

General Conditions of Contract (GCC) for Customer Service

1. General

These General Conditions of Contract ("GCC Customer Service") regulate the world-wide performance of support services by a company of the Güdel Group ("GÜDEL"), unless the service agreement fails to regulate the contractual relationship between Güdel and the customer expressly and exhaustively.

Customer conditions of business which are contradictory, additional or deviate from these conditions are only accepted if they are expressly approved by GÜDEL in writing.

Brochures and other advertising materials belonging to GÜDEL are non-binding, unless the service agreement expressly declares their content to be an integral part of the contract.

Should a condition in these GCC Customer Service becomes invalid, it shall not affect the other provisions in the service agreement. The parties shall agree upon a regulation that reasonably takes into account the interests of both parties.

2. Subject of the support services

The subject of the support services performed by GÜDEL shall be the plant and control systems defined in the service agreement.

3. Support services

The specific support services to be performed by GÜDEL are defined in the service agreement. Should the support services only be described in principle but not in detail, GÜDEL shall define their content at their dutiful discretion. GÜDEL shall be entitled to engage third parties for the fulfilment of contract.

GÜDEL shall undertake to perform all support services by skilled personnel with all due care and attention, taking standard industrial practices into account and in compliance with applicable statutory regulations.

The support services shall be carried out by GÜDEL within the specified time schedule. If no time schedule is specified, GÜDEL shall service the plant at intervals which GÜDEL considers practical within its dutiful judgement.

Should GÜDEL detect during the course of the service agreement that additional support services are required, GÜDEL shall inform the customer accordingly and submit the customer a proposal to amend or extend the service agreement.

4. Place of performance

The place of performance of the support services executed by GÜDEL shall be the place of the plant and control systems as defined in the service agreement.

In case of an agreement for remote maintenance support services by GÜDEL, the customer shall undertake to provide GÜDEL with a suitable data access (company network, modem, etc.) or support GÜDEL to set up a remote access independent of the customer's network.

5. Remuneration and price adjustments

The customer shall pay GÜDEL the lump sums defined in the service agreement or the remuneration on cost basis as specified in the service agreement for performance of the support services. The terms of payment shall be regulated in the service agreement.

Support services or spare parts which are not included in the lump sum remuneration shall be invoiced to the customer separately on cost basis. GÜDEL's valid prices shall apply. For spare parts, the General Terms and Conditions of Business (GTCB) shall also apply in addition for the sale of GÜDEL products.

GÜDEL retains the right to index the agreed remuneration to the rate of inflation automatically and annually and to introduce a reasonable increase in remuneration to cover the cost of expanding the scope of software functions and changes to the scope of support services. GÜDEL shall inform the customer of increases to its prices in writing.

The customer may terminate the service agreement by maintaining a period of notice of termination of one month at the end of any month if he is not in agreement with the price increase.

6. Term of validity and termination of contract

The term of contract and the terms for notification of termination shall be dependent on the provisions in the related service agreement.

Provided the service agreement defines no other term, the agreement shall have an unlimited term and may be terminated in writing by either party subject to notification of termination of three (3) months at the end of any month.

The right to terminate for good cause shall remain unaffected.

The contract shall end automatically with the final decommissioning of the plant.

7. Liability

GÜDEL shall be liable for the proper fulfilment of contractual obligations contained in the service agreement.

No guarantee of plant availability shall be submitted.

GÜDEL's liability shall be limited to damages actually incurred but amounting to no more than 20% of the total annual remuneration from the service agreement.

Any further liability by GÜDEL shall be excluded, in particular liability for indirect damage, consequential damage and for consultation going beyond the support services specified in the service agreement - unless otherwise prohibited by law.

8. Cessation of GÜDEL's obligation to perform

GÜDEL retains the right to cease the supply of support services if

the customer fails to fulfil his normal obligations to perform due maintenance and care to the plants and control systems to be serviced according to the manufacturer's specifications;

the customer fails to heed the operating instructions of the system manufacturer or of GÜDEL;

the customer fails to fulfil his obligations to collaborate and provide information as defined in the service agreement;

the subject of the service agreement (plant and control systems) was modified, maintained or repaired by the customer or by third persons commissioned by the customer without the previous consent of GÜDEL in writing;

the safety of GÜDEL employees is not assured during the rendering of support services;

the customer changed the software defined in the service agreement or their conditions of use or operation, without the parties concluding a written supplement to the service agreement.

9. Force majeure

GÜDEL is entitled to cease its contractual obligations temporarily should performance be rendered impossible or unreasonably onerous as a result of the following circumstances: industrial disputes and all circumstances beyond the control of the parties such as fire, volcanic eruptions, explosions, war, general mobilisation, uprising, requisition, seizure, embargo, restrictions in power supply and defective or delayed deliveries by the customer's or Güdel's subcontractor due to any of the circumstances enumerated in this clause. The parties shall be entitled to terminate the service agreement by sending the other party written notification, if cessation of performance of the service agreement according to this clause should last longer than six months.

10. Customer obligation to perform maintenance and mitigate loss

The customer shall be obliged to provide care to and perform normal daily maintenance on his plant and control systems.

The customer shall undertake to heed the operating instructions of the system manufacturer and of GÜDEL at all times.

The customer shall bear sole responsibility for the management of his databases, networks and operating systems and for the regular backup and archiving of his data.

On identification of an accident risk or a damage event, the customer shall take all the necessary measures to minimise the damage.

GÜDEL shall inform the customer of any identified danger and need to shut down the plant within a reasonable period of time. If the customer fails to carry out GÜDEL's recommendation, the former shall bear the operational risk, thereby fully discharging GÜDEL from any responsibility.

11. Customer's obligations to collaborate and provide information

So that GÜDEL can fulfil his obligations in accordance with the service agreement, it is imperative that the customer collaborates with GÜDEL and provides him with onsite support (resources and consumables, power, water, compressed air, protective devices, operating personnel, etc.) and the information and data which have or could have a significant influence on the support services to be performed by GÜDEL. The customer shall report immediately any exceptional events and incidents (e.g. unusual noises, extreme signs of wear and tear, deformations or damage) in the plant.

The customer shall keep a plant log which shall contain all faults (date, symptom, downtime), particular findings and incidents. The customer shall supply GÜDEL with the plant log and logs from system printers upon first request.

GÜDEL shall assure the continuation of plant related documentation as specified in the service agreement and shall keep a copy of the plant related documentation.

The customer shall undertake to provide GÜDEL with unhindered access at the agreed times to the plant parts to be maintained during the term of the service agreement at the agreed times. Shutdown dates shall be co-ordinated with the customer in advance.

The customer shall ensure that GÜDEL'S support services do not take place under dangerous conditions or conditions harmful to health and he shall take all the necessary measures to protect GÜDEL's personnel from safety and health risks. The customer shall inform GÜDEL's personnel of all the safety regulations applicable at the point of maintenance before the start of work.

For work which takes place outside of normal operating times or in hazardous zones, two (2) persons shall always be present. If only one GÜDEL representative is present, the customer shall deploy a second person. Otherwise GÜDEL shall deploy the second person and shall invoice the customer at GÜDEL's applicable rates.

GÜDEL shall announce an exceptional backup to be performed as a result of GÜDEL support services and the customer shall carry out this backup, for example if a computer shutdown is required. The customer shall bear sole responsibility for execution and data security of the backup.

Additional costs which GÜDEL may incur due to non-fulfilment or delayed fulfilment of the customer's obligations to collaborate and/or provide information shall be invoiced in full at GÜDEL's applicable prices.

12. Delay in service performance

If GÜDEL fails to execute urgently required support services at the announced time and if GÜDEL is solely responsible for the delay, the customer shall set GÜDEL a reasonable period by which the required support service shall be executed. If GÜDEL fails to fulfil this demand, the customer is entitled to allow the work to be executed by a third party. GÜDEL shall compensate the customer for the costs incurred from engaging the support services of a third party. All further claims for damages by the customer shall be expressly excluded.

13. Rights to work results, in particular software

Should the result of GÜDEL's work produce intellectual property rights, they shall remain exclusively with GÜDEL. GÜDEL shall grant the customer a non-exclusive, non-transferable right of use for the customer's own purposes which shall be settled by payment of the support services. GÜDEL shall be entitled to use freely the know-how developed during performance of contract (ideas, concepts, processes, etc.) and shall obtain full ownership to it.

14. Maintenance of secrecy

All documents, data and information from the business unit of the parties divulged to the other party and to its employees during the course of performance of the service agreement, shall be deemed strictly confidential, provided it is not already public knowledge or generally available or purchased legitimately by third parties. The parties shall undertake, and shall place their employees and commissioned third parties under the obligation, to maintain business secrets confidential. The obligation to maintain confidentiality shall last for a further three years after termination of the service agreement.

15. Solicitation of employees

The parties shall undertake not to actively solicit any personnel during the term of the service agreement and for one year after its termination.

16. Changes to the general terms and conditions of contract

GÜDEL shall be entitled to make changes to these GCC Customer Service at any time. The customer shall be notified of all changes in a suitable manner and they shall be deemed accepted unless the customer files an objection within 30 days. The present provisions shall supersede all previous versions.

17. Applicable law and place of jurisdiction

Swiss law shall be applicable subject to the exclusion of UN convention on contract for the international sale of goods (CISG) and the rules of international private law.

The exclusive legal venue shall be Langenthal, Canton of Bern, Switzerland.