

# REISER SIMULATION AND TRAINING GMBH

## General Terms and Conditions of Purchase

### 1. Applicability/Area of Application

1.1 Only the following Terms and Conditions of Purchase shall be applicable for the delivery- and performance relationship between the supplier and Reiser Simulation and Training GmbH (hereinafter “RST”) (see also <http://reiser-st.com/gtc.html> ). Any deviating terms of the supplier or other deviating agreements shall only apply if they had been expressly agreed on or acknowledged by RST and the supplier. An acknowledgement does not include the reticence of RST or an uncontradicted acceptance of a service by RST or their payment by RST. If, apart from that, no provisions have been made in these general terms and conditions of purchase or the order of RST, the legal provisions shall apply in addition.

1.2 Orders by RST shall be made in writing, in electronic form or by telefax. An order by RST shall be regarded as an offer to the supplier to acquire the deliveries and services (“**Contractual Objects**”) under the conditions mentioned in the order. Every order can be revoked by RST at all times before the acceptance by the supplier. An order shall not be regarded as the acceptance of an offer of the supplier if not expressly declared in the order. A reference to the provisions of the supplier’s offer by RST in the order shall only apply if RST’s order and the provisions do not conflict these provisions of the supplier’s offer in any way.

1.3 An order by RST and these General Terms and Conditions of Purchase shall be deemed accepted by the supplier as a whole and without amendments if the supplier accepts an order pursuant to 1.2 in writing or by means of electronic data transfer or commences with the delivery of the scope of services which are part of the order. Every accepted order or every concluded agreement on the delivery of Contractual Objects shall be regarded as “**Supply Contract**” within the meaning of these provisions. The order information (Order number, article number, plan, etc.) of RST shall be mentioned in the written acceptance of an order and in all other documents in connection with the Supply Contract.

### 2. Scope of services/ Amendment of the Scope of Services/ Compliance with Regulations

2.1 The scope of services of the supplier result from the specification agreed on when concluding the Supply Contract and the performance specification, RST’s order as well as the General Terms and Conditions of Purchase.

2.2 The supplier shall examine all specifications, performance specifications and other information as well as all provisions and other materials provided for the performance of a Supply Contract regarding their suitability of the scope pursued by RST and RST’s end customer. If any deviations or corrections on the provided objects or the Contractual Objects are necessary or appropriate, the supplier shall immediately inform RST. RST shall then inform the supplier in writing if and which amendments the supplier shall make, if any. If the supplier is of the opinion that such amendments could lead to a change of the stipulated costs or the agreed deadlines, the supplier shall immediately inform RST. Appropriate provisions shall be made mutually regarding the effects of additional or reduced costs as well as the agreed deadlines; otherwise, they shall be deemed non-agreed.

2.3 The supplier shall ensure that all data and circumstances as well as the use of the delivery planned by RST required for the fulfillment of the contractual obligations are known in sufficient time. The supplier shall only be allowed to refer to the lack of required documents if the supplier requested them in time in writing, gave a written warning at least once and has not received them within a reasonable time. The supplier shall guarantee that the deliveries include all services necessary for a safe and economic use, that the services are suitable for the intended use and that they correspond to the latest status of science and technology. The supplier shall respect all relevant standards, laws and legal provisions under the applicable law (e.g. DIN, VDE, VDI etc.) when performing the services, especially relevant regulations on the environment, hazardous substances, dangerous goods and accident prevention, shall ensure the safety of the delivery chain pursuant to the relevant customs regulations as well as comply with the generally accepted safety-related regulations and the respective RST-standards.

2.4 RST may request from the supplier amendments of the Contractual Objects, especially with regard to construction and performance. The supplier shall be obliged to immediately examine the request for amendment on the basis of the contractual regulations and to inform RST of the result. If the supplier is of the opinion that such amendments could lead to a change in the prices of Contractual Objects or that agreed deadlines could not be met, the supplier shall immediately inform RST. Appropriate provisions shall be made mutually regarding the effects of additional or reduced costs as well as the agreed deadlines.

2.5 The supplier shall inform RST of the required official authorizations and reporting obligations for the introduction and the use of the Contractual Objects. The supplier is especially obliged to comply with the export control regulations pursuant to national, EU or US law, relevant at the time of delivery, and shall communicate them to RST in writing without request and including any required export control marking of the Contractual Objects, with the delivery at the latest. The relevant export control list and the position on it shall be named for any of the Contractual Objects or parts hereof affected by the export control. Moreover, the supplier shall support RST with the fulfillment of the applicable export regulations if requested.

### **3. Commissioning of Third Parties/Spare Parts**

3.1 The subcontracting of the scope of services of the Supply Contract to third parties by the supplier shall only be permitted after RST's written consent

3.2 The supplier shall ensure that it can provide RST with spare parts for a period of 10 years, beginning with the delivery of the Contractual Objects, unless a compatible or suitable part may be delivered due to technical progress.

### **4. Prices, Invoices and Payments**

4.1 Unless the invoices are issued per unit on the basis of negotiated hourly rates, the prices stipulated shall be fixed prices. If no other terms of payment have been agreed on, payment shall be made within 14 days after invoice date at 3 % discount or 30 calendar days after invoice date without discount. An invoice issued before the receipt of the services according to contract will not be accepted. If the date of delivery/service is after the invoice date, the date of delivery/service shall be used for the due date of payment. In case of the acceptance of earlier deliveries and ser-

vices, the due date is based on the agreed date of delivery and/or service. The due date normally begins with the receipt of the service according to contract and its acceptance as well as the presentation of a proper and verifiable invoice. Invoices shall include bank details, delivery address, supplier number, order number, part number, amount and unit price. The invoice shall also include all information required for an input tax deduction, especially but not limited to tax number or value added tax identification number, invoice number and other mandatory details of an invoice of the supplier pursuant to relevant legal provisions of applicable law; otherwise, no obligations fall due.

4.2 RST shall be entitled to any offset rights or rights of retention to the extent stipulated by law.

4.3 Without RST's consent, the supplier shall not be entitled to assign any claims against RST or to let them be collected by third parties. The supplier shall only be entitled to set off claims against RST or to claim a right of retention if and insofar the claims are uncontested or the supplier's counterclaim has been legally established.

### **5. Delivery Obligations and Legal Consequences of Delays**

5.1 The agreed delivery dates and delivery periods are binding and shall be fully complied with. Partial deliveries and early deliveries shall only be made after RST's prior consent.

5.2 If a delivery date is possibly not met, the supplier shall be obliged to immediately inform RST by indicating the reasons, include a proof and inform RST of the probable duration of the delay. This also applies to delays which the supplier is not responsible for, e.g. due to force majeure or non-culpable industrial disputes. The obligation for the compliance with agreed dates and periods shall not be cancelled by that.

5.3 If the supplier does not fulfill its notification obligation pursuant to sec. 5.2, it cannot claim that it is not liable for the delay.

5.4 If the agreed delivery dates or the delivery period are culpably not met by the supplier, RST shall be entitled to demand a lump sum of 0.25%, a maximum of 10%, of the total net order value for damages caused by delay for every day of the delay. RST shall be entitled to claim

and/or retain the lump sum until the final payment. Further claims of RST shall not be affected by this. If the supplier proves that the damage due to the non-compliance with the delivery date or the delivery period is non-existent or substantially lower than the lump sum owed pursuant to sentence 1, the lump sum shall be omitted or reduced correspondingly.

5.5 If the delivery date or the delivery period is exceeded due to any circumstances for which the supplier is not responsible, e.g. force majeure, RST shall be entitled to demand either the later fulfillment of the delivery obligations, without any special claims accruing for the supplier or withdraw from the contract after the end of an appropriate period without any delivery.

5.6 The supplier shall bear the risks of loss or deterioration of delivery objects which had been delivered before the actual delivery date. RST shall be entitled to return any excessive deliveries at the supplier's expenses. The supplier shall bear the risks of loss and deterioration of excessive deliveries.

## **6. Delivery Conditions/ Transfer of Ownership and Risk**

6.1 Delivery shall be made carriage and insurance paid to the destination ('CIP' in Incoterms 2010) unless otherwise agreed in writing. In case of delivery conditions other than 'CIP', the carrier/forwarder specified by RST shall be commissioned with the delivery.

6.2 The Contractual Objects shall be packed properly on the supplier's expenses, according to industry-standards and with due care. RST is entitled but not obliged to specify the suitable style and method of the packaging.

6.3 Every delivery shall include a delivery note in duplicate, enclosed by the supplier. The delivery note shall include order-, article- and supplier number.

6.4 RST shall not accept a simple or extended retention of title or other retentions of the supplier regarding RST's acquisition of ownership.

## **7. Certificates of origin, export restrictions**

7.1 Any certificates of origin demanded by RST shall include all required information by the supplier and shall be properly signed.

7.2 The supplier shall immediately inform RST if deliveries are partially or completely subject to export restrictions pursuant to German or other law.

7.3 The supplier shall inform RST if the export restrictions for the Contractual Objects change after delivery.

## **8. Inspection- and Notice of Non-Conformity**

8.1 The supplier acknowledges that a spot-check inspection of a representative part of the delivery is sufficient for RST to meet its inspection obligations of the Contractual Objects. The inspection shall be made within an appropriate period of time, insofar this is possible during the general and proper course of business. The inspection obligation includes the external condition of the Contractual Objects; however, there shall be no obligation for a functional test and an inspection of externally non-apparent quality features or measures. RST's inspection- and/or obligations to notify any non-conformity shall not apply before full delivery. The completeness of all documents enclosed to the Contractual Objects by the supplier shall be a condition for the acceptance of the ordinary delivery.

8.2 Any identified defects shall be notified to the supplier within 14 days. The same applies to any later identified defects.

## **9. Liability for Defects**

9.1 The supplier shall warrant that all delivered Contractual Objects

- a) comply with the specifications/ designs/ drawings and other requirements;
- b) are free of defects;
- c) correspond to usual market and industry quality;
- d) do not violate any third party rights when delivered or used;
- e) are suitable for the special purposes for which they are ordered.

9.2 If Contractual Objects do not comply with the aforementioned criteria („**Defective Contractual Objects**“), RST may demand from the supplier to either repair the Contractual Objects at its own risk and expense within an appropriate period of time or to replace them with non-defective Contractual Objects. If the supplier does not meet this obligation or in case of other special circum-

stances which require immediate action, RST may repair or replace the Contractual Objects itself or engage a third party to do so.

9.3 The supplier shall furthermore reimburse RST for all costs arising in connection with the repair or replacement of Defective Contractual Objects (including costs for transport, handling, assembly/disassembly, material and labor).

9.4 The warranty period shall be 24 months upon delivery. If a specific acceptance of the Contractual Objects is agreed on by RST and the supplier or if such an acceptance has to take place due to applicable law, the warranty period shall be 24 months upon mentioned acceptance. Any claims of RST arising within the warranty period become time-barred 6 months after the claim at the earliest, but not before the end of the agreed time bar.

9.5 RST's rights stipulated in clause 9 do not limit any other legal or contractual claims. Place of fulfillment of any warranty claims shall be the place in which the Contractual Objects are located.

## **10. Quality Management/ Environmental Protection**

10.1 The supplier shall at all times monitor the quality of its deliveries and services. The supplier shall maintain a quality management system, for this purpose and provide evidence to RST if required. Upon RST's request, the supplier shall be obliged to conclude a quality management agreement with RST.

10.2 The supplier shall prepare records, especially regarding the quality management and provide them to RST upon request. These records shall be visible at any time and be stored easy findable. The records shall be stored at least 10 years. The supplier herewith agrees to the conduction of audits for the assessment of the quality management system by RST or one of its representatives, with the participation of RST's client, if necessary.

10.3 During normal business hours and after prior written notification, representatives of RST as well as RST's clients and representatives of official authorities or their delegates shall have access to all business premises in which work is carried out for RST and its clients; they may inspect all documents relating to the contract. This access right shall especially be granted to all representatives of RST who are responsible for the progress monitoring at

the supplier and for all related execution of audits, investigations or for the qualification of the supplier.

10.4 The supplier ensures and warrants that it possesses comprehensive knowledge of the high standards regarding quality, safety and durability. The supplier undertakes to operate, maintain and develop a quality management system which corresponds to standards pursuant to DIN EN ISO 9000 or QS 9000.

10.5 The supplier shall assure and warrant not to use any illegal substances and materials. The supplier shall comply with all requirements regarding environmental and fire protection and occupational safety. The supplier shall be aware of the environmental impacts of its occupation; it shall comply with all respective applicable laws and legal standards relating to the compliance with environmental protection and occupational safety. If the requirements of the REACH Regulation or the ROHS Directive are not met, the supplier shall communicate this for every individual product before the acceptance of an order.

10.6 The supplier is obliged to immediately inform RST of any Defective Contractual Objects which are set to be delivered and/or which had already been delivered with defects. The client shall immediately lock any Defective Contractual Objects which occur or occurred and shall get RST's and/or its clients' approval.

## **11. Provisions**

11.1 All provisions of RST, especially but not limited to documents, models, materials, equipment, components, means of production, packaging, tools, measuring instruments, devices, patterns or other, partially loaned, consigned objects which are located with the supplier ("Provisions"), are not or shall not become the supplier's property but remain in RST's ownership unless expressly agreed otherwise. The supplier shall use the Provisions only for the production of the Contractual Objects and not use it for other purposes without RST's prior written consent or permit such use to third parties. Scrapping also requires RST's prior written consent.

11.2 Provisions shall be clearly marked as RST's property and shall be stored for RST free of charge, safely and away from other objects with the care of a diligent businessman. The supplier shall treat the Provisions carefully and properly, keep them in good condition at its own expense (care, maintenance partial replacement etc.), re-

place them if necessary and hold RST harmless regarding any claims, costs and damages resulting from assembly, use, storage, the maintenance/care or repair of the Provisions or relating thereto. The supplier shall bear the risk for Provisions as long as they are under its supervision or control. The supplier shall be obliged to insure the Provisions against all appropriate risks (“**all risk**”) at its own expense and in the amount of the replacement value. The supplier herewith assigns its claims against the insurance company to RST. RST herewith accepts this assignment.

11.3 During normal business hours, RST or a third party designated by RST shall have right of access to the supplier to inspect the Provisions and all relating documents.

11.4 RST shall have the right to remove the Provisions at any time without any specific cause or to demand their handover. Upon RST’s request, the supplier shall immediately hand over the Provisions to RST, prepare them for shipping and deliver them to RST against remuneration of the appropriate transport costs. The supplier shall possess no rights of retention or lien with regard to the Provisions.

## **12. Non-Disclosure**

12.1 The supplier shall keep all drafts, patterns, means of production, models, data carriers, prototypes, illustrations, drawings, calculations, discoveries and other documents and all included information (“**Documents**”) secret, keep them inaccessible to third parties without RST’s prior written consent and not use them for other purposes than the ones expressly intended by RST. This correspondingly applies to any copies of the Documents. This does not apply to documents which were justifiably known to the supplier on receipt and without any corresponding obligation or which become justifiably known expressly without any obligation for confidentiality, are or become generally known without any violation of a non-disclosure agreement or for which the supplier received a respective written permission. Apart from that, the provisions of a possible non-disclosure agreement between the parties apply.

The supplier shall also engage subcontractors pursuant to this regulation.

12.2 RST reserves the ownership and all other rights in all documents provided by RST, no matter if registrable or not. The documents shall only be reproduced after prior written consent of RST. All copies shall become property of RST upon their production.

12.3 All documents by RST (including copies and records) shall be immediately and completely returned to RST upon request or at the end of the contract at the latest or shall be destroyed upon RST’s request. The supplier shall possess no rights of retention or lien with regard to the documents and information.

12.4 Contractual Objects, manufactured pursuant to documents by or on behalf of RST or such or pursuant to information marked as confidential, shall only be used by the supplier for the purpose stipulated in the contract; they are especially not allowed to be offered or delivered to third parties.

## **13. Advertisement of the Supplier**

The supplier shall only be allowed to name, picture or otherwise use any of RST’s trademarks, the commissioning, the project or the company of RST or RST’s client in the course of any advertisements, the submission of references or other publications after the prior written consent of RST.

## **14. Intellectual Property Rights**

14.1 The supplier shall advocate that the contractual use of the Contractual Objects does not violate any third party rights. The supplier is aware of the intended use of the Contractual Objects by RST. The supplier shall inform RST if it notices that the use of its deliveries and services leads to an use of any external intellectual property application or any property rights and shall make available to RST free of charge either the right to use the Contractual Objects according to the contract or to change them in such a way, that the violation of intellectual property rights is omitted but the Contractual Objects are nevertheless in accordance with the contract. If the supplier violates these obligations culpably, the supplier shall free RST from all claims third parties assert due to the infringement of the intellectual property rights.

14.2 The limitation period for the claims pursuant to sec. 14.1 is 10 years upon delivery to RST.

14.3 The supplier shall inform RST of the use of published and non-published own or licensed intellectual property rights and intellectual property applications regarding the delivery objects.

## **15. Product Liability**

The supplier shall undertake to precisely inspect the Contractual Objects for defects and to take any action to avoid defects/mistakes which could cause product liability. If RST is made liable by a third party due to the defectiveness of a Contractual Object, RST may demand the release from any third party claims instead of being compensated for defects. This obligation of the supplier also includes the costs of a precautionary recall for damage payment, if necessary. The supplier is obliged to insure corresponding risks.

## **16. Liability / Insurance**

16.1 The supplier undertakes to provide an appropriate insurance cover standard to the industry, especially but not limited to personal- and material damages and financial loss, regarding both, purpose and value and to maintain it. The supplier shall present respective confirmations of insurance to RST upon request.

16.2 If any of the supplier's services include work carried out on the business premises of RST or of one of RST's customers, the supplier shall take all necessary precautions for the avoidance of personal and material damages and shall especially comply with the provisions of the respective work regulations. The supplier shall compensate and release RST from all damages, costs and expenses arising from the supplier's activity on the mentioned business premises if the supplier is responsible.

16.3 The supplier shall be liable for its representatives or subcontractors in the same way as for own negligence.

## **17. Compliance**

17.1 RST and the supplier are committed to a corruption-free business. They undertake to refrain from any corrupt behaviors and other illegal actions and take all measures for their prevention.

17.2 The breach of any party against the obligations in sec. 17.1 shall entitle the other contractual party to extraordinarily terminate the contract.

## **18. Applicable Law, Place of Jurisdiction and Place of Performance**

18.1 The law of the Federal State of Germany under exclusion of the conflict of laws and the United Nations Convention on the International Sale of Goods (CISG) shall apply for the conclusion of the delivery contract, its validity, termination, interpretation, implementation and any legal dispute regarding this. The INCOTERMS 2010 shall apply for the interpretation of the delivery terms.

18.2 Exclusive place of jurisdiction for all disputes resulting from or in connection with the delivery contract between RST and the supplier shall be Munich. However, RST is entitled to initiate legal proceedings against the supplier at its general place of jurisdiction.

18.3 Any change and amendment of these General Terms and Conditions of Purchase as well as any collateral agreements require the written form. This also applies to this written form requirement.

18.4 If one of the aforementioned regulations becomes partially or completely void, invalid or legal ineffective for any reason the other provisions remain unaffected. In this case, the parties shall be obliged to replace the ineffective provision with an effective one which comes closest to the economic result. The same applies in case of a loophole.