

# GENERAL CONDITIONS OF SUPPLY AND SERVICES

## 1. Conclusion of Contract/Documents

1.1 These conditions are an integral part of all of Reiser Simulation and Training GmbH's (hereinafter "RST") quotations for and contracts on supplies and services, including current and future business relations. Deviations from these conditions of supply and services, particularly business conditions of the customer, are deemed agreed only if they have been expressly confirmed in writing by RST.

1.2 Cost estimates of RST are not binding. Contracts made with RST shall be considered in effect only after RST has given written acceptance of contracts/orders received or after RST has supplied the goods or rendered the services ordered by the customer. The same applies accordingly to the customer's requests with regard to contract amendments or changes.

1.3 Any information given and any documents made available to the customer only contain approximate values customary in this branch of business. Stated measured values (e.g. performance values, power requirements, ranges, measuring accuracy etc.) are understood to apply only in the absence of effects of possible interferences or other disturbances from the environment and are binding only if they expressly become a subject matter of the contract.

1.4 RST retains title, copyright and any other rights to all documents stated above which originate from and have been compiled by RST as well as their content. Without RST's written approval, these documents may not be used in any way for purposes not connected with the respective contract; in particular, they may not be made available to third parties. Upon request, they must be returned to RST without delay. A right of retention or a right to refuse services on the part of the customer is excluded in this respect.

## 2. Software Services and/or Consultancy Services

2.1 In the case of contracts according to which RST is obliged to render software services and/or consultancy services, the services to be rendered by RST are defined in a written statement of work (e.g. statement of work or

specification). In the case of series and standard software, RST's delivery specification is considered to be the statement of work.

2.2 RST retains title and all rights to the work results; the customer is entitled to use them only for its own purposes within the scope of the contractual provisions.

2.3 The customer may only demand the handing over of program-related documents of user software if the software had been especially developed for the customer, the handing-over had been expressly agreed and the customer had paid all costs and compensation within the order.

2.4 Any data and documents made available to RST will be held in safe custody by it with due diligence. Copies for purposes of reconstructibility must be kept by the customer.

## 3. Prices

RST's prices are understood to be in Euro ex plant, excluding costs for packaging, other incidental costs (e.g. installation and commissioning) as well as turnover tax, if any, at the applicable statutory rate.

## 4. Payments

4.1 All payments must be made to RST, without any deduction, within two weeks after receipt of its respective invoice.

4.2 If payment by installments has been agreed and if the customer either is in delay, in whole or in part, with two successive installments and the outstanding payment amounts to at least 5% of the total contract price or if the customer offends against its obligations from the agreed retention of title (ref. para. 9), the total residual amount still to be paid by the customer falls due immediately.

4.3 If the customer delays in payment, in part or in whole, RST is entitled - irrespective of any other right - to interest on the delayed payment as of this date and at the statutory defined rate. RST reserves the right to assert other damage due to delay.

## **5. Set-off/Retention**

5.1 The set-off with counterclaims of the customer against RST are only legally possible if and insofar the customer's counterclaims are determined indisputably or legally effective.

5.2 RST shall have the right of set-off and retention to the extent legally provided.

## **6. Contractual Periods/Fixed Dates**

6.1 Any contractual periods agreed with RST commence with the date of the written declaration of acceptance by RST.

6.2 In the case of changes or amendments to the supplies and services in the contracts attributable to the customer the contractual periods stated in the above para. 6.1 are prolonged to such an extent to which the changes or amendments have an effect on the content of the services and especially on the supply/service period.

6.3 Contractual periods and fixed dates are binding only if expressly agreed. Force Majeure and other abnormal circumstances such as, in particular, labour disputes, government acts and transport disruptions – irrespective of whether they occur within RST or at RST's suppliers – will relieve RST from its obligation to supply/render services either for the duration of their effects or altogether if it becomes impossible to render the services at all. If such a hindrance exists for more than 6 months, the customer is entitled to withdraw from the contract. Under these circumstances, any penalty possibly agreed upon shall be considered not forfeited.

## **7. Taking over/Acceptance**

7.1 Upon due date the customer must accept or take over RST's supplies/services immediately after having been requested to do so.

7.2 If the customer does not accept/take over the supplies/services in conformity with the above para. 7.1, RST is entitled, after unsuccessful reminder, to withdraw from the contract after expiration of a reasonable period fixed by RST and to claim damages, i.e. at RST's option either in the form of a reimbursement of the loss incurred to it or - without proving the loss - at the amount of 10% of the

agreed price. It will be left to the customer to furnish proof of the fact that RST has incurred no or only a minor loss.

## **8. Transfer of Risk**

8.1 RST is entitled to make partial supplies and/or to render partial services as long as no recognisable interest of the customer is opposing to it.

8.2 The risk for RST's supplies and services passes to its customer with the acceptance or taking over of such supplies/services; however, in the case of supplies, the risk passes at the time such supplies leave the relevant plant of RST at the latest. This also applies to partial supplies/services even if RST has undertaken further services (such as transport, installation, assembly and/or commissioning).

8.3 If the taking over/acceptance of supplies, or their leaving the relevant plant of RST, is delayed for reasons attributable to the customer, the risk passes to the customer upon futile expiration of the period fixed by RST as per above para. 7.1 at the latest.

8.4 If goods are taken into safe custody for the customer by RST, the customer assumes the costs and risk for such custody. Unless agreed otherwise, the customer is obliged to pay to RST for such storage the ordinary fee of a commercial storage company.

## **9. Retention of Title**

9.1 RST reserves the right of property in the goods supplied by RST until receipt of full payment of the price. In the case of a behaviour of the customer not conforming to the contract, particularly in the case of a delay in payment, RST is entitled to recover the goods subject to retention of title subsequent to withdrawal from the contract.

9.2 The customer is obliged to treat goods subject to retention of title with care; in particular, it is obliged to adequately insure, at its own expense, such goods at their reinstatement value against damage by fire, water and theft.

9.3 In the case of attachment or other interventions by third parties, the customer must immediately inform RST. Unless third parties are incapable of reimbursing RST judicial and extrajudicial costs for an action as per § 771 ZPO, the

customer shall be liable for any expenses defrayed by RST.

9.4 The customer is entitled to sell or dispose of goods subject to retention of title within the course of ordinary business; however, the customer hereby assigns to RST in advance any claim to the amount of the invoice total (including value added tax) of RST's claim which the customer may have against its clients or third parties, i.e. irrespective of whether the goods subject to retention of title were resold without or after processing. The customer will remain entitled to collect such claim even after assignment. RST's power to collect such claims itself remains unaffected. However, if this is the case, the customer shall immediately make known to RST the assigned claims and their debtors, provide any information and documents necessary for collection of such claims and inform the debtors (third parties) of the assignment.

9.5 Any processing or conversion by the customer of the goods subject to retention of title will always be done on RST's behalf. If the goods subject to retention of title are processed with other goods which are not RST's property, it will acquire co-ownership in the new product at the value of the goods subject to retention of title in proportion to the other processed goods at the time of processing. Furthermore, the product resulting from such processing is subject to the same provisions that apply to the goods supplied subject to retention of title. Also, the new product is held in safe custody by the customer on RST's behalf.

9.6 If the goods subject to retention of title are mixed inseparably with other goods which are not RST's property, RST will acquire co-ownership in the new product at the value of the goods subject to retention of title in proportion to the other mixed goods at the time of mixing. If the mixing is such that the customer's product must be considered the main product, it is understood that a proportionate co-ownership is assigned to RST by the customer. The resulting sole or co-ownership is held for RST by the customer. The fourth sentence of para.9.5 shall apply accordingly.

9.7 To secure RST's claims against it, the customer assigns to RST also such claims which arise against third parties due to the combination of goods subject to retention of title with real estate. The assignment takes place with the conclusion of the contract including these conditions and without the need of further explanations by the customer or RST.

9.8 The above-mentioned assignments do not include any respite for payments liable to be made by the customer.

9.9 Upon the customer's request, RST agrees to release any securities to which it is entitled to the extent that the value of RST's securities exceeds the claims to be secured by more than 20%; the selection of the securities to be released shall be at RST's option.

## **10. Defects**

10.1 The following applies in the case of defects of quality:

10.1.1 The customer shall notify RST of any defects of quality immediately after their discovery.

10.1.2 First, RST is to be given the opportunity to provide for rectification of the defect within a suitable period of time, i.e. at RST's option either by elimination of the defect, the delivery of goods free from defects or by manufacture of a new product.

10.1.3 If the rectification finally fails, can be expected neither from RST nor from the customer or is possible only with excessive cost/expenses, the customer is entitled to withdraw from the contract or to reduce the remuneration - irrespective of any other damages.

10.1.4 Any claims of the customer against RST due to expenses required for the purpose of rectification, in particular costs for transportation, travelling, labour and material, are excluded as far as the expenses increase due to the fact that the subject matter of supply/services has been transferred to a place other than the branch office of the customer, unless such transfer corresponds to the intended use of the subject matter of supply/services.

10.1.5 Legal claims of the customer against RST under a right of recourse exist only in so far as the customer has not reached any agreements with its clients beyond the legal warranty claims and rights under German law. Furthermore, the above para. 10.1.4 shall apply accordingly as far as the scope of the customer's claim against RST under a right of recourse is concerned.

10.1.6 In the case of notices of defects, payments of the customer may be withheld to an extent proportionate to the defects in quality found.

10.2 The following shall apply in case of defects of title:

10.2.1 Unless agreed otherwise, RST is obliged to render the supplies/services free from third parties' industrial property rights and copyrights (hereinafter: "Protective Rights") only in the country of the place of delivery.

10.2.2 In the case of justified claims raised by third parties against the customer on the grounds of the infringement of protective rights due to supplies/services rendered by RST and used in accordance with the contract, RST will, at its option and cost, either obtain a right of use for the relevant supplies/services, or will change the supplies/services so that the protective right is no longer infringed, or will replace the supplies/services. If this is impossible for RST at reasonable terms/ conditions, the customer shall be entitled to the statutory rights to claim rescission of the contract or to reduce the amount payable - irrespective of any other damages. Otherwise, para. 10.1 shall apply accordingly.

10.2.3 Claims of the customer on the grounds of the infringement of protective rights are excluded if he is responsible for such infringement of protective rights or if the infringement of protective rights has been caused by special requirements of the customer, by an application unforeseeable for RST or by the fact that the supplies/services are changed by the customer or used together with products not supplied by RST.

10.3 The period of limitation for defects of quality and in title amounts to one year, commencing with the passage of risk. This does not apply if and in so far as longer periods of limitation apply as per §§ 438 para. 1 No. 2, 479 para. 1, 634 a para. 1 No. 2 of BGB (German Civil Code), if and in so far as there has been a malicious silence with regard to the defect or if one of the cases of liability stated in para. 11.1 below applies.

10.4 RST's obligation to pay damages depends on para. 11 stated below.

10.5 In case used goods are supplied by RST - subject to para. 11 stated below - any liability for defects of quality and in title is excluded.

10.6 The above stipulations are not connected with a shifting of the burden of proof to the disadvantage of the customer.

## **11. Damages and Liability**

11.1 Claims for damages and compensation of expenses (hereinafter „Damages“) of the customer against RST are excluded, irrespective of the cause in law, unless they are based on the provisions of the Product Liability Act, on an intentional or grossly negligent violation of contractual or legal obligations on RST's part, on injuries to health and physical injuries due to a violation of duties for which RST is responsible, the takeover of a guarantee for the existence of a characteristic feature or the violation of essential contractual obligations by RST. Essential contractual obligations (major obligations) are those which, when fulfilled, enable the ordinary execution of the respective agreement to be concluded based on these conditions and on which the customer can rely regularly to be fulfilled.

11.2 Damages for the violation of essential contractual obligations shall be limited to foreseeable damage which is typical for the contract, unless it is based on intent or gross negligence, on the assumption of a liability with regard to injuries to health or physical injuries or due to the takeover of a guarantee for the existence of a characteristic feature.

11.3 A violation of duties by RST is put at on a level with such a violation by its representatives or persons employed in performing its obligation.

11.4 Para. 10.6 shall apply accordingly.

## **12. Confidentiality**

12.1 All documents and information received by the customer during and for the purpose of the performance of a contract are to be treated confidentially by the customer as long as they do not become generally known.

12.2 These obligations remain effective even after termination of a contract and are to be imposed also upon third parties if the disclosure of documents and information to them is permitted.

## **13. Place of Jurisdiction/Applicable Law**

13.1 The sole place of jurisdiction for both parties with regard to all disputes directly or indirectly arising from the contractual relationship - also from documentary deeds, drafts and cheques - shall be Munich (Regional Court I). At RST's option, however, it remains entitled to assert claims

against the customer at the courts which have jurisdiction over the customer's place of residence, registered office or assets.

13.2 German law shall apply, excluding the convention of the United Nations on contracts concerning the international sale of goods dated 11.04.1980 (UNCITRAL / CISG).

13.3 If these conditions are translated into another language as the German language, the German version of these conditions shall prevail in case of any interpretation doubts.

#### **14. Severability**

Should individual provisions of a contract on supplies and services, of which these provisions are an integral part, be or become invalid, this will not affect the validity of the remaining provisions of the contract. RST will agree with the customer on a provision which fully or – if this is not legally possible – as far as possible complies with the economic intention of the invalid provision.