

# General Terms and Conditions (GTC) of Güdel Germany GmbH

## § 1 - Scope

- (1) All supplies of goods or services, offers, enquiries and purchase orders on the part of **Güdel Germany GmbH** (hereinafter referred to as GÜDEL) are subject exclusively to these General Terms and Conditions (hereinafter referred to as GTC). The GTC shall form part of all contracts concluded between GÜDEL and its contractual partners (hereinafter referred to as business partner or customer) 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 GTC shall apply exclusively to business partners who are entrepreneurs, legal entities under public law and special funds under public law (§ 310 BGB (German Civil Code)).
- (4) 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. Any verbal commitments given by GÜDEL prior to the conclusion of this contract 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. With the exception of managing directors or authorised officers, employees of GÜDEL are not entitled to make verbal agreements which deviate herefrom. 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.
- (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 our associated representations (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 drawings, images, calculations, brochures, catalogues, models, tools and other documents and resources made available to the customer. Without the express consent of GÜDEL the customer may not make these items available to third parties, either as they stand or in respect to their content; nor may the customer make them public, use them himself or allow third parties to use them on his behalf or reproduce them. At the request of GÜDEL, the customer shall return these items in their entirety to GÜDEL and shall destroy any copies made if the customer no longer require them to conduct proper business transactions or if negotiations fail to lead to the conclusion of a contract.
- (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 confirmations. Additional or special performances shall be invoiced separately. The prices quoted, unless otherwise contractually agreed, are EXW for purchase orders submitted by the business partner and CIP in Euro for deliveries to GÜDEL where applicable, plus value added tax at the statutory rate and, in the case of export deliveries, plus customs duties, fees and other public charges.
- (2) 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: 30% downpayment within 10 days after placing the purchase order, 30% on receipt of delivery from 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.
- (3) 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.
- (4) 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 fulfillment 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 fulfillment, dispatch, packaging, passage of risk and acceptance

- (1) The place of fulfillment 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 fulfillment 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) 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; when 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, 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) 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.
- (2) The warranty period for replaced or repaired parts shall be six months from the replacement or repair date or to the end of the original warranty period (pursuant to paragraph 1), whichever is longer.
- (3) 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 an 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 working days of delivery of the deliverable, or, in other cases, within seven 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.
- (4) 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.
- (5) 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.
- (6) 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 General Terms and Conditions only if the legal enforcement of the said claims against the manufacturer and supplier are unsuccessful or are 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.
- (7) 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. In any case, the customer shall bear the additional costs of remedying the defect brought about by such change.
- (8) 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) The customer acknowledges all and any industrial property rights due to GÜDEL in connection with the deliverables, promises to observe said rights and to notify GÜDEL of any infringements thereof by third parties. 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 disclose to third parties drawings, draft designs, samples, calculations, software or any other documents belonging to GÜDEL. GÜDEL reserves all proprietary, copyright and other industrial property rights trademark rights to the above.

## § 8 - Liability

- (1) GÜDEL shall only be liable for damages not caused to the deliverable itself - regardless of the legal basis - in case of willful intent or gross negligence by its executive staff, in case of negligent injury to life, limb or health, in case of defects which were fraudulently not disclosed or whose absence was guaranteed, maliciously concealed or in case of defects to the deliverable, in so far as liability exists under product liability laws for personal or material damages to objects in private use.
- (2) In case of culpable breach of significant contractual obligations, GÜDEL shall also be held liable for cases involving gross negligence of non-executive employees, however in such cases this shall be limited to reasonable foreseeable damages which are typical for such contracts. Liability for damages arising from minor or average negligence is expressly excluded.
- (3) Liability for further damages, in particular for indirect and consequential damages due to defects is excluded.
- (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.
- (4) GÜDEL shall be entitled to use, process and sell the reserved goods by way of a proper business transaction until enforcement of retention of title pursuant to section (9). Pledging or assigning security on reserved goods are not allowed.
- (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, 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) Should the business partner sell claims within the scope of genuine factoring, he shall assign to GÜDEL the claim arising against the factor taking its place. GÜDEL herewith accepts such assignment. Should payment be made by transfer to the customer's financial institution, the customer shall herewith irrevocably assign to GÜDEL any claims against the financial institution to which the customer is entitled as a result of this. Should the customer receive bills of exchange for settlement of claims against third parties, it shall herewith irrevocably assign to GÜDEL the claims to which it is entitled against the financial institution in the event of discounting of the bill of exchange.
- (8) 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.
- (9) 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.
- (10) 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%.
- (11) 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.

## § 10 - 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.** 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 Federal Republic of Germany** 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.