

CONVERTING CHALLENGES INTO SOLUTIONS



**GENERAL PURCHASING TERMS AND CONDITIONS**  
OF GINZINGER ELECTRONIC SYSTEMS GMBH

JUNE 2017

# GENERAL PURCHASING TERMS AND CONDITIONS

## 1 SCOPE

1.1 All orders and purchases by GINZINGER ELECTRONIC SYSTEMS GMBH of Austria, 4952 Weng im Innkreis, Gewerbegebiet Pirath 16, FN364958d (referred to as "GINZINGER" hereinafter) are based exclusively on these General Purchasing Terms and Conditions in their current version (referred to as "GPTC" hereinafter). These GPTC further apply to all future transactions described in the previous sentence, without the parties separately agreeing on their applicability in each instance.

1.2 Contractual terms, in particular terms and conditions of the Contractor, which are contrary to the present GPTC, are always excluded.

1.3 Deviations from the GPTC will only be legally effective if previously confirmed in writing by GINZINGER.

## 2 ORDERS

2.1 Orders by GINZINGER are only legally binding if placed in writing. An order is deemed accepted if it is not declined in writing by the Contractor within 1 week from the date the order is placed by GINZINGER.

2.2 Offers by the Contractor shall be binding for a period of four weeks from receipt by GINZINGER.

2.3 Orders are inclusive of all necessary secondary, ancillary and supplemental deliveries and performances, including the required training, handover of German operating manuals and technical documentation, all of which shall be included in the agreed prices.

2.4 The Contractor is obliged to assess requests, documents, information and orders received from GINZINGER in view of obvious uncertainties, incompleteness as well as in view of whether the ordered item is suitable for the intended use. The Contractor must promptly notify GINZINGER in writing of any perceivable shortcomings and reservations. The Contractor shall further and within a reasonable period provide GINZINGER at no further cost with information or proposals for resolving or improving such shortcomings or reservations.

# GENERAL PURCHASING TERMS AND CONDITIONS

## 3 GUARANTEES

3.1 The Contractor guarantees to satisfy all prerequisites required for the execution of the order, in particular to have at its disposal a sufficient number of adequately trained staff, technical equipment, industrial property rights, know-how, etc.

3.2 The Contractor further guarantees to hold all official and other permits, approvals, consents and/or licenses, required both under public or private law for the execution of the order.

## 4 ORDER CONFIRMATION

4.1 The Contractor shall issue a written order confirmation. Such written order confirmation is, however, not necessarily required for the order to have binding effect on the Contractor.

## 5 RESERVATION OF RIGHTS / USUFRUCTUARY RIGHTS AND EXPLOITATION RIGHTS

5.1 GINZINGER retains sole ownership in materials, substances, tools, samples or other property provided by GINZINGER for the execution of the order, including in the cases of such property being processed and/or modified. Any order that would infringe on GINZINGER's ownership of such property is prohibited.

5.2 The Contractor is obliged to mark at all times and by any means all property of GINZINGER so that it is clearly distinguishable as such by third parties.

5.3 The Contractor is obliged to treat such materials, substances, tools, samples and/or other property made available to it with due care and to store them safely.

# GENERAL PURCHASING TERMS AND CONDITIONS

5.4 Upon being requested by GINZINGER, the Contractor must surrender any previously provided materials, substances, tools, samples and/or other property, including workpieces produced by the Contractor; this applies in particular in situations where insolvency proceedings have been commenced against the Contractor, or where an application for the commencement of insolvency proceedings has been dismissed on the grounds of insufficient assets to cover the costs of the proceedings, or where GINZINGER has rescinded from the contract.

5.5 The Contractor shall promptly notify GINZINGER in writing of all occurrences concerning the property of GINZINGER, particularly concerning a seizure of assets, confiscation or claims by third parties, etc. The Contractor must further at its own expense and risk take all measures, involving legal action as well as action taken out of court, necessary to defend the property of GINZINGER against any third party interventions.

5.6 Upon being requested by GINZINGER, the Contractor shall make the first-piece available for evaluation purposes, including in particular for a pre-acceptance evaluation.

5.7 All rights of GINZINGER to works, documents such as drawings, plans and samples of all kinds, know-how, design patents, patents, etc. protected or protectable by copyrights, remain the intellectual property of GINZINGER, including in cases where such property has been processed and/or modified. Such works, documents, know-how, samples, patents, etc. must not be disclosed or made accessible to third parties without the written consent of GINZINGER. The same applies to the granting of usufructuary rights or the use of such property for the Contractor's own purposes. In case of doubt, such consent shall be deemed to have been withheld.

5.8 The Contractor shall hold harmless and indemnify GINZINGER against all disputes relating to intellectual property in patents, brands, designs, semiconductor protection and/or copyrights that arise in relation to the contractually agreed use, and shall further unreservedly guarantee proper use of the contractual item / performance.

## **6 DELIVERY / DELAYED DELIVERY**

6.1 All deliveries, performances and packaging must feature the agreed properties. They shall only be deemed as in compliance to the contract if accompanied by all required documents. GINZINGER shall otherwise be entitled to return or to store the delivered item at the Contractor's cost and risk.

6.2 The Contractor must comply with all EU standards, in particular with all applicable import and export laws and regulations.

# GENERAL PURCHASING TERMS AND CONDITIONS

6.3 Upon being requested by GINZINGER, the Contractor shall provide evidence of the origin of the delivered products including provision of all necessary documents and receipts.

6.4 The delivery date specified on the order (day of receipt by GINZINGER) is binding. Early deliveries or partial deliveries are subject to the consent of GINZINGER. GINZINGER may choose whether to keep any additional delivery of excess quantity or to return such additional delivery at the cost and risk of the Contractor.

6.5 Performances shall be rendered during the regular business hours of GINZINGER at the cost and risk of the Contractor.

6.6 Delivery shall be made to the destination specified in the order by GINZINGER. If, on an exceptional basis, the parties agree in writing on different delivery terms, the transport instructions given by GINZINGER are mandatory.

6.7 The goods shall be shipped in packaging that effectively protects the goods against the kind of stress damage as is customary for the selected mode of transport.

6.8 Deliveries must be accompanied by a delivery note specifying the item and order number as well as the material number and the exact material designation, provided this is specified in the order, as well as the exact quantity. GINZINGER is entitled to decline acceptance of deliveries that are not accompanied by the respective delivery documents.

6.9 In the event the Contractor's deliveries are delayed, GINZINGER shall be entitled to set a deadline of 14 working days for subsequent delivery and to otherwise rescind from the contract. GINZINGER reserves the right to assert further claims.

## 7 CANCELLATION OF ORDERS

7.1 GINZINGER is entitled to cancel the order prior to the goods being dispatched. Where finished goods that have been made to GINZINGER's individual requests and specifications are concerned and to the extent a different use is impossible, the Contractor shall be entitled to compensation of its evidenced cost price. Any further claims by the Contractor, in particular any kind of compensation, are excluded.

# GENERAL PURCHASING TERMS AND CONDITIONS

## 8 PRICES / BILLING / PAYMENT

8.1 All prices are fixed and may not be increased. Prices must be broken down by deliverable item and performance. The Contractor guarantees the accuracy of its cost estimates.

8.2 All costs, such as transport and packaging costs, disbursements, fees or other levies and taxes shall be borne by the Contractor. The same applies to warranty claims.

8.3 Invoices are payable within 30 days from complete delivery and proper invoicing, including for accepted partial deliveries and regardless of the commencement of any limitation periods. Likewise the discount period does not commence prior to complete delivery and issuance of a proper invoice. Payments by GINZINGER are effective as of the date of the debit showing on the GINZINGER bank account.

8.4 The Contractor shall grant a discount of 3% for payments received within 14 days.

8.5 Invoices are considered proper only if they specify the order number, item number and date of the purchase order, comply with the statutory requirements and are received in duplicate by the accounts payable department. Invoices must also specify all available discounts and reductions. In case of deliveries within the EU, invoices shall include the statistical goods numbers, net weight of the delivered item and must be accompanied by a delivery note.

8.6 Payments made by GINZINGER shall not be construed as an acknowledgement of the proper performance rendered by the Contractor. They shall also not be construed as to GINZINGER waiving any potential warranty claims or claims for damages.

## 9 WARRANTY

9.1 Information pertaining to properties, qualities or intended use of the goods and/or performances ordered is deemed to be expressly guaranteed by the Contractor. The Contractor further guarantees that the ordered goods and performances are CE-certified, of first-grade quality, fully functional, unencumbered by third party claims, particularly including claims based on industrial or other intellectual property rights or on security interest and liens.

9.2 The warranty period is at least 24 months from the date a proper contractual performance has been rendered.

# GENERAL PURCHASING TERMS AND CONDITIONS

9.3 The provisions of § 377 and § 378 UGB are expressly excluded. If GINZINGER issues a notice of defect within the warranty period, such defect shall be deemed to have existed at the time of handover to GINZINGER.

## **10 LIABILITY / JOINT AND SEVERAL LIABILITY / RETENTION / REFUSAL OF PERFORMANCE**

10.1 GINZINGER and third parties acting on behalf of GINZINGER shall not be liable for damages resulting from slight negligence.

10.2 A multiplicity of Contractors shall be jointly and severally liable towards GINZINGER.

10.3 The Contractor is not entitled to a right of retention or refusal of performance, unless prescribed otherwise by constraining law. Possible disputes do not entitle the Contractor to suspend its contractually owed performances or to withhold deliveries.

## **11 CONTRACTUAL EXCLUSION OF SET-OFF / RESTRAINT OF ASSIGNMENT**

11.1 The Contractor is not entitled to offset its own claims held against GINZINGER, regardless of the legal basis, against claims held by GINZINGER.

11.2 The Contractor is not entitled to assign claims against GINZINGER to third parties or dispose of such claims in any other way for the benefit of a third party. Claims assigned or disposed of in breach of this prohibition will be null and void.

## **12 TERMINATION OF THE BUSINESS RELATIONSHIP**

12.1 The Contractor is obliged to deliver new and repeat orders to GINZINGER for a period of 24 months following the termination of the business relationship. Said period commences upon receipt of a written statement, in which the contracting party declares the termination of cooperation.

# GENERAL PURCHASING TERMS AND CONDITIONS

12.2 The Contractor continues to be bound by these GPTC despite the business relationship having been terminated and continues to be obliged to process all claims for defects lodged by GINZINGER under the statutory provisions concerning liability for damages and warranty obligations.

## 13 CONFIDENTIALITY

13.1 The Contractor must keep all information and data obtained by it in the course of executing an order confidential and may only use such information for the exclusive purpose of rendering the contractual performances.

13.2 The Contractor must submit its employees and all subcontractors to this duty of confidentiality.

13.3 The duty of confidentiality continues to bind the parties after termination of the contractual relationship.

## 14 MISCELLANEOUS

14.1 Modifications or amendments to these GPTC as well as all notifications and statements are only legally effective if made in writing. A transmission via email or fax satisfies the written form requirement. This also applies to deviations from the written form requirement.

14.2 If individual provisions of these GPTC are void or ineffective, the validity of the remaining provisions remains unaffected. In this case, the parties are deemed to have agreed on provisions that come closest to the commercial purpose of the void or ineffective provisions and to the intentions of the parties.

14.3 Deliveries shall be addressed to the most recent address notified in writing. The Contractor must promptly notify GINZINGER of any change of address in writing. Notices served at the Contractor's most recent address advised in writing shall otherwise be deemed as having been served properly. Notices shall be deemed to have been served in due time if posted in the mail on or before the prescribed date, unless expressly agreed otherwise.

14.4 The place of performance for all liabilities stemming from the business relationship is agreed to be the registered offices of GINZINGER in Austria, 4952 Weng im Innkreis.



# GENERAL PURCHASING TERMS AND CONDITIONS

14.5 The parties agree that all disputes arising from or in relation to purchases shall be heard exclusively by the factual and local competent court at the place of GINZINGER's registered offices. GINZINGER also reserves the right to bring legal proceedings against the Contractor at the Contractor's place of general jurisdiction.

14.6 Substantive Austrian law shall apply exclusively. The applicability of the UN Convention on the International Sale of Goods is expressly excluded.

14.7 The Contractor must assert its claims in a court of law within one year from their respective due date. Claims asserted out of time shall be time-barred. The date on which a statement of claim was received by a court determines whether a claim has been lodged within due time.