

Standard Terms and Conditions for the sale of Software of Rittal GmbH & Co. KG

1. General Terms

The following standard terms and conditions shall govern all our sales and licensing of software. They also apply in relation to any product particulars set out in brochures, price lists, advertisements, internet sites and similar media. Any standard terms and conditions used by the Purchaser which conflict with or deviate from the following shall not apply except where we have expressly and in writing consented to the same. The unconditional delivery of goods or supply of services or receipt of payment by us shall under no circumstances be construed as an acceptance of conflicting terms and conditions.

2. Storage of Data

We store and process data relating to the purchaser by electronic means to the extent that our business so requires and is permitted by the Federal Data Protection Act (Bundesdatenschutzgesetzes).

3. Offers, Prices, Delivery Dates

Our offers are without obligation in relation to price, quantity, delivery date, availability, technical data, specification and description of quality. A contract is concluded where we acknowledge an order in written or text form or where we supply orders placed. Any alteration or supplement to the terms of a contract or the setting aside thereof or of these terms and conditions shall not take effect unless in written form.

4. Pricing

Our prices and royalty payments (hereinafter referred to as Prices) are ex works or ex supply centre (Incoterms 2000). Except where agreed otherwise our prices do not include packing, insurance, freight, VAT, installation and training. Where packing units are specified the prices are per unit. Deliveries from our supply centres are subject to an additional delivery charge of 4% of the list price. In the event that the delivery date is more than 4 months after formation of the contract we reserve the right to adjust the contract price to reflect changes in underlying prices (e.g. raw materials, wages), whereupon the prices in effect on the date of delivery will be invoiced by the Supplier.

5. Payment, Counterclaim

Except where otherwise agreed the purchase price is due for payment by the purchaser 30 days from the date of invoice. Upon expiration of the 30 day period the purchaser shall be deemed in default of payment within the meaning of § 286 (2), No. 2 of the German Civil Code (BGB). Payments received within 10 days from the date of invoice shall be credited a 3% discount. An offset by the purchaser is only permissible against undisputed or non appealable counterclaims. Cheques and Bills of Exchange will only be accepted where they are eligible for discounting. All discounting charges shall be borne by the purchaser.

6. Delivery, Place of Delivery

The terms of delivery are ex works or ex supply centre (Incoterms 2000). We reserve the right to determine the freight forwarder as well as the method and route of shipment.

The risk of loss or damage to the goods passes to the purchaser upon shipment or where the purchaser collects the goods upon notification of readiness for shipment. Delivery by instalment is expressly permitted.

7. Delivery Date, Late Delivery

The commencement of the delivery term stated shall be subject to clarification of all technical matters and proper performance by the purchaser of his obligations. Where we fail to deliver upon an agreed delivery date and such failure is caused by an act or omission on our part the purchaser shall grant us an extension in writing of not less than 2 weeks. Where delivery is still non-forthcoming and the purchaser desires to rescind the contract or demand damages in lieu of performance the purchaser shall prior thereto set a final and reasonable deadline in writing expressly indicating his intention. The purchaser is obliged at our request to declare within a reasonable period whether he shall rescind the contract due to the delay in delivery and/or demand damages in lieu of performance or insist upon performance.

8. Software Licence

We hereby grant the Purchaser a non-exclusive licence (software licence) to use the goods (software and associated documentation – hereinafter referred to as the "software"). The grant of licence aforesaid applies solely to the object code of the software version expressly referred to in the purchase order. The Purchaser shall only copy or reproduce the software for the purpose of utilising the software in the agreed manner (e.g. installation of the software, loading thereof in main memory) and/or for the purpose of making a back-up copy. Reproductions of any other kind including the printing of the program code and the copying of documentation are only permitted where we have previously consented to the same. The purchaser is not permitted to reverse assemble or reverse compile the software or to convert it into any other form unless such conversion is expressly provided for by a mandatory statutory regulation. The purchaser undertakes to attach the copyright symbol to all complete and part copies of the software (including data carriers) together with all other references to industrial property rights in the same manner as they are attached to the original version of the licensed software. Any licence granted by us shall only be assigned to a third party where we have previously consented to the same in writing. We shall not unreasonably withhold consent. The purchaser shall not grant a sub-licence or make the software available to third parties temporarily or in any way give a third party access thereto without our previous consent in writing. The aforesaid shall not apply where the purchaser uses the software for its own means through its employees or agents provided that the purchaser has undertaken steps to ensure that such persons are bound by the terms of this licence. The purchaser is obliged to keep a record of the software including any updates, where the software is kept and the number of copies made. The purchaser shall produce such records where we so request.

9. Retention of Title

Notwithstanding delivery we retain the right to use the goods which shall not pass to the purchaser until we have received payment in full for the same. Where the purchaser is in breach of any of the terms herein including without limitation default of payment we are entitled to rescind the contract and retake possession of the goods. The purchaser is obliged to surrender possession or destroy all copies thereof. In the event that the above retention of title clause is void or unenforceable according to the law of the state/country in which the goods are situated, the collateral security which corresponds to the retention of title in that state/country is deemed to be agreed. The purchaser is obliged to undertake all necessary steps required to found and maintain comparable rights or securities.

10. Force Majeure

In the event of a force majeure we are entitled to suspend performance of our obligation to deliver. Where there is a considerable change in the circumstances prevalent at the formation of the contract, we reserve the right to rescind the contract. The same shall apply in cases of shortages of power or raw materials, industrial disputes, governmental measures, interruption of operations, hindrance of traffic routes and defects or delays by sub-contractors caused by any such circumstance referred to in this clause.

11. Product Description, Guarantee

The description of all Rittal Products is determined exclusively by our general technical instructions. The extent of our liability for our product or service particulars is limited to the terms and conditions set out in each individual contract. We reserve the right to make technical changes in the course of our product development. Our product descriptions and particulars describe the quality of our products and services and do not constitute a guarantee within the meaning of § 443 of the German Civil Code (BGB). The purchaser undertakes to test our products and services itself as to their suitability for the purpose intended.

12. Liability for defects

The purchaser can make no claim based on defective delivery or performance where the reduced value or merchantability of the goods delivered or services supplied is nominal. Where the goods delivered by us are defective and the purchaser has properly notified us of the same in writing in accordance with § 377 of the German Commercial Code (HGB) we shall at our option deliver a replacement or remedy the defect. The purchaser shall grant us a reasonable period of not less than 8 days to carry out the same. The purchaser is entitled to demand reimbursement of the costs incurred by reason of the replacement delivery or remedying of the defect insofar as such costs are not increased due to the subsequent transportation of the goods delivered to a location other than the original shipment location unless the purpose for which the goods are intended requires the same. In the event that we are not in a position to remedy the defect or deliver a replacement the purchaser is entitled to rescind the contract or to demand a reasonable reduction in the purchase price. Rescission of the contract is only permissible where the purchaser prior thereto sets a final and reasonable deadline in writing expressly indicating his intention. The purchaser shall retain a right or recourse against us within the meaning of § 478 of the German Civil Code (BGB) insofar as the purchaser has not agreed terms with its purchaser which exceed the statutory liability for defects.

13. Damages

Liability for damages or expenditure (hereinafter liability for damages) irrespective of the legal grounds upon which it is claimed but in particular for breach of a contractual term or a tortious act shall be excluded except where we, our legal representatives or vicarious agents have acted wilfully or in a grossly negligent manner or where the breach goes to the root of the contract. Our liability for a negligent breach which goes to the root of the contract is limited to reasonably foreseeable damages and shall not exceed twice the invoice amount. Our liability for the loss of data or programs due to acts or omissions on our behalf is limited to the amount of damages incurred or would have been incurred had the purchaser made a back up copy of the data at appropriate reasonable intervals or at least once per day. The sum of damages shall not exceed the sum insured under our liability insurance of 1,000,000 (in words one million) Euro for damage to property or 100,000 (in words one hundred thousand) Euro for other damages. The said exclusion/limitation of liability shall not apply in relation to strict liability claims for death or personal injury or damage to items of property for personal use under the Product Liability or any other Act.

14. Limitation

The limitation period for claims based on defective deliveries or performance as well as for claims for damages is 1 year. The limitation period aforesaid shall not apply where longer limitation periods are prescribed by law, as well as in cases of injury to life, body or health due to wilful or gross negligent behaviour on our part and in relation to damage claims based on product liability law.

15. Duty to store data

The purchaser undertakes to make a back up copy of all data and programs at adequate intervals or at least once per day in a machine legible form and thereby to guarantee that such data can be reproduced at a reasonable expense. Failure by the purchaser to comply with the aforesaid shall constitute a fundamental breach of the contract.

16. Choice of Law, Place of Jurisdiction

The forum for the institution of proceedings shall be our corporate domicile. We retain the right however to sue the purchaser before any competent court. All contracts shall be governed by and construed in accordance with German law.

17. Invalidity

In the event that any provision of this agreement shall be found to be invalid, the validity of the remaining conditions shall remain unaffected. The parties undertake to agree a valid replacement provision which shall correspond as closely as possible to the commercial purpose of the invalid provision.

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