

# General Conditions of Purchase



## 1. Validity and legal force of the Client's Terms and Conditions

- a) These Terms and Conditions of Purchase shall apply to all contracts concluded by Getzner Werkstoffe GmbH and Getzner Werkstoffe Holding GmbH (hereinafter referred to as "Getzner") especially purchase contracts and service contracts, however these may individually be named. They shall also apply in the event of any amendment to, or any limitation or extension of such contracts, as well as in relation to any additional goods or services provided. These Terms and Conditions shall also apply in respect of all future transactions.
- b) The terms and conditions of the contractual partner shall not be accepted and shall not apply. No objection from Getzner shall be required.

## 2. Order

- a) Orders shall only be binding upon Getzner in the event that they are made in writing (by letter, e-mail or fax). The same shall also apply with regard to subsequent amendments or additions, and any additional orders.
- b) Any items enclosed with requests or orders from Getzner, such as plans, designs, data, samples, shapes, models, printing blocks, lithographs, patterns, templates or proofs shall remain the property of Getzner and may only be used for purposes specified by Getzner and must not be made available to third parties. They must be returned to Getzner at the expense of the Contractual Partner, no later than the time at which the invoice is submitted, or at any time if so requested by Getzner. Until such time as the items are returned, the contractual partner shall bear any risk in relation to overall degradation or to accidental damage to the items concerned.
- c) Getzner affords no guarantee with regard to the evaluation of offers or offer documentation (plans, technical specifications etc.).
- d) Until such time as the order is accepted, Getzner shall be entitled to withdraw it at any time, without stating a reason.
- e) By accepting the offer, the Contractual Partner declares that it is in possession of all the necessary information, data, descriptions, plans, technical specifications etc. and possesses a sufficient knowledge of local conditions, as well as all of the necessary qualifications and official consents.

## 3. Changes to (working) materials etc.

- a) The Contractual Partner shall provide Getzner with written notification in advance, in good time and at its own initiative of any changes to (working) materials, manufacturing processes, formulations, suppliers and third-party components. The Contractual Partner shall only be entitled to change (working) materials, manufacturing processes, formulations, suppliers and third-party components after obtaining written approval from Getzner. In the case of changes to (working) materials or formulations, Getzner shall be required to make available new declarations, certificates or confirmations for or about the contents used.

## 4. Supply

- a) Deliveries must be made DAT to Getzner's premises in Bürs in accordance with Incoterms 2010. The Contractual Partner shall be responsible for ensuring the items are suitably packaged. The packing costs and the costs for any transport insurance etc. shall be borne by the Contractual Partner.
- b) The Contractual Partner shall be obliged to provide its goods/services itself. Assigning the provision of goods or services to sub-contractors shall require the prior written consent of Getzner.
- c) Any retention of ownership rights against Getzner is hereby excluded.

## 5. Deadline for delivery/performance of service/delay

- a) Deliveries or services shall fall due on the agreed deadline for delivery/performance of service. The dates for delivery/performance of service stated in the order shall be binding.
- b) Getzner shall be entitled to refuse to accept any premature or delayed deliveries/performance of service and shall be entitled to return the goods at the cost and risk of the Contractual Partner or to store them at its own premises or at the premises of a third party.
- c) The Contractual Partner shall be obliged to inform Getzner in writing without delay, in the event that circumstances arise or come to its knowledge that will mean that the agreed deadline can no longer be fulfilled. The Contractual Partner must inform Getzner of the new date of delivery. Getzner shall be entitled to accept that date or to withdraw from the Agreement, without prejudice to its other rights or entitlements.
- d) Unless otherwise agreed in writing, the date for delivery/performance of service shall only be deemed to have been fulfilled in the event that the goods have been received at the agreed delivery location, including all transportation, customs and accompanying documentation, or in the event that the services are provided at the agreed location.
- e) Getzner shall be entitled to refuse acceptance of partial deliveries or services, or deliveries or services, the quantity of which is lower or higher quantity than the one agreed.
- f) In the event that the Contractual Partner falls into arrears with regard to the fulfilment of its binding commitment, whether in full or in part, Getzner shall be entitled to insist that the commitment be fulfilled, or to withdraw from the agreement, without setting a later deadline. In the case of partial deliveries or service provision, Getzner shall also be entitled to declare its withdrawal from the entire scope of services covered by the contract.
- g) In the event that the Contractual Partner is in arrears, Getzner shall be entitled to demand an immediately-payable contractual penalty of 1% of the order amount for each week, or part thereof, of the arrears, up to a maximum of 10%.
- h) Notwithstanding any other of Getzner's entitlements, the payment date shall be extended by four weeks for every week of arrears, or part thereof.

## 6. Acceptance, place of delivery/performance

- a) The place of delivery or performance shall be the agreed place of delivery or performance, or in the case of doubt, at Getzner's premises in Bürs. The location for payment shall be in Bürs.
- b) Delivery or performance shall only be deemed to have been provided in full in the event that all agreed or ordinarily required certificates (invoices, freight waybills, certificates of origin, warranty letters, technical documentation, instruction manuals, explanations etc.) have been provided to Getzner. The provision of those documents shall constitute a requirement before payment shall fall due.
- c) The Contractual Partner shall indemnify and hold Getzner harmless in respect of all claims brought by third parties, especially official authorities or Getzner's customers, as a result of a failure on the part of the Contractual Partner to provide Getzner with any document that had been agreed or is usually required, or in the event that it failed to do so in good time.
- d) The Contractual Partner shall be obliged, upon request, to provide Getzner without delay with all information that Getzner or one of Getzner's customers requires, in order to demonstrate, to any party

whatsoever, that statutory or other regulations, especially the regulations under EC-1907/2006, have been complied with. Such information shall especially include evidence regarding testing, calculations and analyses, together with the values determined on that basis.

- e) Machines and systems shall not be accepted until they have been commissioned. Any trial operation shall not constitute acceptance. In confirmation of acceptance, a protocol shall be drawn up, which will either state that the item is free of faults or will list any faults that may exist. The document shall be signed by Getzner and the Contractual Partner. That protocol shall not however serve to exclude Getzner's entitlement to make a claim in the event of faults not listed in the protocol. More specifically, the Contractual Partner shall be obliged to rectify all faults, including those not recorded in the protocol.

#### **7. Warranty**

- a) The Contractual Partner warrants that the delivery/performance of service corresponds to the agreement and the properties usually required, and especially to all relevant regulations (e.g. EC Regulation 1907/2006), the state of the art and all relevant national and international regulations and official requirements/impositions. Machines and systems must especially comply with the specifications and product-specific standards in terms of safety and operation.
- b) Without prejudice to any further claims by Getzner, the Contractual Partner shall, at Getzner's discretion, be obliged to rectify faults within a reasonable time or to grant Getzner a reduction in price.
- c) In urgent cases, Getzner shall be entitled to rectify faults for itself or to have them rectified by a third party. Any costs incurred in that regard shall be borne by the Contractual Partner.
- d) The warranty period that applies to any hidden faults shall not commence until such time as those hidden faults are discovered.
- e) The Contractual Partner shall be obliged to carry out test of its own in order to determine the quality and quantity of the goods or services it supplies. Any obligation on the part of Getzner to examine the goods and to notify the Contractual Partner of any defects is hereby waived.

#### **8. Insurance and compensation for loss or damage**

- a) The Contractual Partner shall be liable to Getzner in respect of any losses or damage arising from a breach of the contract, especially whenever these are caused by delayed delivery or the delivery goods or performance of service that is deemed to be faulty. Liability shall extend to the goods/services provided by sub-contractors or upstream suppliers. The obligation to provide a replacement shall also include the cost of any recall campaigns.
- b) Getzner shall also be entitled to assert claims for reason of product liability in the event that Getzner utilises the goods/services supplied within its own company.
- c) If requested by Getzner, the Contractual Partner shall be obliged to take out liability insurance providing cover of at least EUR 3.0 million and to continue that policy for a period of at least five years from the date on which the goods are supplied or services performed. If so requested, the Contractual Partner shall provide Getzner with evidence that such insurance cover has been taken out.

#### **9. Third-party rights**

- a) The Contractual Partner warrants that the goods supplied or services performed are not subject to any third-party rights and no rights held by third parties are being infringed as a result of the supplying of the goods or performance of the service.

- b) The Contractual Partner furthermore warrants that Getzner is entitled to process, use or sell the goods supplied by the Contractual Partner, without infringing any industrial property rights of third parties (copyright, patent rights, or rights relating to any brands, samples, names or rights under a licence).

- c) The Contractual Partner undertakes to indemnify and hold Getzner and its customers fully harmless in respect of any claims arising from (property) rights belonging to third parties.

#### **10. Prices/invoicing/delivery notes**

- a) Prices shall be regarded as fixed prices and shall include all activities required in order to effect delivery or performance of service in full.
- b) The original invoice shall be sent in duplicate by mail to Getzner's business address in Bürs. Original invoices may not be enclosed with the goods.
- c) Each invoice must fulfil the statutory stipulations and especially, the stipulations of the tax authorities.
- d) In order for payment to be effected, invoices must include the order number and Getzner's order item.

#### **11. Payment**

- a) Payment of the agreed remuneration shall not fall due until such time as the goods have been delivered/services performed in full and free of faults. The deadline for payment shall be 14 days at a discount of 3%, or 30 days net. Discount and payment periods shall commence on the date that the invoice is received, however not until such time as the goods have been supplied/services have been performed in full and are free of faults.
- b) In determining whether or not a payment has been made in good time, the date on which the instruction is made to the institution tasked with effecting payment shall apply. All costs involved in carrying out money transfer shall be borne by the Contractual Partner. The Contractual Partner shall also bear the risk of any delay in the receipt of the payment transmitted.
- c) Getzner shall be especially entitled to retain any payment either in full or in part until the end of the warranty period, in the event that due to changed financial position of the Contractual Partner there is a concern that the Contractual Partner may not be in a position to fulfil its obligations under the warranty. For the same reason, Getzner shall be entitled to retain any agreed discount payments that are due, until the contractually agreed deliveries/performance have been provided in full, in the event that there exists a concern that the Contractual Partner will not be in a position to fulfil its contractual obligations in full. Getzner shall be entitled at any time to offset any claims against the Contractual Partner to which Getzner may, for whatever reason, be entitled, against any demands for payment made by the Contractual Partner. The Contractual Partner undertakes not to assign any claims against Getzner to third parties, either in full or in part, without Getzner's written consent.
- d) The interest rate payable in the event of arrears shall be 4% per annum.

#### **12. Declaration of origin**

- a) The Contractual Partner shall be obliged to submit Declarations of Origin in respect of the goods supplied/services performed in the event that and in so far as this is required by virtue of regulations under public law or in the event or in so far as Getzner so requests. The Contractual Partner undertakes to facilitate the verification of the Declarations

of Origin by the relevant department of the Customs Administration and to provide any information or any additional confirmations that may be required in that regard.

- b) The Contractual Partner shall be obliged to compensate Getzner for any damage incurred in the event that the origin stated on the declaration is not recognised by the competent authority due to circumstances within the Contractual Party's control (such as insufficient documentation, false or insufficient declaration or inability to verify).

### 13. Confidentiality

- a) The Contractual Partner shall be obliged to ensure that any information that may come to its knowledge verbally or in writing in connection with the order or the execution thereof remains fully confidential. This duty to maintain confidentiality shall especially apply in the case of information regarding Getzner, its affiliated companies, projects, customers, products, production methods and distribution structures.
- b) All documents submitted to Getzner shall remain the property of Getzner. They may only be used by the Contractual Partner for the purpose of fulfilling its obligations to deliver goods or perform services and may not be made available to third parties. Once the order has been completed, the Contractual Partner shall return them to Getzner in their entirety, without being requested to do so. The Contractual Partner shall be liable for any damage accruing to Getzner as a result of a breach of this obligation.
- c) Getzner shall enjoy sole entitlement to all user rights relating to any illustrations, drawings, calculations, analytical methods, formulations, plans, designs, samples, proofs or other items produced or developed by the Contractual Partner or its subcontractors in connection with the order or the execution thereof. These may only be used by the Contractual Partner for the purpose of fulfilling its obligations to deliver goods or perform services and may not be made available to third parties.
- d) The Contractual Partner shall destroy any copies it may have produced, without being requested to do so.

### 14. Publication and publicity

Any evaluation or disclosure of any business connections that exist with Getzner in published works or for publicity purposes shall require the prior express consent of Getzner in writing.

### 15. Severability clause

In the event that any provision or stipulation that forms part of this Agreement is invalid or unenforceable or should so become, or in the event that the Agreement does not include any regulation that is deemed necessary, the validity of the remaining stipulations in this Agreement shall remain unaffected. In replacement of any stipulation that is invalid or unenforceable or in replacement of any gap in the provisions of the Agreement, a legally valid provision shall be deemed to have been agreed between the parties that corresponds to the intentions of the Contractual Parties or that in keeping with the sense or purpose of this Agreement, once the invalidity or unenforceability of the relevant provision or the gap in the provisions of the Agreement have been identified.

### 16. Jurisdiction and applicable law

- a) All legal relations between the Contractual Party and Getzner shall be governed by the substantive laws of Austria. The UN Sales Convention is excluded.

- b) Within the geographical area of application of the Lugano Convention or within the geographical area of application of the Brussels I Convention, all disputes shall be exclusively referred to the court of jurisdiction in Bludenz, Austria.

- c) It is hereby agreed that all cases that lie outside of those geographical areas of application shall be heard by the International Court of Arbitration of the Austrian Chamber of Commerce. The location for arbitration purposes shall be Bludenz, Austria and the arbitration shall take place in the German language. In the event that the Agreement is written in any language other than German, the language of arbitration shall be English. The jurisdiction of the Court of Arbitration shall not preclude either party, either before or during the arbitration process, from applying for provisional or securing measures before a national court or that the court orders any such measure.

- d) Getzner shall however be entitled at all times to institute proceedings against the Contractual Party before any other court that has jurisdiction, in so far as the matter has not yet been brought before the agreed Court or the Court of Arbitration.