

Terms and Conditions for the Sale and Delivery of Goods and Services by Getzner India Pvt. Ltd.



§ 1 Scope of application

(1) All supplies of our goods and the provision of our services including but not limited to calculations, measurements, the selection of materials, consultations/recommendations, installations (including graphic representations, planning etc. shall be governed by the following terms and conditions ("Terms"). These Terms are applicable also to future transactions, even if these were not explicitly incorporated by reference as part of the contract in a particular case. By acceptance or execution of our offer or by issuing purchase order, the customer is deemed to have unrestrictedly accepted these Terms. Any oral side agreements and deviations from these Terms shall be valid only if we have confirmed these in writing. Where explicitly agreed otherwise by way of a written instrument signed by both parties in exceptional cases, these deviations are applicable exclusively to that particular transaction only. However, nothing in these Terms is meant to supersede any more specific provision in a particular contract/writing, and to extent if there is any inconsistency between these Terms and any other provision of a particular subsequent contract/writing, the provisions of a subsequent particular contract shall prevail.

(2) Terms and conditions of the customer or of third parties do not apply, unless we have explicitly agreed in writing that those would be applicable. Any reference on our part to a letter containing or referring to the terms and conditions of the customer or of a third party shall not be construed as our consent to the application of those terms and conditions.

§ 2 Offer, acceptance, acknowledgement of order and no assignment

(1) Our offers are non-binding and subject to change. We accept orders by way of a written acknowledgement/confirmation of order, which can be sent to the customer by post, fax or e-mail ("Confirmation Letter"). We may refuse to accept an order without giving reasons. Any liability claims on this ground are explicitly excluded.

(2) Any Confirmation Letter sent by us shall be deemed expressly agreed between the parties following receipt by the Customer.

(3) Any amendments and modifications of the agreements reached and of these Terms are valid only if made in writing.

(4) Quality, properties, form, design and functionality of samples may be different from the supplied goods/provided services.

(5) The customer may not assign its claim to the supply of goods or the provision of the subject-matter of the contract to others.

§ 3 Prices

(1) Unless otherwise agreed, our prices on the date of the conclusion of the contract/Confirmation Letter shall be net prices (exclusive of GST and other applicable taxes) in Indian Rupees, including standard packaging and loading the goods onto the transportation vehicle. The customer shall have to pay extra for special packaging (e.g. unit package, packing for sea shipment). The customer shall be responsible for export procedures, if any, for onward transport and for all costs arising after collection of the goods. Goods shall be supplied by us from our warehouse and any expenditure to be incurred thereafter shall be required to be borne and paid by the customer.

(2) If goods are supplied/services provided at a later point in time for reasons within the customer's sphere, we will be entitled to charge higher prices, with due prior intimation about the same to the customer, to compensate the resulting higher costs, notwithstanding our right to compensation of any other damage we have suffered.

(3) The customer shall pay all taxes, customs duties and other levies payable by the customer when taking over the supplies/services, unless we have accepted an explicit obligation in writing to make payment.

(3) The customer must insure the goods/consignment at his/her/its own cost and expense against theft, damage caused by breakage, fire, water as well as any other damage, during transit and thereafter, and produce proof of the same, before he/she/it become eligible for delivery.

§ 4 Place of performance, delivery, late delivery, default in acceptance, acceptance

(1) Place of performance shall be our domicile at Pune, Maharashtra, even if it was agreed to supply the goods/provide the services elsewhere.

(2) Goods are transported at the customer's expense and risk. Any risk will transfer to the customer as soon as the goods are loaded onto the

transportation vehicle at the place of performance. This shall apply even in the case of partial dispatch/shipments, and/or even if we have assumed additional obligations such as freight or shipping, direct delivery and installation, if any. If the customer does not accept the delivery of consignment when offered, the customer shall be deemed to be in default of accepting delivery of such consignment and shall be liable for any loss occasioned by his neglect or refusal to take delivery and also for reasonable charges for the care and custody of the goods/consignment. Furthermore, our delivery shall be deemed to have been made and we are entitled to store the goods at the customer's expense. The resulting storage costs shall be refunded to us without delay. The risk for services shall transfer to the customer as soon as the customer has taken over the services. The customer cannot repudiate the performance subsequent to the product put into delivery mode unless and until after receipt of the same, customer can prove by way of legal adjudication that there is some fault and/or imperfection in it and therefore the judicial authority has granted customer right to not perform customer part of performance including payment of consideration to us.

(3) We are entitled to make partial deliveries or provide partial services only if these are of interest to the customer given the purpose of the contract, if the customer does not incur any substantial extra efforts therefrom and if the customer does not communicate in writing its objections. All contractual provisions are also applicable to partial deliveries and partial services.

(4) If we are unable to make supplies or provide services at the agreed date due to unforeseeable temporary circumstances beyond our control (force majeure, delays in supplies from sub-suppliers, shortage of raw materials, substantial breakdown of machinery etc.), we will be entitled to make supplies or provide services at the next date which is possible for us, provided that the customer can reasonably be expected to accept the supplies/services at that date. To the extent that the customer cannot reasonably be expected to accept the supplies or services due to the delay caused by temporary circumstances, the customer may withdraw from the contract by giving written notice immediately, without delay, on being informed of delay or on being informed of the next date. Should these events make it considerably more difficult or impossible for us to supply the goods or provide the services and if the impediment is not only temporary, we may withdraw from the contract. Provided any part/advance payment made by the customer shall be returned to the customer without customer claiming any interest on it.

(5) The time for the supply of goods and/or provision of services is based on the agreements between the parties. To comply with this deadline it is necessary that all commercial and technical issues are clarified and agreed upon between the parties in writing and that the customer has fulfilled all its obligations, e.g. submission of the necessary public permit or approval/documentation and having made an advance payment. Compliance with the delivery period or schedule shall be contingent upon performance of these customer's obligations. If this is not the case or in case of subsequent changes of any kind, the time for delivery will be reasonably extended. In such case we will inform the customer of the new delivery date and change in prices (if any) and will issue a new acknowledgment of order to this effect.

(6) The deadline for delivery is complied with if the goods or services have left our factory/warehouse in Pune, Maharashtra or we have notified the customer that the goods are ready for dispatch, whichever is earlier and the customer can take delivery of the goods/consignment until the expiry of the deadline. If the customer does not within timeline take the delivery of the goods/consignment, he/she/it shall be liable to us for charges as mentioned in § 3 (2) and § 4 (2) herein above.

§ 5 Warranty

(1) We warrant that the subject-matter of the contract (supply of goods or service) corresponds to our product and service specifications. By inspecting these product and service specifications, the customer shall inform itself of our products and services and their properties, including but not limited to manufacturing tolerances, materials and the properties and functionality thereof.

(2) A condition for any warranty rights is the proper fulfilment by the customer of all obligations of inspection and the duty to notify defects within

the prescribed timeline. Unless the customer notifies us in writing of defects within ten business days after delivery of the goods, the customer shall be deemed to have approved the delivered goods in respect of apparent defects or other defects that a prompt and careful inspection would have revealed.

(3) Any defective goods may be returned only with our explicit prior consent at the customer's cost and risk. If goods are returned without our prior consent, we may refuse to accept the returned goods and send them back at the customer's costs.

(4) In case of defects in goods, the customer is entitled to subsequent performance in the form of rectification of the defects or delivery of a defect-free item. If subsequent performance is unsuccessful, the customer may reduce the purchase price with our mutual consent or withdraw from the contract.

(5) We do not provide any warranty in particular in the following cases: inexpedient or improper use, improper transport or storage, defective assembly or commissioning by the customer or third parties, regular wear and tear, wear parts, incorrect or negligent treatment, improper maintenance, unsuitable operating materials, defective construction work, unsuitable foundation, chemical, electro-chemical or electric impact or use of unsuitable building materials.

(6) Furthermore, we do not provide any warranty if the customer changes or procures changes by third parties of the delivered goods without our consent, making the rectification of defects impossible or unreasonably difficult. In any event, any extra costs of having to rectify defects due to changes shall be borne by the customer.

(7) Should the customer become aware - in whatever way - of circumstances, which would make the delivered product defective the customer shall notify us without delay.

§ 6 Liability

(1) In case of infringement of the contract, our liability to compensate damage shall at all times be limited to money which has been received from customer, till such date. Should our products be used in aircraft or passenger vehicles, our liability shall be limited to an amount of EUR 500,000. This applies in particular to costs of installation and dismantling. Furthermore, parties expressly waive the right to claim any compensation for any remote and indirect loss or damage including any punitive damages. We are therefore not liable for consequential damage, including but not limited to lost profit or costs of reclaiming the goods. If we are in default and the customer suffers any damage therefrom, the customer may demand a lump-sum compensation for default equal to 3% of the value of that part of an entire consignment and/or entire service which - due to the delay - could not properly be used or could not be used in conformity with the contract. If the customer sets a reasonable deadline for performance - in consideration of the legal exceptions - and we do not meet this deadline, the customer will be entitled to withdraw from the contract according to the legal provisions.

(2) We are not liable for cases where the delivered products are defective due to having been incorporated into the products of the customer or its buyers. We are not liable either if the delivered goods were incorrectly produced, stored or supplied due to instructions given by the customer (e. g. construction details, specifications, plans, models or regulations for storage or transport).

(3) For the avoidance of doubt, our products are neither intended nor fit for nor was their fitness tested for an application in passenger vehicles and/or in aviation (hereinafter collectively "Special Applications"). It is strictly prohibited to use our products for Special Applications without our express written consent and we do not accept any risk in this context. Risk and responsibility of using our products for Special Applications are exclusively and solely borne by the customer, and the latter will fully hold harmless and indemnify us in this respect.

(4) Unless explicitly stated otherwise above, our liability shall be excluded.

§ 7 Reservation of proprietary rights

(1) We retain the title/proprietary rights to the delivered goods until such time as the customer has fulfilled all its obligations, including but not limited to the payment of the full purchase price (goods being under reservation of proprietary rights). We may reclaim the goods if the customer

infringes the contract and is in default with payment.

(2) We may insure the delivered goods at the customer's cost and expense against theft, damage caused by breakage, fire, water as well as any other damage, unless the customer has demonstrably purchased such insurance.

(3) Unless the customer has paid the purchase price in full the customer may not resell, pledge or assign the delivered goods as security without prior written consent. The customer shall notify us without delay in writing if the goods are pledged, seized or otherwise disposed of by third parties.

(4) If the customer resells goods being under reservation of proprietary rights, customer already assigns to us all claims arising from such resale or any other realization up to the amount of our purchase price (including GST). The customer undertakes to record the assignment in its books. Until further notice, the customer may collect these assigned claims in its own name but for our account. The customer is obliged to reserve for itself the proprietary rights to the goods even if goods being under reservation of proprietary rights are resold on credit.

(5) The delivered goods are always installed or processed by the customer on our behalf. Where the delivered goods are installed or processed together with other items not owned by us, we will become the joint owner of the new item in proportion of the value of the delivered goods compared to the other items. Moreover, the item created via processing is governed by the same provisions as the goods delivered under reservation of proprietary rights.

(6) The customer assigns to us its insurance benefits or claims for compensation of damage arising from the destruction of or damage to the goods being under reservation of proprietary rights.

(7) Goods being under reservation of proprietary rights may not be pledged or assigned for security.

(8) If we assert our proprietary rights by reclaiming the goods, we may dispose of the goods by private sale or auction. The goods are reclaimed at the generated proceeds, yet not exceeding the originally agreed price. We reserve the right to claim compensation for damage.

§ 8 Payment, default, retention

(1) Place of performance for payments shall be our registered office at Pune.

(2) The purchase price is payable without any deduction, free and clear of costs and charges, as per the payment terms agreed between the parties and mentioned on invoice.

(3) If the purchase price is not paid when due, we will be entitled (the claims in the following five sub-items can be enforced individually or in connection with each other):

- to postpone the fulfilment of our obligations until the arrears were paid,
- to reasonably extend the time for the delivery of goods or the provision of services,
- to demand immediate payment of the entire outstanding purchase price,
- to charge all dunning and collection expenses as well as legal default interest or
- to withdraw from the contract if the customer does not make payment within a reasonable grace period; even if the contractual performance is severable, we may withdraw from the contract in its entirety and lodge claims for the compensation of lost profit.

(4) If execution proceedings are conducted in respect of the customer's assets or if the customer's ability to pay is questionable, we are entitled:

- to demand immediate payment of all receivables, regardless of due dates,
- to withhold all deliveries and services under still non-performed contracts and to provide these only against advance payment. Should the customer refuse to pay in advance, we may withdraw from the contract and lodge claims for the compensation of lost profit.

(5) The whole/entire purchase price is due for payment without delay if the customer is in default of acceptance.

(6) Regardless of any other dedicated purpose, payments are always credited to cover the earliest debt and the resulting interest and cost.

§ 9 Setoff and customer's retention right

The customer may set off counterclaims and assert a retention right only if its counterclaims are uncontested or were finally established.

§ 10 Property rights

(1) We are proprietors of all intellectual property rights (inter alia patents, trademarks, designs, copyrights etc), whether registered, applied for registration, registrable or non-registrable, in respect of plans, drafts, cost estimates, technical documentation, samples, catalogues, prospectuses, illustrations, tools, software and similar materials and data which were provided to the customer ("Materials"). Any use, including but not limited to the reproduction, dissemination, publication, communication to the public and demonstration of Materials beyond the use contractually agreed between the parties shall require our explicit consent. To the extent that the delivered goods contain property rights, the customer is awarded the non-exclusive right to use the delivered goods, including their documentation, for their intended purpose.

(2) Should the customer apply for registration of an industrial property right, of which our supplied Getzner products are a component, the customer shall obtain our prior written consent. We explicitly prohibit any unauthorized application for registration of a property right by the customer without our consent. After grant of the property right, we shall have, in any event, a free and non-exclusive right to use the entire property right applied for. The customer undertakes to transfer and assign that obligation to its legal successors.

(3) The use and display of products and services in public (for example as reference) requires our express written consent.

(4) Any documents or information about us, our products, distributors or other customers made available to the customer or which come otherwise to the customer's attention may not be passed on or otherwise made available to third parties, including but not limited to our competitors. This shall also apply to documents such as samples, drawings, drafts, cost estimates or advertising materials made available to the customer or which come to the customer's attention in any other way. We are entitled to all rights to these documents.

(5) The customer guarantees that the drawings, sketches, models etc. made available by it are not encumbered by rights of third parties. The customer will hold harmless and indemnify us for and against all claims brought by third parties against us due to an infringement of rights to any of the above items. If such rights are asserted, we may withdraw from the contract without notice and immediately discontinue our supplies/services without examination of the legal situation and without the customer being entitled to assert any claims vis-à-vis us.

§ 11 Jurisdiction and applicable law

(1) This contract shall be governed by and construed in accordance with the applicable laws of India (without giving effect to the provisions of International Private Law and the UN Sales Convention).

(2) All disputes arising out of or in connection herewith, including any question regarding its existence, validity or termination, shall, unless amicably settled between the parties, be referred to arbitration by a sole arbitrator appointed by us as per Arbitration and Conciliation Act 1996. Place and seat of arbitration shall be Pune and language shall be English.

(3) Subject to the limitations enumerated in the Civil Procedure Code, 1908 and Arbitration and Conciliation Act, 1996, both amended till date, Courts of Pune, Maharashtra, India shall have exclusive territorial jurisdiction to try, entertain and decide any dispute in relation to and /or arising out of present Agreement.

§ 12 Final provisions

(1) Should any term hereof be invalid or unenforceable or become invalid or unenforceable after conclusion of the contract, the remaining terms of the contract shall not be affected. An invalid or unenforceable term shall be replaced, by way of supplementary interpretation of the contract, by a valid and enforceable term, which closest reflects the economic purpose the parties have intended to pursue with the invalid or unenforceable term. This applies also in case the contract should have any gap.

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