

# General Conditions of Purchase of Rittal RCS Cooling Solutions S.r.l.

- Version of [●] 2020 -

## 1. Scope of Application

These general conditions of purchase ("**GCP**") shall exclusively govern current and future supplies of goods and services supplied by the supplier. These GCP apply only if the supplier is not a "consumer" as defined under Legislative Decree 6 September 2005, no. 206 ("**Consumers' Code**"). ("**Rittal RCS Cooling Solutions S.r.l.**" or "**We**" and, as the case may be, "**us**" or "**our**") shall not accept any conflicting or different general terms and conditions except where We have expressly approved the same in writing. The GCP shall also apply where We accept or pay for goods and services of the supplier (hereinafter: the "**Contract Item**") knowing that the supplier's general terms and conditions conflict with or differ from the GPC.

The supply of goods or services to us shall be made in accordance with these GCP, which shall be considered fully accepted by the supplier upon acceptance of the order under paragraph 2. It is nevertheless understood that: (i) We reserve the right to refuse at any time execution of any order (and, therefore, to refuse to make payment and/or receive the goods or services for that order) whenever the supplier has not signed the GCP specifically accepting all the terms and conditions set forth herein, including those for which article 1341 of the Italian Civil Code requires express acceptance in writing, and that (ii) We are under no obligation *vis-à-vis* the supplier on the basis of the order should the supplier not return these GCP signed for acceptance as described above at the earliest of the two following dates: (a) the end of the 30th calendar day from the date of the order (b) the date of commencement of the order on the part of the supplier.

Individual agreements made on a case-by-case basis with the supplier (including collateral agreements, supplements and amendments) shall prevail over these GCP in any case. A written contract or our written confirmation, as applicable, shall be decisive in terms of the content of such agreements.

Legally relevant statements and notices to be made to us by the supplier after the conclusion of the agreement (e.g., granting deadlines, formal reminders and any declaration of rescission) must be made in writing in order to be valid.

References to the applicability of statutory provisions are for clarification only. Therefore, the statutory provisions apply even without such clarification insofar as they are not directly modified or expressly excluded in these GCP.

Should one or more clauses of these GCP be invalidated or declared invalid or unenforceable pursuant to applicable law, the validity of the remaining clauses shall remain unaffected.

## 2. Contract Conclusion

Our order shall be deemed binding upon its issuance or confirmation in writing, at earliest. The supplier must point out any obvious errors (e.g., typographical or computational errors) or incomplete information in the order, including the order documentation, for the purpose of correcting or supplementing it prior to acceptance; otherwise, the agreement shall not be deemed concluded.

Within a period of one (1) week from the issuance of the relevant order, the supplier is required to confirm our order in writing or, in particular by shipping the goods, to execute the order without reservations ("**Acceptance**").

A delayed Acceptance shall be deemed as a new offer and shall require a specific written Acceptance by us.

### **3. Prices**

The price stated in the order is binding. All prices include legal value-added tax (VAT) unless the VAT is stated separately.

Unless otherwise agreed on a case-by-case basis, the price includes all services and ancillary services of the supplier (e.g., assembly, installation), as well as all ancillary costs (e.g., proper packaging and transport costs, including any transport and liability insurance and export taxes). The supplier must take back any packaging material at our request.

### **4. Payment, Set-off, etc.**

Payments shall be remitted as follows: following receipt of a proper invoice and provided that the goods have been received and the service has been performed in full (including any agreed acceptance inspection), payment for invoices received on or before the 15<sup>th</sup> day of any month shall be remitted on the 30<sup>th</sup> day of the same month and payment for invoices or deliveries received after the 15<sup>th</sup> but on or before the last day of any month shall be remitted by the 15<sup>th</sup> day of the following month. We are entitled, at our absolute discretion, to deduct a three per cent (3%) discount on remittances made within the aforementioned deadlines.

Default in payment shall arise only after the payment term has expired and a formal reminder from the supplier has been received. The default interest is five (5) percentage points per annum above the legal interest determined according to Article 1284 of the Italian Civil Code . We retain the right to exercise our rights of set-off or retention, as well as the plea of non-performance, to the extent provided by statutory law. Any offsetting shall take place in accordance with the provisions provided by Article 1243 of the Italian Civil Code.

The supplier shall only be entitled to exercise a right of set off or a right of retention in relation to claims which are undisputed or have been finally adjudged by a court of law.

### **5. Place of Performance, Delivery, Packaging**

The terms of delivery from the free movement within the European Community are DDP (as defined in the INCOTERMS in force from time to time), for cross border deliveries from a third country, DAP (as defined in the INCOTERMS in force from time to time), delivery address as indicated in our order. Accordingly the supplier shall be liable for the risk of loss and destruction until the goods have been accepted by us or our agent at the agreed place of delivery indicated in our order. Where the place of delivery is not specified and unless otherwise agreed, the goods shall be supplied to Rittal RCS registered office. The respective destination is also the place of performance (obligation to be performed at the creditor's address). If an acceptance inspection has been agreed upon, this inspection shall be controlling in terms of the transfer of risk. In all other respects, the statutory provisions of the Italian Civil Code shall apply in the event of an acceptance inspection. Default in acceptance on our part shall be deemed equivalent to handover or a delivery inspection, as applicable. Quantities, weights and dimensions shall be based on the values ascertained by us during the incoming goods inspection, subject to evidence to the contrary.

Partial deliveries are not permitted unless we have expressly agreed to the same. The supplier shall only be permitted to use sub-contractors where we have previously consented to the same in writing. The supplier having requested and obtained authorization from us to subcontract shall in any case ensure that any of its subcontractors meet the same conditions Rittal RCS requires from its suppliers, without prejudice to the joint and several liability of the supplier with its subcontractors *vis-a-vis* us.

Should the order (or any related service) fall within the scope of Legislative Decree 81/2008 (*Consolidated Safety Act*), the supplier undertakes to provide all the documentation - also concerning possible subcontractors - in compliance with current and applicable legislation, and meet all the requirements provided for by such Legislative Decree. In addition, it undertakes to hold us harmless and indemnified against any detrimental effect that may arise from failure to comply with such Legislative Decree.

The supplier undertakes to use environmentally friendly packaging that can be recycled or disposed of at low cost. Polystyrene chips are not permitted for use as packaging material.

Packaging must ensure protection against damage, dirt and moisture during transport and storage in order that assembly at our premises or the premises of one of our agent companies can be carried out at no further cost. Any important information on contents, storage and transport must be affixed conspicuously to the packaging. Loaned packaging shall be returned carriage not prepaid to the supplier's address.

## **6. Delivery Dates**

The delivery period stated by us in the order is binding. The supplier shall inform us in writing immediately if it anticipates that it cannot meet any agreed delivery periods for any reason whatsoever.

If the supplier fails to perform its service, does not perform it within the agreed delivery period or is in default, then our rights, in particular the right of termination pursuant to article 1456 of the Italian Civil Code and the right to claim compensation for damages, shall be determined in accordance with the applicable provisions of the Italian Civil Code.

As soon as the supplier becomes aware that compliance with the agreed delivery date or any other agreed deadline specified in the contract will not be possible, the supplier must notify us accordingly without delay.

The supplier shall only be entitled to invoke our failure to provide requisite information or documents to be provided by us where, despite having sent us a written reminder setting a reasonable deadline, we have failed to provide the supplier with the same.

Save for our rights under the Italian Civil Code, if the supplier defaults, we shall be entitled to impose a contractual penalty - pursuant to Articles 1382 and 1383 of the Italian Civil Code - ranging from zero point two per cent (0.2%) of the net value of the goods delivered late per working day, up to a maximum of five per cent (5%) of the net value of the goods. We have the right to claim the contractual penalty in addition to performance and, as a minimum amount, of damages owed by the supplier in accordance with the applicable statutory provisions. The foregoing shall not affect any claim for additional damages. If we accept the delayed service, we shall claim the contractual penalty no later than the final payment date.

Unconditional acceptance of a delayed delivery or services does not constitute a waiver of the claims to which we are entitled as a result of late delivery or services.

## **7. Retention of Title**

Title to the Contract Items shall pass to us upon remittance of payment in full. We reserve the right however to further process or resell the goods as agreed prior to the payment. Any extended or expanded reservation of title shall be subject to our express written consent.

## **8. Waste Disposal, Prohibited Materials**

The supplier warrants its compliance with all applicable laws pertaining to the packaging of materials and to the withdrawal and disposal of the contract goods, including but not limited to any packing rules current at the time of supply and, *inter alia*, Legislative Decree 49/2014, as well as the RoHS Directive (no. 2011/65/EU dated 8 June 2011) on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

The supplier further warrants that the Contract Items are in conformity with the RoHS Directive (no. 2011/65/EU dated 8 June 2011).

## **9. Confidentiality**

During the term and after termination of the contract for a period of [twenty four (24)] months, the supplier shall not disclose to third parties or use for its own business purposes without authorization any confidential information (including but not limited to documents, designs, business intentions, personal data, problems, data and/or problem solutions or any other specific know-how of any kind (hereinafter referred to as "Information") received from us. The supplier shall also cause, pursuant to article 1381 of the Italian Civil Code, its employees to comply with such confidentiality obligation.

This non-disclosure obligation shall not apply to information which

- was already known to the other party prior to the contract;
- was legally acquired from third parties;
- is or comes into the public domain or is the state of the art;
- is cleared for disclosure by the disclosing party.

Upon termination of the contract the supplier shall return all confidential documents and information unrequested or at our request shall destroy the same and provide evidence thereof. Software provided for the supplier's own use, as well as presentation versions, must be uninstalled immediately by the supplier on its own initiative.

Where the supplier is at fault for a breach of this duty of confidentiality, the supplier agrees to pay appropriate contractual penalty, the amount of which shall be determined at our reasonable discretion and which are subject to review in full by the courts in the event of a dispute. For the first instance in which the supplier is at fault for a breach of the duty of confidentiality, a contractual penalty to an amount of EUR 2,000.00 shall typically be appropriate.

The supplier shall comply with data protection law requirements (Legislative Decree no. 196/2003, as subsequently amended by Legislative Decree no. 101/2018), in particular where access is granted to our premises or to our hardware and software. The supplier shall ensure that its vicarious agents acting upon its behalf shall also comply with the same and in particular that they are bound to data secrecy prior to the commencement of their work.

## **10. Insurance**

The supplier shall for the term of the contract, including periods of guarantee and limitation for warranty claims, take out and maintain liability insurance on terms customary in the trade and with an insurance sum of not less than EUR 2 million per damage claim. The supplier shall provide evidence of this at our request.

## **11. Quality Assurance, Incoming Goods Inspection**

The supplier undertakes to maintain a quality management system ("QMS") which corresponds to the most recent technical standards. The supplier shall carry out tests during manufacture in

accordance with the requirements or its QMS. Where necessary, we shall agree with the supplier on a testing plan for special preliminary testing.

The supplier shall conduct a final review of the products to ensure that only non-defective goods are delivered.

The commercial duty to inspect the goods and to give notice of defects is subject to the applicable statutory provisions (Article 1490 and following of the Italian Civil Code), subject to the following: our duty to inspect the goods is restricted to defects that become perceptible and evident during our incoming goods inspection upon external examination, including the shipping documents, and during our quality control by way of the random sample test procedure (e.g., transport-related damage and incorrect or short deliveries). If an acceptance inspection has been agreed upon, no duty to inspect the goods applies. Otherwise, the relevant factor is the extent to which an inspection is feasible, taking into account the circumstances of the specific case in the ordinary course of business. The foregoing shall not affect our duty to give notice of defects discovered subsequently. In all instances and notwithstanding the term provided under paragraph 1 of Article 1495 of the Italian Civil Code, our notice (notice of defects) shall be deemed to have been given immediately and in a timely manner if it is received by the supplier within five (5) business days.

## **12. Rights in the Event of Defects**

Unless otherwise specified below, our rights in the event of defects in quality or title concerning the goods (including incorrect or short deliveries, as well as improper assembly and faulty assembly, usage or operating instructions) and in case of other breaches of duty by the supplier are subject to the applicable statutory provisions and shall include the right to request replacement or repair of such defective and/or nonconforming goods, without prejudice to compensation for any greater damages and to a commitment to adopt the corrective and preventive actions necessary to prevent a recurrence of the defects and/or nonconformities.

Pursuant to articles 1490 and 1497 of the Italian Civil Code, the supplier is liable for ensuring, in particular, that the goods are of the agreed-upon quality at the time of transfer of the risk to us. In any case, in terms of quality, the parties shall be deemed to have agreed on the product descriptions that form the Contract Item of the respective contract or have been integrated into the contract in like manner to these GCP, particularly by designation or reference in our order. For purposes hereof, it makes no difference if the product description originates from us, the supplier or the manufacturer.

Where during the warranty period the supplier, for purposes of fulfilling its warranty duties, replaces or repairs any part(s) of the goods delivered, such repaired or replaced goods shall benefit from a new full warranty period that shall commence upon the supplier's completion of our claims for supplementary performance, except where the actions of the supplier gave us reason to assume that it did not consider itself obligated to carry out the warranty claim but supplied the replacement or undertook the correction of the defect merely as a gesture of goodwill.

Costs incurred by the supplier for the purpose of inspection and correction (including but not limited to any expansion and installation costs) shall be covered by the supplier even if it turns out that no actual defects existed. The foregoing shall not affect our liability for damages in case of an unjustified request for correction of defects; in this respect, however, we shall only be liable if we acknowledged or were grossly negligent for not acknowledging that no defect existed.

If the supplier fails to fulfill its duty of supplementary performance – by correcting the defects (cure) or delivering a non-defective product (substitute delivery), at our option – within an appropriate period determined by us, we may correct the defect directly and claim reimbursement of the necessary expenses incurred for this purpose or claim an appropriate advance from the supplier. If the supplementary performance by the supplier has failed or is unacceptable for us (e.g., because of

particular urgency, danger to the operational safety or the threat of imminent, disproportionate losses), no cure period needs to be granted; we shall inform the supplier of such circumstances immediately and, where possible, in advance.

Furthermore, in the event of a defect in material or defect of title, article 1492 of the Italian Civil Code grant us the right to reduce the purchase price or to terminate the agreement. Article 1494 of the Italian Civil Code also grant us the right to compensation of damages and expenses.

### **13. Limitation of Actions**

The reciprocal claims of the contracting parties shall become barred by the applicable statutes of limitations unless otherwise specified below.

According to Article 1495 of the Italian Civil Code, the statute of limitations for claims regarding defects is one (1) year from the date of transfer of the risk. If an acceptance inspection has been agreed upon, the limitations period shall begin to run at the time of the acceptance inspection. The one-year limitations period shall also apply by analogy to claims based on defects of title, but this shall not affect the statute of limitations for third-party claims in rem for the restitution of property (Article 2946 of the Italian Civil Code). Apart from this, claims based on defects of title shall not become time-barred in any case, as long as the third party can assert the right against us, particularly in the absence of a statute of limitations.

The statutes of limitations applicable under the provisions of the Italian Civil Code governing sales, including the foregoing extension, apply – to the extent provided by law – to all contractual claims regarding defects. Insofar as we also have non-contractual claims for damages based on any defect, the regular statute of limitations shall apply to these claims unless applying the limitations periods specified by the provisions of the Italian Civil Code governing sales results in a longer limitations period in the specific case.

### **14. Product Liability**

If the supplier is liable for any product-related damage, the supplier must hold us harmless from third-party claims in this respect insofar as the cause is within its sphere of control and organization and the supplier is directly liable to third parties.

As part of its duty to hold us harmless, the supplier must reimburse us for expenses incurred from or in connection with any third-party claim, including those arising from product recalls conducted by us. We shall inform the supplier regarding the subject-matter and extent of product recalls where possible and reasonable, and we shall give the supplier the opportunity to respond. The foregoing shall not affect any other statutory claims.

### **15. Intellectual Property Rights, Indemnification**

Where we provide the supplier with plans, documents, sketches or other information capable of intellectual property right protection for the purpose of performing its services, the supplier is granted a simple limited revocable license to utilize the same for its own internal use for the duration of the order transaction. Such license shall not include the right to reproduce, disseminate, process or the right to provide public access to this information. The supplier is not authorized to use such information for order transactions for other customers.

Where by reason of the cooperation between the parties, results are achieved which are capable of intellectual property right protection, the parties shall reach a separate agreement as to the registration and use of such results, in which the contribution of each party to the development results

is taken into reasonable consideration. In any event we shall acquire a simple, perpetual, gratuitous, unlimited license to use the subject-matter of the intellectual property right.

The supplier warrants that the use of the goods and services supplied as provided for in the contract, by ourselves or our customers worldwide does not infringe the intellectual property rights of any third party. The supplier shall indemnify us against any third-party claims brought against us based on the infringement of intellectual property rights for which the supplier is at fault, and the supplier shall reimburse us for all reasonable costs and disbursements incurred by us in defending against such a claim.

## **16. Replacement Parts**

The supplier shall ensure that it can supply us or our customers with the necessary replacements or replacement parts for the contract products for an additional ten (10) years after the last batch delivery on fair and standard conditions.

## **17. Tools, Materials**

Materials, equipment or tools placed at the supplier's disposal for the manufacture of the goods shall remain our property at all times. Where the supplier procures or manufactures such materials, equipment or tools at our request, we shall gain title to the same upon payment of the agreed price. In that case, the tools shall remain in the supplier's possession under a bailment agreement pursuant to Article 1803 and following of the Italian Civil Code.

The supplier shall be responsible for properly maintaining and insuring the materials, equipment and tools. Unless otherwise agreed by the parties, the cost thereof is included in the purchase price of the goods.

We reserve the right to demand at any time the surrender of any items that are our property unless the supplier requires these items in order to fulfill its contractual duties to us. The supplier is not entitled to use materials, equipment or tools provided by us for orders placed by other customers.

## **18. Code of Conduct**

The supplier undertakes to comply with the ["Rittal code of conduct for social responsibility"], which is available for download at [www.rittal.de](http://www.rittal.de) (Support-> Downloads). The supplier declares its support for the social values of the group of companies of the Friedhelm Loh Stiftung & Co. KG set out therein.

## **19. Export Permits**

The supplier shall be responsible for ensuring that the goods are suitable for use or processing in the agreed or known countries of destination. Where the supply is prevented by decisions made by governmental authorities and/or national or international provisions, including but not limited to export control provisions such as embargos or other sanctions imposed because of the contract goods supplied by the supplier, the supplier undertakes to provide us with reasonable assistance as quickly as possible in order to obtain the requisite export permit. Where supply is prevented for a period of more than six (6) months, we shall be entitled to terminate the order for the parts concerned.

## **20. Final provisions**

The laws of Italy, excluding the conflict of law provisions and the Vienna UN Convention on Contracts for the International Sale of Goods (CISG), shall govern all legal dealings between the supplier and

ourselves. The supplier expressly accepts that any disputes that may arise between the parties relating to the interpretation and/or execution of any orders and of these GPC shall be referred to the court of Milan.

The supplier declares to have agreed and understood any single article clause of the above general conditions of sale. In particular, pursuant to articles 1341 and 1342 of the Italian Civil Code, the supplier expressly declares to approve the provisions of the following articles:

9. Confidentiality

10 Insurance

11. Quality Assurance, Incoming Goods Inspection

12. Rights in the Event of Defects

14. Product Liability

15. Intellectual Property Rights, Indemnification

20. Final provisions

DATE

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Supplier