



RITTAL Co., Ltd. · 10, Incheon tower-daero 25beon-gil, Yeonsu-gu, Incheon, 22013, Rep. of KOREA

## General Terms and Condition of Sales and Service

- Version of May 2018 -

### 1. Take-Over

The term "Take-Over" shall mean taking the physical possession of the Supplies by Buyer and acceptance of any completed Services or work by Seller and shall include within such meaning the following:

- (1) Take-Over of Supplies shall take place after Seller has made delivery. In the event Services are delivered or contracted separately, the Supplies shall be deemed to have been Taken-Over upon delivery.
- (2) If, after completion of the work, Seller requests Buyer to Take-Over the Supplies, Buyer shall comply and Take-Over the Supplies within a period of two weeks from the date Seller makes such request. In such case, if Buyer fails to Take-Over the Supplies within such period, Take-Over shall be deemed to have taken place. Take-Over is also deemed to have been effected if the Supplies are put to use, after completion of an agreed test phase, if any.
- (3) Minor defects in the Supplies shall not impede Take-Over and Buyer shall be liable for any and all damage to Seller caused by delayed inspection of Supplies.
- (4) In the event that Buyer requests to change, amend or cancel in part or in whole his purchase order after the order placement (hereinafter referred to as "Order Changes") Seller, at its own discretion, may inform the price of such Order Changes to Buyer and only reflect the Order Changes after the Buyer's confirmation and acceptance of the price. In the event that Buyer requests an order cancellation in part or in whole after delivery of the goods and requests a return of such goods Seller may investigate if such goods can be returned and used for other customers. In the event that Seller agrees to the goods return a 30% cancellation charge on the order value of such goods shall apply. In addition, other damages incurred by Seller such as air freight cost from overseas factories shall be reimbursed by Buyer. Notwithstanding any other provision, only standard catalogue articles in unused original packing condition which were delivered no longer than 3 months ago may be entitled for goods return. Orders for specially manufactured products not included in the current Seller's catalogue or products delivered more than 3 months ago cannot be returned to Seller and Buyer cannot cancel the purchase order for such goods under any circumstances.

### 2. Transfer of Risk

All risk of loss or damage to the Supplies shall be transferred from Seller to Buyer according to the terms of delivery as set out in the main contract, Seller's quotation or order confirmation (the "Main Contract", collectively with these General Commercial Conditions of Supplies and Services the "Contract").

The risk of loss or damage to the Supplies shall immediately pass and transfer to Buyer if the dispatch or shipping of Supplies, the start or performance of assembly or erection, the acceptance, receipt or Take-Over of Supplies or the trial run is delayed for any reasons attributable to Buyer or if Buyer has otherwise failed to accept, receive or Take-Over the Supplies.

### 3. Retention of Title to Supplies

Seller retains ownership to the Supplies until Buyer has paid the total contract price in full in accordance with the terms of payment as set out in this Contract. In the event where the Buyer fails to pay the total contract price, then Seller is entitled to request the Buyer to return the Product, and in this case the Buyer shall cooperate with the Seller's procedure of returning the Product without any objection.

The above shall not mean or imply that Buyer is entitled to request purchase order cancellation.

### 4. Delay

- (1) Seller shall provide Supplies and Services in accordance with the delivery time and performance schedules stated in the Main Contract.
- (2) The performance schedule for Supplies shall be considered to have been met if Take-Over in accordance with Section 1 herein has taken place within the agreed time period.
- (3) The performance schedule for Services to be accomplished within a fixed period shall be considered to have been met if Take-Over of such Services in accordance with Section 1 herein has taken place within the agreed time period.
- (4) Compliance by Seller with the performance schedules shall be conditional upon the timely fulfillment by Buyer of its obligation hereunder including the rendering of advance payments (if any) as well as, upon supply of all necessary licenses and approvals (if any). If said conditions are not met in a timely manner, the performance periods shall be extended accordingly.
- (5) If delay is attributable to force majeure as stipulated in Section 9 herein, or to any other cause beyond the reasonable control of Seller, the delivery periods shall be extended accordingly.
- (6) If Seller is directly responsible for any delay in the performance of its obligations under this Contract and Buyer has demonstrably suffered an economic loss therefrom, Buyer may claim compensation as liquidated damages in the amount of 0.5 % of the price of that part of the Supplies or Services for every 7 calendar days of delay, but in no case more than a total of 5 % of the price of that part of the Supplies which because of the delay could not be put to the intended use. The liquidated damages under this section shall be the exclusive remedy for damages due to delay.

If dispatch or shipment of Supplies is delayed at Buyer's request by more than one month after notice of the readiness for dispatch was given by Seller to Buyer, Buyer may be charged, for every month thereafter, storage costs in the amount of 0.5 % of the price of items of Supplies subject to such delay. If the dispatch of Supplies is delayed at Buyer's request by more than five



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months, at Seller's option, Seller may either treat such continuing delay as a breach of contract or continue charging Buyer for storage costs at the rate mentioned in the previous sentence.

If assembly, erection or commissioning is delayed due to circumstances for which Seller is not responsible, Buyer shall bear the reasonable costs incurred for idle times and any additional traveling of Seller or the erection personnel.

#### **5. Payment Delay**

If Buyer does not effect the agreed payments as scheduled, Seller shall be entitled to charge interest to Buyer at the rate of 1% of the amount due per month.

#### **6. Warranty**

Seller warrants that the Supplies to be delivered pursuant to the Main Contract are new and the Services rendered under the Main Contract are of good workmanship. Except as expressly warranted in this Contract, Seller hereby disclaims all warranties, express, statutory and implied, applicable to the Supplies and Services, including, but not limited to, any warranty of merchantability or fitness for a particular purpose.

Unless otherwise provided, the warranty period for Supplies and Services is 12 months from Take-Over, but no later than 18 months from delivery according to the terms of delivery as set out in the Main Contract. If during the warranty period(s), defects are detected and reported to Seller in writing, Seller shall within a reasonable period of time at its own account, take the corrective measures necessary to eliminate such defects by repairing or replacing defective Supplies and/or performing the respective Service again.

Buyer has a duty to assist Seller in correcting defects and shall upon reasonable request put personnel and facilities at Buyer's disposal for such purpose.

There shall be no claims based on defects in cases of minor deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under this Contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by Buyer or third parties and the consequences thereof shall be likewise excluded. The remedies provided for in this Section are the exclusive remedies available to Buyer for any breach of warranty by Seller.

#### **7. Industrial Property Rights**

(1) Unless otherwise agreed, Seller shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination. If a third party asserts a justified claim against Buyer based on an infringement of an IPR with respect to the Supplies made by Seller and then used in conformity with this Contract, Seller shall be liable to Buyer within the warranty period stipulated in Section 6 (Warranty) herein as follows:

(a) Seller shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or to replace them. If this would be unreasonable to demand from Seller, Buyer may cancel this Contract or reduce the remuneration pursuant to the applicable statutory provisions. Seller's liability to pay damages shall be governed by Section 8 (Liability) herein.

(b) The above obligations of Seller shall only apply if Buyer (i) immediately notifies Seller of any such claim asserted by the third party in writing, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the discretion of Seller. If Buyer stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

(2) Claims of Buyer shall be excluded if it is itself responsible for the infringement of an IPR.

(3) Claims of Buyer shall also be excluded if the infringement of the IPR is caused by specifications made by Buyer, to a type of use not foreseeable by Seller or to the Supplies being modified by Buyer or being used together with products not provided by Seller.

(4) Where other defects in title occur, Section 6 (Warranty) herein shall apply accordingly.

(5) Any other claims of Buyer against Seller or its agents or any such claims exceeding the claims provided for in this Section 7, based on a defect in title, shall be excluded.

#### **8. Liability**

(1) Any liability of Seller in respect to death or injury of any person is subject to and governed by the provisions of the law applicable in the Republic of Korea.

(2) Seller shall be liable for any loss or damage to goods or property of Buyer caused directly by negligence or wrongful act (breach of contract or tortious conduct) on the part of Seller, its personnel or its subcontractors engaged in carrying out the Contract.

(3) The liability of Seller set forth above in Sections 8(1) and 8(2) shall not, in any event, exceed 5% of the total contract price per incident, and the maximum overall liability shall be limited to 10% of the total contract price. Seller's liability in any case shall cease at the end of the warranty period as set forth in Section 6 herein.



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(4) In no event shall Seller be liable for any loss of use, production, profit, interest, revenues, loss of information or data or any indirect or consequential damages or losses unless any such damages or losses was caused due to gross negligence or intentional misconduct by Seller.

(5) The limitations and exclusions stated under this Section 8 shall apply for any liability of Seller under the Contract, in tort, under any theory of strict liability or otherwise.

(6) This Section 8 shall also apply to Seller's personnel, subcontractors and licensors including their personnel.

#### **9. Force Majeure**

(1) Neither Seller nor Buyer shall be liable for failure to meet contractual obligations under this Contract due to force majeure. Force majeure shall mean such unforeseeable occurrences beyond the reasonable control of a party such as, but not limited to: acts of God, natural disasters, labor disputes, war or warlike conditions, riot, sabotage, fire, breakdown of factory equipment critical to perform this Contract, transportation delays or accidents and acts of government (such as but not limited to change of laws and withdrawal of import permits).

(2) Any delay occurring in Supplies and Services by subcontractors shall be regarded as force majeure if being caused by events as defined in Section 9(1) above.

(3) The party affected by force majeure shall without delay inform the other party about the effect the force majeure event has on the performance of the Contract.

(4) Should any condition of Section 9(1) cause an increase in the cost of or time required for performance of any part of Supplies and Service, an equitable adjustment shall be made in the compensation, the time required for performance and such other provision as may be affected.

#### **10. Software**

Unless otherwise provided in the Main Contract, Buyer has the right to use software that are delivered with the Supplies ("Software") for the purpose stated in the product description only. The right to use is non-exclusive and non-transferable. Buyer shall not modify, reverse engineer or reproduce the Software without Seller's prior written permission.

#### **11. Termination**

In case any of the following events occurs for either party hereto, the other party may terminate the Contract partially or entirely in writing with immediate effect:

(1) Commencement of bankruptcy, reorganization or any similar insolvency proceedings;

(2) Dishonor payment of any notes or checks;

(3) Difficulty of maintaining or upholding any materials obligations under the Contract due to financial difficulties; and

(4) Breach of any material provisions of the Contract which have not been cured within 7 days from notice of such breach by the non-breaching party to the breaching part.

#### **12. Legal Relationship**

Buyer's relationship with Seller shall be that of an independent contractor. Buyer shall not be deemed to be an employee, legal representative, agent, partner or joint venturer of Seller for any purpose whatsoever. Buyer has no right or authority to assume or create any obligations of any kind or to make any representations or warranties, whether express or implied, on behalf of Seller, or to bind Seller in any respect whatsoever.

#### **13. Indemnification**

Buyer shall indemnify and hold Seller harmless from any claims, demands, liabilities, losses, damages, judgments or settlements (including reasonable attorney's fees), whether direct or indirect, of any asserted obligation of Seller stemming from any act, omission or obligation of or by Buyer or its agents or employees.

#### **14. Confidentiality**

During the course of the Contract, either party may have or may be provided access to confidential or proprietary information of the other party, and in the case of Buyer access to confidential or proprietary information of Seller and the Supplies and Services provided by Seller (collectively, "Confidential Information"). Confidential Information also includes the provisions of the Contract. Each party agrees to maintain such Confidential Information in confidence and limit disclosure on a need to know basis, to take all reasonable precautions to prevent unauthorized disclosure, and to treat such Confidential Information like its own information of a similar nature, until the information become rightfully available to the public through no fault of the receiving party or is required to be disclosed by applicable law or government authority.

#### **15. Compliance with Export Control Regulations**

(1) If Buyer transfers goods (hardware and/or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Seller or works and services (including all kinds of technical support) performed by Seller to a third party Buyer shall comply with all applicable national and international (re-)export control regulations.

In any event of such transfer of goods, works and services Buyer shall comply with the (re-)export control regulations of the Federal Republic of Germany, of the European Union and of the United States of America.

(2) Prior to any transfer of goods, works and services provided by Seller to a third party Buyer shall in particular check and guarantee by appropriate measures that:



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(a) There will be no infringement of an embargo imposed by the European Union, by the United States of America and/or by the United Nations by such transfer, by brokering of contracts concerning those goods, works and services or by provision of other economic resources in connection with those goods, works and services, also considering the limitations of domestic business and prohibitions of by-passing those embargos;

(b) Such goods, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided;

(c) The regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.

(3) If required to enable authorities or Seller to conduct export control checks, Buyer, upon request by Seller, shall promptly provide Seller with all information pertaining to the particular end customer, the particular destination and the particular intended use of goods, works and services provided by Seller, as well as any export control restrictions existing.

(4) Buyer shall indemnify and hold harmless Seller from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by Buyer, and Buyer shall compensate Seller for all losses and expenses resulting thereof.

#### **16. Reservation Clause**

Seller shall not be obligated to fulfill this Contract if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

#### **17. Miscellaneous**

(1) The Contract shall be interpreted in accordance with and governed by the laws of the Republic of Korea. All disputes in connection with the Contract or the execution thereof shall be settled through friendly negotiations. In case no settlement can be reached, the Seoul Central District Court shall be the competent court.

(2) If any provision of the Contract should be found invalid or unlawful by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity or lawfulness of any other provisions in the Contract. The parties shall amicably attempt to agree on new provisions of equal economic effect to replace the invalid or unlawful provisions.

(3) The Contract shall constitute the sole agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings between the parties and is intended by the parties as the complete and exclusive statement of the terms of agreement. Therefore, the parties are entitled only to such rights and to make such claims which are expressly provided for in the Contract. Further, the parties shall not be bound by any representation, affirmation of fact, course of prior dealings, promise or condition in connection therewith or usage of the trade not incorporated in the Contract.

(4) Any Supplies or Services not explicitly stipulated in the Main Contract are excluded from the Contract. The final scope of Supplies could also contain products which are under German export control. The export/re-export of these products is subject to the approvals of the authorities concerned.

(5) Any amendments to the Contract are only valid and effective if agreed upon in a signed written form by both parties.

(6) Failure by either party at any time to require the other party's performance of any obligation under the Contract shall not affect its right to require performance of the obligation. Any waiver of any breach of any provision of the Contract shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or modification of the provision itself, or a waiver or modification of any right under the Contract. No waiver shall be binding unless executed in writing by the party making the waiver.

(7) The Contract shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns but shall not be assigned, transferred, or set over in whole or in part by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

(8) This Contract is executed in English and in Korean and both versions shall be equally authentic. In case of any discrepancies or conflicts between the two versions, the Korean version shall prevail.