

General Terms and Conditions (GTC) of Güdel AG, Langenthal (Switzerland)

§ 1 - Scope

(1) All supplies of goods or services and offers from the above-mentioned Group company Güdel Group AG, Gaswerkstrasse 26, CH-4900 Langenthal (hereinafter referred to as GÜDEL) are subject exclusively to these General Terms and Conditions of Business (hereinafter referred to as GTC). The GTC shall form part of all contracts concluded between GÜDEL and its customers in respect to the offered goods or services or other business transactions, unless their validity is otherwise excluded in writing.

(2) The GTC shall also apply to all future supplies of goods and services or offers submitted to customers, even if they are not expressly and separately agreed.

(3) The general terms and conditions of business partners or third parties shall apply, provided they comply with the present conditions. In the event of any contradiction, the GTC of GÜDEL shall apply, even if GÜDEL does not specifically demand their applicability in individual cases. Even if GÜDEL makes reference to a written communication containing the general terms and conditions of the customer or a third party or makes reference thereto, this shall not be tantamount to an admission of the applicability of said terms and conditions.

§ 2 - Offer and conclusion of contract

(1) All offers made by GÜDEL are subject to change without prior notice and are non-binding, provided they are not expressly referred to as binding or do not contain a specifically defined deadline for acceptance. A contract shall only come into being on the issue by GÜDEL of a written order confirmation.

(2) The sole authoritative document governing legal relations between GÜDEL and the customer shall be the written order confirmation including these GTC in the absence of a legally binding contract signed by both parties. Any verbal commitments given by GÜDEL are not legally binding and verbal agreements made between the contractual parties shall be replaced by the written contract, unless it is expressly stated therein that such verbal agreements continue to be binding in each case. Amendments and alterations to agreements entered into, including these GTC, require the written form to be effective. A fax transmission or an email shall suffice as compliance with the requirement for the written form. In all other cases, business correspondence generated by data processing systems shall be binding even without a signature, provided the parties to the contract agreed upon this previously and in writing (confirmed by legally binding signatures).

(3) Statements made by GÜDEL on the goods or service supplied (in particular dimensions, utility values, capacity performance, tolerances, technical specifications and throughput figures) and the associated representations thereof (e.g. drawings and images) are only approximate in nature, provided usability as stipulated for the purpose in the contract does not presume an exact correspondence or such data are not expressly agreed to represent guaranteed properties. Otherwise, such information shall not represent guaranteed properties; they shall instead be descriptions or characteristics of the deliverable or service. Deviations which are customary in the trade and those which arise due to statutory regulations or represent technical improvements and the replacement of components by equivalent parts are admissible, provided they do not impair usability for the purpose as stipulated in the contract.

(4) GÜDEL retains the ownership or copyright for all offers and estimates submitted by GÜDEL as well as to documents and resources made available to the customer (please refer to § 7).

(5) INCOTERMS 2010 shall apply.

§ 3 - Prices and payment

(1) Prices shall apply to the scope of supply of goods and services stipulated in the order confirmation. Additional or special performances shall be invoiced separately. The prices quoted, unless otherwise contractually agreed, are EXW GÜDEL production centre in the national currency valid at the registered office of GÜDEL, and if required, plus value added tax at the statutory rate and, in the case of export deliveries, plus customs duties, fees and other public charges.

(2) GÜDEL shall retain the right to modify prices, provided wage rates or material prices undergo a significant change from the date the initial offer was made until the date of the order confirmation. In the event of follow-on orders, GÜDEL shall not remain bound to the prices quoted in previous orders. Reasonable price adjustment shall also take place after the issue of an order confirmation if significant changes (more than 10%) occur to wage rates or material prices prior to delivery, if the delivery period is subsequently extended due to force majeure or other events where were unforeseeable at the time of conclusion of contract or due to circumstances for which the customer is responsible, or if the type or scope of the agreed supplies or services were subsequently changed for one of the reasons listed

above, or if changes are necessary to the material or design since the documents supplied by the customer failed to correspond to the actual circumstances or were incomplete.

(3) If no other agreement is made in writing, the price for components, modules and spare parts shall be due for payment within 30 days after the invoice date without deduction. The following payment conditions shall apply to transactions involving plants and machines unless a differing agreement is made in writing: 30% downpayment within 10 days after placing the purchase order; 30% on receipt of delivery by GÜDEL; 30% within 10 days after installation and commissioning of the plant (Provisional Machine Acceptance (PMA)); 10% within 10 days after acceptance of the plant but at the latest within 120 days after PMA. The date of receipt of payment by GÜDEL shall be authoritative. Periods granted for payment shall cease to apply and outstanding accounts receivable shall be due for immediate payment if the customer fails to honour fundamental obligations towards GÜDEL or third parties without providing a justifiable reason or if the customer made incorrect statements regarding his creditworthiness.

(4) The deduction of counterclaims by the customer or the retention of payments due to said claims shall only be admissible provided the counterclaims concerned are undisputed or legally binding

(5) GÜDEL is entitled to perform outstanding deliveries or provide services only against advance payment or security deposit if, after conclusion of contract, GÜDEL becomes aware of circumstances which significantly reduce the creditworthiness of the customer and which endanger the payment of outstanding accounts receivable which the customer owes to GÜDEL.

§ 4 - Delivery and delivery date

(1) Deliveries shall be made EXW GÜDEL production centre unless otherwise agreed by contract.

(2) Delivery periods and dates proposed by GÜDEL for the supply of deliveries and services are only approximate in all cases unless a fixed period or a fixed date was expressly promised or agreed. Provided shipment was agreed upon, delivery periods and delivery dates shall refer to the time of handover to the forwarder, carrier or other third party commissioned with transportation.

(3) Provided transportation and assembly are not part of the scope of supply, provision of the goods at the factory ready for collection or notification of readiness for dispatch shall be sufficient for fulfilment of contract by GÜDEL.

(4) Without prejudice to its rights arising from delays on the part of the customer, GÜDEL may demand from the customer an extension to the delivery periods for goods or for the performance of services corresponding to the period during which the customer failed to fulfil his contractual obligations towards GÜDEL. Should it prove impossible to make delivery or in the event of delivery delays, GÜDEL shall not assume any liability provided that such circumstances are caused by force majeure or other events which were unforeseeable at the time of conclusion of contract (e.g. operating disruptions of any kind; difficulties in the procurement of materials or energy; delays in transportation; strikes; legitimate lockouts; shortages of staff, energy or raw materials; difficulties in the procurement of necessary official permits; government measures; or non-delivery or incorrect or untimely delivery by suppliers) for which GÜDEL is not responsible. Should such events render it significantly difficult or impossible for GÜDEL to make delivery or perform the service, and the hindrance in question is not merely temporary, GÜDEL shall be entitled to withdraw from the contract. In case of temporary hindrances, delivery periods for goods or services shall be extended or the delivery periods for goods or services shall be postponed for the duration of the hindrance plus a reasonable start-up period. If the delay makes it unreasonable to expect the customer to accept delivery of the goods or service, the latter may withdraw from the contract by immediately sending an explanation in writing to GÜDEL.

(5) GÜDEL shall be entitled to make partial deliveries only if the partial delivery can be used by the customer to fulfil the contractual purpose, if delivery of the remaining goods ordered is assured and if the customer does not incur significant extra costs or additional costs as a result, unless GÜDEL declares its readiness to assume these costs.

(6) The customer shall be entitled to make claims for losses resulting from delayed deliveries insofar as it can be proven that the delay was caused by GÜDEL and the customer can substantiate that he has suffered a loss as a result of this delay. If the customer is supplied with a substitute delivery, he shall not be entitled to receive any damages for delay.

(7) Compensation for losses arising from a delay as specified in § 4 Clause (6) of these GTC shall total a maximum of 0.5% for each full week of delay, but no more than 5% of the contractual price of the delayed part of the delivery. The first two weeks of the delay shall not establish entitlement to compensation in case of delay. On reaching the maximum for compensation in case of delay, the customer shall grant GÜDEL a reasonable extension of time in writing to complete the delivery. Should said extension fail to be kept by the default of GÜDEL, the customer shall be entitled to withdraw from the contract in accordance with statutory regulations.

⁽⁸⁾ Delay to a delivery does not give the customer any rights or claims except for those expressly stipulated in § 4 of these GTC. In all other cases, GÜDEL's liability shall be limited to the payment of damages as stipulated in § 8 of these GTC.

§ 5 - Place of fulfilment, dispatch, packaging, passage of risk and acceptance

⁽¹⁾ The place of fulfilment of obligations arising from the contractual relationship shall be the registered office of GÜDEL unless otherwise provided for. Should GÜDEL also be responsible for assembly or installation, the place of fulfilment shall be the location at which assembly or installation takes place.

⁽²⁾ The choice of shipping method and packaging are subject to the obligatory discretion of GÜDEL.

⁽³⁾ Unless otherwise agreed in writing, the passage of risk shall take place on handover of the deliverable (whereby the start of the loading procedure is authoritative) to the forwarder, carrier or other third party commissioned with the execution of transportation to the customer. This shall also apply to partial deliveries or if GÜDEL undertakes to perform other services (e.g. dispatch, assembly or installation). Should dispatch or handover be delayed due to circumstances brought about by the customer, the risk shall pass to the customer on the day on which GÜDEL notifies the customer of readiness for dispatch.

⁽⁴⁾ The customer shall bear the costs of storage. In the case of storage by GÜDEL, the storage costs shall amount to 0.25% of the net invoice amount per expired week for the deliverables stored. GÜDEL and the customer shall reserve the right to assert claims and furnish evidence for additional or lower storage costs.

⁽⁵⁾ The performance of a Final Acceptance Test and the definition of the associated conditions shall require a separate agreement. The following shall apply, provided no other agreement is made: GÜDEL shall notify the customer in good time of the performance of the acceptance test so that the latter or his representative is able to attend. A Final Acceptance Certificate (FAC) shall be produced and shall be signed by the customer and GÜDEL and their representatives, respectively. The FAC shall record that (a) the acceptance test is passed; (b) the acceptance test is passed with reservation or (c) the customer refuses the acceptance. The customer may not refuse the acceptance due to minor defects, in particular defects which do not significantly impair the functionality of the delivered goods or services. In the event of significant deviations from the contract or serious deficiencies, the customer shall grant GÜDEL the opportunity to rectify such deviations or deficiencies within a reasonable period of time. After said period, another acceptance test shall take place. Should the acceptance test again reveal significant deviations from the contract or serious deficiencies, the customer shall be entitled to their statutory claims.

⁽⁶⁾ Should acceptance be required to take place, the goods or service shall be deemed as accepted when delivery, assembly and installation have been concluded if GÜDEL is also responsible for said installation or assembly; when GÜDEL has notified the customer of such conclusion of acceptance pursuant to the present § 5 Clause (6) and has requested the customer to perform acceptance; if twelve (12) working days have elapsed since delivery or installation or the customer has started to make use of the item supplied (e.g. has commissioned the delivered plant) and, in such case, six (6) working days have elapsed since delivery or assembly or installation; and the customer has failed to perform acceptance within the said period for a reason other than that of a defect of which GÜDEL has been informed, said defect rendering it impossible to use the deliverable or service or significantly impairing the use thereof.

§ 6 - Warranty

⁽¹⁾ At the written request of the customer, GÜDEL shall undertake to repair or replace as quickly as reasonably possible all parts of the deliverables which are proved to be damaged or unserviceable due to poor materials or defects in design or workmanship prior to expiry of the warranty period. Spare parts shall remain the property of GÜDEL.

⁽²⁾ The warranty period shall last for one year from the time of delivery or, should acceptance be required, from the time of acceptance, unless another warranty period was expressly agreed in writing. If delivery, acceptance or installation are delayed through no fault of GÜDEL, the warranty period shall expire at a later date, however at the latest 18 months after notification of readiness for dispatch.

⁽³⁾ The warranty period for replaced or repaired parts shall be six months from the replacement or repair date or up to the end of the original warranty period (pursuant to paragraph 2), whichever is the longer.

⁽⁴⁾ The deliverables shall be thoroughly checked without delay upon delivery thereof to the customer or to a third party designated by the customer, unless further services supplied by GÜDEL, in particular assembly or installation, render a formal acceptance necessary. Such deliverables or services shall be deemed as accepted when GÜDEL does not receive a complaint regarding obvious defects or other defects which come to light after immediate and thorough inspection within seven (7) working days of delivery of the deliverable, or, in other cases, within seven (7) working days after discovery of the defect or the time when the defect becomes apparent to the customer during the course of normal use of the deliverable without closer examination. At the request of GÜDEL the rejected deliverable shall be returned to GÜDEL freight paid. If notice of defects is justified, GÜDEL shall bear the costs of the

cheapest dispatch method; this shall not apply if the costs increase due to the fact that the deliverable is located at a place other than where it is intended to be used for its proper purpose.

(5) In the event of material defects to the deliverables, GÜDEL shall be obliged and entitled to choose at its own discretion between repair and replacement of the deliverables within a reasonable period of grace. Should this fail to happen, i.e. because it proves impossible or unreasonable to perform the repair or replacement or because GÜDEL fails to perform the repair or replacement within a reasonable period of time or refuses to do so altogether, the customer may withdraw from the contract or reduce the purchase price by a reasonable amount.

(6) Should a defect be due to a fault on the part of GÜDEL, the customer may require payment of compensation under the provisions stipulated in § 8.

(7) In the event of defects to components made by other manufacturers which GÜDEL is unable to remedy for licensing or material reasons, GÜDEL may choose to enforce its warranty claims against the manufacturer and supplier to the account of the customer or to assign such rights to the customer. Any warranty claims against GÜDEL in the event of such defects shall be admissible under other conditions and in accordance with these GTC only if the legal enforcement of the said claims against the manufacturer and supplier is unsuccessful or futile, for example due to insolvency. For the duration of the legal dispute, the statute of limitation concerning the affected warranty claims by the customer against GÜDEL shall be suspended.

(8) The warranty is subject to the proper operation, servicing and routine maintenance of the deliverables. Spare parts are excluded from the warranty.

(9) The warranty shall cease to apply if the customer undertakes changes to the deliverable or commissions a third party to undertake such changes without the consent of GÜDEL, and such changes make it impossible or unreasonable to remedy the defect. Specifically, this shall include manipulation to the control software or other actions which contradict the user manual or the documentation. In any case, the customer shall bear the additional costs of remedying the defect brought about by such change.

(10) Any agreed delivery of used deliverables agreed upon an individual basis with the customer shall take place under the exclusion of any form of warranty.

§ 7 - Industrial property rights

(1) Pursuant to § 7 of these GTC, GÜDEL gives its assurances that the deliverable is unencumbered by third party industrial property rights or copyrights. Each contractual partner shall notify the other contractual partner in writing without delay should claims be made against the latter arising from infringement of such rights.

(2) In the event that the deliverable is in breach of third party industrial property rights or copyright, GÜDEL shall opt at its own discretion to either replace or modify the deliverable at its own expense in such a way as to ensure that third party rights are no longer infringed and that the deliverable can continue to fulfil its contractually agreed functions or that the customer is granted the right of use by concluding a licensing agreement. Should GÜDEL fail to do this within a reasonable period of time, the customer shall be entitled to withdraw from the contract or to reduce the price by a reasonable amount. Any claims for compensation by the customer are subject to the limitations set out in § 8 of these GTC.

(3) In case of infringements by products made by other manufacturers and supplied by GÜDEL, GÜDEL shall choose at its own discretion whether to enforce claims against the manufacturer and pre-supplier to the account of the customer or to assign such claims to the customer. In such cases, claims against GÜDEL shall be admissible in accordance with § 7 of these GTC only if the legal enforcement of the said claims against the manufacturer and pre-supplier are unsuccessful or are futile, for example due to insolvency.

(4) GÜDEL shall retain ownership, copyright and other industrial property rights to all offers and cost estimates submitted by GÜDEL and to any drawings, plans, technical specifications, images, calculations, brochures, catalogues, models, tools and other documents and resources (hereinafter referred to as documents) supplied to the customer. The customer acknowledges all and any industrial property rights due to GÜDEL in connection with the deliverables, promises to observe said rights. Furthermore, the customer warrants that the manufacture and supply of deliverables produced at his behest do not infringe third party industrial property rights and shall indemnify GÜDEL against all claims to the contrary. It is prohibited to pass on documents belonging to GÜDEL as such or disclose their contents to third parties without the express consent of GÜDEL. At the request of GÜDEL, the customer shall return to GÜDEL all documents and destroy any copies made once such documents are no longer required by him in the ordinary course of business or if negotiations fail to result in the conclusion of a contract.

§ 8 - Liability

- (1) All cases of breach of contract, their legal consequences and all claims by the customer, regardless of the legal basis, shall be exclusively governed by these GTC subject to mandatory law.
- (2) In no case can the customer assert claims for compensation for damage which was not caused to the deliverable itself, such as, specifically, loss of production, loss of use, loss of orders, loss of earnings or other direct or indirect damages. Liability for further damages, in particular for indirect and consequential damages due to defects is expressly excluded.
- (3) GÜDEL shall handle all third party property supplied (materials, parts, tools, equipment, etc.) with great care and shall take reasonable measures to protect it from theft or damage. GÜDEL shall be liable to the customer for all damage arising from supervision or processing in line with the provisions of the law but limited however to the maximum amount of the insurance cover.
- (4) In so far as GÜDEL supplies technical information or acts in a consultative capacity and this information or advice is not included in the contractually agreed scope of supply and service which GÜDEL is obliged to fulfil, this shall take place free of charge and under the exclusion of any form of liability.
- (5) The above exclusions and limitations of liability shall apply to the same extent in favour of the organs, legal representatives, employees and other vicarious agents of GÜDEL.

§ 9 - Retention of title

- (1) The retention of title agreed in the following serves to provide security against all present and future claims on the part of GÜDEL against the customer arising from the supply relationship that exists between the contractual partners.
- (2) The deliverables supplied by GÜDEL to the customer shall remain the property of GÜDEL until such time as all outstanding accounts receivables have been settled. The goods as well as any goods taking their place and subject to retention of title in accordance with this clause shall be referred to as reserved goods.
- (3) The customer shall store the reserved goods safely on behalf of GÜDEL free of charge and shall maintain them at his costs until complete settlement of the payments owing to GÜDEL and shall insure them against theft, breakage, risks resulting from natural hazards and other risks.
- (4) The customer is obliged to assist in measures required to protect GÜDEL's property. Specifically, he shall permit GÜDEL, on conclusion of contract and at the customer's expense, to proceed with the entry or reservation of the right of ownership in public registers, books or similar in accordance with the relevant national laws and to fulfil all the corresponding formalities.
- (5) Should the reserved goods be processed by the customer, it shall be agreed that processing takes place in the name and to the account of GÜDEL as manufacturer, and that GÜDEL shall acquire ownership or - if processing uses materials supplied by more than one owner or the value of the processed item is greater than that of the reserved goods – co-ownership (partial ownership) of the newly created item in proportion to the value of the reserved goods based on the value of the newly created item. In the event that GÜDEL does not acquire ownership, the customer herewith transfers any future ownership or - in the above-mentioned circumstance – co-ownership of the newly created item by way of security to GÜDEL. Should the reserved goods be combined or inseparably mixed with other items to create a separate unit, and should one of the other items then be deemed the principal item, then GÜDEL shall transfer to the customer a proportional co-ownership to the separate unit as stipulated in Clause 1, in so far as the principal item belongs to GÜDEL.
- (6) In the event of the resale of the reserved goods, the customer herewith assigns to GÜDEL by way of security any claims accruing from the buyer - in case of co-ownership of GÜDEL to the reserved goods, where assignment shall be proportional to the co-ownership share. The same shall apply to other claims taking the place of the reserved goods or otherwise arising in respect of the same, such as insurance claims or claims arising from an unauthorised action in the event of loss or damage. GÜDEL grants the customer the revocable right to collect claims assigned to GÜDEL in the customer's own name and to the account of GÜDEL. GÜDEL may revoke this authorisation to collect only in the event of enforcement of retention of title.
- (7) The business partner herewith grants GÜDEL the irrevocable authorisation, in the event of withdrawal from the contract, to enter its business premises, to take possession of all supplied goods and to sell them privately at the best possible price and set off the proceeds therefrom against the outstanding claims less the costs incurred.
- (8) Should third parties lay claim to the reserved goods, in particular by way of pledge, the customer shall inform them without delay that the goods in question are the property of GÜDEL and shall inform GÜDEL thereof to allow the latter to enforce its proprietary rights. Should the third party not be in a position to reimburse GÜDEL for any judicial or extra-judicial costs arising from such a circumstance, the customer shall be held liable herefor in respect to GÜDEL.

(9) Upon request and at the discretion of GÜDEL, GÜDEL shall release the reserved goods and any items or claims taking their place in so far as their value exceeds the amount of secured claims by more than 50%.

(10) Should GÜDEL withdraw from the contract as a result of the business partner acting in breach of contract, in particular in the event of payment default (enforcement of retention of title), GÜDEL shall be entitled to demand restitution of the reserved goods. Any costs arising herefrom shall be borne by the business partner.

(11) In deviation from § 11 (2) the law of the country of destination applies in international relations to the acquisition and the loss of rights in rem of the reserved goods.

§ 10 – Regulations in force in the country of destination and safety devices

(1) At the latest at the time of placing the purchase order, the customer shall bring GÜDEL's attention to the regulations, standards and official orders in the country of destination at the latest at the time of placing the purchase order referring to performance of the products and services, their operation and to health and safety provisions.

(2) The products and services shall comply with the regulations and standards valid at the customer's place of business, provided that the customer brings GÜDEL's attention to this as stipulated in § 10 Para. 1. Agreements to the contrary are expressly reserved. Additional or other safety devices shall be supplied, provided this was expressly agreed.

(3) GÜDEL accepts no liability whatsoever in the event of a breach in this information obligation. In such case, the customer shall undertake to release GÜDEL from any claims arising herefrom.

§ 11 - Final provisions

(1) The legal venue for any legal disputes arising from the business relationship between GÜDEL and the customer shall be either the registered office of GÜDEL or that of the customer, at the discretion of GÜDEL. **In the case of legal actions against GÜDEL, the exclusive legal venue shall be the registered office of GÜDEL.** For customers with their registered office abroad, the registered office of GÜDEL shall also be the agreed place of performance (place of domicile pursuant to Art. 50, para. 2, Swiss Federal Debt Enforcement and Bankruptcy Act (SchKG)). Mandatory statutory regulations about exclusive legal venues shall not be affected by this provision.

(2) Relationships between GÜDEL and the customer are governed exclusively by the laws of the Swiss Confederation under exclusion of private international law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall not apply.

Version 06/2018