

Rheinmetall Air Defence AG general terms and conditions for orders

for the procurement of goods and services

<p>A</p> <p>1</p> <p>1.1</p> <p>(a)</p> <p>(b)</p> <p>1.2</p> <p>1.3</p> <p>2</p> <p>2.1</p> <p>2.2</p> <p>2.3</p> <p>B.</p> <p>3</p> <p>3.1</p> <p>3.2</p> <p>3.3</p> <p>3.4</p> <p>3.5</p> <p>3.6</p> <p>3.7</p> <p>4</p> <p>4.1</p> <p>4.2</p> <p>4.3</p>	<p>SCOPE OF APPLICATION, CONCLUSION OF CONTRACT</p> <p>Scope of application</p> <p>These Rheinmetall Air Defence AG (hereinafter RAD) general terms and conditions for orders shall govern the conclusion, content and performance of contracts regarding:</p> <p>the procurement of goods and services, particularly in the areas of consulting, support and training (not including construction services).</p> <p>These general terms and conditions for orders shall apply alongside the order from RAD.</p> <p>The application of general terms and conditions of the contractor (such as general terms and conditions of supply) is precluded.</p> <p>Conclusion of contract</p> <p>The contractor shall confirm each order from RAD immediately (confirmation of order).</p> <p>The contract shall come into effect upon receipt by RAD of a confirmation of order conforming to the order.</p> <p>If RAD does not receive a confirmation of order conforming to the order within 10 days of the contractor's receipt of the order, RAD shall no longer be bound by such order.</p> <p>PROCUREMENT OF GOODS</p> <p>Delivery and shipping</p> <p>The goods shall be delivered in compliance with the agreed trade clause, which shall be construed in accordance with the ICC Incoterms[®], as applicable at the time of concluding the contract.</p> <p>Except where otherwise agreed, delivery shall be CPT works at Birchstrasse 155, 8050 Zurich, Switzerland.</p> <p>RAD's order reference must be stated on all shipping documents and correspondence.</p> <p>The terms of the agreed trade clause shall apply with respect to the bearing of responsibility and costs etc. for official permits such as, in particular, export, transit and import permits, as well as customs formalities. The same shall apply with respect to transport and insurance.</p> <p>The contractor shall bear all risks of loss and damage in respect of the goods until their delivery to RAD in conformity with the agreement.</p> <p>RAD is not required to accept partial or excess deliveries.</p> <p>The contractor shall ensure at its own expense that the packaging used is suitable for transporting the goods. If the packaging has been designated as belonging to contractor, the latter is required to take it back at its own expense.</p> <p>Delivery period</p> <p>The contractor shall comply with agreed delivery dates and delivery periods.</p> <p>RAD must be notified immediately of any delivery delays, stating the reasons for and duration of such delays.</p> <p>In the event of delivery delays for which the contractor or its suppliers are responsible, for each full or partial calendar week of the delay RAD shall be entitled to claim a contractual penalty equal to 2%, but not exceeding a total of 10%, of the price of the delayed portion of the delivery. The penalty shall also</p>	<p>be due if RAD accepts the delivery concerned without reservation and RAD does not incur any damage as a result of the delay. If the damage exceeds the penalty amount, RAD may also claim the additional amount unless the contractor proves that it is not at fault.</p> <p>In the event of late delivery, the contractor shall be in default without any further notice. In this case, RAD shall be entitled to exercise its statutory rights. The right to delivery of the goods shall cease to apply only if RAD claims compensation on grounds of non-performance or withdraws from the contract. Unreserved acceptance of the delayed delivery shall not constitute a waiver of claims for compensation.</p> <p>Prices and payment terms</p> <p>The prices listed in the order are fixed prices that shall continue to apply even in case of changes to the price bases. They shall cover all the services necessary for proper performance of the contract.</p> <p>Invoices must show the value-added tax separately and be clearly laid out. They must display RAD's order reference. Invoices that have not been properly drawn up will be returned.</p> <p>Payment shall be made in the customary commercial manner within 60 days after delivery of the goods and receipt of the invoice by RAD, but at the earliest within 60 days after the agreed delivery date. In the case of payment within 14 days, the supplier shall grant a discount of at least 3%; in the case of payment within 30 days, the supplier shall grant a discount of at least 2%.</p> <p>In the case of a defective or incomplete delivery, RAD may withhold the entire payment until proper performance of the contract, without any loss of discounts or other payment benefits.</p> <p>Warranty</p> <p>The contractor shall be liable for the qualities of the goods that are guaranteed or otherwise agreed upon as well as for the absence of any physical or legal defects that cancel or reduce the value of the goods or their suitability for the intended use. It shall be liable without regard to the cause of the defect and irrespective of fault. If the parties are in dispute as to whether a defect exists, the burden of proof shall lie with the contractor.</p> <p>If a warranty claim is made in respect of defects in the goods, in addition to the statutory rights to a price reduction or rescission of the contract RAD shall be entitled at its option to demand rectification of the defect free of charge at the location of the goods or delivery of defect-free replacement goods at no charge. In urgent cases, RAD may arrange for such rectification or replacement delivery to be carried out by a third party or carry them out itself at the expense of the contractor. The contractor shall bear all costs associated with the rectification and replacement delivery. If a defect has caused damage, RAD shall be entitled to claim compensation in addition to and separately from the aforementioned rights relating to defects and irrespective of fault.</p> <p>A warranty period of two years, calculated from the date of delivery, shall apply with regard to all rights relating to defects. All types of complaint can be raised at any time within this period, during which a breach of statutory time limits for inspection or raising a complaint cannot be cited in opposition to RAD. The contractor shall be liable for any defects RAD raises during the warranty period. The contractor shall be liable for replacement deliveries and rectification work to the same extent as for the original delivery; the warranty period shall commence anew on the date of the replacement delivery or acceptance.</p> <p>If similar defects arise in more than 5% of the delivery (serial faults), RAD shall be entitled to reject</p>	<p>the entire delivery and to assert the aforementioned rights relating to defects in relation to them.</p> <p>6.5 Rights relating to defects (such as rescission, price reduction, rectification, replacement delivery and compensation) shall become statute-barred one year after expiry of the warranty period.</p> <p>7 Product liability</p> <p>7.1 The contractor shall fully indemnify RAD and hold it harmless against any third-party claims relating to product liability, provided these are attributable to a defect in the delivered goods.</p> <p>7.2 The damage to be indemnified by the contractor shall also include the costs of a precautionary recall campaign by RAD, provided this is attributable to a defect in the delivered goods. In so far as is reasonable, RAD shall inform the contractor of the content and extent of any recall campaigns that are to be carried out and grant it an opportunity to state its opinion.</p> <p>8 Intellectual property</p> <p>8.1 The contractor shall guarantee that the delivered goods and their use by RAD or its customers for the intended purpose do not infringe any patents, copyrights or other intellectual property rights of third parties. It shall fully indemnify RAD and its customers and hold them harmless against any third-party claims resulting from any such infringement.</p> <p>8.2 All rights to the documents and other data provided by RAD shall remain with RAD. The contractor is not entitled to use such documents or other data for any purpose other than performing the contract with RAD without the prior consent of RAD. In particular, it may not use such documents or other data for third-party orders or other purposes of its own or of third parties. After the contract has ended the contractor shall hand the documents and other data provided over to RAD at first request. Any right to retain such documents and data is precluded.</p> <p>9 Production means</p> <p>9.1 Production means (e.g. tools, devices, models, templates) provided by or fully or partially paid for by RAD shall be the property of RAD and must be labelled as such.</p> <p>9.2 Production means as per section 9.1 above may be used exclusively for executing orders from RAD. The contractor is not permitted, in particular, to make such production means accessible to third parties or to copy or destroy them without the prior consent of RAD.</p> <p>9.3 The production means as per section 9.1 must be handed over to RAD on request. Any right to retain production means is precluded. Until the production means have been handed over to RAD, the contractor shall bear the risk of loss and damage, but not the risk of normal wear and tear. It is required to insure the production means against these risks at its own expense.</p> <p>10 Right of termination by RAD</p> <p>10.1 RAD is entitled to terminate the contract in whole or in part at any time without giving reasons.</p> <p>10.2 In the event of termination, RAD shall inform the contractor whether work must be completed and, if applicable, what work is to be completed. The contractor is required to carry out such work in accordance with the terms of the terminated contract.</p> <p>10.3 The contractor shall terminate the subcontracts concluded on the basis of the contract concerned immediately with due regard for the interests of RAD. In the case of subcontracts with a right of termination, endeavours must be made to terminate the subcontract before the next termination date where this achieves a cost saving for RAD.</p>
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10.4 The contractor shall be entitled to the following residual payment after such a termination:

- (a) the agreed price for the finished contractual goods;
- (b) reimbursement of the reasonable total production costs for semi-finished and processed parts plus a profit rate of 5%;
- (c) reimbursement of all other costs incurred due to the contract and not covered under letters a and b above.

10.5 Compensation for lost profits is precluded.

10.6 The total payments to be made under the contract, including the residual payment, may not exceed the amount that would have been due to the contractor had the contract been performed and not terminated.

10.7 The contractor must prove all facts on which the claims asserted in relation to the residual payment are based.

10.8 RAD is required to make payment in respect of those objects and rights for whose costs the contractor is to be reimbursed only to the extent that the contractor assigns or transfers such objects and rights to it free of third-party rights.

C AGENCY CONTRACTS FOR SERVICES

11 General

11.1 Article 394 et seq. of the Swiss Code of Obligations (OR) regarding simple agency contracts shall apply to agency contracts for services.

11.2 In all other respects the following provisions shall apply.

12 Execution

12.1 The contractor undertakes to perform the contract in a diligent, compliant and competent manner. It shall guarantee that its services conform to the agreed terms and conditions and specifications.

12.2 The contractor is not authorised to enter into legal transactions on behalf of RAD or to obligate RAD in any other way without written authorisation.

12.3 The contractor shall only use carefully selected and well-trained employees who possess the required permits. At RAD's request it shall within a reasonable period replace any employees who do not have the required specialist knowledge or could otherwise adversely affect or jeopardise performance of the contract. The employees used may only be replaced with the prior written agreement of RAD.

12.4 The contractor may only enlist third parties (e.g. subcontractors, substitutes) to perform its services with the prior written agreement of RAD. It shall remain responsible for ensuring any third parties perform the services in conformity with the contract.

12.5 The contractor is required to comply with RAD's instructions when performing the contract.

12.6 The contractor shall provide RAD with a written account of its ongoing activities in connection with performance of the contract upon request at any time.

13 Time and place of performance

13.1 The contractor shall comply with agreed time limits and deadlines. RAD must be notified immediately of any delays, stating the reasons for and duration of such delays. A contractual penalty for non-compliance with the performance period shall be due only where such penalty has been agreed by contract.

13.2 Except where otherwise agreed, the place of performance shall be Birchstrasse 155, 8050 Zurich, Switzerland.

14 Documents and working materials

14.1 The contractor shall surrender to RAD at first request all documents and other data it has prepared while performing the contract.

14.2 Section 8.2 shall apply accordingly with respect to all documents and other data that RAD may provide to the contractor.

14.3 Section 9 (Production means) shall apply accordingly with respect to any working materials that may be provided to the contractor.

15 Remuneration, expenses

15.1 The contractor shall perform the services under the contractually agreed terms:

- (a) on a time and materials basis;
- (b) on a time and materials basis with an upper limit on remuneration (cost ceiling); or
- (c) at fixed prices.

15.2 The agreed remuneration shall cover all the services necessary for proper performance of the contract. Except where otherwise agreed, the contractor is not entitled to any reimbursement of its expenses and expenditures in addition to the agreed remuneration.

15.3 The contractor shall invoice in accordance with the agreed payment plan. Where no payment plan is agreed, payment shall be made in the customary commercial manner within 60 days after performance of the agreed services and receipt of the invoice by RAD. Section 5.2 shall apply accordingly to invoicing.

16 Intellectual property rights to work results

16.1 The contractor hereby transfers to RAD all rights to work results created in connection with performance of the contract. It shall, at its own expense, take all appropriate measures to ensure that ownership of the work results passes to RAD.

16.2 The contractor shall refrain from exercising non-transferable personal rights.

16.3 All rights to work results forming the subject matter of the contract and not created in connection with performance of the contract (pre-existing work results) shall remain with the contractor. The contractor hereby grants RAD a non-exclusive, irrevocable right of use that is unrestricted in terms of time, geography and subject matter. This shall include all current and future types of use, the right to sublicense and assign as well as the right to process.

17 Social insurance institutions

17.1 If the contractor uses employees, it shall register itself and its employees with the social insurance institutions.

17.2 Any self-employed persons it engages must provide evidence of registration with a social security office (Ausgleichskasse).

18 Termination

18.1 The agency contract for services may be terminated by either party at any time (Article 404 (1) OR).

18.2 If the agency contract for services is terminated at an inopportune juncture, the party giving notice of termination is required to compensate the other party for the damage incurred as a result (Article 404 (2) OR). Compensation for lost profits is precluded.

D COMMON PROVISIONS

19 Secrecy

19.1 The contractor undertakes to maintain secrecy with respect to all technical and commercial information (particularly manufacturing and business secrets) that it receives from RAD directly or indirectly in verbal, written or any other form. It may not make such information accessible to third parties in any

way, either directly or indirectly.

19.2 The contractor's own employees and other auxiliary persons who need information in order to perform the contract with RAD shall not be deemed third parties within the meaning of section 19.1. However, the contractor shall impose the duty to maintain secrecy on employees and other auxiliary persons by contract.

19.3 The duty to maintain secrecy shall not apply to information that (i) was already available to the contractor at the time of receipt without any duty to maintain secrecy, (ii) was already publicly accessible at that time or became publicly accessible at a later time without breach of this agreement, (iii) was legitimately handed over to the contractor by a third party or (iv) was released by RAD by means of a written declaration.

19.4 The duty to maintain secrecy shall continue to apply after the contractual relationship has ended.

19.5 The provisions of any separate non-disclosure agreement concluded between RAD and the contractor shall apply.

20 Miscellaneous

20.1 Agreements and legally relevant declarations must be made in writing. Declarations made by fax or e-mail shall meet the requirement for written form.

20.2 Counterclaims of the contractor may be offset only with the prior written agreement of RAD.

20.3 The contractor may not assign or pledge claims against RAD to third parties without the prior written agreement of RAD.

20.4 The following order of precedence shall apply in the event of contradictions in the contractual documents:

- (a) order from RAD;
- (b) written framework and other agreements governing the cooperation;
- (c) these general terms and conditions for orders;
- (d) performance specification;
- (e) provisions of a technical nature (such as the performance specification) in the offer.

21 Applicable law and place of jurisdiction

21.1 The contract shall be governed by Swiss substantive law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980.

21.2 The place of jurisdiction for RAD and the contractor shall be Zurich 11, Switzerland. RAD shall nevertheless have the right to initiate legal proceedings against the contractor in the location of the contractor's registered office.

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