

## GÜDEL GROUP GENERAL CONDITIONS OF PURCHASE (

Edition: 1/2019)

### 1. General

- 1.1. These General Conditions of Purchase apply to each purchase order and all agreements with regard to goods or materials supplied and/or services performed (collectively the "Goods") by the "Supplier" to the GÜDEL Group, i.e. world-wide to all Affiliated Companies of Güdel Group AG, Gaswerkstrasse 26, CH-4900 Langenthal, Switzerland, (each individually a "Purchaser").
- 1.2. Additional or deviating terms proposed by the Supplier, in particular Supplier's terms and conditions of sale and delivery shall not be applicable and expressly rejected by the Purchaser, even if (1) the Supplier expressly refers to other terms and conditions during the business relationship with Purchaser or (2) they are not rejected explicitly by the Purchaser in an individual Purchase Order or (3) the Purchaser accepts and pays for the Goods delivered by the Supplier.

### 2. Formation of Contract, Changes and Amendments

- 2.1. Supplier's quotations and offers shall be prepared free of charge. They shall explicitly point out any deviations from Purchaser's Request for Proposal as well as any ambiguities, gaps or technical specifications contained therein which may impair the suitability of the Goods for the purpose for which they are intended or with regard to the latest state of the art or applicable laws and regulations.
- 2.2. Purchaser's orders or any changes or amendments thereto shall be binding only if made or confirmed in writing. Sketches, drawings, specifications, etc. referred to in the Order shall form an integral part thereof.
- 2.3. If an Order is not accepted by Supplier within three (3) working days, Purchaser shall be entitled to withdraw it. Such withdrawal shall not entitle the Supplier to raise any claims.
- 2.4. The Confirmation of Order shall explicitly point out any deviations from the Order. Such deviations shall only form part of the contract if accepted by Purchaser in writing.
- 2.5. The Confirmation of Order must contain at least the following information: Purchaser's order number, Purchaser's item number, country of origin, price, incoterms, and terms of payment.
- 2.6. After conclusion of the contract Purchaser shall remain entitled to request reasonable changes with regard to the specifications, the manufacture or the delivery of the Goods. To the extent such changes result in an increase or decrease of Supplier's costs or in a change of the date of delivery, Supplier shall inform the Purchaser latest within a calendar week. The resulting Variation Order shall be mutually agreed between the Parties

### 3. Delivery Period

- 3.1. The agreed delivery dates and/or delivery periods are binding. The delivery periods start to run from the date the Purchaser receives Supplier's unreserved Order Confirmation. If the Goods are not received at the agreed place and date of delivery, the Supplier shall automatically be deemed to be in arrears.
- 3.2. Partial deliveries or early deliveries of more than three working days shall require Purchaser's prior consent.
- 3.3. Supplier shall inform Purchaser immediately of any circumstances occurred or likely to occur, which may impair the agreed delivery date, as well as of the estimated period of delay. The Supplier shall exert its best efforts to minimise the delay or to procure replacements from third parties.

- 3.4. Delays occasioned by missing information, documents or items to be supplied by Purchaser shall be excused only to the extent Supplier has requested the supply of said documents or items in due time, or in case he has timely reminded the Purchaser that documents are missing.
- 3.5. Except in case of Force Majeure, for the rest however by the sole fact of delay and irrespective of any evidence of damages incurred by Purchaser, the Supplier shall pay a penalty of 1% of the Contract Price for each commenced week of delay, in the aggregate however at least the equivalent of USD 1,000. The maximum penalty for each delayed delivery shall be limited to the higher of the following two amounts a) the equivalent of USD 50,000 (fifty thousand) or b) 10% of the Contract Price for the delivery concerned. Shortages of raw material or delays by subcontractors or sub-suppliers shall not exonerate Supplier, unless such delays were equally caused by Force Majeure. Purchaser's statutory right to claim damages which exceed the penalties remains reserved.
- 3.6. If the agreed date of delivery is exceeded by more than 4 weeks, Purchaser may rescind the contract forthwith.
- 3.7. If it is foreseeable that the agreed date of delivery will not be met, Purchaser may rescind the contract prematurely. In this case Supplier shall – in addition to Purchaser's rights at law - reimburse all payments already made, plus 5 % interest per annum.

### 4. Shipping and Packaging

- 4.1. The Supplier shall ship the Goods according to Purchaser's shipping and marking instructions. At a minimum, a list of contents is mandatory for every packaging unit. If the goods are shipped in multiple packaging units, each unit must be individually identified.
- 4.2. The packaging must be such that the Goods are effectively protected against damage and corrosion during transport and subsequent storage. The supplier is liable for damage caused as a result of improper packaging.
- 4.3. The Supplier shall be liable for all costs and expenses incurred resulting from his failure to observe Purchaser's instructions regarding transport or customs clearance.
- 4.4. The assumption of risk for accidental loss of the Goods shall pass to Purchaser pursuant to the Incoterm agreed in the Order; in the absence of an agreed Incoterm, the Goods shall be shipped DAP named place of delivery Incoterms 2010 or latest edition. In case acceptance tests in Purchaser's works have been agreed, passing of risk shall occur upon successful completion of said tests.
- 4.5. Each delivery has to be accompanied by a detailed delivery note containing at least the following data: Delivery note number, delivery date, Purchaser's Order Number, Date of Order, Item Number, Purchaser's Item Number (if applicable), Drawing number and index (if available), Quantity, Gross/Net Weight, Country of Origin, Customs Tariff Number and Type of Packing, Delivery Address (including plant and gate).

### 5. Prices, Invoicing, Terms of Payment, Transfer of Ownership

- 5.1. The prices agreed are firm and may only be changed by mutual agreement between the Parties.
- 5.2. Statutory VAT must be shown on the invoice as a separate item.
- 5.3. Unless otherwise agreed, a separate invoice shall be issued for each Order. Invoices are to be sent separately from each shipment.
- 5.4. Invoices must comply with applicable VAT regulations. Supplier's invoices must match the Purchaser's order and the Suppliers' Confirmation of Order concerning the items and the order value listed. In addition, the Invoices must show at least the order number, item number, delivery date and also the scope of the delivery, e.g. partial or residual deliveries. In addition Supplier shall be liable for the proper indication and proof of the country of origin of the Goods.

- 5.5. Unless otherwise agreed and subject to the proper delivery of the Goods and the pertinent documents, payment shall be made within 45 days from receipt of a properly prepared invoice, (except in case of advance payments) however earliest 45 days from the receipt of the Goods.
- 5.6. Defects in the Goods shall entitle Purchaser to withhold a reasonable part of the agreed price until the defects have been remedied.
- 5.7. Invoices failing to comply with the aforementioned requirements shall not be processed and the pertinent payment withheld until submission of a properly prepared invoice.
- 5.8. Unless otherwise agreed, advance payments shall be subject to the submission of a pertinent irrevocable guarantee, payable on first demand, of a first class bank in Purchaser's country.
- 5.9. If the Supplier has undertaken to install or assemble the Goods and no other agreement has been reached, the Supplier shall pay all charges such as travel expenses, accommodation, tool provisioning, allowances, etc.
- 5.10. Ownership of the Goods shall pass to Purchaser at the earlier of the following events
  - delivery
  - advance payment in full

## 6. Inbound Inspections

- 6.1. Upon receipt Purchaser shall inspect the Goods only with regard to transport and other apparent defects as well as with regard to identity and quantity.
- 6.2. In the ordinary course of business, latest within one month after receipt, Purchaser shall, by random sampling, inspect the Goods to determine whether they correspond to the agreed specifications.
- 6.3. If more than 20% of the Goods of a consignment do not meet the agreed specifications and quality standards, Purchaser is entitled to reject the whole consignment. It is then Supplier's responsibility to inspect the rejected Goods and sort out the Goods of good quality.

## 7. Warranty

- 7.1. Supplier warrants that the Goods comply in all respects with the terms of the contract, achieve the agreed performance, are new and state-of-the-art and fit for the purpose for which they have been purchased. The Goods shall further comply with all applicable standards, laws and regulations (including, without limitation, those regarding the environment, health and accident prevention) in force at the final place of delivery indicated in the order
- 7.2. Defects shall be notified to Supplier within two calendar weeks after detection.
- 7.3. The warranty period is 24 months and begins, unless otherwise agreed by the Parties, upon delivery of Purchaser's products to its customer, but ends no later than 48 months (60 months in the case of serial defect) after receipt of the Goods by Purchaser. A serial defect is assumed when - within a period of 60 months from receipt by Purchaser - more than 5 % of the Goods show the same defect caused by the same root cause.
- 7.4. The warranty period for repairs or replacements shall be 24 months from the date of replacement or successful repair, provided however that it shall not expire prior to the original warranty period for the Good in question.
- 7.5. In the event of defects, Purchaser may, irrespective of any other rights he may have at law, avail itself, at its election, of the following remedies: a) refuse to accept the Goods, rescind the respective order and claim the reimbursement of any advance payments and/or damages, b) request the repair or replacement of the Goods. In case of Supplier's refusal or inability to repair or replace or if the repair or replacement is unreasonable or unduly burdensome: c) to have the defective Goods repaired or replaced

by a third party at the Supplier's expense or d) to demand a price reduction, or e) rescind the contract, or f) to combine any of the above remedies. In any event Supplier, even without fault, shall bear or reimburse all costs associated with the repair or replacement (inspection, dismantling, reinstallation, transport, etc.).

- 7.6. Contractual claims arising from the delivery of defective products or faulty advice or instruction shall be time barred, i.e. fall under the statute of limitations, one year after expiry of the warranty period.

## 8. Recalls

- 8.1. If Purchaser, in its sole reasonable judgement, intends to recall products or to replace them at its customer's premises as a preventive measure, it shall inform the Supplier as quickly as possible, provided there is no imminent danger.
- 8.2. The Supplier shall bear the costs of the product recall and exchange action and any associated consequential costs, limited however to a maximum of the equivalent of USD 1,0 million per recall campaign or exchange action.

## 9. Product Liability and Recall Insurance

- 9.1. The Supplier shall take out and maintain for at least 5 years after the last delivery of Goods to Purchaser liability insurance to cover its liability for personal injury and damage to property with a coverage of at least the equivalent of USD 5 million per claim, and for other damages, such as disassembly and reassembly costs on one side and recall costs on the other side, at least in the amount of the equivalent of USD 1 million each per incident
- 9.2. The Supplier hereby assigns any claims against the insurer to Purchaser and Purchaser hereby accepts the assignment.
- 9.3. At Purchaser's request the Supplier shall submit a pertinent insurance certificate.

## 10. Quality Audits

- 10.1. Purchaser may, upon reasonable prior notice and during normal business hours, audit the manufacturing process of the Goods in Supplier's works. The Supplier shall exert its best efforts to make such audits also possible in the works of his sub-suppliers or subcontractors.
- 10.2. The Parties shall take appropriate measures to protect any business secrets of the Supplier and of its sub-suppliers or subcontractors.

## 11. Infringement of Third Party Rights

- 11.1. Supplier shall indemnify, defend and hold Purchaser harmless from and against all liabilities, costs, damages, claims and expenses (including court costs and legal expenses and any settlement of such claim or action) incurred by Purchaser in respect of any claim or action brought by a third party against Purchaser or its customer alleging that the Goods or their use by Purchaser or Purchaser's customer infringe the intellectual property rights of such third party. Notwithstanding the foregoing, Supplier shall not be liable to the extent that the infringement results from the manufacture of the Goods in accordance with instructions received from Purchaser and Supplier (having taken all reasonable precautions) could not have known that following these instructions would result in an infringement of a third party's intellectual property rights.
- 11.2. The Parties will inform each other forthwith of all actual or alleged infringements of third party rights of which they become aware. Supplier will assist Purchaser in its investigation, defence or handling of any such claim, including the provision any documents needed by Purchaser to defend the action.
- 11.3. If Purchaser selects its own legal counsel, Supplier's indemnification extends to the reasonable costs and fees associated with such representation. If Purchaser does not select its own legal counsel, Purchaser will give Supplier sole conduct of the defence of any such claims or actions

11.4. In the event of a claim of infringement of any third party rights that is communicated to Supplier, Supplier shall take the needed steps to ensure for Purchaser a non-infringing source of supply, which may involve securing the needed licenses (if any), redesign of the Goods, or other steps Supplier deems necessary to ensure that a non-infringing product is delivered to Purchaser.

## **12. Ownership in Documents, Software, Tools and Patterns, Escrow for Source Code, etc.**

12.1. Documents, such as drawings, software, and all means of production, such as tools, samples, patterns and the like, placed by Purchaser at Supplier's disposal or sourced or manufactured by Supplier at Purchaser's cost, remain respectively become Purchaser's property as soon as sourced or produced. Purchaser shall own all rights in them. If no longer used for the execution of Purchaser's orders, they shall, at Purchaser's election, be either returned to Purchaser free of charge or disposed of, such disposal to be confirmed by Supplier in writing.

12.2. They must not be duplicated, sold, pledged, assigned as collateral, be disposed of or in any other way be encumbered, made available to third parties or used for the manufacture of products for third parties.

12.3. Such tools, samples and patterns shall be properly, marked, insured against theft and natural hazards, stored and maintained by the Supplier. The Supplier waives all statutory rights of retention.

12.4. Unless otherwise agreed, the Supplier, upon fulfilment of the pertinent contract, must, at Purchaser's request, return to Purchaser all documents, software or means of Production being Purchaser's property and any copies made thereof, or in case of documents or software confirm to Purchaser their destruction or deletion. The Supplier, however, shall have the right to retain one set of copies of the documents or software received for the strict purpose of legal records only, provided such copies are treated as classified documents.

12.5. Purchaser shall be entitled to use software falling under the scope of supply, including its documentation to the extent required for the use of the Goods or any other purpose provided for in the contract and Purchaser may make backup copies of the software supplied by Supplier.

12.6. At Purchaser's request, the Supplier shall conclude a source code escrow agreement. Purchaser will submit a contract template for this purpose.

## **13. Re-Supplies of Goods and Supply of Spare Parts**

13.1. Supplier undertakes to re-supply to Purchaser - based on individual purchase orders, at competitive conditions and for a period of at least ten (10) years following delivery of the Goods – identical Goods and /or spare parts required therefor.

13.2. Should Supplier intend to discontinue the manufacture of the respective Goods or spare parts, he shall notify Purchaser forthwith, latest however three (3) months prior to ceasing their production. Within one month following receipt of such notice, Purchaser shall be entitled to place a final order for the delivery of the Goods or spare parts at customary market conditions.

13.3. Purchaser shall be entitled to procure spare parts to the Goods, not covered by Supplier's industrial property rights, also directly from Supplier's sub-supplier or any third parties.

13.4. Supplier shall exert his best efforts to bind its subcontractors and sub-suppliers accordingly.

## **14. Confidentiality**

14.1. The Parties shall not disclose to third parties and shall use solely for the execution of an order all confidential information of which they have gained knowledge in the course of their dealing with the other Party, in particular technical information, drawings, business secrets and details of the order, such as quantities, technical specifications, commercial terms of

an order, etc. as well as any knowledge derived from said information. However, the Purchaser is entitled to disclose all confidential information within the scope of the order to all of its affiliated companies.

14.2. The Supplier shall ensure that any subcontractors or sub-suppliers to whom confidential information is disclosed for the purpose of executing the subcontract or sub-order, agree to be bound by these terms

14.3. Without Purchaser's prior consent, Supplier shall not publish the fact that he has contracted with Purchaser or to use Purchaser's Order for publicity purposes.

14.4. If either Party or one of its agents, sub-suppliers or subcontractors infringes the aforementioned confidentiality obligations, it shall pay to the other Party a penalty equivalent to USD 50,000 (fifty thousand) unless it can prove that neither the Party itself nor the sub-supplier or subcontractor in breach was at fault.

14.5. The aggrieved Party may assert claims for higher damages as well as to seek injunctive relief for cease and desistance or enjoinder. Payment of the penalty shall not relieve the breaching Party from the further performance of its obligations hereunder.

## **15. Protection of Personal Data**

15.1. The Parties may exchange Personal Data such as names, phone numbers, E-mail addresses and other personal related information in the course of their contractual relationship. In such case, both Parties shall use such Personal Data in accordance with applicable laws on the protection of personal data, in particular, to the extent applicable, the requirements of the General Data Protection Regulation of the European Union of 4th May 2016 (EU 2016/679; "GDPR") and ensure that no unauthorized third parties will have access to such Personal Data without the consent of the affected individuals or based on another legal reason to process such data.

15.2. The Parties shall keep Personal Data of the other Party strictly confidential and process such data solely for contractual purposes. The Party that processes Personal Data is responsible for the lawfulness of its processing as well as for ensuring the rights of the data subjects.

## **16. Compliance with Laws and Regulations**

16.1. If not otherwise agreed, the Supplier shall meet the quality standards ISO 9001, ISO 14001 and ISO 45001 (OHSAS 18001). The Supplier further warrants that the Goods supplied conform to all applicable laws, regulations and standards in the country to which the Goods are delivered.

16.2. The Goods shall comply in particular but not exclusively with the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding "Conflict Minerals" as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act pertaining to "Conflict Materials".

16.3. The Goods shall further comply with all applicable laws, regulations and standards, environmental regulations and requirements regarding critical and hazardous materials and substances, in particular to Regulation (EC) No 1907/2006 (REACH) and the Directives (EU) 2011/65 and (EU) 2017/2102 (RoHS).

## **17. Social Responsibility**

17.1. The Supplier shall comply with the laws of the legal system(s) applicable in connection with the performance of the contract. He will, in particular, not engage, actively or passively, nor directly or indirectly in any form of bribery, in any violation of basic human rights of employees or any child labour.

17.2. Moreover, the Supplier will take responsibility for the health and safety of its employees; he will act in accordance with the applicable environmental laws and will use best efforts to promote these undertakings of good conduct among its suppliers.

17.3. In addition to other rights and remedies he may have, Purchaser may terminate the contract and/or any purchase order issued thereunder in case of breach of these undertakings. However, provided that Supplier's breach of contract is capable of remedy, Purchaser's right to terminate is subject to the proviso that such breach has not been remedied by the Supplier within a reasonable grace period set by Purchaser.

## **18. Final Provisions**

- 18.1. Any subcontracting of the design or manufacture of the Goods, in whole or to a significant extent, as well as the subcontractors chosen by the Supplier, shall require Purchaser's prior approval. Such subcontracting shall not relieve Supplier from its liability for the proper fulfilment of the Contract.
- 18.2. Without the prior written consent of Purchaser Supplier shall not, in whole or in part, assign the rights and obligations under a supply or service contract, or subcontract a substantial portion thereof, to any third party.
- 18.3. Material placed at Supplier's disposal in connection with the execution of an order shall, irrespective of any machining or processing, remain Purchaser's property. It shall be marked as such and be stored separately until processed, assembled or installed.
- 18.4. Unused or remaining material, scrap and the like shall, at Purchaser's request, be either returned or, at market prices, credited towards the Contract Price
- 18.5. If a provision hereof or any partial provision is held by any competent court or authority to be invalid or unenforceable, such provision or partial provision will be deemed null and void, the remaining provisions hereof continuing to be in full force and effect. If required, the Parties shall replace such invalid or unenforceable provision with a valid and enforceable provision having similar economic consequences, provided that the content of these terms and conditions is not materially altered. The same applies should any gaps or loopholes be found.
- 18.6. No delay or omission of Purchaser to exercise any right or remedy granted under the contract and these terms and conditions shall operate as a waiver of such rights, and every right and remedy of Purchaser provided herein shall be cumulative, concurrent and in addition to any other further rights and remedies available at law or in equity.
- 18.7. Any communication transmitted via facsimile or electronically (e.g., via the Internet, including but not limited to EDI, cXML, e-mail) shall also be considered to have been made "in writing".

## **19. Place of fulfilment**

- 19.1. Unless otherwise agreed, the place of fulfilment for delivery and payment shall be Purchaser's place of business.

## **20. Applicable Law and Place of Jurisdiction**

- 20.1. Cross-border contracts with the Purchaser are subject to the UN-Convention on Contracts for the International Sale of Goods (CISG) and for matters not governed by the CISG to the substantive laws in force at Purchaser's place of business.
- 20.2. Exclusive place of jurisdiction for all actions arising out of or in connection with a Purchase Order or another agreement between the Parties shall be Purchaser's place of business, the Purchaser being entitled to bring actions also before any other court having jurisdiction over the subject-matter in dispute.

Effective as of January 1, 2019