

## **Terms & Conditions of Sales**

### **GENERAL**

All sales of RICMAR (hereinafter referred to as "RICMAR" which includes all worldwide companies of the RICMAR Group) are strictly based upon the following terms and conditions set forth herein. Any purchase order or other communication from purchaser containing terms and conditions contrary and/or inconsistent to these terms and conditions are ***NOT*** accepted, nor shall be binding upon RICMAR, unless such terms are accepted in writing by an authorized representative of RICMAR. Failure of RICMAR to take exception or object to any terms contained in any purchase order, agreement, or communication from Purchaser shall not be construed as a waiver of such terms and conditions, nor acceptance thereof.

RICMAR's quotations and these terms and conditions of sales constitute the entire agreement between the parties and supersede all oral and written proposals, representations, understandings, and agreements previously made or existing with respect to the sale of RICMAR products and services.

Submission of any quotation to Purchaser in written or electronic form, RICMAR consents to, and by accepting in written or electronic form any such quotation, Purchaser consents to, any quotation made by RICMAR to Purchaser, any acceptance by Purchaser of any such quotation, any contract between RICMAR and Purchaser resulting from any such quotation and acceptance and any other transaction between RICMAR and Purchaser being in written or electronic form. In these terms and conditions of sales, "writing" and "written" include, but are not limited to, any electronic record as defined for purposes of applicable law, and "signed" includes, but is not limited to, any electronic signature as defined for purposes of applicable law.

1. **ACCEPTANCE.** For purchase order(s) based on this quotation shall only be binding upon RICMAR until accepted in writing by an authorized RICMAR representative at this main location in Kramsach, Austria.
2. **QUOTATIONS AND PRICING.** The prices stated in the quotation shall be firm for thirty (30) days from the date of the quotation. Prices shown in published price lists or other literature are not offers to sell, subject to confirmation by specific quotations.
3. **MINIMUM CHARGE.** There is a minimum charge of € 250, - per order.
4. **PAYMENT.** All invoices shall be payable in full within thirty (30) days of the date of the invoice, unless otherwise specified in the quotation. Tooling costs and NRE-charges will be invoiced after order placement and are payable in full within thirty (30) days of the date of invoice unless otherwise specified in the quotation. Each shipment shall be a separate transaction and payment shall be made accordingly. All payments not made when due shall be subject to a late charge of 2% per month, provided the rate of the late charge shall not exceed the highest applicable rate allowed by law. Unless otherwise agreed by RICMAR in writing, international payment terms are by Confirmed Irrevocable Letter of Credit, confirmed and payable through a bank approved by RICMAR. Please see also section 15 for more details.

- 5. TAXES AND OTHER CHARGES.** Purchaser shall pay any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, duty, custom inspection or testing fee, or other tax, fee or charge of any nature whatsoever, imposed by any governmental authority, on or measured by any transaction between RICMAR and Purchaser. In the event RICMAR is required to pay any tax, fee, or charge, Purchaser shall reimburse RICMAR therefore; or, in lieu of such payment, shall provide RICMAR at the time the purchase order is submitted with the exemption certificate or other documentation acceptable to the authority imposing the tax, fee or charge.
- 6. SHIPMENTS AND DELIVERY.**
- (a) Delivery of products** shall be "ex works" at the place of manufacture for loading by Purchaser's designated carrier and shall constitute delivery to Purchaser. Accordingly, all risk of loss or damage in transit shall pass to Purchaser at that time. Purchaser is responsible for all transportation, delivery, and insurance costs incurred in connection with the delivery of the products to the designated site.
- (b) Packaging.** Standard commercial air-freight packaging is included. Purchaser will be invoiced for any special packaging (e.g. see-freight packaging) requested outside of manufacturer's packaging specifications. Such special packaging must be mutually agreed upon the parties at least 60 days in advance of the scheduled delivery date.
- (c) Security Interest.** Purchaser hereby grants to RICMAR a security interest in products sold to it, and in any proceeds (including accounts receivable) thereof as security for its obligations hereunder. This security interest shall commence upon delivery of any product and terminate upon full payment therefore. At the request of RICMAR, the Purchaser shall execute any document required to protect this security interest.
- (d) Shipping Schedule.** The shipping schedule shall be computed from the date RICMAR receives Purchaser's purchase order for products with full instructions, samples, and such other information or items as RICMAR may need in order to proceed with the design manufacture, and test of the products ordered. In the event that Purchaser fails to supply RICMAR with shipping instructions in a timely manner, RICMAR shall have the right to arrange for shipment in any reasonable manner.
- (e) Shipping Cost Invoices.** If the cost of shipment is prepaid by RICMAR at Purchaser's request, RICMAR shall invoice the products upon shipping to reflect shipping costs known to RICMAR; additional shipping costs shall be invoiced as they become available from the shipper. A partial shipment will be invoiced as per the unit price.
- (f) Claims of Defects.** All claims for defects in delivery of products or services shall be deemed waived unless presented in writing within ten (10) days after delivery. Purchaser's receipt of products and/or services shall constitute a waiver of any claim for delay.
- (g) Returns.** No product shall be returned without a *Return Material Authorization Number* (RMA #) and shipping instructions first being obtained from RICMAR. The purchaser shall provide a detailed explanation documenting the claim for defect. All freight forwarding, transportation or any other shipping costs and custom clearance charges shall be paid by Purchaser.

**7. CANCELLATION AND RESCHEDULING.** Purchaser may unilaterally cancel this contract upon written notice to Ricmar and upon payment of cancellation charges as follows:

- (a) If notice is within 30 days of the scheduled shipment date, 80% of the purchase price of the order.
- (b) If notice is more than 30 days, but within 60 days of the scheduled shipment date, 50% of the purchase price of the order.
- (c) 100% of the purchase price is payable for tooling costs, NRE-costs, custom made items and spare parts.

Purchaser may unilaterally reschedule this contract upon written notice to Ricmar and upon payment of rescheduling charges as follows:

- (a) If notice is within 30 days of the scheduled shipment date, 80% of the purchase price of the order.
- (b) If notice is more than 30 days, but within 60 days of the scheduled shipment date, 50% of the purchase price of the order.
- (c) 100% of the purchase price is payable for tooling costs, NRE-costs, custom made items and spare parts.

**8. WARRANTY.** RICMAR warrants all parts manufactured shall be free from defects in material or workmanship under proper and normal use. RICMAR, at its option, shall repair or replace, free of charge, any part covered by this warranty which shall be returned to its original place of manufacture, transportation charges prepaid, and which examination proves not to be free from defects in material or workmanship. The warranty obligations of RICMAR are valid for 12 months after acceptance of the RICMAR product, but in no event longer than 14 months after the date of shipment. RICMAR shall not be liable for any repairs or replacement of parts covered by this warranty, except those made with RICMAR's written consent. RICMAR shall be liable for breach of this warranty only if it receives written notice of such breach within the warranty period. There is no warranty for consumables or expendable tools. The foregoing shall constitute the sole remedy of the purchaser for any breach by RICMAR of its warranty.

These warranties shall not apply to (a) products repaired or altered by anyone other than those authorized by RICMAR, (b) products subjected to negligence, accidents or damage by circumstances beyond RICMAR's control, or (c) products subjected to improper operation or maintenance (i.e. operation or maintenance not in accordance with RICMAR's operation manual, scheduled maintenance, installation manuals and/or instructions) or for use other than the original purpose for which the product was designed to be used. Parts exchange is accepted by authorized and trained personnel only.

RICMAR reserves the right to make changes to the design of any products sold to Purchaser, at any time, without incurring any obligation to install the new design on products previously purchased or shipped. RICMAR shall not be responsible for the correctness, accuracy, or consistency of any information provided by others, including information provided by Purchaser. The warranties set forth herein shall be void if: (a) Purchaser violated its duties stated herein, or (b) Purchaser directly or indirectly sells, leases or transfers the products to a third party without RICMAR's prior written consent.

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, RICMAR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

RICMAR shall not in any event have obligations or liabilities to Purchaser or any other party for loss of profits, loss of use or incidental, special or consequential damages, whether based on contract, tort (including negligence), strict liability, or any other theory or form of action, even if RICMAR has been advised of the possibility thereof, arising out of or in connection with the manufacture, sale, delivery, use, repair or performance of the PRODUCTS, SERVICES OR ANY SOFTWARE CONTAINED THEREIN, or any failure or delay in connection with any of the foregoing or for breach of any warranty set forth herein. Without limiting the generality of the preceding sentence, RICMAR shall not be liable to Purchaser for personal injury or property damages. In no event shall the liability of RICMAR to Purchaser arising under or in connection herewith exceed the original invoice amount of the products Purchased pursuant to such invoice. This warranty policy applies only to products purchased directly from RICMAR or from an authorized RICMAR distributor. RICMAR provided service is the exclusive remedy of Purchaser for product defects or any other claim of liability in connection with the purchase or use of RICMAR products.

- 9. REMEDIES.** In addition to RICMAR's remedies as stated above, and in addition to other available remedies, RICMAR shall have the following remedies:

In the event Purchaser fails to make any payment when due, RICMAR shall be entitled to: (a) offset the overdue amount against any other funds of Purchaser in RICMAR's custody; (b) terminate RICMAR's obligations under these terms and conditions of sale and treat this agreement as if cancelled by Purchaser, in which case Purchaser shall be liable for any amount payable pursuant to above; (c) delay the manufacture or delivery of all or part of the products and/or delay performance of the related services sold to Purchaser under this or any other sale or lease agreement between Purchaser and RICMAR; and/or (d) recover or require Purchaser to return forthwith, at Purchaser's expense (including proper insurance with respect thereto), all products and other materials which RICMAR provided to Purchaser and with respect to which Purchaser failed to make timely payment.

Without otherwise limiting RICMAR's right to change the terms and conditions of sale as provided above, if RICMAR at any time and in its sole discretion determines that Purchaser's financial condition or conduct jeopardizes RICMAR's right to payment, RICMAR may require payment in advance of shipping all or part of the products or performing related services pursuant to these terms and conditions of sale.

RICMAR shall have the right to obtain an injunction against unauthorized copying or use of the software or designated confidential information in violation of paragraphs above. RICMAR reserves the right to assign any overdue amount to a third party collection agency. Purchaser will be responsible for all collection expenses.

- 10. LIMITATION OF LIABILITY.** In addition to the limitations of RICMAR's liability set forth above, the following limitations also are applicable:

**(a) Patent Infringement.** RICMAR agrees to defend any patent infringement suit brought against Purchaser if such a suit alleges that Purchaser's use of a product furnished by RICMAR infringes any U.S. Patent or any patent in any country, provided that (1) Purchaser timely notifies RICMAR within ten (10) days after Purchaser becomes aware of any possible charge of infringement and (2) Purchaser gives RICMAR the authority to defend and settle, as well as information and assistance needed for the defense of, a suit or the threats of a suit. RICMAR may, at its option and expense, (1) procure for Purchaser the right to continue using the alleged infringing product, (2) modify the product to render it non-infringing or (3) take back the

product and refund the purchase price (less depreciation) and Purchaser's transportation and installation cost of the product.

The foregoing states RICMAR's entire liability for patent infringement and RICMAR shall have no obligation to defend any infringement suit if: (1) Purchaser's alleged infringing use of the product is based upon contributory infringement or results from the use of the product in connection with a product or equipment supplied or designed by others, or (2) Purchaser's infringing use arises from the use of the product for purposes not intended by RICMAR.

**(b) General Limitations of Liability.** In addition to any other limitations on RICMAR's liability under these terms and conditions of sale, RICMAR's total liability to Purchaser for any and all causes of action, regardless of form, shall not exceed the aggregate purchase price of the products and services sold to Purchaser as stated in the quotation and in other applicable conditions of sale signed by an authorized RICMAR representative.

**EXCEPT AS HEREIN PROVIDED RICMAR SHALL NOT BE LIABLE TO PURCHASER OR ANYONE ELSE FOR ANY OTHER EXPENSE, INJURY, LOSS OR DAMAGE WHETHER DIRECT OR CONSEQUENTIAL, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE OF THE PRODUCTS OR PRODUCTION, LOSS OF INFORMATION OR INCREASED COST OF OPERATION OR DELAYS IN OPERATION** arising in connection with the sale, repair, use of, or inability to use the products OR SERVICES for any reason. The provisions of this Paragraph shall survive any termination of these terms and conditions of sale.

11. **INDEMNIFICATION.** Purchaser shall defend, indemnify and hold RICMAR harmless from any and all liability, claims, losses, damages, costs and expenses (including reasonable attorney's fees and costs) arising from Purchaser's breach of these terms and conditions of sale, including Purchaser's duties as described in above.
12. **FORCE MAJEURE.** RICMAR shall not be held responsible or liable for any loss or damage resulting from a delay in the delivery of the products or any failure to perform its obligations to Purchaser if the causes of such delay or failure are attributable to Acts of God, governmental authority, or Purchaser, or due to strikes, embargoes, supply shortages or other causes beyond the reasonable control of RICMAR. In the event any delay occurs because of these causes, the date of delivery shall be extended by at least the period of time attributable to the delay.
13. **EXPORTS.** Products manufactured by RICMAR may be subject to export control by Austrian Bundesministerium für Wirtschaft, Familie und Jugend (Federal Ministry of Economy, Family and Youth) and, possibly, may not be exported without application and issuance of appropriate licenses from the Federal Ministry. Purchaser is responsible for obtaining the appropriate export licenses when reselling the products, at any time, to a party other than that which was named in the original contract of sale as the end user of the products.

14. **MISCELLANEOUS.**

**(a) Assignment.** These terms and conditions of sale shall inure to the benefit of and shall be binding upon

the heirs, successors, and assigns of the parties hereto. Purchaser shall not assign its duties and obligations hereunder without RICMAR's prior written consent.

**(b) Controlling Law.** These terms and conditions of sale shall be governed by, construed under, and enforced in accordance with the laws of Austria without regard to principles of conflicts of law, and the parties submit to the jurisdiction of any appropriate court within Austria for adjudication of disputes arising from the sale of RICMAR's products or services.

**15. LETTER OF CREDIT.** If a Letter of Credit (L/C) is required for payment, purchaser shall open a fully operable irrevocable L/C to Ricmar at least 30 running days prior to the scheduled delivery date. The L/C shall be opened in accordance with publication ERA 500 of the International Chamber of Commerce (ICC) and the following terms of Ricmar's instructions:

- Form of documentary credit: Irrevocable
- Beneficiary:
  - Ricmar Technology GmbH
  - Amerling 133
  - 6233 Kramsach
  - Austria
- Advising Bank (Euro-Account):
  - Raiffeisenbank MUT
  - Bank Code: 36216
  - Account Number: 4054185
  - IBAN: AT963621600004054185
  - BIC: RZTIAT22216
- Advising Bank (US-Dollar-Account):
  - Raiffeisenbank MUT
  - Bank Code: 36216
  - Account Number: 4090536
  - IBAN: AT653621600004090536
  - BIC: RZTIAT22216
- Currency: Euro (€) or US-Dollar (\$)
- Date and place of expire: yy.mm.dd in the country of beneficiary
- Drafts at: At sight
- Payable at: Payable at the counters of advising bank
- Partial shipment: Allowed
- Transshipment: Allowed
- Loading on board/dispatch: Any European airport or port
- Latest date of shipment: yy.mm.dd
- Shipment of goods: Ex works. The description of goods in the L/C has to be identical with the description of goods in our order acknowledgement entirely.
- Documents required: e.g. Commercial Invoice, Delivery Note, Air Waybill, Pre-Acceptance Certificate
- Details of charges: All banking charges including reimbursement fee and payment charges are for account of applicant.

Important: Above example is valid only if RICMAR Technology GmbH is the contracting party.

- 16. DISPOSAL IN THE END-OF-LIFE CASE.** Ricmar and the customer agree that the customer is obliged to dispose old equipment in the end-of-life case in a professional way and according to the prevailing local legal regulations.
- 17. SUBJECT TO CHANGE.** These Terms & Conditions of Sales are valid starting April 1<sup>st</sup>, 2010. Ricmar reserves the right to change these Terms & Conditions of Sales at any time. All previous Terms & Conditions of Sales lose their validity.