

# General Conditions of Purchase



## 1. Scope, Validity of the Customer's terms and conditions

- a) These Terms and Conditions of Purchase shall apply to all contracts concluded by Getzner Werkstoffe GmbH and/or Getzner Werkstoffe Holding GmbH (hereinafter referred to as "Getzner"), in particular sales contracts and contracts for work, irrespective of how they are referred to in detail. They shall also apply in the event of changes to, restrictions of or additions to these contracts as well as to all additional orders. The Terms and Conditions of Purchase shall also apply to all future business transactions.
- b) Terms and conditions of the contractual partner are not accepted and do not apply. Getzner does not need to object to them.

## 2. Order

- a) Orders are only binding for Getzner if they are placed in writing (per letter or e-mail). This also applies to subsequent changes and additions as well as to all additional orders.
- b) Any devices enclosed with Getzner's enquiries or orders, such as e.g. plans, drafts, data, samples, moulds, models or specimen, remain the property of Getzner and may only be used for Getzner's purposes and may not be made available to third parties. They shall be returned to Getzner unsolicited, at the latest with the invoice or at any time upon request and at the expense of the contractual partner. Until they are returned, the contractual partner shall bear the risk of accidental loss or accidental damage to the devices.
- c) Getzner shall not pay any remuneration for the preparation of offers and offer documents (plans, technical specifications etc.).
- d) Until the order is accepted, Getzner shall be entitled to withdraw the order placed at any time, even without giving reasons.
- e) By accepting the order, the contractual partner declares that it has all the information, data, descriptions, plans, technical specifications, etc. required to execute the order and that it has sufficient knowledge of the local conditions as well as all necessary qualifications and official permits. If the contractual partner realizes that the description provided by Getzner is obviously incorrect, unclear, incomplete or obviously deviates from the sample, it shall notify Getzner immediately in writing thereof.

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

The contractual partner shall inform Getzner in writing in good time and without being asked to do so in advance of any changes to (raw) materials, production processes, formulas, suppliers and vendor parts. The contractual partner may only change (raw) materials, production processes, formulas, suppliers and vendor parts after written approval by Getzner. In the event of changes to (raw) materials or formulas, suppliers and vendor parts, the contractual partner shall provide Getzner with new declarations, certificates or confirmations for or about ingredients without being requested to do so.

## 4. Delivery

- a) Deliveries must be made DPU (Delivered at Place Unloaded) (at Getzner's plant in Bürs) in accordance with Incoterms 2020. The contractual partner shall ensure proper packaging. The contractual partner shall bear the costs of packaging and any transport insurance, etc.
- b) The contractual partner shall be obliged to personally provide its delivery/service. The commissioning of subcontractors requires Getzner's prior written consent.
- c) A retention of title cannot be invoked vis-à-vis Getzner.

## 5. Delivery Date/Service Date/Default

- a) The deliveries/services are due on the agreed delivery/service dates. The dates of delivery or services stated in the order are binding.

- b) Getzner is entitled to refuse acceptance of an early or late delivery/service and to return the goods at the contractual partner's expense and risk. Furthermore, Getzner shall be entitled to store goods delivered prematurely at the contractual partner's expense and risk at its own premises or at the premises of third parties.
- c) The contractual partner shall be obliged to inform Getzner immediately in writing if circumstances arise or become apparent to it which indicate that the agreed deadline cannot be met. The contractual partner shall notify Getzner of the new date without delay. Getzner shall have the right to accept the date or to withdraw from the contract, without prejudice to Getzner's other rights and claims.
- d) Unless otherwise agreed in writing, the receipt of the goods with all transport, customs and accompanying documents at the agreed place of delivery or, respectively, the provision of the service at the agreed place of performance shall be decisive for compliance with the delivery/service date or the delivery/service deadline.
- e) Getzner is entitled to refuse to accept partial, short or excess deliveries/services.
- f) If the contractual partner defaults on the fulfilment of its obligations in whole or in part, Getzner may insist on performance or withdraw from the contract without granting a grace period. Getzner shall also be entitled to withdraw from the contract with regard to the entire contractual services, even in the case of severable services.
- g) If the contractual partner is in default, Getzner shall be entitled to demand an immediately payable, no-fault contractual penalty of 1% of the order amount for each commenced week of delay, up to a maximum of 10%. This shall not affect the right to claim damages in excess thereof.
- h) Notwithstanding Getzner's other claims, the payment deadline shall be extended by one week for each commenced week of delay.

## 6. Acceptance, Place of Performance

- a) The place of performance for the delivery of goods or, respectively, performance of services is the agreed place of delivery/service; in case of doubt, the place of Getzner's registered office in Bürs. The place of payment shall be Bürs.
- b) The delivery or, respectively, performance of service shall only be deemed complete when all agreed or usually required documents (invoices, freight documents, certificates of origin, letters of guarantee, technical documentation, operating instructions, declarations, etc.) have also been handed over to Getzner. The handover of these documents is a prerequisite for the payment to become due.
- c) The contractual partner shall indemnify and hold Getzner harmless for all claims asserted against Getzner by third parties, in particular Getzner's customers or public authorities, resulting from the fact that the contractual partner did not hand over an agreed or usually required document to Getzner, or did not do so completely or on time.
- d) The contractual partner shall be obliged to immediately provide Getzner upon request and at its own expense with all information required by Getzner or one of Getzner's customers to prove compliance with legal or other regulations, in particular those of Regulation EC-1907/2006, to whomsoever. This information shall include, in particular, evidence of tests, calculations and analyses, as well as any values resulting from these.
- e) Machines and plants are not deemed to be accepted until they are put into operation. A possible trial run shall not be considered as acceptance. On the occasion of the takeover, a protocol is drawn up in which either the absence of defects is to be recorded or in which any defects are to be included. The protocol shall be signed by Getzner and the contractual partner. However, this protocol shall not have any foreclos-

ing effect preventing Getzner from asserting any claims for defects not listed in the protocol. In particular, the contractual partner has to remedy all defects even without a corresponding note in the protocol.

#### **7. Warranty**

- a) The contractual partner warrants that the delivery/performance of service complies with the agreement and the usually presupposed characteristics, in particular with all relevant regulations (e.g. Regulation EC 1907/2006), with the state of the art as well as all relevant national and international regulations and official prescriptions/official requirements. Machines and plants must in particular comply with the specifications and product-specific standards for safety and function.
- b) In the event of a defective delivery/performance of service, the contractual partner shall primarily be given the opportunity to rectify or replace the defective goods/performance, unless this is not reasonable for Getzner. If the contractual partner is unable to do so or if it does not comply with this immediately within the period set by Getzner, Getzner shall be entitled to withdraw from the contract and return the subject matter of the contract at the contractual partner's expense and risk or to make an appropriate price reduction. In urgent cases, Getzner shall be entitled to carry out repairs itself or have them carried out by a third party without granting a grace period. The contractual partner shall bear the costs arising from this. This shall not affect any further claims exceeding such.
- c) In urgent cases, Getzner shall be entitled to remedy defects itself or have them remedied by third parties. The contractual partner shall bear the costs incurred for this.
- d) For hidden defects, the warranty period shall only start running when such hidden defects are detectable.
- e) The contractual partner is obliged to check the quality and quantity of its delivery/performance of service itself. Getzner's obligation to inspect and give notice of defects is expressly waived.
- f) Getzner shall not accept any exclusions or limitations of liability on the part of the contractual partner, in particular in connection with warranty or compensation for damages.

#### **8. Force Majeure and Ceasing of the Basis of the Contract to Exist**

- a) Extraordinary events caused from the outside, which occur only extremely rarely and hinder the performance of the contractual partner, only release the contractual partner from its obligation to perform if (i) the extraordinary event is beyond any control of the contractual partner; (ii) it could not be foreseen at the time of acceptance of the respective (partial) order despite all conceivable expertise and extreme caution, (iii) this disruption and/or its effects can neither be averted nor overcome and (iv) the contractual partner proves the existence of all the aforementioned pre-conditions.
- b) The contractual partner must inform Getzner immediately of the existence of any such event. The obligation to perform shall only cease to apply from the time Getzner receives the corresponding notification and only for the duration of the disruption and to the extent of its effects.
- c) Supply bottlenecks, strikes, default or non-performance by suppliers and/or third parties (for any reason whatsoever) as well as official measures and legal norms which do not directly relate to the business of the contractual partner and which is absolutely necessary for the provision of services (whereby an obligation to use any other existing operating facilities exists) shall not release the contractual partner from its obligation to perform.
- d) The contractual partner affected by the extraordinary event undertakes to take all measures to limit the effects on the performance of its services.

e) If such a disruption lasts longer than 3 weeks, Getzner shall be entitled to terminate the contractual relationship.

f) The contract may not be contested on the grounds that the basis of the contract ceases to exist. The provisions in point 8. a) to e) remain unaffected thereof.

#### **9. Compensation and Insurance**

- a) The contractual partner shall be liable to Getzner for all disadvantages resulting from a breach of contract, in particular for direct or indirect disadvantages resulting from a delayed or defective delivery/service. The liability shall also extend to the delivery/service of subcontractors and pre-suppliers. The obligation to pay compensation also includes the costs of recall activities.
- b) Getzner shall also be entitled to assert product liability claims also if Getzner uses the delivery/service predominantly in its own company.
- c) Upon Getzner's request, the contractual partner shall be obligated to take out liability insurance with a coverage of at least EUR 3.0 million and to maintain it for at least 5 years after delivery/performance of service. The contractual partner shall provide Getzner with proof of this insurance upon request.

#### **10. Third Party Rights**

- a) The contractual partner warrants that no rights of third parties exist in respect of its delivery/service and that no rights of third parties are infringed by its delivery/service.
- b) The contractual partner further warrants that Getzner can process, use and sell the contractual partner's delivery/service without any restrictions and without infringing the industrial property rights of third parties (copyrights, patent rights, trademark rights, design rights, name rights, license rights).
- c) The contractual partner undertakes to fully indemnify and hold harmless Getzner as well as its customers with regard to any claims based on third parties' (industrial property) rights.

#### **11. Prices/Invoice/Delivery Note**

- a) Prices are fixed prices and include all expenses for the complete provision of the delivery/service.
- b) The invoice must be sent as a PDF file to the following e-mail account: buers.invoice@getzner.com.
- c) Each invoice must comply with all legal, in particular tax regulations.
- d) Invoices as well as other supplier documents (e.g. order confirmations, credit notes, delivery notes or test certificates) must quote the order number and order position of Getzner as a condition for the payment to become due.

#### **12. Payment**

- a) The agreed remuneration is only due for payment after complete and defect-free delivery/service. The term of payment is 14 days less 3% discount or 60 days net. Payment and discount periods shall commence to run upon receipt of invoice, but not before complete and defect-free delivery/services and starting with the agreed delivery date at the earliest.
- b) The date of placing the order with the respective payment institute commissioned to execute the payment is decisive for the timeliness of the payment. All costs of monetary transactions shall be borne by the contractual partner. The contractual partner shall also bear the risk of a delay of the transmitted payment.
- c) In particular, Getzner shall be entitled to withhold a due payment in whole or in part until the warranty period expires if, due to changed

economic circumstances of the contractual partner, it is to be feared that the contractual partner will not be able to fulfil its warranty obligations. For the same reason, Getzner shall be entitled to withhold agreed and due payments on account until the contractual service has been rendered in full, if it is to be feared that the contractual partner will not be able to fulfil the contract in full. Getzner shall at any time be entitled to offset any claims Getzner may have against the contractual partner for any reason whatsoever against its claims for remuneration. The contractual partner undertakes not to assign claims against Getzner to third parties, neither in part nor in full, without Getzner's written consent.

- d) Default interests shall amount to 4% p.a.
- e) It is agreed that all payments shall only be made subject to reservation.

### 13. Declaration of Originating Status

- a) The contractual partner shall be obliged to submit certificates of origin for its delivery/service if and to the extent that this is required by public law or if Getzner so requests. The contractual partner undertakes to enable the verification of the certificates of origin by the competent customs authorities and to provide the necessary information as well as any necessary confirmations.
- b) The contractual partner is obliged to compensate Getzner for any damage caused by the fact that the declared origin is not recognized by the competent authority due to circumstances for which the contractual partner is responsible (e.g. faulty certification, incorrect or insufficient declaration or lack of opportunity for verification).

### 14. Confidentiality

- a) The contractual partner is obliged to treat all information (whether in writing, electronically, orally, digitally embodied or in any other form), which the contractual partner receives with the order or during the execution of the order, as confidential without any restriction. This obligation to maintain confidentiality applies in particular to information about Getzner, its affiliated companies, its projects, customers, products, production methods and sales structures.
- b) Non-confidential information is however information which (i) was known or generally accessible to the public before Getzner disclosed or handed over the information to the contractual partner, or which becomes known or generally accessible at a later date without breaching a confidentiality obligation; (ii) has already demonstrably been known to the contractual partner before Getzner disclosed the information and without breaching a confidentiality obligation; (iii) was obtained by the contractual partner itself without using or referring to confidential information of Getzner; or (iv) was handed over or made accessible to the contractual partner by an authorized third party without breaching a confidentiality obligation.
- c) The contractual partner shall be liable for all damages incurred by Getzner or its affiliated companies as a result of a breach of this obligation.
- d) The contractual partner undertakes to contractually impose this obligation of confidentiality on its employees and, if subcontractors are commissioned, on subcontractors and their employees.
- e) All documents handed over by Getzner shall remain Getzner's property. They may only be used to fulfil the contractual partner's delivery/service and may not be made available to third parties and have to be entirely returned to Getzner unsolicited after execution of the order.
- f) Getzner shall be exclusively entitled to all rights of use regarding all illustrations, drawings, calculations, analysis methods, formulas, plans,

drafts, samples, specimens and other works produced or developed by the contractual partner or its subcontractors in connection with the order or its execution. They may only be used by the contractual partner to fulfil the contractual partner's delivery/service and may not be made available to third parties.

- g) Copies made by the contractual partner shall be destroyed by the contractual partner without being requested to do so once the cooperation has ended.
- h) This obligation of confidentiality ends 5 years after the end of the exchange of information within the scope of the contractual relationship concerning the delivery/service and remains unaffected by the termination of other contractual agreements.
- i) The contractual partner shall be liable for all damages incurred by Getzner as a result of the violation of the obligation according to point 14.

### 15. Publications/Testimonials and Advertising

Any evaluation or disclosure of existing business relations with Getzner in publications or for advertising purposes is only permitted with Getzner's express prior written consent

### 16. Severability Clause

Should any provision of these Terms and Conditions of Purchase be or become legally invalid or unenforceable in whole or in part, the validity of the remaining provisions of these Terms and Conditions of Purchase shall not be affected thereby. In place of the invalid or unenforceable provision, or in order to fill the regulatory gap, such a legally permissible provision shall be deemed agreed which corresponds to the greatest extent possible to what the parties to the contract wanted or would have wanted according to the meaning or purpose of this contract if they had recognised the invalidity or unenforceability of the provision in question or the regulatory gap.

### 17. Applicable Law and Place of Jurisdiction

- a) All legal relations between the contractual partner and Getzner shall be governed by Austrian substantive law (excluding the provisions of private international law as well as UN sales law).
- b) The exclusive place of jurisdiction for all disputes within the scope of application of the Brussels II Regulation or within the scope of application of the Lugano Convention shall be the court having jurisdiction *ratione materiae* and *loci* at Getzner's registered office in Bürs. Mandatory legal provisions on exclusive places of jurisdiction shall remain unaffected by this provision.
- c) For all cases outside this scope of application, the jurisdiction of the International Arbitration Institution of the Austrian Federal Economic Chamber (VIAC) (according to its Rules of Arbitration (Vienna Rules)) shall be agreed. The place of arbitration shall be Bludenz, Austria. The arbitration language shall be German. If the contract is drawn up in a language other than German, English shall be the arbitration language. The jurisdiction of the Arbitral Tribunal shall not exclude that a party applies to a state court for interim or protective measures before or during the arbitral proceedings or that the court orders such measures.
- d) However, Getzner shall always be entitled to bring a claim against the contractual partner before another court having jurisdiction over it, as long as the agreed court or the Arbitral Tribunal has not been seized yet.

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