

Terms and conditions for Purchasing Services

of

Rheinmetall MAN Military Vehicles Österreich GesmbH and
Rheinmetall MAN Military Vehicles GmbH



1.Scope; Ambit; Application Field

1.1.The Client shall be either Rheinmetall MAN Military Vehicles Österreich GesmbH, Brunner Straße 44-50, A-1230 Vienna, Austria, FN 344783i, or Rheinmetall MAN Military Vehicles GmbH, Dachauer Straße 651, D-80995 Munich, Germany, HRB 251132. The Client shall be specified in each order.

1.2.These Terms and Conditions of Purchasing Services of Rheinmetall MAN Military Vehicles Österreich GesmbH and Rheinmetall MAN Military Vehicles GmbH shall apply exclusively. Any terms and conditions of the Contractor that conflict with or deviate from these Terms and Conditions of Purchasing Services shall not apply unless the Client has expressly agreed to their validity in writing in individual cases.

1.3.These Terms and Conditions of Purchasing Services shall also apply if the Client effects payment for or accepts services from the Contractor without reservation in full knowledge of opposing terms of the Contractor or terms that deviate from its own Terms and Conditions of Purchasing Services. These Terms and Conditions of Purchasing Services are an integral part of all orders placed by the Client. They also apply to follow-up orders without the Client having to refer to these Terms and Conditions again.

2.Offer – Contractual Documents

2.1.Offers from the Contractor shall be submitted in writing. Cost estimations shall not be subject to a charge.

2.2.The Client shall reserve property rights and copyright to illustrations, drawings, calculations, models, samples and other documents provided to the Contractor by the Client for the purposes of creating the offer or fulfillment of the contract.

2.3.The documents and objects listed in clause 2.2. may not be made available to third parties unless the Client has given its prior written consent to their disclosure. The documents and objects shall be used exclusively for the processing of the order or the fulfillment of the contract and shall be returned to the Client or irretrievably destroyed after such processing without request.

3.Client's Orders

3.1.If an order that is legally considered as an offer by the Client is not confirmed in writing by the Contractor within five days, the Client is entitled to revoke the order within a further five days. The Contractor shall not be entitled to any claims arising from the revocation.

3.2.If the Contractor's confirmation deviates from the order, the Client shall be expressly informed in this regard. In such cases, a contract shall only come into effect with the Client's written consent to the deviations. The Client's silence in response to a confirmation that deviates from the order shall be deemed to be a rejection.

3.3.Orders are only binding for the Client if they are placed or confirmed in writing by the Client. This also applies to additions or modifications. In case of services that are not based on a proper written order, the Client may refuse to accept and pay for the deliveries. Printouts produced by means of data processing do not require a handwritten signature to be binding. If there are any ambiguities in the order, these must be clarified by written query from the Contractor.

4.Performance of Services

4.1.The Contractor is obliged to provide the services in full and on time, including all ancillary services required for the contractual use of the services by the Client.

4.2.The Contractor shall perform all services independently and on its own responsibility, providing all necessary work equipment itself.

4.3.The Contractor is not authorised to represent the Client in legal transactions.

4.4.If services are provided on site at the Client's premises, the Contractor shall comply with the Client's applicable safety regulations and information guidelines and shall follow the Client's safety instructions without limitation. If the Contractor is granted access to the Client's IT and communication systems, the Client's applicable information security regulations shall be observed.

5.General Requirements for Services

5.1.The services must comply with the service specifications provided by the Client. Any reasons that, after review by the Contractor, could argue against the feasibility of the service specifications provided by the Client (e.g. ambiguities, contradictions, technical obstacles, other concerns, etc.) must be communicated to the Client in writing immediately before the contract is concluded.

5.2.The services must comply with the contractual standards, the recognised rules of science and technology, and all other applicable legal regulations.

6.Changes to Services

6.1.The Client may request changes to the services at any time during the execution of the contract. In the event of a request for changes, the Contractor shall immediately submit a written change proposal to the Client. Changes shall only take effect once the Client has confirmed the change proposal in writing. If the Client does not accept the change proposal, the Client may terminate the contract extraordinarily if it is unreasonable for the Client to adhere to the existing contract.

7.Remuneration – Terms of Payment

7.1.Remuneration shall only be paid after all services have been rendered in full in accordance with the contract. If partial payments have been agreed, these shall only be made after the respective partial services have been rendered in full in accordance with the contract.

7.2.Payment shall be made within 14 days with a 3% discount, 30 days with a 2% discount or 60 days without deduction after receipt of the invoice and contractual performance of all services, including associated documentation.

7.3.Assignment of invoice claims to third parties is not permitted.

7.4.Fixed fees, fee caps and cost estimates are binding. Changes or additional claims due to subsequent cost increases are excluded, regardless of the reason.

7.5.Payment for the services does not constitute acceptance of their contractual conformity. Acceptance of services that are ready for acceptance shall only take place by means of a written declaration of acceptance by the Client; implied acceptance is excluded.

7.6.In the event of delay or other performance disruptions, the Client is entitled to withhold all payments until all services have been rendered in full in accordance with the contract.

8.Performance Dates – Delay

8.1.The performance dates specified in the order are binding. Timeliness is determined by the contractual provision of the services at the place of performance on the agreed performance date.

8.2.The Contractor shall be obliged to inform the Client immediately in writing if circumstances arise or come to its attention, which indicate that compliance with the agreed performance date may not be possible. If the Contractor violates this obligation to notify, he shall also be liable for such delays for which he is not responsible. Silence in response to this notification does not constitute acceptance of a new performance date specified by the Contractor.

8.3.In the event of delay, the Client shall be entitled to demand a pro rata amount of 0.5 % of the contract amount for the outstanding part of the service for each commenced week as liquidated damages for delayed performance, but no more than a total of 5 %. The Contractor shall have the right to provide proof that no damages or significantly lower damages were incurred as a result of the delay. The contractor shall perform the services in delay within a reasonable period of time specified by the Client without additional remuneration. Further claims for damages remain unaffected. If the aforementioned period expires without result, the Client may terminate the contract extraordinarily. The provisions in clauses 10.4. and 10.5. apply accordingly.

8.4.The ICC force majeure clause (long version as of March 2020) applies. If the Client is prevented from accepting the services as a result of force majeure or circumstances which the Client cannot avert despite exercising reasonable care (e.g. labour disputes, operational disruptions and other circumstances resulting in a reduction or temporary loss of demand), the Client may demand performance of the service at a later date without the Contractor being entitled to any claims against the Client.

8.5.Partial services are only permitted with the express prior written consent of the Client.

8.6.If (partial) services are provided before the agreed service date without the express written consent of the Client, the Client reserves the right to reject the services provided prematurely and to demand that the services be provided again on the contractual date without additional remuneration for the Contractor.

9.Invoices

9.1.Invoices shall be sent separately from the service, in single copy.

9.2.Invoices can only be processed by the Client if these include the relevant order number and all the statements required, especially necessary tax-related details as per the details specified in the order; the Contractor shall be responsible for all consequences arising from non-compliance with this obligation, unless he can prove that he is not responsible for them.

10.General Performance Disruptions – Extraordinary Termination – Legal Consequences

10.1.In the event that the services or parts of the services do not correspond to the agreed service descriptions or the Contractor does not perform the obligations assumed or does not perform them in accordance with the contract, the Contractor shall perform the relevant services in accordance with the contract within a reasonable period of time determined by the Client without additional remuneration. Claims for damages remain unaffected.

10.2.The Client shall be entitled to terminate the contract extraordinarily if the Contractor has not performed the relevant services in accordance with the contract within the aforementioned period.

10.3.The Client shall also have the right to terminate the contract extraordinarily if the Contractor violates its obligations under clauses 2.2 and 2.3 or if he is apparent to the Client that the successful execution of the contract is jeopardised due to the Contractor's insufficient performance, if the Contractor suspends payments or applies for the opening of insolvency proceedings, or if facts become known that give rise to suspicion of bogus self-employment on the part of the Contractor.

10.4.In the event of extraordinary termination, only those (partial) services that have been provided by the Contractor in accordance with the contract and can be used by the Client for their intended purpose shall be remunerated. Settlement shall be based on a detailed final invoice on a contractual basis, which the Contractor shall issue within 14 days of the extraordinary termination taking effect. The Client is entitled to deduct all damages and additional expenses to be reimbursed.

10.5.Notwithstanding further legal claims, in the event of extraordinary termination, the Client shall be entitled to perform the services in question itself at the Contractor's expense or to have them performed by third parties, to reduce the remuneration and to claim damages in lieu of performance. In the event of extraordinary termination, the Contractor shall immediately hand over to the Client all work results, documents and electronic data necessary for the fastest possible takeover.

10.6.If the Client is held liable for damages by third parties under mandatory law, the Contractor shall indemnify the Client upon first request to the extent that it is also directly liable and is obliged to compensate the Client internally.

10.7.The Contractor undertakes to maintain business and financial loss liability insurance with a minimum coverage of €5 million per claim and insurance year and to provide proof of such insurance upon request. If the Client is entitled to assert further claims for compensation of damages, these shall remain unaffected.

11.Prohibition of Assignment and Retention – Subcontractors

11.1.Rights and obligations of the Contractor arising from the contract may not be assigned or transferred without the consent of the Client.

11.2.Except in cases of undisputed or legally established claims, the Contractor shall have no right of retention.

11.3.Commissioning of a subcontractor shall require the prior written consent of the Client. In the event of consent, the Contractor shall be liable for the fault of the subcontractors as for his own fault.

12.Rights to Work Results – Infringement of Property Rights

12.1.The Client shall have the exclusive right to use all work results arising in connection with the provision of the services, regardless of whether they are eligible for property rights or not. The work results may not be used for purposes other than those specified by the Client without the prior written consent of the Client. Documents, reports, presentations and other materials (including data media) created shall be transferred to the Client, insofar as this is legally possible.

12.2.The Client shall acquire the exclusive, irrevocable, temporally, spatially and content-wise unrestricted, transferable right of use for all types of usage, including the right to reproduce, distribute and modify, for all copyright-protected work results (e.g. data, diagrams, reports, overviews, illustrations, calculations, concepts, programmes, etc.) No separate remuneration shall be paid.

12.3.The Contractor guarantees that the services provided and the intended use of work results by the Client do not infringe any national or international industrial or other property rights of third parties. If necessary, the Contractor shall obtain the rights of use required by the Client from third parties at his own expense. In the event of an infringement of third-party property rights, the Contractor shall indemnify the Client against all claims for damages or other claims asserted against the Client in connection with the services provided by the Contractor upon first request.

12.4.All inventions and work results eligible for protection under property rights shall be reported to the Client immediately and transferred to the Client, insofar as they arise in connection with the provision of services by the Contractor. The Client reserves all rights with regard to the registration of property rights. If the Client is not interested, he shall transfer the invention back to the Contractor, whereby the Client shall in any case retain a non-exclusive, irrevocable, temporally, spatially and content-wise unrestricted, sublicensable, royalty-free right of use for its commercial purposes.

13.Compliance

13.1.The Contractor undertakes to comply with the Client's Contractor Code of Conduct, which is an integral part of the contract and is available to the Contractor at rheinmetall.com/SCOC.

13.2.In particular, the Contractor warrants that it will not engage in any illegal practices, such as financial contributions or other gifts to employees of the Client or their relatives, in order to obtain orders from the Client.

13.3.The Client is entitled to extraordinary termination if employees or agents of the Contractor commit a corresponding violation of the above provisions. This applies regardless of whether the violation is attributable to the Contractor's company. In addition, the Contractor is obliged to compensate the Client for any damage incurred as a result.

14.Ordinary Termination

14.1.The Client may terminate the contract in writing at any time without giving reasons. The right to extraordinary termination remains unaffected.

15.Confidentiality (unless otherwise agreed in individual agreement) – Data Protection

15.1.The Contractor shall undertake to treat as a trade secret all commercial or technical details not commonly known that he become aware of as a result of the business relationship and all work results arising in connection with the provision of the services and not to make them accessible to third parties without the prior written consent of the Client.

15.2.The Client shall reserve property rights and copyright to all illustrations, drawings, calculations, samples, models, and similar documents and objects, as well as data media. These objects must be treated as confidential with respect to third parties and shall be used exclusively for the Client; after completion of the order they shall be returned to the Client without prompting and at no charge.

15.3.The Contractor shall comply with all data protection regulations in their currently valid version and shall only use employees who have been bound by the Contractor to maintain data secrecy to perform the services. The Contractor shall ensure compliance with all statutory data security measures and shall provide the client with the relevant information and evidence for order control without being asked to do so.

15.4.The Client shall oblige its subcontractors to comply with the above provisions accordingly.

15.5.The Contractor shall only refer to the business relationship for publicity purposes with the prior written consent of the Client.

16.Other

16.1.The place of performance for all services is the registered office of the Client, unless expressly agreed otherwise.

16.2.The place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship shall be the competent court in Vienna.

16.3.Contracts based on these Terms and Conditions of Purchasing Services shall be solely subject to Austrian law, excluding all references to foreign law, whereby the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 is also excluded.

16.4.Should individual provisions of these Terms and Conditions of Purchasing Services be or become invalid for any reason, or should there be a gap that needs to be filled, this shall not affect the validity of the remaining provisions. The contracting parties undertake to replace the invalid provision with a stipulation that comes as close as possible to its commercial purpose.