

General Terms of Delivery and Performance

These Terms and Conditions apply for all Deliverables from RMG Messtechnik GmbH.

(Issued July 2017)

1. APPLICABLE TERMS & CONDITIONS

These terms and conditions of sale establish the rights, obligations and remedies of the applicable RMG Messtechnik GmbH entity ("**RMG**" and buyer "**Buyer**" which apply to any order issued by Buyer for the purchase of RMG's equipment and parts (collectively "**Products**"), services ("**Services**") as well as software and firmware including all related documentation, data files, modules, libraries, and elements, updates, upgrades, error corrections, changes or revisions each supplied or licensed by RMG to Buyer under the Order ("**Software**") (each "Products", "Services" and "Software" hereinafter also referred "**Deliverable**"). Unless otherwise stated in a written agreement signed by authorized representatives of RMG and Buyer and covering the specific Deliverables that are the subject of any Buyer's order, RMG's acceptance of Buyer's order is made expressly conditional on Buyer's acceptance of the terms and conditions of sale included herein. No additional or different terms or conditions, whether contained in Buyer's order form or any other document or communication pertaining to Buyer's order, will be binding upon RMG unless accepted in writing, and RMG hereby expressly objects to any such terms and conditions which shall be deemed ineffective and are rejected. In addition these terms and conditions of sale shall apply for any framework agreement between RMG and Buyer with respect to the sale of Deliverables ("**Framework Agreement**") if and so far not otherwise stated in writing in such Framework Agreement, any Buyer's order accepted by RMG and/or any Framework Agreement are hereinafter referred to as the "**Agreement**".

2. GENERAL DEFINITIONS

2.1. "**Order**" means a Buyer purchase order accepted by RMG.

2.2. "**Party**" means RMG or Buyer and "**Parties**" means both.

3. DELIVERY AND ACCEPTANCE

3.1. Delivery terms are EXW Butzbach [Incoterms@2010], unless otherwise is agreed in writing. RMG will schedule delivery in accordance with its standard lead time unless Buyer's order requests a later delivery date; or RMG agrees in writing to a separate delivery date. If RMG prepays transportation charges, Buyer will reimburse RMG upon receipt of an invoice for those charges.

3.2. Buyer shall promptly inspect any Products delivered and shall notify RMG of any nonconformance detectable in the due course of an intake inspection without undue delay in writing at the latest however within ten (10) days after delivery. Buyer shall notify any nonconformance which cannot be detected within the due course of an intake inspection, without undue delay at the latest however within three (3) days after discovery of the defect. Buyer shall be deemed to have accepted any Products delivered hereunder and to have waived any such nonconformance in the event such a written notification is not received by RMG within the deadlines stipulated above.

3.3. If Services are qualified as work pursuant to Section 631 German Civil Code or an acceptance is agreed, Sec. 640 German Civil Code shall apply for such acceptance of Services.

4. RETENTION OF TITLE

4.1. RMG reserves title in all Products until receipt of all payments under the business relationship with Buyer (hereinafter: "**Reserved Products**"). If a current account relationship exists as part of the business relationship, RMG shall retain title in the Reserved Products until receipt of all payments from acknowledged balances. In this case, reservation of title shall serve as security for the balance. For the duration of the reservation of title Buyer may not pledge the Reserved Products nor use the same as security.

4.2. If Buyer combines or mixes any Reserved Products in which RMG has reserved title with other items to form a new unit in such a way that one of the other items must be regarded as the main constituent, RMG shall have pro rata (co-)title in the new unit created, such (co-)title being in the ratio of the value of the Reserved Products to the value of the combined or mixed items at the time of such combining or mixing, and Buyer hereby transfers (co)title and possession in the combined or mixed item to RMG. RMG hereby

accepts this transfer. Buyer shall keep possession of the combined or mixed item, which has thus been created for RMG in trust free of charge.

4.3. If Buyer or third parties acting on behalf of Buyer process or modify the Reserved Products (co-) owned by RMG, this shall be deemed to have been carried out for RMG. If Buyer acquires sole title in the new main unit created by way of such processing or modification, the parties shall be deemed to have agreed that Buyer hereby transfers to RMG (co-) title and possession therein in the ratio of the value of Reserved Products (co-) owned by RMG to the value of the combination or modification and that RMG hereby accepts such transfer. Buyer shall keep possession of the sole or co-owned items which has thus been created for RMG in trust free of charge. If the Reserved Products owned by RMG have not yet been inextricably combined or mixed with other items or otherwise processed or modified since supply, their value at the time of combining, mixing, processing or modification shall be deemed to be the amount billed for the Reserved Products by (including VAT).

4.4. Buyer may sell the Reserved Products in the course of ordinary business activities, however all claims equal to the final invoice amount (including VAT) accruing to Buyer against its customers or third parties from the resale are hereby already assigned to RMG. RMG herewith accepts such assignment. Buyer may not sell the Reserved Products to customers that have excluded or limited the assignment of payment claims against them. After the assignment, Buyer retains the right to collect the claims. This shall not affect RMG's entitlement to collect the claims itself. However, RMG shall not collect the claims as long as (1) Buyer fulfill its payment obligations from the proceeds taken in, or (2) Buyer is not in default of payment or (3) Buyer has not filed an application for the opening of insolvency proceedings and has not suspended its payments. If any of this is the case, RMG may request Buyer to disclose the assigned claims and their respective debtors, to furnish all data required for collection, to hand over all documents pertaining thereto and to inform the debtors of the assignment. If such a case occurs, Buyer's right to collect the claims is extinguished. To the extent that a current account relationship exists between Buyer and its customers pursuant to Sec. 355 of the German Commercial Code (Handelsgesetzbuch), the claim assigned to RMG in advance by Buyer shall also relate to the acknowledged balance, as well as to the balance surplus existing from the closing balance in the case of the customer's insolvency.

4.5. Buyer is obliged to notify RMG in writing without undue delay of all seizures, attachments and other interference by third parties with respect to the Reserved Products. Moreover, Buyer shall notify such third parties of the reservation of title. To the extent the third party is unable to reimburse RMG for the court and out-of-court costs of a legal action pursuant to Sec. 771 of the German Code of Civil Procedure (Zivilprozessordnung), Buyer shall be liable for the loss thus incurred to RMG.

4.6. Buyer is obliged to treat the Reserved Products with care; in particular, Buyer is obliged to have the same at its own expense sufficiently insured at replacement value against fire, damage by water and theft. To the extent that maintenance or inspection work is required, Buyer must carry this out in good time at its own expense.

4.7. At Buyer's request RMG shall release the securities held by RMG to the extent their realizable value exceeds the claims to be secured by 10% or more whereby RMG may select the securities to be released.

4.8. In case that RMG in its formal position of remaining titleholder of the Reserved Products shall under any laws be obliged to pay any taxes referring to the title of the Reserved Products Buyer shall indemnify RMG from those tax obligations.

5. PAYMENT & SET-OFF

5.1. Payment terms are net 30 days from date of invoice.

5.2. If Buyer is in payment default RMG may at its option charge interest on delinquent amounts at the statutory interest rate.

5.3. Additionally, if Buyer is delinquent in its payment obligation to RMG, RMG may upon written notice to Buyer stop work and withhold future shipments until all delinquent amounts and late interest, if any, are paid.

5.4. Buyer may only set off any invoiced amounts against claims that are undisputed or declared final and absolute by a competent court.

5.5. RMG's extension of credit is subject to Buyer maintaining an acceptable credit standing.

6. PRICES/TAXES

6.1. If not otherwise agreed in writing, all prices for Deliverables are subject to RMG's actual price list at the date of placement of Buyer's Order as amended from time to time in RMG's sole discretion. RMG will inform Buyer on any price increases with 30 day's written notice.

6.2. All prices are in the applicable currency of the Agreement and are based on delivery EXW Butzbach [Incoterms®2010]. Prices do not include any charges for services such as packaging, insurance, or brokerage fees. RMG's pricing excludes all applicable taxes (including but not limited to, sales, use, excise, value-added, and other similar taxes), duties and charges. If RMG is required to impose, levy, collect, withhold or assess any such taxes, duties or charges on any transaction, then in addition to the purchase price, RMG will invoice Buyer for such taxes, duties, and charges unless at the time of order placement Buyer furnishes RMG with an exemption certificate or other documentation sufficient to verify exemption from such taxes, duties or charges.

6.3. The minimum value of Orders acceptable for RMG is Euro 450. Should Buyer the value of an Order fall below a purchase price of Euro 450, RMG is entitled to a surcharge in the amount of the difference between Euro 450 and the actual purchase price.

7. FORCE MAJEURE AND DELAY

7.1. Except payment obligations, neither Party is liable for failure to meet its obligations affected by a force majeure event. If performance is so delayed longer than 90 days, either Party can terminate the Order with notice.

7.2. Force majeure events may include but are not limited to the following no matter whether they incur at RMG or any of its sub-suppliers: (1) delays or refusals to grant an export license or the suspension or revocation thereof, (2) any other acts of any government that would limit the ability for performance consistent with the Agreement, (3) fires, earthquakes, floods, severe weather conditions, or any other acts of God, (4) quarantines or regional medical crisis', (5) labor strikes or lockouts, and (6) riots, strife, insurrection, civil disobedience, armed conflict, terrorism or war, declared or not (or impending threat of any of the foregoing, if such threat might reasonably be expected to cause injury to people or property).

7.3. If a force majeure event causes a delay, then the date of performance will be extended by the period of time that the non-performing party is actually delayed or for any other period as the parties may agree in writing.

7.4. If Buyer causes delay, RMG is entitled to adjust price, schedule and other affected terms.

8. WARRANTIES

8.1. RMG warrants to Buyer that for Products at the time of deliver and for Services at the date of acceptance: (i) the Deliverable will be free from defects in workmanship and materials, and (ii) the Deliverable will comply with the agreed specifications. Deliverables in which there is no defect found will not be considered Nonconforming.

8.2. The warranty period is for Products twelve months upon delivery of the Product from RMG to Buyer and for Services twelve months upon acceptance of Services by Buyer. This warranty period of twelve months shall not apply in the following cases: (i) fraudulently concealed defects (arglistiges Verschweigen eines Mangels), and (ii) defects for which a guaranty for the quality of the Deliverable (Beschaffheitsgarantie) was given; in the case of claims for damages, this shall also not apply in the following cases: (i) personal injury (Verletzung von Leib, Leben oder Gesundheit), (ii) intention (Vorsatz), and (iii) gross negligence (grobe Fahrlässigkeit). Subsequent Performance will be effected by RMG without acknowledgement of any legal duty (Anerkenntnis). For repaired Deliverables the remainder of the original Warranty Period shall run from the return of the repaired Product; the same shall apply for replaced Deliverables.

8.3. If during the Warranty Period hereunder a Deliverable shows a defect which already existed at the time of transfer of risk from RMG to Buyer and Buyer notifies such defect to RMG pursuant to section 3, RMG will at its own choice repair the defect (Nachbesserung) or replace the defective Deliverable (Nachlieferung) ("Subsequent Performance", Nacherfüllung). If Subsequent Performance fails, Buyer shall be entitled to rescind the affected Order of Product or Service (Rücktritt) or in case of Services also remedy the defect himself and demand reimbursement for required expenses (Selbstvornahme), whereas the right to reasonably reduce the purchase price of the affected Order (Minderung) is excluded. Further-reaching claims for defects are excluded, without prejudice to any claims for damages under section 9.

8.4. This Limited Warranty shall not apply to ordinary or normal wear and tear resulting from use of the Deliverable during the Warranty Period or to improper use of the Deliverable. RMG shall not assume any liability for defects caused by improper storage, effects of the climate or other circumstances not under RM's control.

8.5. Buyer shall provide RMG with a detailed description of any claimed nonconformance and permit RMG to preserve evidence, test the Deliverable, and investigate the cause thereof. Buyer shall give RMG prompt and continuing access to the Deliverable for inspection and testing, to the environment and location of the Product, and shall cooperate with RMG by promptly furnishing all relevant information, data, test results, witnesses, and other information relative to any occurrence, accident or claimed Nonconformance in the Deliverable.

8.6. If Buyer accepts a defective Service, even though he knows of the defect, he only has the rights under this section 8 if he reserves his rights with regard to the defect when he accepts the Service.

9. LIMITATION OF LIABILITY

9.1. RMG is only liable for damages caused by slight negligence (einfache Fahrlässigkeit) if such exist due to the breach of duties which are material for fulfilling the contract and on which the Buyer relies and is entitled to rely on being fulfilled. In this case, the liability is limited to the damage which is typical and foreseeable.

9.2. RMG is liable in accordance with statutory law (i) under the German Product Liability Act (Produkthaftungsgesetz), (ii) in case of fraudulently concealed defects (arglistiges Verschweigen eines Mangels), (iii) in case of defects for which a guaranty for the quality of the Product (Beschaffenheitsgarantie) was given, (iv) for personal injury (Verletzung von Leib, Leben oder Gesundheit) and (v) in the event of gross negligence and willful intent.

9.3. In all other cases the liability of RMG shall be excluded irrespective of the legal basis.

9.4. The above limitations of liability shall also apply in the case of Buyer's claims for damages against an officer, executive, employee or agent of RMG, if any.

10. SOFTWARE

10.1. If Software is included in an Order the Buyer is only granted a nonexclusive license limited to such equipment and/ or location(s) as are specified in the Order or otherwise confirmed in writing by RMG. No other use is permitted and RMG retains for itself (or, if applicable, its suppliers) all title and ownership to any software delivered hereunder. Without RMG's written consent Buyer shall not attempt any sublicense, copy, amendment, reverse compilation or disassembly of software (save to the extent expressly permitted by law). Nor shall Buyer except for back-up copies which need to be marked as such copy, disclose or display any such software, or otherwise make it available to others (except as RMG authorizes in writing).

10.2. If not otherwise stated herein or in a written agreement with RMG, Buyer shall comply with the terms and conditions of RMG's licence agreement for end-users as provided by RMG (Endnutzer - Lizenzvereinbarung)

11. PATENT AND COPYRIGHT INDEMNITY

11.1. Buyer shall notify RMG immediately if a third party raised a claim against Buyer arising out of any actual or alleged patent or copyright infringement of a valid patent or copyright, to the extent based on the Deliverable as delivered by RMG. RMG may then in its sole discretion decide whether it wishes to defend the claim at RMG's expense and indemnify Buyer for any final judgment assessed against Buyer resulting from such claim. In this case Buyer shall be obliged to grant sole and complete authority to defend the claim to RMG and Buyer shall provide RMG with all required information for the defense of the claim. RMG will not be responsible for any waiver, acceptance, compromise or settlement made without RMG's written consent. RMG will have no obligation or liability with respect to: (a) Deliverables provided pursuant to Buyer's designs, drawings or manufacturing specifications; (b) Deliverables used other than for their ordinary purpose; (c) claims of infringement resulting from combining any Deliverable furnished hereunder with any article not furnished by RMG; (d) use of other than the latest version of software Deliverable released by RMG; or (e) any modification of the Deliverable other than a modification by RMG.

11.2. Further, Buyer agrees to indemnify and defend RMG to the same extent and subject to the same restrictions set forth in RMG's obligations to Buyer as set forth in section 11.1 for any suit against RMG based upon a claim of infringement resulting from (a), (b), (c), (d) or (e) of the preceding paragraph unless Buyer did not act culpable. Because RMG has exclusive control of resolving infringement claims hereunder, in no event will RMG be liable for Buyer's attorney fees or costs. If a claim is made against a Deliverable RMG may, at its option, and at its expense, (i) procure for Buyer the right to continue using the Deliverable; or (ii) replace or modify the Deliverable so that it becomes non-infringing. Further, if a claim of patent or copyright infringement is made against a Deliverable RMG may cease shipping infringing Deliverables without being in breach of this Agreement. Any liability of RMG under this Article is subject to the provisions of the "Limitations of Liability" Article of this Agreement. This Article states the parties' entire liability, sole recourse and their exclusive remedies with respect to infringement. All other warranties against infringement of any intellectual property rights, statutory, express or implied are hereby disclaimed.

12. CHANGE ORDERS

Either Party may make changes within the scope of an Order subject to acceptance by the other Party. RMG will inform Buyer if the change causes a price or schedule adjustment. The change will be effective and RMG may begin performance upon the Parties' authorized signature of a change order.

13. INVENTIONS AND INTELLECTUAL PROPERTY

13.1. **“Intellectual Property”** means all copyrights, trademarks, trade secrets, patents, utility models and other intellectual property rights recognized in any jurisdiction worldwide, including all applications and registrations.

13.2. If not otherwise agreed in writing, no right, title or interest in Intellectual Property provided by RMG is transferred to Buyer under the Agreement, including Intellectual Property existing prior to, or created independently of, the performance of the Agreement. If not otherwise agreed in writing, all Intellectual Property and results of Services, including software, models, designs, drawings, documents, inventions, and know-how (**“Inventions”**), conceived or developed by RMG in connection with the Agreement, are the sole property of RMG and Buyer assigns any rights it may have in such Inventions to RMG.

14. CONFIDENTIAL INFORMATION

14.1. **“Proprietary Information”** means: 1) any information, technical data or knowhow in whatever form, including, but not limited to, documented information, machine readable or interpreted information, information contained in physical components, maskworks and artwork, that is clearly identified as being confidential, proprietary or a trade secret, 2) business related information including but not limited to pricing, manufacturing, or marketing, 3) the terms and conditions of any proposed or actual Agreement between the Parties, 4) either Party’s business policies, or practices, and 5) the information of others that is received by either Party under an obligation of confidentiality. The receiving Party will keep all Proprietary Information disclosed hereunder confidential for a period of 7 years following the provision of the information or if the information was provided under any long term Framework Agreement following expiration or termination of this Framework Agreement. Each Party will retain ownership of its Proprietary Information including, without limitation, all rights in patents, copyrights, trademarks and trade secrets. No right or license is granted hereby to either Party or its customers, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent, patent application or other Intellectual Property of the other Party, notwithstanding the expiration of the confidentiality obligations stated herein. RMG agrees to use the Proprietary Information of Buyer only to provide products or services for Buyer. Buyer agrees that it will not use or disclose RMG’s Proprietary Information for any purpose besides the purchase or use of Products or services.

14.2. The receiving Party has no duty to protect information that is proven to be: (a) publicly known at the time of disclosure or becomes publicly known through no fault of recipient, (b) known to recipient at the time of disclosure through no wrongful act of recipient, (c) received by recipient from a third party without restrictions similar to those in this section, or (d) independently developed by the receiving Party.

14.3. Any news release, public announcement, advertisement, publicity or any other public disclosure concerning this Agreement requires prior written approval of RMG, which approval will not unreasonably be withheld.

15. DISPOSAL OF ELECTRONICAL DEVICES

15.1. After end of use Buyer is obliged to dispose the Deliverables at its own cost. Buyer shall indemnify RMG from any and all obligations pursuant to Sec. 10 Para 2 ElektroG and related claims by third parties.

15.2. If Buyer sells the Deliverable to third party entrepreneur (§ 14 BGB), Buyer is obliged to agree a respective obligations to dispose the Deliverables at own cost with such third parties. If Buyer does not comply with this obligation it is obliged to retract and dispose the Deliverable himself at its own cost.

15.3. RMG claims under this clause 15 shall not become time-barred before lapse of two years as from end of use of the Deliverable. The two years period shall begin only on the date of receipt of a notification on the end of use by RMG.

16. MISCELLANEOUS

16.1. Buyer is responsible for compliance with all import, export, and re-export control laws and regulations and will mutually cooperate as needed.

16.2. RMG may suspend Services at Buyer’s expense if RMG determines that performance of Services may compromise safety.

16.3. If any provision of the Agreement is determined to be illegal, invalid, or unenforceable, the validity of the remaining provisions will not be affected.

16.4. The failure of either Party to enforce at any time any provision of the Agreement may not be construed to be a continuing waiver of those provisions.

16.5. The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the Federal Republic of Germany, excluding its principles or laws regarding conflicts of laws. Application of the Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods of 1980, and any amendments or successors thereto is

specifically excluded. In the event that the parties are unable to resolve the disputes, the parties shall submit the disputes to the courts of Offenbach, Federal Republic of Germany.

16.6. The Agreement contains the entire agreement between the Parties and any preprinted terms are excluded. Any terms on facility entry documents or other similar documents signed by RMG after the Order date are not applicable. If there is any conflict in terms, the order of precedence is the License, any Addendum, the acceptance, the Agreement (excluding the Order), and then the Order.

16.7. Buyer shall not assign any rights or obligations under this Agreement without the advance written consent of RMG, which consent will not be unreasonably withheld. RMG may assign this Agreement to any affiliate of RMG or in connection with the sale or transfer of all or substantially all of the assets of the product line or business to which it pertains to such party. Any attempt to assign or delegate in violation of this clause will be void.