1. ORDER AND ORDER ACCEPTANCE

1.1 Only orders and agreements made in writing are binding. In particular, the employees of ROTA are not authorized to confirm in writing oral commitments beyond the terms of the written contract or alter those terms of purchase to the detriment of ROTA.

1.2 The supplier shall confirm the order in writing without undue delay. If ROTA receives the order confirmation within 5 days after the order date, ROTA is entitled to revoke the order without the supplier being able to derive claims in this regard.

2. PRODUCTION, DESTINATION, LEAD TIME, ACCEPTANCE

2.1 The supplier is the manufacturer of the goods ordered by ROTA. Without ROTA’s prior written consent, delivery shall not be undertaken to commission subcontractors and/or change the place or country of manufacture.

2.2 Unless otherwise agreed, the “destination” shall be ROTA’s place of business in Wehr.

2.3 Agreed delivery and acceptance dates are binding. A delivery date is deemed observed if the delivery is received at the destination. An acceptance date is deemed observed, if acceptance has been performed as set out in Article 2.4 relating to this date.

2.4 Goods and services to be accepted shall be accepted by ROTA upon presentation of the goods and/or the receipt of the service within 14 days of delivery, provided that no other reasonable period has been agreed otherwise in writing. The terms and conditions of the supplier, service provider or contractor (hereinafter referred to as supplier) shall apply only insofar as ROTA agrees to them in writing.

3. DELIVERY AND ACCEPTANCE

3.1 Delivery shall be completed in accordance with IGC - INCOTERMS. The delivery date is binding. Deliveries must be accompanied by delivery notes specifying the number of the order, the order references of ROTA, the type of packaging, as well as the quantity and the weight of the deliveries.

3.2 The invoice must be sent separately for each order by email to RYG.ACC@de.yokogawa.com.

3.3 Materials certificates to be delivered, declarations of conformity, etc. are to be attached in paper form to the delivery and sent separately by email in PDF format with the order number issued by ROTA in High resolution and scanned. Certificates are to be sent to shipment.infoRYG@de.yokogawa.com.

3.4 ROTA is entitled to specify the shipping method as well as the freight carrier. Otherwise the supplier is obliged to choose the most favorable shipping method for ROTA.

3.5 Until such time as ROTA receives the proper delivery and delivery documents and, if agreed, unless ROTA has been notified and accepted in writing, ROTA is not responsible for the duration of the incident and the extent of its effect. ROTA shall promptly notify the supplier of the beginning and end of the aforementioned impediments.

4. PRICE AND PAYMENT

4.1 The prices agreed upon in the order are fixed prices, including packaging and free at destination unless otherwise agreed. Changes, for whatever reason, are not permitted, in particular changes in the currency value.

4.2 In the absence of any other agreement, payment shall be made at the option of ROTA either within 14 days with a 3% discount or within 30 days net after receipt of the full delivery and receipt of the properly completed invoices and documents.

4.3 ROTA reserves the right to freely choose the method of payment and has an unlimited right of retention. The payment period begins after the complete receipt of the goods in accordance with the contract and receipt of the documents in accordance with Article 3.2, but not before the agreed delivery date.

4.4 A payment does not mean the acceptance of the goods nor their conformity with the requirements specified in the order and does not exempt the supplier from its contractual obligations.

5. PACKAGING

5.1 The goods to be delivered are to be packed in accordance with commercial practice, in an environmentally friendly manner and in compliance with the requirements of national and international regulations in the supplier’s country of origin as well as in the countries where delivery takes place.

5.2 ROTA is entitled to return the packaging to the place of dispatch carriage free and to charge the supplier 1/3 of the charged value for this purpose.

6. ROHS AND REACH REGULATIONS AND SHIP RECYCLING

6.1 All Goods delivered by the supplier must be generally manufactured and delivered in accordance with the provisions of the European Union Directive 2011/65/EU (RoHS II) and Regulation No. 1907/2006/EC (REACH).

6.2 The supplier warrants that all deliveries which are subject to registration pursuant due to Regulation (EC) No 1907/2006 (“REACH Regulation”) as amended are properly registered or pre-registered, and that it has also complied with all other obligations imposed on it in accordance with the REACH Regulation and its implementation by the EU and the member states of the EU, and has appointed a representative tasked with meeting all obligations under article 8 of the REACH Regulation so that ROTA is not treated as an importer under the REACH Regulation, unless ROTA decides to be an importer of its own accord for the purposes of the REACH Regulation.

6.3 All products from the supplier, if applicable, must generally be manufactured and delivered in conformity with the provisions of the “Hong Kong International Convention for the Safety of Sea and Environmentally Friendly Ship Recycling” in the latest version as amended in European Union Regulation 1257/2013 as amended and Resolution MEPC.269 (68).

If the supplier violates the provisions under this paragraph, it shall compensate ROTA for all damages resulting from and attributable to its own negligence and hold ROTA completely harmless.

7. COMPLIANCE WITH ALL PROVISIONS

7.1 The Goods shall be produced and delivered in accordance with all applicable laws, directives and regulations in the supplier’s country of origin as well as in the countries where delivery takes place and the final destination specified by ROTA is not contrary to any country regulations that a currently applicable (EU) legislation will not restrict the future support, the (re-)sale, the use or processing of the Goods.

In performing its activities under this agreement, the supplier shall comply with the Code of Conduct of Yokogawa, which is provided upon request, or a Code of Conduct with at least equivalent ethical standards.

8. ORDER CHANGES

8.1 Deviations, changes, deletions or substitutions of details from ROTA’s specifications, drawings, etc., or from the terms and conditions contained in the order in the manner permitted without the prior written consent of ROTA.

8.2 ROTA may at any time request deviations from the quantities and/or specifications stated in the order. If the deviations requested by ROTA affect the price and/or the delivery date, the supplier shall notify the supplier of the change in writing within 7 days after the date of notification of the change by ROTA or the date of the event on which the supplier bases its right to change the order.

8.3 In performing its activities under this agreement, the supplier shall comply with the Code of Conduct of Yokogawa, which is provided upon request, or a Code of Conduct with at least equivalent ethical standards.

9. TRANSFER OF RIGHT AND OWNERSHIP

9.1 Risk shall be transferred to ROTA once the delivery has been duly presented to ROTA at the stated destination or has been accepted by ROTA. This also applies if ROTA engages its own transport services.

9.2 Title to the goods shall be transferred to ROTA once a) the goods are delivered to ROTA or b) ROTA settles the first installment for the Goods, whichever occurs first. In the latter case, the supplier shall label all goods owned by ROTA as “property of ROTA Yokogawa” and shall store them separately.

10. LIABILITY FOR DEFECTS AND LIABILITY

10.1 The supplier warrants that the delivery item is free from legal or material defects at the time of delivery to/acceptance by ROTA or the latter’s customers and is state of the art, conforms to the relevant state and international regulations and requirements as well as all national quality assurance standards (e.g. DIN, VDE, TÜV, ex-guidelines, regulations of the Employers’ Liability Association). In the case of a different design of these standards, the German version shall prevail.

10.2 All products from the supplier are subject to the notification of defects due to defects, identity, missing quantities and transport damage. There is no further duty to inspect. Defects shall be notified to the supplier by ROTA in writing no later than 14 calendar days after the discovery. In this respect, the supplier shall waive the objection of the delayed notification of defects.

10.3 In the case of defects, ROTA may request, apart from the rectification of defects, the substitution of the goods or the returns of the goods by mutual agreement. In any case, all expenses for the necessary workmanship, the transportation of goods, the removal of faulty or non-conforming goods and installation, as well as any compensation for this, are to be borne by the supplier. In the case of replacement delivery a) the warranty period begins anew for the replacement goods or b) a proper replacement delivery is required.

10.4 The supplier shall notify the supplier of the place of use upon request.

DOMICILED IN RHEINSTRASSE 8, 79964 WEHR, GERMANY (HEREINAFTER REFERRED TO AS “ROTA”)

These General Terms and Conditions of Purchase (hereinafter referred to as “GTC of Purchase”) shall apply exclusively to all orders – also future orders – of production material, products and/or services (hereinafter referred to as “GOODS”), unless agreed otherwise in writing. All cancellations or reservations in the terms and conditions of the supplier, service provider or contractor (hereinafter referred to as supplier) shall apply only insofar as ROTA agrees to them in writing.
10.5 The supplier shall take responsibility for defects for 36 months from the date of delivery or - if agreed upon - from the time of acceptance.

10.6 If ROTA withdraws its products as a result of the defect in the supplier's product, or if the purchase price has been reduced as a result of ROTA having taken action in the event of a defect, ROTA reserves the right of recourse against the supplier. It is not necessary to set an otherwise customary deadline. The supplier shall also reimburse ROTA the required expenses. Notwithstanding the provisions of Article 10.5, the above claims shall lapse two months after the date on which ROTA has satisfied the claims against its customers, but no later than 5 years after delivery.

10.7. If, within 6 months of the date of delivery/acceptance, a material defect is identified in the goods, it is assumed that the defect already existed at the time of delivery, unless this presumption is incompatible with the nature of the item or defect. If defective parts are repaired or replaced, the limitation period shall commence again in accordance with article 10.5.

10.8 Any additional claims, in particular those relating to compensation, shall remain unaffected by the above provisions.

11. PROPERTY RIGHTS OF THIRD PARTIES

11.1 The supplier shall ensure that the use of the delivered goods does not constitute breach of any proprietary rights, e.g. patent or utility model, other rights or trade or business secrets of third parties - also in the country of use. It shall indemnify ROTA from any third party claims from first written demand.

11.2 Article 11.1 shall also apply where third parties assert claims against the companies affiliated with ROTA; in that case the supplier is required to indemnify the companies affiliated with ROTA accordingly.

11.3 The supplier is not liable to the extent it manufactures goods exclusively based on drawings and models produced by ROTA and it did not know or had to know that the production of such goods infringes third party rights.

12. LIABILITY

12.1 In the event that ROTA is held liable by a customer or other third parties on the grounds of product liability, the supplier is obliged to indemnify ROTA on first written demand from such claims, if and to the extent that the cause of the defect in the goods was caused by the supplier. In cases of strict liability, however, this only applies where the supplier is at fault.

12.2 In the event that the cause of the defect lies with the supplier, evidence that the defect caused the damage is sufficient, otherwise the supplier bears the burden of proof.

12.3 In all cases, the supplier shall bear the costs and expenses, including the costs of any legal prosecution or recalls, corresponding to the amount attributable to its own fault; this also applies to demonstrable or imminent serial defects.

12.4 The supplier shall cover its liability risk by way of insurance and to provide ROTA with evidence of adequate insurance upon request.

12.5 The supplier shall bear any damages arising from culpable non-compliance with these conditions.

12.6 In addition, claims for damages - of whatever nature - against ROTA are excluded, if ROTA, its legal representatives or vicarious agents have caused the damage through simple negligence. This exclusion of liability does not apply to physical injury nor to a breach of significant contractual obligations which jeopardise the performance of the contractual purpose. However, ROTA's liability is limited to the typical contractual and foreseeable damage.

12.7 In no circumstances shall ROTA be liable for any special, indirect or consequential damages suffered by the supplier, including but not limited to loss of profit, loss of business, interruption of business activity, lost goodwill, loss of income and/or loss of business data, whether such damages are caused by tort, breach of contract or other legal deficiencies. Liability for breach of warranty, the assumption of procurement risks, culpable injury to life, body or health and its liability under the German Product Liability Act shall remain unaffected.

13. DRAWINGS

13.1 ROTA reserves the right of retention and copyright to all illustrations, drawings, models, calculations and other documents and materials which the supplier has intentionally or incidentally received from ROTA.

13.2 Goods manufactured in accordance with the documents and materials referred to in article 13.1 and drawn up by ROTA or in accordance with confidential information issued by ROTA or produced using tools provided by ROTA or tools modelled on ROTA's tools shall not be used by the supplier, nor offered to or supplied to third parties.

14. WORKING AT ROTA OR AT ITS CUSTOMERS' PREMISES

14.1 If employees or agents of the supplier work in the premises of ROTA or its customers, they must observe the accident prevention regulations and other regulations as well as the respective site rules. If they are not familiar with these rules, they are not allowed to commence work.

14.2 Approval and installation work must be approved. Approval is deemed to be given if the authorised representative of ROTA has expressly accepted the work of the supplier in writing as being in accordance with contract. However, ROTA may still claim defects when issuing a final acceptance certificate. If the supplier (i) is already known to the supplier, or is generally accessible to the supplier at the time of disclosure; (ii) is legally disclosed to the supplier by a third party without imposing any obligation of confidentiality; (iii) becomes generally available after disclosure through no fault of the supplier; (iv) is demonstrably drawn up by the supplier of its own accord without relying on, or referencing the information provided by us. or (v) required to be disclosed by law or official order.

16. ADMINISTRATION AND QUALITY ASSURANCE

The supplier shall set up and maintain an appropriate administrative unit to track all data on the GOODS, including their batch information, production data, purchased components and their source, belonging to a particular production and to be stored for at least ten (10) years from the respective production date. The supplier shall keep samples of each batch for at least two (2) years from the respective production date.

The supplier has and maintains a certified quality assurance system, such as ISO9001:2015. ROTA reserves the right to check compliance with this requirement by the supplier at the supplier's premises.

17. ASSIGNMENT

An assignment or pledge of the rights accruing to the supplier under this contract may be effected only with the written consent of ROTA. This does not apply to money claims. However, ROTA may make payment to the supplier with discharging effect.

18. TERMINATION

If ROTA has a factual justification for the assumption that the supplier will not meet an obligation arising from the order without adequate security, or if the supplier (i) does not meet an obligation under the order within thirty (30) calendar days after written request by ROTA (ii) is subject to a change in control and ownership; (iii) ceases or suspends its business; becomes insolvent, admits its inability to or outstanding debts in writing; makes an assignment in favour of creditors; is placed under the direct control of a trustee, liquidator or other similar official, or if bankruptcy or insolvency proceedings are instituted against it, ROTA shall be entitled, without undue delay and without warning or notice of default, and without reference to or without prejudice to any other remedies and/or rights available to ROTA, to either demand immediate performance of the supplier's obligations or to terminate the order, to repossess finished goods and/or to be reimbursed the amounts paid by the supplier.

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