

# General Terms and Conditions (GTCs)

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## 1. General terms

- I.1. These General Terms and Conditions (GTCs) are binding between GÜDEL AG as the vendor and supplier (referred to in the following as «GÜDEL») and their customers (referred to in the following as the «Purchaser»). They form part of the contract and apply to the entire business dealings between GÜDEL and the Purchaser, even if they are not explicitly mentioned in subsequent contracts.
- I.2. Conflicting General Terms and Conditions of the Purchaser, or General Terms and Conditions of the Purchaser which differ from these GTCs are only valid with the express written acknowledgement of GÜDEL.
- I.3. In the case of conflicts, these GTCs take priority prior over a written order or order confirmation.
- I.4. All agreements and legally relevant declarations of the contract parties are only valid in the written form. Declarations in text form which are transmitted or retained via electronic media are placed on equal footing to the written form if this is specially agreed by the parties. Acceptance of the order is only deemed to be complete when it is acknowledged by GÜDEL in writing (order confirmation). Offers which do not include a term of acceptance are not binding.
- I.5. In the event that individual clauses in these GTCs should be invalid or incomplete, this shall not affect the validity of the remaining clauses. Any arising gaps and unclarities shall be replaced with a permissible clause which corresponds to the commercial intent of the contract parties at the time of conclusion of the contract.

## 2. Scope of deliveries and services

- 2.1. The supplied goods and services provided by GÜDEL are specified conclusively in the written order confirmation, which will include any relevant attachments. Even without the express approval of the Purchaser, GÜDEL is authorised to make changes which lead to improvements, provided the price is not increased as a result.
- 2.2. Brochures and catalogues are not binding unless agreed otherwise. Properties derived from details specified in technical documents are only binding if they are expressly assured features.
- 2.3. GÜDEL reserves all rights to diagrams and technical documents which have been provided by GÜDEL to the Purchaser. The Purchaser acknowledges these rights and agrees not to make these documents available to third parties, neither in part nor in full, without prior written authorisation from GÜDEL or to use said documents outside the purpose for which they have been made available.

## 3. Regulations in the receiving country and safety devices

- 3.1. The Purchaser must, no later than when the order is placed, inform GÜDEL about the regulations, standards and official directives in the receiving country which relate to the execution of the supplied goods and services, as well as to operation of the goods and health and safety issues pertaining to accident avoidance.
- 3.2. The supplied goods and services must satisfy the regulations and standards which are applicable at the registered office of the Purchaser, provided that GÜDEL has been informed about them in accordance with section 3.1 of these GTCs. The right to make different agreements is expressly reserved. In this respect, additional or alternative safety devices will be supplied together with the goods where this is expressly agreed.
- 3.3. In the event of violation of the information requirement stipulated in section 3.1 of these GTCs, GÜDEL rejects any liability. In this case the Purchaser agrees to fully exempt GÜDEL from all resulting claims.

## 4. Prices

- 4.1. In the absence of any other agreement, all prices are net, ex works, without packaging, in freely available Swiss Francs (CHF) and without any deductions of any kind. All additional costs, such as for freight, insurance, export, transit, import and other licences, registration or certification are at the expense of the Purchaser. Similarly, the Purchaser is also liable for all types of tax, charges, fees, duties or similar which are raised in connection with the contract, or the Purchaser must remunerate GÜDEL for such taxes, charges, fees, duties etc. if GÜDEL has had to pay them, subject to submission of the relevant documents/proof.
- 4.2. GÜDEL reserves the right to change prices if wage levels or material prices change between the date when the offer is made and the date of contractual fulfilment. In this case the prices will be changed in accordance with the enclosed sliding-scale price formula (see Attachment I), which forms part of these GTCs. In the case of follow-on orders, GÜDEL is not bound by prices from previous orders.
- 4.3. Appropriate adjustment of the prices is also performed if:
  - the delivery deadline is extended retrospectively for one of the reasons stated in section 7.2 of these GTCs, or
  - the type or scope of the agreed supplied goods or services are subject to change, or
  - changes become necessary to the material or execution because the documents provided by the Purchaser either did not correspond to the actual situation or were incomplete.

## 5. Terms of payment

- 5.1. Payments are to be made by the Purchaser in accordance with the agreed terms of payment at the residence of GÜDEL without deduction of discounts, expenses, taxes, charges, fees, duties or similar.

- 5.2. In the absence of any other agreement, the price is to be paid in the following instalments:
- one third as an advance payment within 10 days of receipt of the order confirmation at the Purchaser,
  - one third after two-thirds of the agreed period of delivery has passed,
  - the remainder within one month of the notification of readiness for dispatch being issued by GÜDEL.
- 5.3. The payment obligations are satisfied once Swiss Francs have been transferred to the domicile of GÜDEL where they can be freely accessed by GÜDEL. If payment is agreed in the form of a bill of exchange, then the Purchaser is liable for bank discounts, note tax and expenses of collection.
- 5.4. The payment dates must still be met if the transportation, delivery, assembly, commissioning or acceptance inspection of the supplied goods or services is delayed or made impossible for reasons for which GÜDEL cannot be held accountable, or if reworking becomes necessary which does not render use of the supplied goods impossible.
- 5.5. If the advance payment or the securities which are to be provided at the conclusion of the contract are not rendered in accordance with the contract, then GÜDEL is entitled to either abide by the contract or to withdraw from the contract. In both cases GÜDEL is entitled to demand compensation for damages. If the Purchaser gets into arrears by a further payment, or if GÜDEL is forced to assume, on account of a situation which has arisen after conclusion of the contract, that the payments on the part of the Purchaser will not be received in full or on time, then GÜDEL is entitled, without impairment of their legal rights and without liability for damages, to suspend further execution of the contract and to hold back deliveries which are ready for dispatch; this applies until new terms of payment and new terms of supply have been agreed and GÜDEL has received sufficient securities. If no such agreement can be arrived at within an appropriate period of time or if GÜDEL does not receive sufficient securities, then they are entitled to withdraw from the contract without liability for damages and to demand compensation for damages themselves.
- 5.6. If the Purchaser fails to meet the agreed payment dates, then he must, without being issued a reminder, pay interest on the arrears from the date on which the agreed payment was due; this arrears interest must be at least 4% above the relevant 3-monthly CHF LIBOR rate. The arrears interest shall be at least 5% in all cases. The right to seek compensation for further damages is expressly reserved.

## 6. Title retention

- 6.1. GÜDEL remains the owner of all of its delivered goods until it has received full payment of all the monies owed.
- 6.2. The Purchaser is obliged to cooperate on measures required to protect the property of GÜDEL; in particular, with the completion of the contract the Purchaser authorises GÜDEL to make, at the cost of the Purchaser, the entry or priority notice of the title retention in public registries, books or similar in accordance with the relevant national laws, and to fulfil all the formalities required in this context.
- 6.3. The Purchaser shall maintain the delivered goods at his own cost for the duration of the period of title retention and shall insure them in favour of GÜDEL against theft, breakage, fire, water damage and other risks. He shall further put in place all measures to ensure that the property claim of GÜDEL is neither adversely affected nor cancelled.
- 6.4. The Purchaser must not install, process, sell, give in mortgage, nor burden in any other way with third-party rights, goods which have not been paid for in full.

## 7. Delivery period

- 7.1. The delivery period begins as soon as the contract is concluded, all official formalities such as import, export, transit and payment authorisations have been obtained, the payments to be made at the time of the order have been made and any required securities have been provided, as well as the major technical points have been clarified. The delivery period is deemed to have been met if the readiness for dispatch notification has been sent to the Purchaser before the end of the delivery period. This also applies if assembly by GÜDEL has been agreed.
- 7.2. Satisfaction of the delivery period requires the Purchaser to have fulfilled his contractual obligations. The delivery period shall be extended appropriately particularly if:

- GÜDEL does not receive the information in good time which is needed in order to fulfil the contract, or if such information is changed retrospectively by the Purchaser and this causes a delay in the delivery of goods or the provision of services;
- obstacles arise which cannot be avoided by GÜDEL despite the application of due care, irrespective of whether these obstacles arise at GÜDEL, the Purchaser or at a third party. Such obstacles include but are not limited to epidemics, mobilisation, war, insurgency, significant disruption of operations, accidents, industrial disputes, delayed or incorrect supplies of the necessary raw materials, semifinished products or finished products, rejection of important workpieces, official measures or omissions, natural phenomena;
- the Purchaser or third parties slip into arrears with the work which is to be carried out by them, or if they are behind with the fulfilment of their contractual obligations, particularly if the Purchaser fails to adhere to the terms of payment.

7.3. The Purchaser is entitled to assert the right to compensation for delays in the event of delayed deliveries, in as much as a delay was demonstrably caused by GÜDEL and the Purchaser is able to prove that damages have been suffered as a result of this delay. If alternative deliveries are made in order to help out the Purchaser, then the claim for compensation for delays shall no longer be applicable.

7.4. The compensation for delays as per section 7.3 of these GTCs shall not exceed 0.5% for each full week of delay, in total no more than 5% of the contractual price of the part of the delivery which is delivered late. The first two weeks of any delay shall not represent grounds for compensation for delays. Once the maximum compensation for delays has been reached, the Purchaser shall inform GÜDEL in writing of an appropriate period of extension. If this extension is not met for reasons for which GÜDEL can be held responsible, then the Purchaser is entitled to refuse to accept the delayed part of the delivery. If it would be commercially unreasonable to expect the Purchaser to accept a partial acceptance, then he is entitled to withdraw from the contract and to demand that any monies already paid are refunded against the return of goods which have already been delivered.

7.5. If a specific delivery date is agreed instead of a delivery period, this shall be treated in the same way as the last day of a delivery period; sections 7.1 to 7.5 of these GTCs should be applied analogously.

7.6. The Purchaser has no rights or claims arising from late delivery of goods or services other than those expressly identified in section 7 of these GTCs. For the rest, a disclaimer of warranty in accordance with section 17 of these GTCs shall apply.

## **8. Packaging, dispatch, transportation and insurance**

8.1. The packaging will be billed separately by GÜDEL and is non-returnable. However, if it has been identified as the property of GÜDEL, then it must be sent back by the Purchaser carriage paid to the point of dispatch.

8.2. GÜDEL must be notified in good time of any special requirements on the part of the Purchaser in relation to dispatch, transportation and insurance. Transportation is carried out at the cost and risk of the Purchaser.

8.3. Complaints relating to dispatch or transportation must be directed by the Purchaser immediately towards the last freight carrier on receipt of the deliveries or freight documents.

8.4. Insurance against damage of any type is within the responsibility of the Purchaser.

## **9. Transfer of benefits and risk**

9.1. Benefits and risk are transferred to the Purchaser at the latest when the deliveries are dispatched ex-works.

9.2. If the dispatch is delayed at the request of the Purchaser or for other reasons for which GÜDEL cannot be held responsible, then the risk is transferred to the Purchaser on the day originally intended for dispatch ex-works. From this day on, the deliveries are stored and insured at the cost and risk of the Purchaser.

9.3. The clauses relating to the transfer of benefits and risk according to sections 9.1 and 9.2 of these GTCs will also remain valid if the commissioning or assembly of the delivery object is performed by GÜDEL on the premises of the Purchaser.

## 10. Checking and acceptance of supplied goods and services

- 10.1. Where standard, GÜDEL checks the goods and services prior to dispatch. If the Purchaser demands more far-reaching checks, these must be agreed separately and be paid for by the Purchaser.
- 10.2. The performance of an acceptance inspection and the definition of the terms and conditions which should apply to this are subject to a separate agreement. Except where other agreements are in place, the following shall apply:
- GÜDEL must inform the Purchaser about the performance of the acceptance inspection with enough warning to allow the Purchaser or his representative to attend.
  - A report shall be prepared about the acceptance; this shall be signed by the Purchaser and by GÜDEL or their representatives. This report will document that the acceptance inspection has been performed satisfactorily, or that it has been performed with reservations, or that the Purchaser has refused to accept the goods. In the two latter cases, the claimed defects must be individually detailed in the report. The Purchaser is not entitled to refuse acceptance and refuse to sign the acceptance report on account of minor defects, in particular such defects which do not substantially impair the functional efficiency of the supplied goods or services.
  - In the event of major discrepancies from the contract or serious defects, the Purchaser must in all cases offer GÜDEL the opportunity to rectify the problems within an appropriate period of grace. Thereupon a further acceptance inspection shall take place. If this again reveals major discrepancies from the contract or serious defects, the clauses relating to warranty and liability for defects, in particular section 15.1 of these GTCs, shall be applied.
- 10.3. The acceptance inspection is still deemed to have been completed if:
- for reasons for which GÜDEL cannot be held responsible, the acceptance inspection cannot be performed on the scheduled date or on the date proposed by GÜDEL;
  - the Purchaser refuses acceptance without due justification;
  - the Purchaser refuses to sign an acceptance report drawn up in accordance with section 10.2;
- 10.4. In the event of defects of any nature on the supplied goods or services, the Purchaser has no rights or claims which can be asserted against GÜDEL other than those explicitly mentioned in section 10.2 and sections 11.1 to 15.2 of these GTCs (warranty, liability for defects).

## 11. Warranty period

- 11.1. The warranty period is 12 months, or 6 months if the supplied goods are used in multi-shift operation. This period starts from the day on which the goods are dispatched ex works or from the day on which the acceptance of the delivered goods and services has been agreed (if applicable), or, if GÜDEL is also performing the assembly, from the end of the assembly. If dispatch, acceptance or assembly are delayed for reasons for which GÜDEL cannot be held responsible, then the warranty period shall end no later than 18 months after notification of readiness for dispatch.
- 11.2. For replaced or repaired parts, the warranty period starts again and runs for a period of 6 months from the day of replacement, completion of the repair or from the day of acceptance, but no longer than a period equal to twice the warranty period according to section 11.1 of these GTCs.
- 11.3. The warranty shall be terminated prematurely if the Purchaser or third parties make any unauthorised changes or repairs or if a defect occurs and the Purchaser fails to immediately undertake all suitable measures for damage mitigation and fails to give GÜDEL the opportunity to remedy the defect.

## 12. Liability for defects – general information

- 12.1. The Purchaser must check the supplied goods and services within an appropriate time frame and inform GÜDEL immediately in writing of any defects. Failure to do so will cause the supplied goods and services to be treated as approved.

12.2. GÜDEL must remedy the defects notified in writing as quickly as possible, and the Purchaser must provide it with the opportunity to do this in all cases. In all cases, the rectification of defects is always limited only to the defects notified beforehand in writing in accordance with section 12.1 of these GTCs.

### **13. Liability for defective materials, faulty design/construction or defective execution**

13.1. At the written request of the Purchaser, GÜDEL agrees to offer, as quickly as possible and at its own discretion, to repair or replace all parts of the deliveries which demonstrably become faulty or unusable as a result of defective materials, faulty design/construction or defective execution until the end of the warranty period. Replaced parts shall become the property of GÜDEL.

13.2. GÜDEL shall carry the costs accrued in its own plants in association with the reworking. If the improvements cannot be carried out on GÜDEL's premises, then the associated costs, in as much as they exceed the standard costs for transport, personnel, travel and accommodation, as well as the costs for installation and removal of the defective parts, shall be covered by the Purchaser.

13.3. The following are excluded from the warranty and liability of GÜDEL: damage which cannot be proven to have been caused by poor materials; faulty design/construction or defective execution, e.g. damage resulting from natural wear and tear; inadequate maintenance; failure to comply with operating instructions; excessive operational demands; use of unsuitable operating materials, fluids or lubricants; chemical or electrolytic influences; construction or assembly work not performed by GÜDEL; or any other reasons for which GÜDEL cannot be held responsible.

13.4. For supplied goods and services from suppliers which are required by the Purchaser, GÜDEL will accept liability for defects only within the framework of the warranty obligations of the affected suppliers.

13.5. The Purchaser cannot assert any rights or claims due to defective materials, design/construction or execution or due to missing assured properties except those which are expressly stated in sections 11.1 to 15.2.

13.6. GÜDEL can only be held liable for claims asserted by the Purchaser on account of poor advice or similar, or on account of the violation of any secondary obligations, in the event of unlawful intent or gross negligence.

### **14. Liability for assured properties**

14.1. Assured properties are only such properties which have been expressly identified as such in the order confirmation or in the specifications. The assurance of such properties extends at most to the end of the warranty period. If an acceptance inspection has been agreed, then the assured properties are deemed to have been fulfilled if the verification of the affected properties is performed on occasion of this inspection.

14.2. If the assured properties are only fulfilled in part or not at all, then the Purchaser initially has the right to demand immediate remediation by GÜDEL. The Purchaser must grant GÜDEL sufficient time and opportunity to do this.

### **15. Consequences of the impossibility of (partial) remediation**

15.1. If the remediation stipulated in sections 13.1 and 14.2 of these GTCs is partially or altogether unsuccessful, then the Purchaser has the right to demand the compensation agreed for this case or, in as much as no such agreement has been put in place, an appropriate reduction of the price. If the defect is so serious that it cannot be remedied within an appropriate period of time, and if the use of the supplied goods or services for the declared purpose is not possible at all or it is only possible to a significantly reduced extent, then the Purchaser has the right to refuse to accept the defective part or, if it is not commercially reasonable to expect him to accept partial acceptance, the Purchaser has the right to withdraw from the contract. GÜDEL can only be forced to refund the monies which have been paid for the parts affected by the withdrawal from the contract.

15.2. The following are excluded from the warranty and liability of GÜDEL: damage which cannot be proven to have been caused by poor materials, defective design/construction or defective execution; e.g. damage resulting from natural wear, defective maintenance, failure to comply with operating instructions, excessive operational demands, use of unsuitable operating materials, fluids or lubricants, chemical or electrolytic influences, construction or assembly work not performed by GÜDEL, or any other reasons for which GÜDEL cannot be held responsible.

## 16. Non-compliant performance and defective performance

- 16.1. In all cases of non-compliant performance or defective performance on the part of GÜDEL which are not explicitly covered in these GTCs, the Purchaser must grant GÜDEL an appropriate period of grace for the affected deliveries under a threat of withdrawal in the case of failure to deliver appropriate remediation. If this period of grace elapses unused due to the fault of GÜDEL, then the Purchaser is entitled to withdraw from the contract in relation to the supplied goods or services which have been executed contrary to contract or for which the execution contrary to contract can be foreseen with certainty, and to demand back the proportion of monies which have already been paid for this portion.
- 16.2. In such a case the clauses in section 17 of these GTCs shall apply with respect to potential claims from the Purchaser for compensation and with respect to the exclusion of further liability. Claims for compensation for damages shall be limited to 10% of the contractual price of the supplied goods and services covered by the withdrawal.

## 17. Exclusion of further liability on the part of GÜDEL

- 17.1. All cases of breaches of contract and their legal consequences, as well as all claims on the part of the Purchaser, regardless of the legal justification on which they are based, are governed conclusively by the rulings in these GTCs. In particular, all claims are excluded for compensation for damages, abatement, termination of contract or withdrawal from contract unless they are explicitly mentioned.
- 17.2. In no case shall the Purchaser have the right to claim compensation for any damages which do not relate directly to the delivery object itself, specifically for damages relating for example to production downtime, loss of usage, loss of earnings or profit or any other direct or indirect damages. This disclaimer of warranty applies to GÜDEL also in the case of minor negligence.

## 18. Termination of contract by GÜDEL

- 18.1. The contract shall be adapted appropriately in the event of unforeseen events which significantly alter the commercial meaning or the content of the supplied goods or services, or which have a significant impact on the work carried out by GÜDEL, as well as in the case of subsequent impossibility of execution. In cases where this is no longer commercially justifiable, GÜDEL has the right to terminate the contract or the affected portions of the contract.
- 18.2. If GÜDEL wishes to assert this right and terminate the contract, it must inform the Purchaser without delay once the importance of the event has become apparent; this also applies if an initial extension of the delivery period has been agreed. In the event of termination of the contract, GÜDEL has the right to remuneration for goods and services which have already been supplied. Claims for compensation on the part of the Purchaser for damages on account of such a contract termination are excluded.

## 19. Termination of contract by the Purchaser

- 19.1. Sales orders can only be annulled by the Purchaser if GÜDEL agrees to the annulment in writing.
- 19.2. In the case of order annulments, the Purchaser is obliged to reimburse GÜDEL for all costs accrued in relation to the order. This includes, in particular, the costs of raw materials, tools of any type, order-specific production equipment, unrecouped development costs and prepared and finished products.

## 20. Right of recourse for GÜDEL

- 20.1. If, as a result of actions or omissions on the part of the Purchaser or his auxiliary persons, persons are injured or material damage is caused to third-party property, and if claims are filed against GÜDEL for this reason, then the latter shall have a right of recourse to the Purchaser.

**21. Assembly**

21.1. In the event that GÜDEL also performs the assembly or supervision of the assembly, this shall be covered by the General Terms and Conditions of Assembly issued by the Swiss organisation «Verein Schweizerischer Maschinen-Industrieller (VSM)».

**22. Court of jurisdiction and applicable law**

22.1. The court of jurisdiction for all legal disputes between GÜDEL and the Purchaser is the court which covers the registered office of GÜDEL. GÜDEL reserves the option of pursuing legal matters within the jurisdiction applicable at the registered office of the Purchaser.

22.2. Swiss law applies to all relations between GÜDEL and the Purchaser. The validity of the Vienna Convention on the International Sale of Goods and other international rulings is expressly excluded. The German original of the GTCs shall take priority in the event of any discrepancy between the content of this or any other translation of the GTCs and the content of the original German version.

**Attachment I: Sliding-scale price formula 2001**

Formulated by the «Verein Schweizerischer Maschinen-Industrieller (VSM)»

$$P = P_0 (a + b \frac{L_m}{L_0} + c \frac{M_m}{M_0})$$

P = Sales price at the time of delivery

P<sub>0</sub> = Sales price according to the offer

a = Coefficient of the proportion of fixed costs (e.g. = 0.1)<sup>1</sup>

a = Coefficient of the proportion of wage-dependent costs (e.g. = 0.6)<sup>1</sup>

a = Coefficient of the proportion of material-dependent costs (e.g. = 0.3)<sup>1</sup>

L<sub>0</sub> = Wage index<sup>2</sup> of the «Arbeitgeberverband der Schweizer Maschinenindustrie» (Zurich) at the time of the offer

L<sub>m</sub> = Combined average of all wage indices<sup>2</sup>  
from the time of order confirmation to the contractual delivery date\* or  
during the duration of manufacturing, i.e. from \_\_\_\_\_ to \_\_\_\_\_\*

M<sub>0</sub> = Weighted mean of the price indices<sup>3</sup> of the materials from the group of «metals and metal products» required primarily for manufacturing, in relation to their proportions of the delivery on a value basis at the time of the offer

M<sub>m</sub> = Average of the weighted means of all price indices<sup>3</sup> of the materials from the group of «metals and metal products» required primarily for manufacturing, in relation to their proportions of the delivery on a value basis from the time of order confirmation to the contractual delivery date\* or from the time of the order confirmation to the date on which the Contractor has procured these materials for the substantive matter, i.e. up to \_\_\_\_\_\*

<sup>1</sup> a + b + c must always add up to 1.

<sup>2</sup> As the wage index is calculated by the «Arbeitgeberverband» (Employer's Association) only on a quarterly basis, the index for the most recently finished quarter should be used.

<sup>3</sup> Partial indices of the manufacturers' price index calculated and published on a monthly basis (if the basic year used to determine the index is changed by the relevant authorities then the Contractor may calculate the changes to the prices in accordance with the corresponding new index values).

\* Delete as applicable.