

## GÜDEL GROUP GENERAL TERMS AND CONDITIONS OF SALE

(EDITION: 2/2019)

### 1. General

- 1.1. These General Conditions of Sale apply to all orders placed by Purchaser with Affiliated Companies of the GÜDEL Group, i.e. world-wide with any direct or indirect subsidiary of Güdel Group AG, Gaswerkstrasse 26, CH-4900 Langenthal, Switzerland, (each individually a "Supplier") for the supply of goods (such as plants, machines, components, modules, spare parts) or services (hereinafter collectively referred to as the "Goods").
- 1.2. Additional or deviating terms proposed by Purchaser, in particular Purchaser's Terms and Conditions of Purchase, are not applicable and hereby expressly rejected, even if (1) the Purchaser expressly refers to other terms and conditions in the course of the business relationship with the Supplier or (2) they are not rejected explicitly by the Supplier in an Order Confirmation or (3) the Supplier delivers the Goods and accepts payment by the Purchaser.

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

- 2.1. The Supplier shall be bound only to offers specifying a period for acceptance. Purchaser's order must be binding for at least 10 days after receipt by Supplier.
- 2.2. The scope and execution of the contract shall exclusively be governed by Supplier's written Order Confirmation or any other written agreement between the Parties.
- 2.3. Supplier may deviate from the agreed specifications and supply technically improved Goods, as long as the improved Goods have no negative impact on price, function and quality.

### 3. Local Laws and Regulations, Standards

Unless the Purchaser in its Purchase Order has brought to Supplier's attention any laws, regulations or standards to be complied with at the place of destination of the Goods, in particular relating to safety, health or regulatory approvals, the Goods shall comply with the relevant laws, regulations and standards in Supplier's country.

### 4. Delivery

- 4.1. Part shipments shall be permitted and Supplier may invoice each part shipment, provided the respective Goods can be used by Purchaser for the agreed purpose.
- 4.2. The term of delivery shall commence as soon as the contract has been concluded, all regulatory approvals, such as export-, import- and payment permits have been obtained, any advance- or prepayments or the notification of the issue of or the confirmation of a letter of credit have been received by Supplier, all payments due for Goods supplied under prior contracts have been made and as soon as all technical documents agreed between the Parties have been supplied or approved by Purchaser.
- 4.3. Delivery is subject to the following conditions, i.e. the term of delivery shall be reasonably extended:
  - a) if Supplier is prevented from performing the contract by Force Majeure. Force Majeure shall be deemed to be any unforeseeable event beyond Supplier's control which renders Supplier's performance commercially unpractical, unduly burdensome or impossible, such as delayed or defective supplies from sub-contractors or sub-suppliers, labour disputes, governmental orders or regulations, shortage in materials or energy, serious disruptions in Supplier's works, such as total or partial destruction of plant and equipment or the breakdown of essential production facilities, serious disruptions in transport facilities, e.g. impassable roads.

Should the effect of Force Majeure and the ensuing reasonable start-up period exceed a total of two (2) months, either Party may terminate the contract forthwith. In such case Purchaser may not claim damages.

- b) if Purchaser is in delay with the fulfilment of his obligations under the contract, in particular, if he does not adhere to the agreed terms of payment or if he has failed to timely provide an agreed security.
- 4.4. If for reasons attributable to Supplier the agreed term of delivery or a reasonable extension of not less than one month to be granted by Purchaser is exceeded, Purchaser may exert its rights at law. Subject to any further limitations provided for in Clause 11, Supplier's liability hereunder shall be limited to maximum 5% of the Price of the Goods in delay.
- 4.5. If Purchaser fails to take delivery of the Goods notified as ready for dispatch or if he cancels a Purchase Order without cause and if he fails to remedy such breach within latest seven days' from Supplier's notice, Supplier shall be entitled to withdraw from the contract and claim damages pursuant to Clause 6.10.

In addition, Purchaser shall bear the costs of storage of the Goods. In case the Goods are stored in Supplier's premises, the weekly storage charge shall amount to 0.25% of the Price of the Goods stored.

- 4.6. Supplier shall inform Purchaser as soon as practical 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 minimize the delay or to procure replacements from third parties.

### 5. Shipping, Passing of Risk

- 5.1. Unless agreed otherwise between the Parties, the Goods shall be shipped FCA Supplier's place of business (Incoterms 2020 or latest edition).
- 5.2. If Supplier arranges the transport on behalf of Purchaser, Purchaser shall timely, at least one (1) week prior to the agreed delivery date, notify special requests regarding carriage and insurance. Otherwise the Supplier shall, at its discretion but without liability, arrange for the quickest and cheapest carriage possible.
- 5.3. The risk in the Goods shall pass to Purchaser pursuant to the Incoterm agreed in the Order. In case acceptance tests in Purchaser's works have been agreed, passing of risk shall occur upon Preliminary Machine Acceptance (PMA).
- 5.4. Each delivery shall be accompanied by a detailed delivery note containing the following data: Purchaser's Order Number, Date of Order, Item Number, Quantity, Gross/Net Weight, Country of Origin, Customs Tariff Number and Type of Packing.
- 5.5. Purchaser shall note transport damages, missing or wrong items on the notice of receipt and document the damages by photo records.

### 6. Prices, Invoicing, Terms of Payment

- 6.1. Unless otherwise agreed, the Prices are understood to be agreed in the currency of and FCA Supplier's place of business (Incoterms 2020 or latest edition).
- 6.2. For supplies to be delivered later than 4 months after conclusion of the contract Supplier reserves the right to increase the price of the Goods or Services in accordance with an increase by more than 10 % of the following cost items: labour costs, prices charged by its suppliers or service providers or by an increase in public dues.
- 6.3. Statutory VAT will be shown on the invoice as a separate item.
- 6.4. Supplier's invoices shall comply with applicable VAT regulations and, in addition, shall 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 properly indicate the country of origin of the Goods.

- 6.5. Unless otherwise agreed in writing the Price for plants and/or machines shall be due and payable as follows: 30% down payment within 10 days after conclusion of the contract; 30% upon delivery ex Supplier's works; 30% within 10 days after installation and commissioning of the plant/and or machinery (Preliminary Machine Acceptance [PMA]); 10% within 10 days after final acceptance of the plant and/or machinery and the beginning of the warranty period, latest, however, within 120 days after PMA.
- 6.6. Unless otherwise agreed in writing the Prices for components, modules and spare parts for the Goods shall be due and payable within the later of 30 days from the date of delivery and the receipt of the invoice.
- 6.7. The invoice amount shall be payable without any deductions for cash discounts, costs, taxes, dues or other charges.
- 6.8. Payments shall be deemed effected, as soon as the amount due is freely available in in the agreed currency on the bank account indicated by Supplier.
- 6.9. Purchaser may only withhold or set-off payments against counter claims which are either expressly acknowledged by Supplier or awarded to Purchaser by final judicial judgment. Provided it has no material impact on the use of the Goods, the delay of an insignificant part of the supplies does not entitle the Purchaser to defer payments.
- 6.10. If Purchaser is more than 14 calendar days in arrear in effecting payment of an instalment or in providing an agreed security, the balance of the total Price shall become due and payable. In addition, the Supplier – without having to set any additional deadlines – shall be entitled to withdraw from the contract and claim damages in an amount of at least 10 % of the Contract Price.
- 6.11. In case of payments by letter of credit (L/C), Purchaser shall bear the costs of opening, notification and confirmation of the L/C.

## 7. Retention of Title

- 7.1. Until the Goods are fully paid they shall remain Supplier's property. Supplier shall be entitled to register and do all things necessary to preserve its property rights. Prior to the transfer of title, Purchaser shall not be entitled to pledge or grant security interests in the Goods.
- 7.2. Should the Purchaser resell Goods to which title is reserved in the ordinary course of business, he shall be deemed to have tacitly assigned to Supplier the receivables deriving from their sale, together with all collaterals, securities and reservations of title, until all of Supplier's claims towards Purchaser have been settled. Up to Supplier's revocation, this assignment shall not preclude Purchaser's right to collect the assigned receivables.

To the extent the value of the Goods to which title is reserved together with any other collateral exceeds Supplier's claims against the Purchaser by more than 20%; Supplier shall re-assign the above receivables to Purchaser at his request.

- 7.3. If Purchaser is in arrear with its payments by more than 14 calendar days, Supplier may withdraw from the contract and request the return of the Goods at Purchaser's cost.
- 7.4. For the right to use the Goods from receipt to their return to Supplier, Purchaser shall pay to Supplier the following remuneration a) 2 % of the Purchase Price per calendar week in the first 6 months and b) 0.5 % per calendar week thereafter.

In the event of withdrawal from the contract, Supplier may enter Purchaser's premises to retake possession of the Goods which have not been paid in full.

In case of partial payment of the Purchase Price, a positive or negative balance resulting a) from the aforementioned remuneration for the use

of the Goods plus possible claims of Supplier for damages, including damages for an improper use of the Goods, and b) Purchaser's claim to repayment of its partial payments of the Purchase Price shall be due and payable to the respective creditor 10 days following the return of the Goods to Supplier.

- 7.5. As long as title is reserved to Supplier, Purchaser shall insure the Goods at its cost, naming Supplier as beneficiary, against theft, breakage, fire, water and similar calamities and risks. In addition, he will take all other measures reasonably required to protect Supplier's property.

## 8. Inbound Inspections

- 8.1. Unless a joint Acceptance Test is agreed between the Parties, Purchaser upon receipt shall inspect the Goods with regard to transport and other apparent defects as well as with regard to identity and quantity.
- 8.2. In the ordinary course of business, latest within one week after receipt, Purchaser shall, at least by random sampling, inspect the Goods to determine whether they correspond to the agreed specifications.

## 9. Acceptance Tests

- 9.1. The terms and conditions of a final Site Acceptance Test (SAT) of the Goods at the place of destination shall be defined in a separate agreement. If the details of a SAT agreed in the contract are not defined in such a separate agreement, the following shall terms and conditions shall apply:
- 9.2. Supplier shall notify Purchaser at least 5 working days ahead of the scheduled date of the SAT to enable the latter or his representatives to attend the SAT.

The representatives of the Parties shall sign a Final Acceptance Certificate (FAC). The FAC shall record either (a) the passing of the acceptance test; (b) the passing of the acceptance test with reservation or (c) Purchaser's refusal to accept the Goods as compliant with the contract.

The Purchaser may not refuse the acceptance due to minor defects, in particular defects which do not significantly impair the function of the Goods. In case Purchaser is entitled to refuse the acceptance of the Goods, the Supplier shall remedy the defects, deviations or deficiencies within a reasonable period of time. For this purpose, the Purchaser shall grant the Supplier access to the plant. Thereafter, another acceptance test shall take place. Should the Goods again fail to pass the SAT, Purchaser, subject to the limitation of liability provided in Clause 11 may avail itself of its rights at law.

- 9.3. The Goods shall be deemed to have been tacitly accepted, if a) Purchaser, without proper cause, fails to attend a SAT duly announced by Supplier or b) Purchaser has used the Goods for production purposes for more than a month without notifying any defects.

## 10. Warranty

- 10.1. Supplier warrants that the Goods: (i) conform to the agreed specifications and achieve the agreed performance, (ii) have been manufactured in accordance with all applicable laws and regulations in force from time to time, (iii) are free from defect in materials and workmanship, (iv) are non-infringing on third party patent rights and other intellectual property rights at the place of destination (the place of destination, unless otherwise agreed in the contract, being Purchaser's place of business) and in the country of their manufacture, and (v) are fit for the agreed purposes and of good and merchantable quality.
- 10.2. In case of Goods manufactured to specifications, drawings or patterns supplied by Purchaser, Supplier's warranty shall be limited to defects in material and workmanship.
- 10.3. Supplier, at its election, undertakes to repair or replace all defective Goods free of charge after having received Purchaser's written notice thereof, such notice (if no SAT has been agreed) to be given within fif-

teen (15) days after the receipt of the respective Goods, or, in the event of latent defects, within fifteen (15) days after Purchaser has or should have become aware of the defect.

- 10.4. Purchaser may withdraw from the contract or to demand a reduction of the Purchase Price,
  - if the repair or replacement of the defective Good is impossible; or
  - if Supplier refuses the repair or replacement or if, for reasons attributable to Supplier, the repair or replacement is unduly delayed.
- 10.5. The warranty period is 12 months and begins, unless otherwise agreed by the Parties, upon receipt of the Goods by Purchaser (or, in case of a PMA, upon successful completion of the PMA); it ends latest 18 months after notification of readiness of dispatch.
- 10.6. The warranty period for repairs or replacements shall be 12 months from the date of replacement or successful repair.
- 10.7. The warranty given hereunder shall not apply to defects or damages resulting from normal wear and tear, improper storage and maintenance, failure to observe the commissioning- or operating instructions, over-stressing or overloading, unsuitable operating media, improper repairs or alterations by Purchaser or third parties, defects resulting from the use of other than original spare parts or other reasons beyond Supplier's control.
- 10.8. Used Goods are sold without warranty.

## 11. Limitation of Liability

- 11.1. The rights and remedies of Purchaser are exclusively governed by these General Conditions of Sale and shall be in lieu of any remedies at law. All further claims for damages, reduction of the contract price, termination of or rescission of the contract are excluded.
- 11.2. Purchaser shall not be entitled to claim damages for loss of production, loss of use, loss of orders, loss of profit, loss of anticipated savings, loss of data, costs for dismantling or reinstallation of the Goods or handling costs for claims management, as well as for claims of third parties for such damages or costs.
- 11.3. Supplier's liability for damage to property or recourse claims for injury or death of persons shall be limited to the equivalent of USD 500'000 per occurrence and in the aggregate to the equivalent of USD 2'000'000 per calendar year.
- 11.4. This limitation of liability equally applies to the extent Supplier is liable for acts or omissions of its employees or third parties engaged in the performance of its obligations.
- 11.5. The limitation does not apply to the extent Supplier's liability is mandatory, in particular in case of unlawful intent or gross negligence on the part of Supplier and its employees or third parties engaged in in the performance of the contract, in case of fraudulent concealment of a defect, for direct claims arising from personal injury or death or under Supplier's mandatory liability under applicable Product Liability Acts.

## 12. Infringement of Third Party Intellectual Property Rights

- 12.1. In the event of a claim of infringement of any third party intellectual property rights at the agreed place of destination of the Goods, Supplier, at its discretion, shall take the needed steps to ensure for Purchaser a non-infringing source of supply, which may involve securing the needed licenses, redesign of the Goods, or other steps Supplier deems necessary to ensure that non-infringing Goods are delivered to Purchaser.
- 12.2. Supplier shall further 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 Purchaser alleging that the Goods or

their use by Purchaser or Purchaser's Purchaser infringe the intellectual property rights of such third party.

- 12.3. Notwithstanding the foregoing, Supplier shall not be liable to the extent that the infringement results from the manufacture of the Supplies 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.
- 12.4. 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.
- 12.5. 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

## 13. Ownership in Documents and Software

- 13.1. Supplier retains all rights in the drawings, plans, technical specifications, images, calculations, brochures, catalogues, models, tools and other documents or in the software supplied to Purchaser, unless Purchaser has specifically ordered and paid for their creation. Purchaser acknowledges these rights and will not - without Supplier's prior written consent - make these documents or the software available to third parties or use them for other than the agreed purpose.
- 13.2. If software forms part of the scope of supply, Purchaser is granted a non-exclusive, non-transferable license to use the software for the agreed purpose. Copies may be made only for archival or debugging purposes or in connection with the replacement of a defective data carrier. Without Supplier's prior consent, the Purchaser is not entitled to update, upgrade, enhance disassemble, decompile, decode or reverse-engineer the software. In case of breach of one of these undertakings Supplier may revoke the right to use the software with immediate effect

## 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, 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.
- 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 Supplier's prior consent, Purchaser shall not publish the fact that he has contracted with Supplier to use his business relationship with Supplier 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 was at fault.
- 14.5. The aggrieved Party may assert claims for higher damages as well as 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. Final Provisions**

- 16.1. 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 portions hereof continuing to be in full force and effect. 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.
- 16.2. No delay or omission of Supplier 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 Supplier provided herein shall be cumulative, concurrent and in addition to any other further rights and remedies available at law or in equity.
- 16.3. 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

## **17. Place of fulfilment**

- 17.1. Unless otherwise agreed, the place of fulfilment for all obligations under this agreement shall be Supplier's place of business.
- 17.2. Should Supplier be responsible for the erection and commissioning of the Goods, the place of fulfilment shall be the location at which erection and commissioning takes place.

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

- 18.1. The contract between the Parties is subject to the substantive laws in force at Supplier's place of business, the UN-Convention on Contracts for the International Sale of Goods (CISG) expressly being excluded.
- 18.2. 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 Supplier's place of business, the Supplier being entitled to bring actions also before any other court having jurisdiction over the subject-matter in dispute.

Effective as of February, 2019