire the exclusive, unrestricted right of use of the new software, including the source code, with retroactive effective as of the date of the signing of the contract. The Customer shall be entitled to use the software, to the exclusion of all other persons, within the scope of the permission granted to it and to grant rights of use.

14.6) Subcontractors of the Supplier shall be put under the obligations set forth in the above paragraphs under this § 14.

§ 15 Severability clause / Secrecy / Place of jurisdiction / Choice of law

15.1) Should any individual provisions of a contract for the delivery of goods and services that incorporates these Terms and Conditions as an integral part, be or become ineffective, the validity of the remainder of that contract shall not be affected thereby.

15.2) The Supplier agrees to treat as business secrets all commercial and technical details that are not in the public domain and have become known to it through the business relationship. The Supplier shall not be allowed to use this business relationship in its advertising unless the Customer has given its prior written consent.

15.3) Bremen (the courts of the City of Bremen) is the place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship.

15.4) The substantive law of the Federal Republic of Germany shall apply exclusively to all legal relationships between the Supplier and the Customer; the UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply. If Incoterms have been agreed, the Incoterms as amended from time to time shall apply to the interpretation of delivery clauses.

§ 16 Data protection

The Supplier declares its revocable consent to the order-related processing of personal data disclosed to it in compliance with the statutory provisions.

§ 17 Supplier code of conduct

The Supplier agrees to observe the Supplier Code of Conduct* to these Terms and Conditions and to abide by it.

§ 18 Translations

If these Terms and Conditions are translated into a language other than German, the German version hereof shall always govern in all cases of doubts as to interpretation, incompleteness, etc.

* available at https://www.rheinmetall-defence.com/en/rheinmetall_defence/company/divisions_and_subsidiaries/rheinmetall_electronics/lieferanten_informationen_2/index.php