

## General Terms of Delivery RISC Software GmbH 26<sup>th</sup> of June 2017

### 1. Scope

- 1.1. These General Terms shall govern all legal transactions between **RISC Software GmbH (referred to as "RISC")** and the ordering party. Any deviation from these Terms of Delivery shall be valid only if expressly accepted in written form by RISC.
- 1.2. General Terms of the ordering party are not binding for RISC.

### 2. Offers

- 2.1. Offers of RISC are binding on the basis of these General Terms of Delivery within 14 days.
- 2.2. RISC provides his services / performances with the diligence of a prudent business person. RISC undertakes to use its best efforts but accepts no liability for a special result.
- 2.3. Design documents such as plans and drawings and other technical specifications as well as samples, catalogues, prospectuses, pictures and the like shall remain the intellectual property of RISC and are subject to the relevant statutory provisions governing reproduction, imitation, competition etc. Any documents must not be duplicated.
- 2.4. RISC is entitled to reclaim any documents given to the ordering party, at any time, especially in the case that a contract between RISC and the ordering party is not concluded.

### 3. Conclusion of contract

- 3.1. The contract shall be deemed concluded upon written confirmation by RISC of an order by the ordering party on the basis of the offer by RISC or upon dispatch of a delivery by RISC on the basis of the offer and the order.
- 3.2. Any amendments and changes in the confirmation of an order by RISC with regard to the order will be accepted by the ordering party, unless the ordering party contradicts to these changes without delay and immediately.
- 3.3. Any information appearing in catalogues, folders etc. as well as any oral or written statements shall only be binding if RISC makes express reference to them in the confirmation of the order.

- 3.4. All modifications and amendments of or additions to the contract or the General Terms, including this clause, shall only be effective if made in written form.
- 3.5. Any side-agreements, statements of intention or any other circumstances of legal relevance made or having occurred before or at the conclusion of an agreement on the basis of this General Terms lose any and all effect, unless RISC accepts such statements in written form.
- 3.6. RISC shall be at liberty to subcontract or assign parts of the completion of the order to third parties.
- 3.7. Employees of RISC are not empowered to give legally binding declarations or statements.

### 4. Duties of the ordering party

- 4.1. The ordering party has to provide RISC all documents which are relevant or necessary for the completion of the order.
- 4.2. The ordering party guarantees, that all documents given to RISC are free from third parties rights; the ordering party agrees to indemnify and hold RISC harmless in respect of legal proceedings and claims/liabilities resulting from a violation of third parties rights. If such claims are raised, the ordering party guarantees to inform RISC immediately.
- 4.3. The ordering party shall ensure compliance with all relevant statutory and official regulations and obtain regulatory approval at his risk and expense; the ordering party agrees to indemnify and hold RISC harmless concerning this matter.

### 5. Prices

- 5.1. Prices shall be quoted ex works or ex RISC's warehouse excluding packing and packaging, loading and VAT. Transport costs as well as the cost of any transport insurance desired by ordering party shall be borne by the latter. The ordering party shall be liable for any and all charges, taxes or other costs levied in respect of delivery. Delivery does not, however, include unloading and subsequent handling. Packaging materials will be taken back only by express agreement.

5.2. RISC reserves the right to modify prices if the order placed is not in accordance with the offer submitted.

5.3. Prices are based on costs obtaining at the time of the first quotation. In the event that the costs have increased by the time of delivery, RISC shall have the right to adjust prices accordingly.

5.4. Expenses for travel and accommodation shall be invoiced to the ordering party separately; times for travelling are considered as working hours.

## 6. Delivery

6.1. RISC uses its best efforts to fulfil the agreed time limits.

6.2. RISC is only liable for delay, if the ordering party has provided RISC the relevant and accurate documents and information. For all delays caused by inaccurate and wrong or insufficient information or by breach of duty to disclose information, RISC has no liability. Any additional costs caused by such negligence have to be borne by the ordering party.

6.3. The ordering party is reliable for any delay resulting from a breach of point 4.3.

6.4. In case of unforeseeable circumstances or circumstances beyond the parties control, such as all cases of force majeure, which impede compliance within the agreed period of delivery, the period of delivery shall be extended in any case for the duration of such circumstances; these include in particular armed conflicts, official interventions and prohibitions, delays in transport or customs clearance, damages in transit, energy shortage and raw materials scarcity, labour disputes, and default on performance by a major component RISC who is difficult to replace. The aforesaid circumstances shall be deemed to prevail irrespective of whether they affect RISC or his subcontractor(s).

6.5. In the case that circumstances set out in point 6.3 and 6.4 happen, the parties shall immediately inform each other in written form.

6.6. If circumstances beyond the control of RISC (point 6.4) are continuing in time, RISC is allowed to terminate the agreement without grace period and to the exclusion of warranty claims, claims for damages and voidability for mistake.

6.7. RISC may carry out part-delivery and invoice partial deliveries.

6.8. Transport is carried out at the cost and risk of the ordering party. Transport insurance only takes

place on explicit request of the ordering party.

6.9. The ordering party shall take care that any exportation complies with the customs regulations. The ordering party shall indemnify RISC for all breaches of custom regulations.

6.10. The period allowed for delivery shall commence at the latest of the following dates:

- a) the date of the order confirmation by RISC
- b) the date of fulfilment of all conditions, technical, commercial and other requirements by the ordering party for which he is responsible
- c) the date of receipt of a deposit or security which is due before delivery by RISC.

6.11. In the case of a delay by the ordering party RISC is entitled to suspend the services as long as the delay continues; the period of delivery shall be extended for the duration of the delay. If the delay of the ordering party affects the processing of other projects of RISC, RISC is entitled to finish these other projects first. The ordering party has no consequential claims.

## 7. Receiving of delivery

The ordering party shall not refuse acceptance of the delivered goods or the provided service/performance due to minor defects which do not affect the overall performance. It is a major defect, if no part of the good/service can be used.

## 8. Risk and Place of performance

8.1. The assumption of the risk to the ordering party takes place at the time of departure of the goods ex works or ex warehouse. With regard to services, the assumption of the risk to the ordering party takes place at the time the services have been rendered.

8.2. The place of performance is the registered seat of RISC.

## 9. Assembly and erection / completion / acceptance

Unless otherwise agreed in written form, assembly/erection/completion/acceptance shall be subject to the following provisions:

9.1. The ordering party shall provide at its own expense and in time:

- a) all extra work outside the scope of RISC, including the necessary skilled and unskilled labour, to ensure the problem-free service provision through RISC,
- b) other materials and utensils necessary for the provision of the service/performance,
- c) Energy (electric power, gas, compressed air etc.) and water at the point of use including electric connections as well as other circuit points and sufficient lighting,
- 9.2. If assembly, erection or completion of the provision of the service/performance is delayed due to circumstances for which RISC is not responsible, the ordering party shall bear the reasonable costs incurred for idle times and any additional travelling of RISC or the erection personnel.
- 9.3. The ordering party has to accept the provided service/performance within a period of two weeks after completion of the agreed (partial) service/performance. Detected material defects or errors have to be reported in written form by the ordering party just immediately, but not later than within two weeks after completion; otherwise acceptance is deemed to have been effected. Acceptance is also deemed to have been effected, if the service is put to use or after completion of an agreed test phase. The service / performance is completed by the time RISC has executed the order or after completion of a test phase. Acceptance is also deemed to have been effected when there is a final report or a final presentation by RISC. Concerning personal services and trainings/instructions acceptance is deemed to have been effected directly after the provision. Acceptance of an agreed (partial) service cannot be refused due to minor defects.
- ## 10. Payment
- 10.1. Unless otherwise agreed, 30 % of the purchase price shall become due at the time the ordering party receives the order confirmation of RISC, 20 % after half the delivery period has elapsed and the balance at the time of completion.
- 10.2. In the case of invoice for partial delivery the individual part payments shall become due upon receipt of the respective invoices. The same shall apply to amounts invoiced for additional deliveries or resulting from additional agreements beyond the scope of the original contract, irrespective of the terms of payment agreed upon for the principal delivery.
- 10.3. Payments shall be made without any deductions and free of transaction charges to RISC's designated account in the agreed currency.
- 10.4. The ordering party shall not be entitled to withhold or offset payments.
- 10.5. Payment shall be deemed to have been effected on the date at which the amount in question is at RISC's disposal.
- 10.6. If the ordering party is in default with payments or any other obligation arising from this or other transactions, RISC may without prejudice to his other rights
- a) suspend performance of his own obligations until payments have been made or other obligations fulfilled, and exercise his right to extend the period of delivery to a reasonable extent or/and
- b) declare due all debts arisen from this or any other transactions and charge default interest of 1.25 % per month plus turnover tax for these amounts beginning with the due dates, unless RISC proves costs exceeding this or/and
- c) in any case RISC has the right to invoice all expenses arising prior to a lawsuit, especially reminder fees and lawyer's fees.
- ## 11. Industrial property rights
- 11.1. The ordering party shall use all documents and information provided by RISC only with regard to the relevant project and shall inform RISC about such usages.
- 11.2. All property and industrial property rights as to design documents, computer programs, drawings, technical specifications as well as samples, catalogues, prospectuses, pictures, inventions, know-how and the like shall remain with RISC.
- 11.3. The ordering party receives a license to use the relevant copyrighted works or other relevant results produced by RISC if all payments agreed are paid in due time. The license in favour of the ordering party comprises only these rights which are necessary with regard to the relevant agreement and inevitably for the ordering party. RISC do not convey rights which go beyond the relevant subject matter of the contract.
- 11.4. Documents and information produced by RISC under this General Terms and the relevant contract

must not be used in advertising, unless RISC has consented in written form.

## 12. Secrecy and data protection

RISC shall not disclose any business secrets, which he may learn as a result of its activity under the agreement based on these General Terms, to third parties unless the ordering party give written consent to such a disclosure or a disclosure is legally compulsory. RISC takes the necessary technical and organizational measures to comply with data privacy regulations regarding the secrecy of personal data of third parties and supports the ordering party, who is responsible for data protection in this regard.

## 13. Warranty

13.1. RISC gives no warranty/guarantee as to the achievement of special R&D-results, unless otherwise agreed in written form.

13.2. RISC shall fulfil warranty claims within a reasonable time.

13.3. The ordering party has to prove a defect – the shift in the burden of proof in favour of the ordering party is excluded.

13.4. The warranty claim presupposes that the ordering party immediately notifies the detected defects in written form.

13.5. Any expenses incurred in connection with rectification of defects (e.g. expenses for assembly and disassembly, transport, waste disposal, travel and site-to-quarters time) shall be borne by the ordering party. For warranty work on the ordering party's premises, the ordering party shall make available advance performance free of charge.

13.6. If an article is manufactured by RISC on the basis of design data, design drawings, models or other specifications supplied by the ordering party, RISC's warranty shall be restricted to non-compliance with the ordering party's specifications.

13.7. RISC's warranty obligation shall not extend to any defects due to assembly and installation work not undertaken by RISC, inadequate equipment, or due to non-compliance with installation requirements and operating conditions, overloading of parts in excess of the design values stipulated by RISC, negligent or faulty handling or the use of inappropriate materials, nor for defects attributable to material supplied by the ordering party. Nor shall RISC be liable for damage due to acts of third parties, atmospheric discharges, excess voltage

and chemical influences. The warranty does not cover the replacement of parts subject to natural wear and tear. RISC accepts no warranty for the sale of used goods.

13.8. The warranty shall lapse immediately if, without written consent of RISC, the ordering party himself or a third party not expressly authorised modifies or repairs any items delivered or services / performances provided.

13.9. The provisions of points 13.2 to 13.8 shall apply, mutatis mutandis, to all cases where the obligation to repair defects has to be accepted, irrespective of legal basis.

13.10. The warranty period shall be six months and starts with the acceptance of the service/performance. RISC has the choice between improvement and exchange RISC has the right to give a reduction of price, if the defect is minor.

## 14. Liability

14.1. Outside the scope of the Product Liability Act, RISC shall be liable only if the damage in question is proved to be due to intentional acts or acts of gross negligence, within the limits of statutory provisions. RISC shall not be liable for damage due to acts of ordinary negligence nor for consequential damages or damages for economic losses, loss of savings or interest or damage resulting from third-party claims against the ordering party.

14.2. If RISC uses commercialized software and computer programs in order to fulfil its contractual duties, RISC shall not be liable for damages caused by the usage of such software or computer programs as well as consequential damages etc (point 14.1).

14.3. RISC shall not be liable for damages in case of non-compliance with instructions for assembly, commissioning and operation (such as are contained in instructions for use) or non-compliance with licensing requirements or non-compliance with legal regulations.

## 15. Termination and early termination

15.1. Service/performance of RISC is terminated after acceptance of the service / performance by the ordering party, after the final report or a final presentation by RISC, or, concerning personal services and trainings/instructions, directly after the provision. Subsequent improvements have to be offered or agreed separately in written form.

15.2. A cancellation of the agreement without written consent of RISC is not possible. In the case of such a written consent RISC may claim in any case at least payment for the delivered parts and 30 % of the rest of the entire order as cancellation fee.

15.3. RISC is entitled to terminate the contract especially for the following important reasons, without grace period:

- a) if insolvency proceedings are instituted with respect to the assets of the ordering party, or if a petition for opening such proceedings is rejected because of lack of sufficient assets to cover the costs of the proceedings, or if the conditions for the institution of such proceedings, or the dismissal of such a petition are met, or if the ordering party suspends his payments;
- b) If the ordering party is in default of payment despite qualified reminder by RISC (announced cancellation and granting grace period) and the default does not concern a minor scope of services;
- c) if the ordering party ceases the necessary cooperation for fulfilling the contractual duties or is not able to provide RISC with necessary information/documents, despite announced cancellation and granting an adequate period of grace in written form;
- d) if the ordering party early terminates the contract without important reasons and/or wantonly;
- e) if the ordering party breaches his obligations regarding secrecy or poaching (point 16) or attacks the intellectual property of RISC;
- f) if the ordering party violates terms of the contract or rules of conduct, which makes further cooperation impossible for RISC, for example frustrate the service-providing or discriminating or insulting behaviour against employees of RISC.

## 16. Loyalty

The parties promise mutual loyalty. The parties shall not mutually poach employees during the duration of the relevant agreement plus 12 month after termination. In the case of violating this obligation the violator shall pay a penalty of one annual gross income of the poached employee to the other party, independent of any fault and not subject to any reduction by the court. The

replacement of any further damages shall remain unaffected.

## 17. Error / Waiver of Challenge / Laesio enormis

The ordering party knows the services / performances and qualities of RISC.

To the extent permitted by mandatory law, the ordering party waives his right to challenge the contract, to demand its modification or to claim that the contract was not concluded validly or is null and void.

Claims for Laesio are excluded.

## 18. Retention of Title

The goods remain RISC's property until full payment (including cost and interest). Before the payment, the goods may not be pledged or transferred by way of security.

No retention of title of third parties or ordering parties is accepted by RISC.

The ordering party hereby assigns to RISC his claim against his ordering party arising from resale, together with all ancillary rights and no special declarations shall be required at later date. The ordering party shall mark this assignment in his books and inform the purchaser on request by RISC about the assignment. Even in the case that the goods are separable, the retention of title in favour of RISC remains on the entire order.

## 19. Information via Email

The ordering party approves, that RISC sends newsletters and other information about RISC (advertising and product information) to the ordering party. The ordering party is able to revoke his approval at any time.

## 20. Severability clause

Should any provision of the contract be or become illegal or unenforceable, the remainder of the contract shall not be affected. These provisions are automatically replaced by valid and enforceable provisions which achieve the intended economic effect as closely as possible.

## 21. Final provisions

All legal issues arising out of or in connection with the contract and its pre- and post-contractual effects, are governed by the laws of Austria. The application of the UNCITRAL-Rules is renounced.

Any disputes concerning the contract including the issue

of its valid conclusion and its pre- and post-contractual effects are exclusively decided by the competent court in Linz, Austria.

A statement or declaration is in written form under these General Terms if it is sent via email. The receipt of the email follows the regulation under § 12 E-Commerce Act.