

## Rittal Limited (Canada) General Terms and Conditions of Sale Rittal and its associated and independent brands

(Revised February 2018)

- I. Selling Entity.** The selling entity is Rittal Limited (Canada), a Delaware corporation (the “Company”).
- II. Agreement.**
- 2.1** The following terms and conditions of sale, together with the terms and conditions of any written agreement signed by an authorized representative of the Company and of the ordering entity or person (“Buyer”) covering the subject matter hereof (collectively this “Agreement”), shall apply to sales resulting from Company’s acceptance of Buyer’s order for the products, goods, articles, materials, supplies, components, drawings, data or other property described herein (the “Products”). Offers to purchase can be accepted only by an authorized representative of Company and offers to purchase are not effective or binding until approved in writing by such authorized representative. Any different or additional terms and conditions proposed by Buyer in its purchase order or otherwise are hereby rejected by Company and shall not be incorporated into this Agreement. Buyer’s assent to the terms and conditions of sale set forth herein shall be conclusively presumed from Buyer’s failure to object thereto in writing as well as from Buyer’s acceptance of all or part of the Products.
- 2.2** Where this Agreement is found to be an acknowledgement, if such acknowledgement constitutes an acceptance of an offer, such acceptance is expressly made conditional upon Buyer’s assent solely to the terms and conditions hereof, and acceptance of any part of the Products delivered by Company shall be deemed to constitute such assent by Buyer. If this Agreement constitutes an offer, Buyer’s acceptance of such offer is expressly limited solely to the terms and conditions hereof.
- III. Prices.** Prices are as established by Company from time to time, with shipments to be billed at such prices as in effect on the date of shipment. Such prices are in U.S. dollars unless stated otherwise (Canadian prices are in Canadian dollars unless stated otherwise), and are subject to any price adjustment necessitated by Company’s compliance with any act of government, laws or regulations. Any tax, duty, tariff or other governmental charge upon the production, sale, shipment or use of the Products which Company is required to pay or collect from Buyer shall be paid by Buyer to Company unless Buyer has furnished Company with a tax exemption certificate acceptable to the appropriate taxing authority. All prices are net of all discounts, excluding applicable taxes and freight charges.
- IV. Payment.**
- 4.1** Payment for the Products and any credit terms shall be according to payment and credit terms as Company may establish in its discretion. Company may in its discretion make available to Buyer prompt payment discounts. Any prompt payment discounts shall be allowed on the Products only and shall exclude freight charges. Absent any contrary agreement, payment terms shall be net 30 days from the invoice date.
- 4.2** Late payments shall bear interest at the rate of 1-1/2% per month (18% per annum), both before and after judgment until payment in full; provided, however, that in no event shall Company charge interest higher than the maximum rate allowed by applicable law. Buyer shall pay Company for all expenses (including reasonable attorneys’ fees) incurred by Company in collecting any amounts due by Buyer to Company. If Buyer has any past due accounts, all Buyer’s accounts may, at Company’s option, be declared due and payable immediately.
- V. Terms of Shipment.** The shipment of the Products to Buyer shall be F.O.B. Company’s location of shipment [(if outside the U.S., INCOTERMS 2010: Ex works)], and Company may in its discretion ship from any of its locations. At the time and location of such shipment, Buyer takes title to the Products shipped and assumes all risk of and responsibility for any loss, damage or destruction with respect to such Products. No allowances shall be made for pickups by Buyer or its customers at Company locations. If Seller’s preferred carriers are used, freight charges will be prepaid and added to Buyer’s invoice. If Buyer chooses non-preferred carriers, freight charges will be collect or third party billing only. Alaska, Hawaii, Puerto Rico and export shipments are F.A.S. Port of Embarkation with all export charges to Buyer’s account. The Products shall be packed and packaged in accordance with reasonable commercial practices for one-way shipment. Additional packing expressly required by Buyer shall be charged separately. If the carrier delivers all material shown on the freight bill, but Buyer subsequently discovers shorted material, any claim must be filed directly with Company within ten (10) days after delivery. Claims filed later than ten (10) days after delivery will not be honored. When such shortage is verified by Company, credit will be issued to Buyer’s account within ninety (90) days of such verification. Company may in its discretion ship either in lots or in a single shipment.
- VI. Date of Shipment.** Shipping dates are approximate and are based upon conditions existing upon Company’s receipt of Buyer’s order. Company will, in good faith, endeavor to ship by the estimated shipping date but shall incur no liability for any delay or any damage arising therefrom.
- VII. Cancellation of Order by Buyer.** Orders shall not be subject to cancellation or modification by Buyer either in whole or in part without Company’s written consent and then may be subject to payment of a reasonable cancellation or modification charge that will reimburse Company for applicable costs incurred by virtue of the order (including costs of purchased materials and engineering costs) and provide Company with a reasonable allowance for profit, both in accordance with Company’s policy in effect on the date of cancellation or modification. Orders for Special Products (as defined in Section 11.1 below) and product identified as Rittal Non-Stock at time of purchase shall not be subject to cancellation or modification by Buyer under any circumstances.
- VIII. Force Majeure.** Company shall not be liable for any failure to perform its obligations under this Agreement resulting directly or indirectly from or contributed to by any acts of God,

acts of Buyer, embargoes, governmental actions, fires, accidents, floods, epidemics, delays in transportation, lack of or inability to obtain raw materials, components, labor, fuel or supplies, or other circumstances beyond the reasonable control of Company.

- IX. Limited Product Warranty.**
- 9.1 THE FOLLOWING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**
- Company warrants to Buyer that the Products are, at the time of delivery to Buyer, free of material and workmanship defects, provided that no warranty is made with respect to (a) any Product which has, in Company’s judgment, been subject to negligence, misuse, abuse, accident or improper storage, or (b) any Product which has not, in Company’s judgment, been installed, operated or maintained in accordance with normal practice and in conformity with recommendations and published specifications of Company. Repairs to, alteration of, or work done on the Products without Company’s prior written authorization shall void Company’s warranty on the Products.
- 9.2** At its option, Company shall repair, provide replacement Products for, or refund the purchase price of any Products, except climate products, that breach the foregoing warranty for twelve (12) months starting from the date of shipment of the Products to Buyer; and such obligation shall be Company’s exclusive obligation and the full extent of its liability, and Buyer’s exclusive remedy, for breach of warranty. The obligation above shall be extended to twenty four (24) months from the date of manufacturer for Rittal Climate products. Company makes no warranty with respect to any software or firmware that are a part of the Products, and Company makes no warranty with respect to Products that are manufactured by and carry the brand of a third party that is not an affiliate of Rittal Limited (Canada).
- Upon discovery of an alleged defect, Buyer shall notify Company in writing within ten (10) days of such discovery of any claim whatsoever that Buyer may have with respect to the Products, and failure to give such notice within the specified time shall constitute an unqualified acceptance and waiver of all claims with respect to the Products. Upon receipt of notice from Buyer claiming defective Products, Company may inspect such Products at Buyer’s location or require that they be returned to Company on a freight collect basis for inspection. All warranty claims must be supported by a dated proof of purchase and appropriate Product identification information, where applicable. Product can be returned to Company only when it has issued proper return authorization. Company retains the right to be the sole judge of what constitutes a defect in performance or manufacturing in regard to this warranty.
- 9.3** This warranty excludes labor costs associated with the replacement of defective Product.
- 9.4** Acceptance shall occur, if not before, when Buyer fails to reject in writing within ten (10) days after delivery of the Products to Buyer. Buyer may rightfully reject only where a reasonable inspection shows that the Products fail to substantially conform to the applicable Product specifications. Rejection shall not affect transfer of title and risk of loss under Section V. Buyer waives its right to revoke acceptance, it being the intent of the parties that Buyer’s remedies for any nonconformity detected after acceptance be limited to those expressly provided herein for breach of warranty. After acceptance, the Products may not be returned to Company except to the extent expressly provided herein upon a breach of warranty, or otherwise in accordance with Company’s returns policy as Company may establish in its discretion.
- X. Limitation of Liability. IN NO EVENT SHALL COMPANY BE LIABLE (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, INCLUDING NEGLIGENCE) FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES BY WHOMEVER INCURRED OF WHATEVER NATURE, INCLUDING DAMAGES FOR LOST PROFITS, DATA, TIME, REVENUES OR THE LIKE, EVEN IF COMPANY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, EXCEPT FOR COMPANY’S PATENT INDEMNITY OBLIGATIONS UNDER SECTION 11.2 BELOW, IN NO EVENT SHALL COMPANY’S TOTAL LIABILITY (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, INCLUDING NEGLIGENCE) FOR ANY CLAIMS OR DAMAGES ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS EXCEED THE PURCHASE PRICE OF THE PRODUCTS GIVING RISE TO SUCH CLAIMS OR DAMAGES. THIS SECTION X SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.**

*Terms and Conditions continue on reverse side.*

**XI. Special Products; Patent Indemnity.**

**11.1** “Special Products” are those Products manufactured or furnished by Company in accordance with drawings, samples, or manufacturing specifications designated by Buyer or its customers. All Special Products must be accepted by Buyer within thirty (30) days of manufacture; after thirty (30) days, Company may invoke a storage charge of 1% per month (12% per annum) on their purchase price. Company may retain as its own property any special molds, tools, dies or fixtures utilized in manufacturing Special Products. Buyer shall defend, indemnify and hold harmless Company and its affiliates from and against any and all claims and demands, and related liabilities, damages and expenses (including reasonable attorneys’ fees), arising from or related to the design, distribution, manufacture or use of any Special Product, including such claims and demands asserting infringement of any U.S. or foreign patent, trademark, copyright, or other intellectual property right.

**11.2** In the event any Product is designed by Company, is not a Special Product and has not been modified by Buyer, its customers or other third parties, Company shall hold Buyer harmless against any damage awarded by a court of final jurisdiction in connection with any claim of infringement of any U.S. or foreign patent by reason of the sale or use of such Product, provided that Company is notified promptly in writing of any such claim, is permitted to assume the full direction and control of the defense against such claim and is given authority, information and assistance by Buyer (at Company’s expense) for such defense and authority to settle. In case any judgment rendered in connection with such claim shall become final (beyond right of appeal), and where Buyer has complied with the foregoing provisions of this Section 11.2 to Company’s satisfaction, Company agrees to pay all damages and costs thereby awarded against Buyer. If, subject to the above limitations, such Product or any part thereof should be finally held in connection with such claim to constitute an infringement or in Company’s discretion is likely to be so held to constitute an infringement, Company shall have the right at its option either to (a) procure for Buyer the right to use such Product, (b) modify or replace such Product with a non-infringing Product accomplishing substantially the same purpose as the replaced Product, or (c) require the return of such Product and refund to Buyer the purchase price thereof. Buyer’s remedies for damages resulting from the infringement or claimed infringement of any U.S. or foreign patent by the Products (regardless of the form of action) are exclusively limited to the provisions of this Section 11.2.

**XII. Changes in Products; Returns.** Company shall have the right in its discretion, without incurring any liability, to discontinue or limit its production or deliveries of any Product and alter the design, materials or construction of any Product. Rittal permits returns of standard stock products in accordance with the published return policy on the Rittal website and subject to but not limited to the following conditions:

- 12.1** All returns require a Return Authorization Number from Rittal Customer Service. Material sent without a proper return authorization number may be returned to sender.
- 12.2** All products returned must be in saleable condition and without alterations in original Rittal packaging. No credit will be given for product that requires major repair or rework. Products not in original “as shipped” Rittal packaging shall be subject to repackaging fee up to 100%.
- 12.3** Specials and Rittal Non-Stock product may not be returned unless covered under Section 9.1 Warranty, and all standard stock products in saleable condition are subject to a 20% restocking fee
- 12.4** All products must be returned to the location stated on the Return Authorization, and those products must be within 1 year of purchase date.
- 12.5** All products return are to be packaged and palletized (upright and banded) to prevent damage in accordance with Rittal product shipping instructions on the Rittal website.
- 12.6** The buyer is responsible for all freight charges on returns unless Company has accepted responsibility for the return in writing. When the company accepts responsibility for the return the Buyer is required to use the carrier stated on the Return Authorization.
- 12.7** Buyer may not take a deduction or credit without written permission from Rittal.

**XIII. Governing Law; Venue; Limitation of Actions.**

**13.1** This Agreement shall be governed by the laws of the domicile country of the selling entity. In the United States, this Agreement shall be governed by the laws of the State of Delaware in the United States of America. In Canada, this Agreement shall be governed by the laws of the Province of Ontario. The parties agree that the United Nations Convention on the International Sale of Goods shall not apply to this Agreement or to any goods sold or purchased among them.

**13.2** Any suit, action, or proceeding against Company concerning this Agreement shall be brought in the courts of the jurisdiction of the State of Delaware, or another U.S. State of Company’s choice, and Buyer hereby irrevocably submits to the exclusive jurisdiction of such state.

**13.3** Buyer irrevocably consents to service of all writs, process, and summons in any suit, action or proceeding filed or initiated by Company to be made upon Buyer by any of the following methods at Company’s sole election:

- (a) Service upon Buyer at its address by registered mail or certified mail postage prepaid (or the equivalent in Buyer’s jurisdiction), or
- (b) Service in any other manner permitted by applicable law.

**XIV. Confidential Information.** Buyer shall not disclose to Company any confidential information which Buyer possesses unless Company has, prior to such disclosure, agreed in writing to accept such information as confidential under clearly defined obligations of confidence. Buyer represents and agrees that all information disclosed to Company by Buyer (except such information as is specifically subject to a confidentiality agreement signed by Company prior to such disclosure) is non-confidential, and that Company is free to use and disclose any or all of

such information without accounting to Buyer therefor, notices on Buyer’s drawings, proposals, specifications and other documents to the contrary notwithstanding.

**XV. Indemnity.** Buyer shall defend, indemnify and hold harmless Company and its affiliates from and against any and all claims and demands, and related liabilities, damages and expenses (including reasonable attorneys’ fees), for or in connection with any property damage, any injury to or illness or death of any person or any other damage (including loss of income, profits, sales or “down time”) arising from or related to the Products, including such claims and demands brought by any employee, agent or subcontractor of Buyer for Buyer’s failure to comply with Company’s published instructions and specifications concerning the operation, use and maintenance of the Products, except any claim, demand, liability, damage or expense proven to be the result of the negligence of Company and not contributed to by the negligence of Buyer, its agents, employees, officers or directors or other third parties.

**XVI. Compliance with Laws.** By placing an order with Company, Buyer represents, warrants and covenants that:

**16.1** Buyer will comply with all applicable laws and regulations of the United States, Canada, Mexico and all other jurisdictions governing the marketing, sale, export and distribution of the Products, including, but not limited to, the U.S. export control laws, the Export Administration Regulations (the “EAR”) and the Foreign Corrupt Practices Act of 1977 (the “FCPA”). Diversion via export or re-export contrary to U.S. law is prohibited.

**16.2** Buyer has not paid, offered to pay, agreed to pay, or authorized or caused to be paid, directly or indirectly, any money or anything of value to any foreign official (as defined in the FCPA) to induce such official to use their influence to obtain an improper business advantage in connection with the purchase and resale of the Products, nor will Buyer do so at any time in the future.

**XVII. General.**

**17.1** Products (other than Special Products) ordered must be in standard packaging. Minimum acceptable order is US\$200.00 (or the Canadian equivalent).

**17.2** All clerical, stenographic, and typing errors are subject to correction.

**17.3** This Agreement is not assignable by Buyer without the prior written consent of Company. Any attempt to assign any of the rights, duties or obligations of this Agreement without such consent shall be void.

**17.4** This Agreement does not create an agency or joint venture relationship between Company and Buyer, whose relationship will be that of independent contractors.

**17.5** This Agreement does not constitute a license or authorization of any kind for Buyer to use any of the trademarks or trade names owned by Company in connection with the Products.

**17.6** If any provision or provisions of this Agreement, or parts thereof, shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**17.7** References in this Agreement to “including” shall be deemed to mean “including without limitation”; references in this Agreement to “in Company’s/its discretion” shall be deemed to mean “in Company’s/its sole discretion”; and references in this Agreement to a “claim” or “claims” shall be deemed to mean such a claim or claims whether or not in the form of a lawsuit. The captions in this Agreement are for ease of reference only and shall not in any way affect the meaning or interpretation of this Agreement.

**17.8** Buyer acknowledges that Buyer has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Buyer agrees further that this Agreement is the entire agreement between Company and Buyer concerning the subject matter hereof, and any proposals, negotiations or representations made prior to or contemporaneously with this Agreement, whether verbal or written, are excluded. Any amendment or modification of this Agreement must be in a writing clearly identifying itself as an amendment to this Agreement and signed by Company’s authorized representative.

**17.9** The official language of this Agreement shall be English, except where applicable law requires otherwise. Specifically, the official language for sales made in the Province of Quebec, Canada shall be French.

**18.0** The Customer shall take appropriate measure to ensure that the goods delivered to him by us under this contract and listed in the list of goods under Article 12g of Council Regulation (EU) No 833/2014, do not enter the Russian Federation either directly or indirectly. Even entering into an obligation under law of obligations aimed at this is to be refrained from, as is any arrangement that is to be qualified as circumvention of the above prohibition.

If the Customer becomes aware of activities of third parties, that indicate a breach of the obligations specified in this Clause, it shall inform us immediately. The Customer shall support us to the best of its ability in clarifying and remedying the situation. A breach of this Clause constitutes a serious breach of contractual obligations which entitles us to an extraordinary termination of the contractual relationship. Furthermore, we may demand suitable remedial measure from the Customer.