

Rittal – The System.

Faster – better – everywhere.

Rittal GmbH & Co. KG Special Conditions for Software Purchase and Use

as of February 2017

1. General terms

- 1.1 These Special Conditions apply to the commercial provision of software to customers who are merchants within the meaning of the German Commercial Code, legal public-law entities, or public-law special assets. The conditions do not apply to additional services such as software installation, integration, and maintenance, nor to consulting and training services.
- 1.2 Our Standard Terms and Conditions of Sale and Delivery (VLB) apply as a supplement to these Special Conditions; like these Special Conditions, they are available for download at www.rittal.com or we are happy to send them to you on request. In the event of conflict with the VLB, these Special Conditions take precedence. Contrary or differing purchasing conditions of the customer do not apply unless we agree to them in writing in the particular case.
- 1.3 We supply software exclusively in machine-readable object code and exclusively for use for the contractually intended purpose. The customer is not entitled to disclosure or use of the source code. The source code is not the subject matter or object of the agreement, unless other terms were explicitly agreed in writing.
- 1.4 Where we supply outside software from other manufacturers, their licensing terms take precedence.

2. Type and scope of performance

- 2.1 The software's conformance with the agreement is based on the performance description (specifications) valid at the time of delivery and provided to the customer, including supplemental information in the application documentation. We provide the software in the version current at the time it is delivered or made available.
- 2.2 We deliver the software either by providing it to the customer on a machine-readable data medium or, at our election, by making it available for download via Internet and giving the associated download information to the customer. In either case, the customer also receives one copy of the application documentation in German.
- 2.3 In case of physical shipment, the time at which we hand off the data medium and application documentation to the shipping agent is controlling for meeting delivery dates and for transfer of risk; otherwise the time at which the software is available for download on the network and we have sent the download information to the customer is controlling.
- 2.4 We supply to the customer only software which we or our assistants and agents have examined a reasonable time prior to delivery or availability using a current virus detection program, having noted nothing out of the ordinary. It is the customer's responsibility to ensure proper security for its own data.

3. Utilization rights

- 3.1 Subject to other agreement, we grant the customer a simple, non-expiring utilization right to the subject matter and objects of the agreement, for single- or multiple-workstation use as agreed in each case. Absent an express agreement, the utilization right is granted exclusively for the country where the customer is headquartered. The utilization right may be simultaneously exercised

by no more than the number of users for whom the customer paid the purchase price as set forth in Section 6.

- 3.2 The customer may use the software only for its own purposes and the purposes of enterprises with which it is affiliated within the meaning of Section 15 German Company Law (Group Companies). In particular, use of the software is permitted only with our prior written consent if it
 - serves the purpose of computer center operations for third parties that are not Group Companies;
 - consists of providing the software to third parties (even just temporarily) that are not Group Companies (e.g., as Application Service Providing);
 - serves the purpose of training individuals who are not employees of the customer or its Group Companies; or
 - consists of commercial re-rental.Our consent may depend on payment of reasonable additional compensation.
- 3.3 Copying software is permitted only to the extent necessary for use in conformance with the agreement. The customer may make backup copies of the software to the necessary extent in accordance with the technical rules. Backup copies on physical data media must be marked as such and must bear the copyright notice of the original data medium.
- 3.4 If the customer purchased the software through online download, it is permitted to copy the software onto a data medium when sharing it in accordance with Section 8. Moreover, our right to the online copy corresponds to the right to the software provided on a data medium.
- 3.5 The customer is authorized to modify, expand, or otherwise revise the software within the meaning of German Copyright Law (UrhG) Section 69 (c) (2) only to the extent unconditionally permitted by law. The customer does not have its own utilization and exploitation rights to such revisions going beyond its rights to the original software. We may require the customer to fully and completely transfer to us any property rights arising by law, or to grant us exclusive utilization rights. In return the customer will receive from us utilization rights in the contractually agreed scope. The customer is prohibited from copying or revising the application documentation.
- 3.6 The customer is authorized to decompile the software only within the limits set forth in German Copyright Law (UrhG) Section 69 (e), and only if we are in delay (despite a written demand setting a reasonable deadline) with providing the data and/or information needed by the customer in order to establish interoperability with other hardware and software.

ENCLOSURES

POWER DISTRIBUTION

CLIMATE CONTROL

IT INFRASTRUCTURE

SOFTWARE & SERVICES



- 3.7** These Special Conditions also apply to any supplement (e.g., patch) or new edition of the software (e.g., update or upgrade) that supplements the originally supplied product as an improvement or maintenance measure or takes its place partially or in total. If we provide an entirely new edition, the customer's permissions with respect to the existing software expire as soon as it productively uses the new edition of the software; we will give the customer a three-month conversion period during which it is permitted to use both versions of the software in parallel.
- 4. Reservation of utilization rights**
- 4.1** The granting of utilization rights named in Section 3 is subject to the condition precedent that our compensation claims set forth in Section 6 be fully and completely satisfied. The customer must promptly notify us of any imminent seizure, confiscation, or other disposition or intervention by third parties.
- 4.2** In the event of any violation by the customer, specifically including but not limited to payment delays, we may rescind the agreement following expiration of a reasonable deadline set for the customer; the statutory provisions regarding the expendability of a deadline shall remain unaffected thereby.
- 5. Extraordinary termination, termination of the agreement**
- 5.1** If the customer seriously violates its contractual obligations or our property rights, we may terminate the utilization rights granted to the affected software for cause after sending an unsuccessful reminder with a reasonable deadline. Repeatedly exceeding the utilization rights granted to the customer pursuant to Section 3, for instance, is a serious violation.
- 5.2** Upon termination of the agreement, the customer is required to delete the original software, including the application documentation and all copies, or return them to us. The customer must show proof of the deletion at our request.
- 6. Reservation of title and compensation**
- The supplied product remains our property pending payment in full by the customer. The transfer of contractual utilization rights is settled and discharged upon payment of the total contractually agreed software price.
- 7. Warranty and liability**
- 7.1** We will provide the software to the customer free of legal and material defects; only significant material defects are consequential.
- 7.2** Statements regarding the software's properties are considered a performance description and do not represent any warrant of characteristics or durability within the meaning of German Civil Code (BGB) Section 443.
- 7.3** The customer's warranty rights do not extend to software which the customer has modified or which is used in a system environment other than the one intended or contractually agreed. The customer may still show that the different usage environment was not the cause of the defect.
- 7.4** The customer may assert warranty claims only for defects that are reproducible or otherwise ascertainable. It must document such defects in text form and promptly send us the defect reports and documentation, including all known and expedient information. The customer is required to take all reasonable measures to simplify ascertainment of the defect and its causes.
- 7.5** If we are required to correct defects, we may do so at our election through repair, replacement of the software, or pointing out or providing a reasonable workaround.
- 7.6** The warranty governs the most recent version of the software accepted by the customer. A reasonable new version must be accepted by the customer if it serves to avoid or correct defects.
- 7.7** In case of data loss, we are liable only for the effort required for data restoration, given application-adequate data backup by the customer. Regular data backup is application-adequate if it ensures immediate or prompt restoration of the state that existed prior to the damaging event with reasonable effort, depending on the sensitivity of the data.
- 7.8** In other respects Sections 8, 9, and 10 of our VLB apply as supplements.
- 8. Sharing**
- The customer may provide software and application documentation to a third party only as a single unit and only if it finally and completely discontinues its own use of the contractual objects. Partially or temporarily providing the product for use by a third party for a fee is prohibited, regardless of whether the contractual objects are provided in physical or nonphysical form. The same applies for providing it free of charge.
- 9. Cooperation and information duties of the customer**
- 9.1** The customer will learn about the software's essential functional features prior to purchase. It bears the evaluation risk of whether the software is suitable for its intended purpose and needs. The existence or creation of a functional and adequately dimensioned hardware and software environment is the sole responsibility of the customer.
- 9.2** The customer will test the software carefully before use to ensure it is free of defects and usable in the existing hardware and software configuration. This also applies to software it receives from us in the context of warranty and maintenance.
- 9.3** The customer will observe the applicable notes regarding installation and operation of the software. It will read current notes at www.rittal.com at regular intervals.
- 9.4** Where we have additional performance obligations in addition to providing the contractual object, the customer will cooperate free of charge to the necessary extent, for instance by providing employees, offices, hardware and software, and data and telecommunication facilities. The customer will allow us access to the software in order to detect and correct errors, at the customer's election directly on site and/or by remote data transfer.
- 9.5** It is the customer's responsibility to back up data and programme at application-adequate intervals, at least once daily. We may rely on the presumption that the customer's data that we come into contact with have been appropriately backed up.
- 9.6** We are entitled to verify at any time whether the software is being used in conformance with the agreement. To this end we may demand information from the customer, particularly with regard to the time frame and scope of use, and we may visually inspect the hardware and software used by the customer. The customer will grant us access to its offices during normal business hours for this purpose.
- 10. Choice of law, jurisdiction and venue**
- 10.1** Relevant German law applicable to domestic contracting parties, excluding the UN Convention on Contracts for the International Sale of Goods, shall apply to these Terms and Conditions and all legal relationships between us and the customer. By way of exception to this, the requirements for and effects of retention of ownership under Section 6 shall be subject to the law at the respective place of storage or assembly of the item if the choice of law in favor of German law is impermissible or invalid at that location.
- 10.2** For those persons addressed by Section 1.1, the sole place of jurisdiction – including international jurisdiction – for all disputes arising under and in connection with the contractual relationship shall be where our registered German office is located. We shall also be entitled to sue in any court with general jurisdiction over the customer.