

Terms and Conditions for the Sale and Delivery of Goods and Services by Getzner USA, Inc.



§1 These Terms Shall Apply

(A) The following terms and conditions shall apply to and shall govern all products and services provided or supplied by Getzner USA, Inc. ("Getzner") to any original purchaser of such products and/or services ("Customer"), regardless of whether an invoice, purchase order, or other document which memorializes a contract to purchase products and/or services between Getzner and Customer makes reference to these terms and conditions. All shipments, services, sales, and quotations between Getzner and Customer are subject to these terms and conditions. These terms and conditions shall also govern any future transactions.

§2 Quotes, Acceptance, Acknowledgement of Order

(A) Getzner shall sell products to Customer in the quantities and at the times agreed to by Getzner in writing. Customer may order products by submitting written purchase orders that contain the product(s), quantity per product, and requested delivery date. All orders submitted to Getzner for products or services, whether via purchase order or otherwise, are subject to final written acceptance by Getzner and no orders are binding upon Getzner until so accepted. Getzner's acceptance may be in writing (such as via an order confirmation) including via email or by delivery of the products to, or performance of the services for, Customer. Customer is solely responsible for proper selection and application of the products.

(B) No effect shall be given to any terms or conditions proposed in Customer's purchase order, proposal, sales note, acknowledgment, commercial document, correspondence, or other form of offer or acceptance which add to, vary from, or conflict with these terms and conditions. Getzner hereby objects to and rejects any such additional or different terms or conditions proposed by Customer, regardless of any knowledge Getzner may have of such terms, and such terms shall not bind Getzner.

§3 Price

(A) Unless otherwise agreed, the prices in effect on the delivery/service date shall apply.

(B) If prices are agreed upon in advance and there is any change in the costs underlying such prices, Getzner may adjust these prices to reflect such cost changes upon notice to Customer.

(C) Unless otherwise agreed, prices include customary packaging only. If Customer requests special packaging (including, but not limited to, individually packed, packed for ocean shipment), Customer shall be responsible for the additional costs for such packaging. Unless otherwise set forth in the invoice issued by Getzner for the transaction, the price specified in the invoice shall not include any international or domestic shipping charges, import duties, storage charges or taxes of any kind all of which shall be paid by Customer. Unless otherwise specified in the invoice, the price does not include any services related to the products, including travel, consulting, evaluations, or maintenance.

(D) If delivery is delayed for reasons within the Customer's control, Getzner is entitled to set correspondingly higher prices to compensate it for any increased costs resulting from such a delay. This shall not affect Getzner's right to reimbursement for any damage it may otherwise incur.

(E) Any taxes, customs duties, and other levies relating to acceptance of the delivery/service shall be borne by Customer, unless Getzner has agreed in writing to pay such charges.

§4 Place of Performance, Delivery

(A) All risk of loss during shipment shall be in accordance with the INCOTERM (2010) referenced in the invoice. If no such INCOTERM is referenced, all shipments shall be shipped Ex Works. Unless otherwise set forth in the invoice or agreed between Getzner and Customer in writing, Customer shall assume the sole responsibility for the transportation and importation of the products.

(B) Any risk in connection with services shall transfer to the Customer as soon as it has accepted those services. Customer has accepted products and services when Customer pays the charges for such products or services, commits to pay such charge, or uses the products or the item serviced.

(C) Getzner reserves the right to make partial deliveries of any products and/or services and these shall be subject to all of these terms and conditions.

(D) Customer shall be responsible for the importation of any products as importer of record and shall be liable for all importation expenses, including customs duties, penalties, taxes and storage charges. It shall be Customer's sole responsibility to obtain and maintain appropriate import licenses or permits. Customer shall not be released from performance hereunder if the products cannot be delivered, or delivery is delayed, as a result of the failure of Customer to maintain the appropriate licenses or permits, or failure to pay any charges owed with respect to the importation of the products.

(E) Unless otherwise agreed, Customer shall select the carrier(s) and routing of the shipment from Getzner's location to destination. Getzner shall assume no responsibility for the selection of the carriers and other entities involved in the transportation and delivery of the products, even in the event that Getzner is retained or otherwise assumes the responsibility for the transportation of the products. Customer assumes all responsibility for payment of freight charges to all carriers used to transport the products and all other costs associated therewith, regardless of whether the freight charges and other costs are reflected in the Invoice.

§5 LIMITED WARRANTY & LIMITATION OF LIABILITY

(A) GETZNER WARRANTS FOR A PERIOD OF SIX (6) MONTHS AFTER THE DATE OF DELIVERY (THE "WARRANTY PERIOD") THAT WHEN DELIVERED TO CUSTOMER, THE PRODUCTS WILL MATERIALLY COMPLY WITH GETZNER'S WRITTEN PRODUCT SPECIFICATIONS AND THE PRODUCTS WILL BE FREE FROM MATERIAL DEFECTS IN MATERIALS AND WORKMANSHIP. CUSTOMER SHALL BE PRESUMED TO HAVE READ AND UNDERSTOOD THESE SPECIFICATIONS AND TO BE FAMILIAR WITH GETZNER'S PRODUCTS AND SERVICES, INCLUDING, BUT NOT LIMITED TO, MANUFACTURING TOLERANCES, MATERIALS, AND THEIR PROPERTIES AND FUNCTIONALITY. IF, WITHIN THE WARRANTY PERIOD, (I) THE CUSTOMER DISCOVERS EVIDENCE THAT THE PRODUCTS DO NOT MATERIALLY COMPLY WITH GETZNER'S WRITTEN PRODUCT SPECIFICATIONS OR ANY DEFECTS IN MATERIALS OR WORKMANSHIP, AND (II) NOTIFIES GETZNER IN WRITING OF SUCH DEFECTS, AND RETURNS THE ALLEGEDLY DEFECTIVE PRODUCTS TO GETZNER, GETZNER SHALL PROMPTLY EVALUATE THE CLAIM. IF GETZNER CONFIRMS THE CUSTOMER'S WARRANTY CLAIM, GETZNER WILL, AT ITS SOLE OPTION, PROVIDE REPLACEMENT PRODUCTS OR REFUND THE PURCHASE PRICE FOR THE DEFECTIVE PRODUCTS. GETZNER IS NOT RESPONSIBLE FOR REMOVAL OF ANY PRODUCTS OR INSTALLATION OF REPLACEMENT PRODUCTS. THIS WARRANTY SHALL NOT APPLY TO ANY OF THE FOLLOWING: (a) PRODUCTS THAT HAVE BEEN ALTERED; (b) PRODUCTS THAT HAVE BEEN DAMAGED BY NEGLIGENCE OR ACCIDENT OR BY OTHER CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF GETZNER; OR (c) PRODUCTS THAT HAVE BEEN IMPROPERLY INSTALLED, USED OR MAINTAINED, OR THAT HAVE BEEN SUBJECTED TO ABNORMAL CONDITIONS OF USE OR MAINTENANCE NOT IN CONFORMITY WITH ACCEPTED INDUSTRIAL PRACTICES OR WITH GETZNER'S WRITTEN INSTRUCTIONS. NO WARRANTY CLAIMS WILL BE PROCESSED IF RECEIVED AFTER THE WARRANTY PERIOD. GETZNER'S SOLE OBLIGATION AND CUSTOMER'S SOLE REMEDY FOR ANY BREACH OF WARRANTY SHALL BE AS SET FORTH IN THIS SECTION 5.

(B) CUSTOMER SHALL INSPECT THE PRODUCTS AND SERVICES IMMEDIATELY UPON THEIR DELIVERY AND SHALL, WITHIN THREE (3) BUSINESS DAYS FROM THE DATE OF DELIVERY, GIVE WRITTEN NOTICE OF ANY CLAIM THAT THE PRODUCTS OR SERVICES DO NOT CONFORM TO THEIR DESCRIPTION AS SET FORTH IN THE INVOICE COVERING SUCH PRODUCTS AND/OR SERVICES, OR THAT THE PRODUCTS ARE DAMAGED. NOTATIONS REGARDING SUCH A CLAIM SHALL BE MADE ON THE APPLICABLE BILL OF LADING, AIR WAYBILL OR DELIVERY RECEIPT. IF CUSTOMER DOES NOT PROVIDE SUCH NOTICE, THE PRODUCTS AND/OR SERVICES SHALL BE DEEMED ACCEPTED BY CUSTOMER. CUSTOMER EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO REJECT OR REVOKE ACCEPTANCE OF THE PRODUCTS AND/OR SERVICES AFTER SUCH THREE (3) DAY PERIOD.

(C) IN NO CASE WHATSOEVER, INCLUDING JUSTIFIED WARRANTY CLAIMS, IS THE CUSTOMER ENTITLED TO RETAIN ANY MONIES OWED TO GETZNER, EXCEPT UPON THE WRITTEN CONSENT OF GETZNER.

(D) CUSTOMER HEREBY EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY CLAIMS FOR LIQUIDATED CONTRACT DAMAGES LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS, LOSS OF BUSINESS OR LOSS OF INCOME RELATING TO OR ARISING OUT OF THE PURCHASE OR USE OF THE PRODUCTS OR SERVICES.

(E) IN ALL EVENTS, THE LIABILITY OF GETZNER, WHETHER BASED IN TORT, BREACH OF CONTRACT, BREACH OF WARRANTY, OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCTS AND/OR SERVICES IN QUESTION OR WITH RESPECT TO WHICH SUCH BREACH, DEFAULT, OR NEGLIGENCE IS CLAIMED. THE CUSTOMER ACKNOWLEDGES THAT THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES. IN NO EVENT WILL GETZNER BE LIABLE TO CUSTOMER OR ANY THIRD PARTY, IN CONTRACT, TORT OR OTHERWISE, FOR ANY LOSS OF PROFITS OR BUSINESS, OR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY CLAIMS FOR LIQUIDATED CONTRACT DAMAGES LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS, LOSS OF BUSINESS OR LOSS OF INCOME RELATING TO OR ARISING OUT OF THE PURCHASE OR USE OF THE PRODUCTS OR SERVICES, EVEN IF GETZNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF THE CUSTOMER PASSES ON OR SELLS ALL OR ANY OF THE PRODUCTS SUPPLIED, CUSTOMER SHALL FULLY TRANSFER AND ASSIGN THIS LIMITATION OF LIABILITY AND RECOURSE BAN TO CUSTOMER'S OWN CUSTOMERS. GETZNER SHALL NOT BE LIABLE FOR ANY DEFECT THAT WAS CAUSED BY THE PRODUCTS HAVING BEEN INTEGRATED INTO PRODUCTS OF THE CUSTOMER OR THOSE OF ITS CUSTOMERS. GETZNER SHALL NOT BE LIABLE IN THE EVENT THE PRODUCTS SUPPLIED WERE SUPPLIED BASED ON THE CUSTOMER'S INSTRUCTIONS (INCLUDING, WITHOUT LIMITATION, DESIGN DETAILS, SPECIFICATIONS, PLANS OR TEMPLATES). CUSTOMER SHALL BE REQUIRED TO INFORM GETZNER IMMEDIATELY IF IT BECOMES AWARE OF ANY CIRCUMSTANCES WHICH MAKE THE PRODUCTS DEFECTIVE. IF THE CUSTOMER FAILS TO FULFILL THIS OBLIGATION AS SET FORTH IN THESE TERMS AND CONDITIONS, AND FAILS TO TRANSFER AND ASSIGN THAT OBLIGATION TO ITS OWN CUSTOMERS, IT SHALL HOLD HARMLESS AND INDEMNIFY GETZNER FOR AND AGAINST ALL RELATED THIRD-PARTY CLAIMS.

(F) Rejected products may be returned only with Getzner's prior express written consent and at Customer's cost and risk. If products are returned without Getzner's prior consent, Getzner may refuse to accept the returned products and may return them to the Customer at Customer's cost and expense.

(G) The quality, properties, form, design, and functionality of samples may be inconsistent with the actual products or services. Any product descriptions, diagrams, illustrations and similar depictions, whether included in catalogs, prospectuses, or otherwise, are descriptions, illustrations, or approximations only, and do not constitute any specifications, representations, warranties, or guarantees, implicitly or explicitly.

(H) Customer acknowledges that the products purchased from Getzner are not intended for use in vehicles, aircraft or vessels (hereinafter referred to as "special applications"). Getzner does not offer its products for special applications unless Getzner expressly confirms in advance and in writing that its products can be used for a named special application. WITHOUT SUCH CONFIRMATION FROM GETZNER, CUSTOMER AND OTHERS SHALL NOT USE ANY PRODUCTS FOR SPECIAL APPLICATIONS AND ANY USE OF GETZNER'S PRODUCTS FOR SPECIAL APPLICATIONS SHALL TAKE PLACE AT CUSTOMER'S OWN RISK AND SHALL VOID ALL WARRANTIES AND ELIMINATE LIABILITY FOR GETZNER.

(I) EXCEPT FOR THE LIMITED WARRANTIES EXPRESSLY PROVIDED IN THIS SECTION, GETZNER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE PRODUCTS OR THE SERVICES, AND GETZNER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO THE PRODUCTS AND THE SERVICES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

§ 6 Grant of Security Interest

(A) Customer grants Getzner a continuing purchase money security interest in all products sold or delivered to it and to the proceeds of those products to secure the full payment of the purchase price of the products and all other obligations of Customer.

(B) As a secured party, Getzner shall be entitled to exercise all rights and remedies available to a secured creditor under applicable law. To assist Getzner in protecting its interest, Customer agrees that Getzner may execute and file, and Customer agrees to execute and deliver to Getzner, any and all documents necessary to establish, perfect, maintain, preserve and enforce Getzner's security interest, including all financing statements. Customer further appoints Getzner as Customer's attorney in fact for the purpose of executing all documents on Customer's behalf which are necessary to perfect and maintain Getzner's security interest

§ 7 Payment and Default

(A) Each transaction is entered into in Charlotte, North Carolina and the place of performance and payment shall be Charlotte, North Carolina.

(B) Payment shall be made within 30 days after the invoice date (unless different payment terms are included in Getzner's proposal or order confirmation), free and clear of any deduction and of any costs and charges. Payment shall be as set forth in the applicable invoice or other writing agreed to by the parties.

(C) If the purchase price is not paid when due, Getzner may, at its sole option: (i) defer the fulfillment of its obligations pending payment, (ii) accelerate the payment of the entire outstanding purchase price, (iii) charge to Customer all collection costs and interest as set forth in Section 7(F) below, and/or (iv) cancel the contract or delivery, or a portion thereof, and claim compensation for lost profits.

(D) Without limiting Getzner's other rights and remedies available under applicable law, Getzner shall have the immediate right to cancel or suspend any outstanding order, shipment, or any part thereof, without any liability whatsoever, in the event (i) there is a change in the control or management of Customer; (ii) Customer ceases to conduct its operation in the normal course of business; (iii) Customer becomes insolvent or files for bankruptcy or has a bankruptcy proceeding filed against it; (iv) Customer makes an assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or part of Customer's property; or (v) Customer fails to perform or observe any of its obligations to Getzner in accordance with its contract with Getzner or under other existing or future contracts between Getzner and Customer or otherwise, including payment of any purchase price, fees or charges as and when due. Such cancellation shall be in writing and shall take effect on the date of mailing.

(E) Payments will be credited towards the oldest debt and resulting interest and costs, even if earmarked otherwise.

(F) Acceptance by Getzner of any payments shall not waive any breach by Customer. In any dispute involving moneys owed to Getzner, Getzner shall be entitled to recover all costs of collection, including reasonable attorney's fees and interest at 15% per annum or the highest rate allowed by law, whichever is greater. The confiscation or detention of a shipment by any governmental authority shall not affect or diminish the liability of Customer to Getzner to pay all charges or other money due promptly on demand.

§ 8 U.S. Federal, State or Local Laws, Regulations or Requirements

(A) The Products are manufactured in Austria by an affiliate of Getzner, and Getzner makes no warranty, representation or promise as to whether the products meet any U.S. federal, state or local laws, regulations or requirements (for example, the Buy American Act), including without limitation any that may be included in any contract between Getzner and Customer.

§ 9 Place of Jurisdiction and Applicable Law

(A) All sales of products and providing of services to Customer, and all legal relationships between Getzner and the Customer, shall be governed by and construed in accordance with North Carolina law, excluding North Carolina's conflicts of laws principles. The 1980 United Nations Convention on the International Sale of Goods is expressly excluded.

(B) The parties agree that the North Carolina state courts and the United States District Court for the Western District of North Carolina shall constitute the sole and exclusive judicial forum(s) and venue and, therefore, shall have sole and exclusive jurisdiction over the adjudication and resolution of any and all disputes or controversies arising out of or relating to the purchase and sale of products or services or any contract between Getzner and Customer. Getzner and Customer hereby consent and submit to the exercise of personal jurisdiction over them by the North Carolina state courts and United

States District Court for the Western District of North Carolina. Notwithstanding the foregoing, Getzner reserves the right to bring any claims against the Customer before any other court having jurisdiction.

§10 Indemnification

(A) Getzner shall have no liability to Customer under any legal theory if any patent infringement allegation or claim is based upon Customer's use of the products delivered hereunder in connection with a process, or in combination with equipment, devices, materials or software not supplied or approved in writing by Getzner, or if products are used in a manner for which the products were not designed.

(B) Customer agrees to defend, indemnify and hold Getzner, its officers, directors and employees, harmless from and against any and all losses, damages, expenses, actions, attorney fees, liabilities, penalties, fines, duties as well as for any claims for injury, illness, or death of persons and damage to property arising out of, or in connection with: (i) the subject products after their delivery; (ii) any action or inaction taken by Customer, its employees, agents or independent contractors; (iii) any violation by Customer, its employees, agents, or independent contractors, of any applicable law, regulation or other mandate by a competent authority; (iv) any allegation or claim against Getzner for infringement or violation of any third party's intellectual property right due in whole or part to the act or omission of Customer, its employees, agents, or independent contractors; or (v) any claim related to drawings, sketches, templates, specifications, documents, or information supplied to Getzner by Customer in connection with the products or services.

§11 Miscellaneous Provisions

(A) Customer may not set off claims it may have against Getzner against any sums payable to Getzner. Customer shall not have any right of retention.

(B) Customer may not assign to others its claim to delivery or to service of the items.

(C) No terms may be challenged on the grounds of error on the part of Customer.

(D) Any documents or information about Getzner, its products, distributors, business, or other customers that are not publicly available and which are made available to Customer or of which Customer becomes otherwise aware through its dealings with Getzner shall be held in strict confidence and shall not be disclosed or otherwise made available to third parties or competitors. This also includes documents such as samples, drawings, drafts, cost estimates, prices or promotional materials that were delivered to the customer by Getzner.

(E) Customer agrees and confirms that it has no, and Getzner's sale of the products shall not be construed as granting to Customer any, license or intellectual property or similar right applicable to or in the products, or any estimates, drawings, illustrations, calculations, installation instructions, samples, or other document or material Getzner provides to Customer even if developed jointly by Getzner and Customer. Getzner retains ownership and control over all intellectual property including patents, trademarks, and copyrights applicable to or arising out of the products and services provided hereunder, whether developed by Getzner or jointly, as well as the exclusive right to manufacture the products. Customer assigns and agrees to assign to Getzner any rights in jointly developed intellectual property. Customer shall not name

or designate any Getzner product information or products in any process patent application. Customer may not alter or remove, and shall abide by, any patent, trademark, copyright, trade secrets, proprietary or other notices contained on or in the products.

(F) If any term hereof is or becomes invalid or unenforceable, this invalidity or unenforceability shall not affect the remaining terms hereof. These invalid or unenforceable terms shall be replaced by valid and enforceable terms which closest reflect the intended economic purpose.

(G) The headings contained in these terms and conditions are included for convenience and shall not affect the language included herein.

(H) Getzner is an independent contractor. Nothing shall be construed as creating a partnership, association or joint venture between the parties. Customer shall have no power or authority to enter into any commitment on behalf of or otherwise bind Getzner on any matter including without limitation making any representation or warranty on behalf of Getzner. No employee of either party shall be deemed to be an employee of the other party.

(I) Getzner's remedies for breach of any portion of the contract with Customer or of these terms and conditions shall be cumulative and shall include any remedies allowed by law. Any action or proceeding by Customer arising out of or relating to its contract with Getzner, the products or the services will be forever barred unless it is commenced within the earlier of: (a) one year after the claim or cause of action has accrued; or (b) the period prescribed by applicable statute of limitation or repose. Customer must give Getzner prompt written notice of any such claim.

(J) With the exception of payment requirements, neither party shall be liable, and performance shall be deemed extended, for delays or failure to perform directly or indirectly resulting from events and causes beyond its reasonable control, including but not limited to accidents, acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, strikes or other labor disputes, fires and natural calamities (including floods, earthquakes, storms and epidemics), changes in the law, and delays in obtaining (or the inability to obtain) labor, materials or services through usual sources at normal prices. If products, or labor, materials or services for producing products, are not available through Getzner's usual sources at normal prices, then (a) Getzner may allocate its supplies among its customers, including those not under contract, in any reasonable manner without liability, and (b) Getzner will not be held to the price set forth in the applicable sales document and Getzner and Customer agree to re-negotiate the price based on those actual cost increases to Getzner. Getzner shall have no obligation to purchase supplies related to the products to enable it to fulfill any order.

(K) Getzner's waiver of any breach by Customer must be in writing and signed by Getzner and shall not constitute a waiver of any other breach of the same or any other provision.

(L) These terms and conditions along with the final Getzner document (proposal or order confirmation) contain all of the terms and conditions governing the purchase and sale of the products and services and may not be modified or amended by Customer except by a written agreement duly executed by the parties.

Status: March 2014