

## General Conditions of Purchase

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### **I. General Provisions**

- 1.1. These General Conditions of Purchase apply for all business dealings between Güdel AG and the supplier, even if not specifically mentioned for subsequent contracts.
- 1.2. The confirmation and/or actual execution of an order of Güdel AG are taken to mean the consent of the client to these General Conditions of Purchase.
- 1.3. Contradictory conditions or conditions of the client that depart from these General Conditions of Purchase are permitted only with express written consent from Güdel AG. The acceptance of products or the utilisation of services of the client and/or payment for same does not constitute consent.
- 1.4. In the event of contradictions, these General Conditions of Purchase take priority over a written order or a written order confirmation.
- 1.5. Should individual provisions of these General Conditions of Purchase be invalid or incomplete, the validity of the remaining provisions shall not be affected. Loopholes and ambiguities are to be replaced by a permissible provision that corresponds to the economic intention of the contracting parties when the contract is concluded.

### **2. Order confirmation and format of orders**

- 2.1. Quotations from suppliers and interested parties are free-of-charge for Güdel AG.
- 2.2. Orders of Güdel AG are binding if set out in writing or confirmed in writing by Güdel AG.
- 2.3. The supplier must confirm the order immediately. Entries by the supplier that deviate from the order are valid only when explicitly confirmed in writing by Güdel AG.

- 2.4. The supplier must notify Güdel AG immediately of any mistakes, typing and printing errors (especially with regard to quantity, price or deadline).

### **3. Delivery**

- 3.1. The agreed delivery deadlines and/or delivery periods are binding. The delivery periods start to run from the date of the written order. The goods must arrive at the destination stated by Güdel AG inside the delivery period.
- 3.2. The supplier must automatically report to Güdel AG every delay immediately, stating the anticipated period of the delay. Any special regulations in the order must be strictly observed and heeded. The supplier may only cite the absence of essential documents or objects to be supplied by Güdel AG if it has requested same or sent a reminder without delay.
- 3.3. Should the supplier fall behind schedule, Güdel AG shall be entitled, irrespective of further damage claims, to demand a contractual penalty amounting to 1% of the order value per week or start thereof of the delay, the maximum being 5 % of the order value.
- 3.4. Should the supplier omit to advise Güdel AG of the failure to comply with the delivery deadline, it shall reserve the express right, at the onset of the delay, to withdraw from the contract and forgo the delivery.
- 3.5. Güdel AG also reserves the express right to claim against the supplier for further (over and above any contractual penalty) damages.

### **4. Prices and payment conditions**

- 4.1. The prices agreed by the contracting parties are maximum prices and may not be increased by the supplier. When setting prices in foreign currencies, Güdel AG reserves the express right to reduce the invoice amount in line with any changes to the interest rate to the detriment of Güdel AG. On conclusion of the contract, the prices are to be reduced in favour of Güdel AG, insofar as the nature and scope of the agreed goods or services or the material or the design have been altered.
- 4.2. The prices are exclusive of statutory VAT and/or duty.
- 4.3. Güdel AG undertakes to pay invoices correctly issued by the supplier within the agreed payment period upon receipt of same, the earliest time however, being the arrival of the fault-free goods or services. In the absence of an appropriate agreement, payment shall be made within 30 days of the fault-free goods or services being received. In the event of substandard goods or services, Güdel AG shall be entitled to retain payment until the faults have been rectified by the supplier.
- 4.4. The supplier undertakes to issue an invoice as soon as the goods have been dispatched. Unless otherwise agreed by the parties, a separate invoice shall be issued for each order. The supplier's invoices must show the order number, item number, delivery date and also the scope of the delivery, namely the part or residual delivery. Statutory VAT must be shown on the invoice as a separate item.
- 4.5. 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.

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**5. Delivery, packaging, transport and insurance**

- 5.1. The contractor must observe the shipping instructions of Güdel AG. For consignments delivered from an overseas plant of the supplier, shipping instructions must be obtained from Güdel AG as a priority. The supplier is responsible for the customs declaration.
- 5.2. 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.
- 5.3. Unless otherwise agreed by the contracting parties, the costs of delivery, including the costs for packaging and insurance, as well as other additional costs, shall be paid by the supplier.
- 5.4. The supplier is responsible for all costs and drawbacks arising from failing to follow the instructions for transport, goods declaration, customs clearance procedures etc.
- 5.5. The supplier shall arrange transport insurance. The supplier shall furnish the relevant proof of insurance at the request of Güdel AG.
- 5.6. Unless otherwise agreed by the contracting parties, the risk shall be transferred to Güdel AG when the consignment is handed over at the agreed destination.
- 5.7. All shipping documents, mails and invoices etc. must contain the purchase order numbers, contract numbers etc.

**6. Inspecting the consignment**

- 6.1. On acceptance of the goods, Güdel shall check the identity, quantity and the presence of transport damage as soon as the normal course of business allows. Acceptance of the delivery and the complete or partial payment for the goods or services do not constitute approval of the delivery and neither, specifically, a waiver to any warranty claims.
- 6.2. Güdel AG will notify defects in writing following discovery of same. The supplier waives the defence of delayed defect notifications (Art. 201 OR).

**7. Warranty**

- 7.1. The supplier warrants that the goods exhibit the agreed characteristics, are suitable for their intended purpose, conform to the recognised state of the art, are free from defects in material, construction and design, and also comply with the laws, regulations and other conditions. The supplier is liable under the terms of its own warranty obligation for consignments delivered by sub-suppliers.
- 7.2. Güdel AG reserves the right, following appropriate prior notification, to conduct quality or deadline audits at its suppliers or their sub-suppliers.
- 7.3. The warranty period is 12 months from the contractual product being delivered or the service being provided at the destination, although no more than 30 months from delivery of the contractual products to Güdel AG. Any longer warranty period as specified by law, standard market conditions or the written agreements between the contracting parties shall apply.
- 7.4. The supplier undertakes to either repair or replace substandard contractual products, as Güdel AG sees fit. It shall pay all costs associated with the repair or replacement (inspection, dismantling, transport etc.). If the supplier is unable to achieve the contractual status within

an appropriate period, Güdel AG shall be entitled to either demand a price reduction or repair or replace the substandard contractual products itself or have same repaired or replaced by a third party, as it sees fit. Repairs and replacements shall be covered by the same warranty scope as the delivery object itself, the warranty period for repaired or reworked parts starting from acceptance of the repair or replacement consignment.

- 7.5. If more than 30% of the contractual products in a consignment are substandard, a series defect is said to have occurred. In this case, Güdel AG shall be entitled to reject all contractual products in the entire consignment and all contractual products that originate in the same production batch, even if it is proven that not all products are substandard. It is the supplier's responsibility to check the rejected contractual products and separate out the sound parts. The supplier must advise Güdel AG if it intends to re-supply contractual products from such a consignment.
- 7.6. The supplier assures Güdel AG that it is able to supply spare parts at the request of Güdel AG for a period of 10 years, calculated from the date of the written order or order confirmation.
- 7.7. The right to make statutory warranty claims is reserved.
- 7.8. The supplier undertakes to compensate any damage sustained by Güdel AG on account of faulty contractual products, insofar as the supplier is unable to prove that it is not responsible for such faults.
- 7.9. If Güdel AG is claimed against by third parties, citing by the conditions of the product liability law, because contractual products are substandard as defined by these conditions, the supplier shall indemnify Güdel AG against such claims. Güdel AG shall hand over conduct of a case to the supplier if there is no doubt that the only possible cause of damage is the supplier's contractual products.
- 7.10. If Güdel AG believes that a product recall is necessary due to substandard contractual products, Güdel AG shall orientate the supplier as quickly as possible, provided there is no imminent danger. The supplier must pay the costs of a recall campaign, insofar as it became necessary on account of faults in its contractual products.
- 7.11. The supplier undertakes to arrange an appropriate product liability insurance policy and to maintain same for the duration of the contract. Güdel AG is authorised to demand appropriate documentary evidence of the insurance at any time.

## **8. Ownership and intellectual property rights**

- 8.1. All documents such as drawings, calculations, models, matrices, drafts, samples, manufacturing instructions, company data, tools, equipment etc., which Güdel AG passes to the supplier under the terms of the supply relationship or for producing a bid, shall remain in the full ownership of Güdel AG and may not be disclosed to third parties without the prior written consent of Güdel AG. In particular, the supplier is not entitled to use such documents for third party orders.
- 8.2. The models, matrices, tools etc. provided by Güdel AG must be stored and maintained by the supplier in an appropriate manner. They must be appropriately marked by the supplier

and insured against theft and elementary damage. The supplier waives all rights of retention (specifically to the right of retention in accordance with Art. 895 et seq ZGB).

- 8.3. Unless otherwise agreed by the contracting parties, the supplier must automatically return to Güdel AG on fulfilment of the contract all tools and records, data carriers, models, samples etc., and any copies made of same.
- 8.4. For its part, Güdel AG shall be entitled to use the software that falls under the scope of supply, including its documentation, to the extent permitted by law and by the contract. Güdel AG reserves the express right to make a backup copy of the supplied software.

## **9. Third party industrial property rights**

- 9.1. The supplier warrants that it does not, by supplying and using the contractual objects, infringe any third party industrial property rights recognised in Switzerland.
- 9.2. The supplier shall avert third party claims based on the infringement of industrial property rights at its own cost and risk. Güdel AG shall notify the supplier of such claims immediately and leave it to handle any legal action and the measures required for to settle such action either judicially or non-judicially. Under these provisos, the supplier shall pay any costs incurred by Güdel AG and any damages imposed on same.

## **10. Confidentiality and data privacy**

- 10.1. The contracting parties mutually undertake to maintain secrecy over all facts and data, which are marked as confidential or are clearly confidential or are not generally disclosed and which they have obtained from each other under the terms of the contractual relationship. In case of doubt, facts and data are to be treated as confidential.
- 10.2. The contracting parties will take steps to ensure that this obligation is met by their personnel and any sub-suppliers or vicarious agents. These confidentiality obligations exist prior to the contract being concluded and continue beyond the end of the contractual relationship and/or once the agreed service has been rendered.
- 10.3. If the supplier wishes to use the contractual relationship for advertising or publication purposes, it must obtain prior written consent from Güdel AG.
- 10.4. If either contracting party or their assistants infringe the aforementioned confidentiality obligations, it must pay to the other party a contractual penalty insofar as the infringing party fails to prove that neither it nor other involved third parties are at fault. The conventional penalty amounts to 10% of the overall remuneration, the maximum amount however being CHF 50,000.00 per infringement. Payment of the contractual penalty does not exempt the parties from their confidentiality obligations. The right to assert further damage claims is expressly reserved.
- 10.5. Compliance with the applicable data privacy conditions is required. The data privacy obligations continue to apply on termination of the contractual relationship.
- 10.6. The supplier declares its revocable consent that Güdel AG is entitled to edit and/or process the personal data it has provided in compliance with the legal conditions.

**11. Place of fulfilment**

11.1. Unless otherwise agreed, the place of fulfilment for delivery and payment is Langenthal/BE (Switzerland).

**12. Applicable law and place of jurisdiction**

12.1. All relations between the supplier and Güdel AG are governed by Swiss law. The applicability of the Viennese Sales Law and other international regulations is expressly ruled out.

12.2. The place of jurisdiction for all actions brought is the court at the headquarters of Güdel AG. Güdel AG reserves the right to also bring actions before the court at the supplier's headquarters.