

General Terms and Conditions for the Delivery of Test Systems

Preliminary statement

1. These General Terms and Conditions for the Delivery of Test Systems (hereinafter also referred to as "Terms of Delivery") of RTE Akustik + Prüftechnik GmbH (hereinafter referred to as "RTE") correspond to the greatest possible extent to the recommendations given by the association of the German mechanical and plant engineering industry (VDMA) as of 8/2012.
2. These Terms of Delivery shall apply to the delivery of machines, components and software.
3. When a delivery item is being installed, RTE's "General Terms and Conditions of Service" shall apply as amended at the time of contract conclusion in addition to the present terms and conditions. If service is performed via remote access, RTE's terms and conditions of teleservice shall apply on a complementary basis.

I. General

1. Every service or delivery shall be subject to these terms and conditions, and to any contractual arrangement made on a separate basis. No purchaser's terms and conditions of purchasing differing herefrom shall become part of the contract even by order acceptance.
2. In default of any specific agreement, no contract shall be deemed brought about unless by RTE's written order confirmation. These Terms of Delivery shall be applicable on an exclusive basis, no purchaser terms and conditions conflicting with or differing from these Terms of Delivery shall be recognized by RTE unless with RTE's express and written consent to the validity thereof. These Terms of Delivery shall also be applicable if RTE performs delivery to the customer without any reservation while being aware of purchaser terms and conditions conflicting with or diverging from these Terms of Delivery.
3. RTE shall reserve title to ownership and, where copyrightable, the copyright in any sample, cost estimate, drawing or any similar information whatsoever, whether tangible or intangible in nature, and even in an electronic form; no such information must be disclosed to any third party. RTE shall be obligated not to disclose any information designated to be confidential by the purchaser to any third party unless with the purchaser's consent.
4. These Terms of Delivery shall not be applicable unless to entrepreneurs as defined in Section 310, Subsection 1 of the German Civil Code (BGB).

II. Prices and payment

1. Unless as specifically agreed otherwise, any price shall apply ex works including loading at works, but exclusive of packaging and unloading. Any price shall be deemed exclusive of value-added tax in the amount as defined by law from time to time. Any remuneration shall be paid in Euros.
2. Unless as specifically agreed, payment shall be made without any deduction to RTE's account within a period of two weeks from the receipt of the corresponding invoice, i.e., as follows:
 - 50% after receiving the order confirmation;
 - 30% after delivery release or as soon as the purchaser is notified that the main parts are ready for shipment;
 - 10% after erection and installation in the purchaser's plant;
 - 10% within one month after the passage of risk.
3. No right to set-off and/or retention shall be available to the purchaser unless for counterclaims which are recognized by a final judgement, uncontested or ready for a decision in any proceedings pending in court.

III. Delivery time, delay in delivery

1. The delivery time shall be as defined in the agreements made by the contracting parties. Observance thereof by RTE shall be subject to the prior solution of all commercial and technical questions existing between the contracting parties, and to the fulfilment of every duty incumbent on the purchaser, including, but not limited to submitting all certificates or authori-

zations as required from public authorities or the performance of any payment on account. If the foregoing is not complied with, the delivery time shall be extended appropriately. The foregoing shall not apply if any delay therein is under the RTE's control.

2. The observance of any delivery deadline shall be subject to correct and timely deliveries to ourselves. Any delay, which becomes apparent, shall be communicated by RTE as soon as possible.
3. A delivery deadline shall be deemed observed when a delivery item has left RTE's works or when readiness for shipment has been notified prior to the expiry of such deadline. The date of acceptance or, in the alternative, the notification of readiness for acceptance shall prevail if and where acceptance should take place except in the event acceptance is rejected on a justified basis.
4. If the shipping or acceptance of any delivery item is delayed for any cause under the purchaser's control, the costs incurred due to any such delay shall be invoiced to the purchaser, starting one month after the notification of readiness for shipping or of readiness for acceptance.
5. The delivery time shall be extended by a reasonable period if and where any failure to comply with the delivery time is caused by force majeure, industrial action or by any other event beyond RTE's sphere of control. RTE shall notify the purchaser of the beginning and end of any such circumstance as soon as possible.
6. The purchaser may rescind the contract without giving any prior notice if complete performance by RTE becomes definitely impossible prior to the transfer of risk. In addition, the purchaser may also rescind the contract if the performance of a part of a delivery becomes impossible for any purchase order, and if the purchaser has a legitimate interest in rejecting the partial delivery. If this is not the case, the purchaser shall pay the contract price which is attributable to such partial delivery. The same shall apply if RTE is unable to perform. Section VII.2 shall apply in other respects.
7. If RTE is in default and if such default causes any loss or damage to the purchaser, the purchaser shall be entitled to claim liquidated damages for default. Such liquidated damages shall amount to 0.5% for every full week of delay but to not more than 5% of the net value of the proportion of the overall delivery which, in consequence of such delay, cannot be used in time or as provided for in the agreement.
8. If, after any due date, the purchaser specifies a reasonable period for performance by RTE, taking account of the exceptions as provided for by law, and if such period is not observed, the purchaser shall be entitled to rescind the contract subject to the statutory provisions. Any other claim from any delay in delivery shall be subject exclusively to section VII.2 of these terms and conditions.

IV. Transfer of risk, acceptance

1. The risk shall be transferred to the purchaser as soon as any delivery item has left the works, i.e., even in the event that any partial delivery is made, or even when RTE has undertaken to perform any other service in addition, including but not limited to any forwarding expenses, inbound delivery or erection. Where it shall be granted, acceptance shall prevail for the transfer of risk. Acceptance shall be granted immediately at the date of acceptance or, in the alternative, after RTE's notification of readiness for acceptance. The purchaser may not refuse acceptance if there is any nonessential defect.
2. If shipping or acceptance is delayed or fails to take place in consequence of any circumstance which is beyond RTE's control, the risk shall pass to the purchaser from the day on which readiness for shipping or acceptance has been notified. RTE shall agree to take out any insurance as required by the purchaser at the purchaser's expense.
3. Partial deliveries shall be permitted where the purchaser may reasonably be expected to take such deliveries.

V. Reservation of title

1. RTE shall reserve ownership in the item purchased until the receipt of all payments from the supply contract.
2. RTE shall be entitled to insure the delivery item at the purchaser's expense against theft, damage by breakage, fire, water or other damage or loss, unless the purchaser provides evidence for having taken out such insurance itself.
3. The purchaser may neither sell, nor pledge any delivery item nor make any assignment thereof as security for any debt. The purchaser shall immediately notify RTE of any attachment, levy of execution, seizure or any other disposition by any third party.
4. If the purchaser commits any act contrary to the contract including, but not limited to any default in payment, RTE shall be entitled to take back any item delivered after sending a reminder and the purchaser shall be obligated to surrender possession thereof.
5. Due to retention of title, RTE cannot demand the return of a delivery item only unless having rescinded the contract.

VI. Claims based on defects

For any material defect or defect of title in any item delivered RTE shall assume warranty to the exclusion of any further claim and subject to Section VII as follows:

Material Defects

1. Any part, which turns out to be defective due to any circumstance that occurred prior to the transfer of risk, shall, at RTE's option, be subsequently improved or replaced free of charge by providing a part free of any defect. The discovery of any such defect shall be notified to RTE in writing and without any delay. Any part replaced shall become the property of RTE.
2. The purchaser shall allow sufficient time and opportunity for RTE to make any subsequent improvement or substitute delivery as considered necessary by RTE; otherwise, RTE's liability shall be cancelled for the consequences brought about thereby. The purchaser shall not be entitled neither to correct any defect on his or her own nor to have any defect corrected by any third party, and claim compensation from RTE for any expenditure required thereby unless in urgent cases which cause a hazard to operational safety or where required to avert any disproportionately high damage or loss while RTE shall be notified thereof with no delay.
3. From the immediate cost caused by subsequent improvement or substitute delivery, RTE shall pay the cost of any replacement part including shipping if and where such complaint is proven to be justified. RTE shall also pay the cost of removal and installation as well as the cost for the necessary provision of any fitter and auxiliary personnel required including travel expenses unless such costs involve any disproportionate burden on RTE.
4. The purchaser shall have a right to rescind the contract within the scope of statutory provisions if, taking account of the exceptions as provided for by law, RTE allows a reasonable deadline to elapse without fulfilment, which has been set for RTE to make subsequent improvement or substitute delivery due to any material defect. If a defect is merely immaterial, the purchaser shall be entitled to a reduction in the contract price only. The right to a reduction in the contract price shall remain excluded in other respects. Any other claim shall be subject to Section VII.2 of these Terms and Conditions.
5. No warranty shall be assumed including in but not limited to any of the following cases:
Unsuitable or improper use, incorrect installation or start-up by the purchaser or any third party, natural wear and tear, incorrect or negligent handling; improper maintenance; unsuitable operational material, improper construction work, unsuitable subsoil, chemical, electrochemical or electrical influences unless if and where under RTE's responsibility.
6. If the purchaser or any third party makes any improper subsequent improvement, no liability shall exist on the part of RTE for any consequence caused thereby. The same shall apply to any change or modification to a delivery item performed without RTE's prior consent.

Defects of title

7. If the use of the delivery item leads to the infringement of any industrial property right or copyright in the home country, RTE shall, at its expense and in principle, procure for the purchaser the right to continue such use or modify the delivery item in a manner the purchaser can reasonably accept so as to ensure that such infringement of an industrial property right ceases to exist.

If the foregoing is not feasible under reasonable economic conditions or within a reasonable period of time, the purchaser shall be entitled to rescind the contract. If the aforementioned conditions apply, RTE shall also have the right to rescind the contract.

RTE shall, furthermore, indemnify the purchaser against any claim from a holder of an industrial property right concerned which is either undisputed or established as final and absolute.

8. The obligations of RTE as set forth in Section VI. C shall be final subject to Section VII.2 in the event of any infringement of industrial property rights or copyrights.

Such obligations shall not apply unless

- the purchaser notifies RTE immediately of any alleged infringement of an industrial property right or copyright;
- the purchaser provides assistance to RTE to a reasonable extent in defending against any claim alleged or allows RTE to perform the modification actions in accordance with Section VI. 7;
- all measures for defence shall be reserved to RTE, including any extrajudicial settlement;
- the defect of title is not based on any instruction given by the purchaser and
- such violation of an industrial property right or copyright has not been caused by any unauthorised modification of the delivery item by the purchaser or by any use thereof by the purchaser other than as provided for in the contract.

VII. Liability

1. The provisions as set forth in Sections VI and VII.2 shall apply mutatis mutandis, excluding any further claim of the purchaser if the delivery item may not be used by the purchaser as provided for in the contract through any fault on RTE's side, due to any failure to perform or any defective performance of any proposal or consulting made or given either before or after contract conclusion or through the breach of any other subsidiary duty under the contract, including but not limited to instructions for the operator control and maintenance of such delivery item.
2. RTE shall not assume liability for any loss or damage which, irrespectively of its legal basis, has not been caused in the delivery item itself unless
 - a. when caused intentionally;
 - b. caused by gross negligence committed by the proprietor, by any executive body or by any executive employee;
 - c. in the event of any culpable injury to life, body, or health;
 - d. for any defect RTE has fraudulently concealed or whose nonexistence RTE has guaranteed;
 - e. for any defect in the deliverable item if and where liability for personal injury or property damage to any privately used object shall be assumed under the German Product Liability Act.

In the event of any culpable non-observance of an essential duty under the contract, RTE shall also be liable for any gross negligence committed by any non-executive employee and for ordinary negligence while liability for the latter shall be restricted to the foreseeable damage or loss typical of the agreement. Any further claim for damage compensation shall be excluded.

VIII. Statute of limitations

1. Every claim made by the purchaser shall become statute-barred in twelve (12) months irrespectively of its legal basis. The statutory time limits shall apply to any claim for damages as described in Sections VII. 2 a – e. Such time limits shall also apply to any defect in a structure or to any delivery

item which has been used for a structure in accordance to its common usage, and which has caused such structure's defectiveness. The statutory time limits shall also apply in the event of any claim as provided for in Sections 479, 480 of the German Civil Code (BGB).

IX. Software use

1. If and where the scope of supply includes any software, the "General Terms and Conditions for the Use of Computer Software" shall apply as amended at the time of contract conclusion in addition to the present Terms and Conditions.

X. Choice of law, place of jurisdiction

1. Any legal relationship between RTE and the purchaser shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention.
2. The place of jurisdiction shall be the court of law competent for RTE's place of business. But RTE shall be entitled to bring action at the purchaser's principal place of business.