

GÜDEL, INC. (US)
GENERAL PURCHASING TERMS & CONDITIONS
FOR SUB-CONTRACTORS

§1 General

1. These General Purchasing Terms & Conditions (“Terms”) shall apply to every purchase order (“PO”) issued by GÜDEL Inc. (“GÜDEL”) to a subcontractor (“Supplier”) for procurement of goods or services (“Contracted Items”) whether transmitted by hard copy, telefax, e-mail or other electronic media. All agreements, PO’s, confirmations, amendments, additions and sub-agreements between GÜDEL and Supplier must be in writing.
2. PO’s will be issued solely on the basis of these Terms. Acceptance of Contracted Items by GÜDEL or payment for same shall not constitute acceptance by GÜDEL of any additional or inconsistent terms in any Supplier’s document and GÜDEL rejects all such terms.
3. Supplier’s acceptance (or commencement of performance) of a PO shall constitute acceptance by Supplier of all of these Terms.
4. These Terms and the PO, (together with any specifications, schedules, exhibits, riders or other writings which are made a part thereof), constitute the entire agreement between GÜDEL and Supplier (the “Agreement”) with respect to the subject matter covered therein.

In the event of any inconsistency between these Terms and the provisions on the face of any GÜDEL accepted PO or supplement attached thereto or incorporated therein by reference, the provision contained on the PO or on the supplement shall control, and take precedence.

§2 Quotation, PO, Procedures

1. Prices shown on the PO are fixed. No additional charges of any type may be added by Supplier without GÜDEL’s written consent.
2. GÜDEL may revoke any PO until the later of 14 days before the scheduled delivery date or when confirmed by the Supplier in writing. Delivery schedules shall be binding unless otherwise agreed, in writing, within one week from receipt of the delivery schedule issued by GÜDEL.
3. Neither payment for, nor taking delivery of, non-conforming Contracted Items constitutes consent to such non-conformance by GÜDEL.
4. GÜDEL is entitled to make modifications to the PO and the Agreement at any time. The consequences of such modifications (in particular, changes in pricing or delivery schedule) shall be mutually agreed upon in writing by the parties in advance of any work by Supplier.

§3 Prices and Payment Terms

1. Prices for all goods are to be stated for freight paid delivery, inclusive of packaging. Delivery shall be in accordance with INCOTERMS 2020 and, unless otherwise indicated on the PO, shall be FCA the location where Supplier will do its work.
2. Payment may be made with a two percent (2%) discount if paid within forty-five (45) days of receipt of both the Contracted Items and invoice. Otherwise, payment without discount shall be net sixty (60) days.
3. Supplier shall issue a separate invoice for each PO, clearly stating the GÜDEL purchase order number.
4. Except as otherwise required by law, the price quoted by Supplier includes any applicable sales, use, excise, import or other local or foreign taxes, duties or assessments. Supplier will separately detail such taxes on Supplier’s invoice. The parties will provide each other with any necessary certificates or other documentation evidencing the inapplicability of, or exemption from, any taxes to which either GÜDEL or Supplier may be entitled.

§4 Delivery Time, Delay in Delivery

1. Supplier must strictly comply with all terms as to quantity, quality, specifications, and time of delivery or performance of services, each of which are material elements of every PO. Time is of the essence with regard to each PO.
2. If Supplier cannot meet the agreed delivery/performance deadline Supplier shall promptly notify GÜDEL in writing, indicating the reasons for (and the expected duration of) the delay. Such notification shall not, however, affect GÜDEL’s right to pursue claims against Supplier for default arising because of late delivery/performance.

3. Acceptance by GÜDEL of delayed delivery or performance will not constitute a waiver by GÜDEL of any compensation claims for such delay.
4. Neither party shall be responsible for failure to perform under a PO as a result of any cause beyond its reasonable control and without fault (a “Force Majeure Event”), including but not limited to: acts of God; fires; civil disobedience; war; riots; strikes; acts of terrorism; floods; changes in laws or other governmental requirements; or inadequate site preparation. Notwithstanding the foregoing, GÜDEL has the absolute right to terminate all or any part of any affected PO (without cost to GÜDEL) if the delay caused by the Force Majeure Event is such as to reduce materially the commercial value of the Contracted Items in question.
5. GÜDEL may, at any time, and in its sole discretion, change delivery/performance schedules or direct temporary suspension of scheduled shipments or work. Such changes shall be implemented by Supplier without any additional cost to GÜDEL.

§5 Shipping/Delivery

1. All invoices for Contracted Items shall be issued by, and be payable to, Supplier. Supplier shall provide GÜDEL with a Supplier’s declaration and/or any other documents requested by a customs office or other authority. In the event the declaration is found to be false or incomplete and claims are raised as a result, the Supplier undertakes to fully indemnify GÜDEL from all penalties, costs or fees incurred as a result.
2. Title to and risk of loss for goods shall pass to GÜDEL upon shipment.

§6 Warranty, Guarantee and Liability

1. Supplier warrants the Contracted Items: (a) strictly conform with all the specifications, drawings, descriptions, or samples furnished or specified by GÜDEL; (b) are of good material and workmanship; (c) are merchantable and are fit and sufficient for the usual and ordinary purposes for which they are intended and the intended use of GÜDEL; (d) comply with all applicable federal, state, and local laws, rules, regulations, orders and ordinances (collectively “Laws”); and (e) any services will be performed in a competent and workmanlike manner in accordance with sound practice, and in accordance with professional standards of skill, care and diligence.
2. The warranty period for Contracted Items (and all repair parts provided under warranty), shall be effective for twelve (12) months from acceptance by GÜDEL.
3. GÜDEL has the right to inspect (or test) all materials and workmanship provided by Supplier in performing any PO, and Supplier shall permit such inspection or testing by GÜDEL (and, if requested, by GÜDEL’s customer) to the extent practicable at all times and places. If any such inspection or testing is made on Supplier’s premises, Supplier shall provide, without additional charge, reasonable facilities and assistance for such inspection and testing. Such inspection and testing, however, shall not preclude subsequent rejection of the Contracted Items or other relief for any defects discovered.
4. If Contracted Items are rejected, GÜDEL shall in writing notify Supplier, and GÜDEL, at its option and at the sole expense of Supplier, may either require Supplier to repair or replace any Contracted Item which GÜDEL has rejected or grant a full refund to GÜDEL in lieu thereof.
5. GÜDEL shall be entitled to make any necessary corrections to the Contracted Items – either itself or through a third party if: (a) Supplier fails to fulfil its warranty obligations within a reasonable period of time stipulated by GÜDEL or; (b) if there is a risk of unusually great damage or operational safety being impaired should the corrections not be made immediately. In all cases, such measures shall be performed solely at the cost and risk of the Supplier without in any way releasing the Supplier from the warranty obligations contained herein. If requested by GÜDEL, Supplier shall deliver defect-free parts for needed repairs to the place of performance free of charge within forty-eight (48) hours of such request.

§7 Insurance

1. Supplier shall maintain in effect throughout the period of its performance of any PO property damage, general liability, automobile liability, professional liability, pollution liability and worker’s compensation insurance with commercially reasonable limits of coverage. Supplier shall provide GÜDEL with a certificate confirming such coverage upon request, naming GÜDEL as additional insured.

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§8 Property Rights

1. The Contracted Items will not, infringe the patents, copyrights, trademarks, licenses, industrial design, mask work or other intellectual property rights ("IP Rights") of third parties.
2. To the fullest extent permitted by law, Supplier shall indemnify and hold GÜDEL and its customer harmless from all claims, suits, actions, awards liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any IP Rights and arising out of the sale or use of the Contracted Items by either GÜDEL or its customer.
3. In the event of an infringement, Supplier shall at its sole cost and expense, but at GÜDEL's sole discretion and direction: (a) obtain all licenses necessary to allow GÜDEL and its customer to use the affected Contracted Items; or, at GÜDEL's option (b) modify the Contracted Items so as to make them non-infringing without disturbing their functionality, intended use or ability to meet all warranties provided herein.

§9 Materials, Drawings, Patterns, Tools, etc.

1. If the Contracted Items are to be made pursuant to specifications, designs, or blue prints furnished by GÜDEL ("Prints"), Supplier shall return such Prints to GÜDEL immediately upon GÜDEL's request or upon completion, termination, or cancellation of the associated PO.
2. Any Confidential Information (as defined in Section 11, below) furnished by GÜDEL to Supplier as well as any ideas (whether patentable or not), know-how, patents, trade secrets or other intellectual property developed or produced by Supplier in the performance of any PO shall be the sole property of GÜDEL. GÜDEL will also own any enhancements or improvements to its pre-existing IP Rights or any new intellectual property that is related to the Contracted Items that is developed by Supplier under any PO. Supplier shall fully cooperate with GÜDEL with regard to assisting in the preparation and filing of appropriate applications for patents (or other protection) of such items.

§10 Termination

1. If GÜDEL terminates a PO other than as provided in sub-section 4 below, GÜDEL will pay Supplier for all finished Contracted Items accepted by GÜDEL, as well as for the verified, documented costs to Supplier of work in process and material allocated to the terminated PO that are not in excess of any prior authorization by GÜDEL. Payment made under this Section 10 shall constitute GÜDEL's only liability to Supplier for cancellation or termination of a PO.
2. In the event of a PO cancellation, GÜDEL shall not be obligated to make payments to Supplier (directly or on account of claims by Supplier's subcontractors), for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges, unless specifically agreed by GÜDEL in writing.
3. Within thirty (30) days from the effective date of a PO termination, Supplier shall submit a comprehensive termination claim to GÜDEL, with sufficient supporting data to permit GÜDEL's audit. GÜDEL, or its designated representatives, shall have the right to audit all books, records, facilities, and other items relating to any termination claim as may be deemed necessary by GÜDEL.
4. This Section 10 will not apply to any termination by GÜDEL based upon: (a) Supplier's default; (b) Supplier becoming insolvent or making a transfer for the benefit of creditors; (c) or becoming a debtor or defendant in any bankruptcy or other insolvency proceeding or (c) Supplier stops paying its vendors. In any of these cases, GÜDEL shall have the right to immediately terminate any PO, with no obligation to Supplier.

§11 Confidentiality

1. Supplier will not, without GÜDEL's prior written consent, disclose, or otherwise make available to any other person, or use, except during the performance of a PO, any information relating to GÜDEL, GÜDEL's customers, their business, operations, Contracted Items, or any other intellectual property including but not limited to trade secrets, patents, trademarks, copyrights, processes, techniques, designs, documents, models, films, drawings, plans, specifications, equipment, systems, know-how, project information, policies or agreements, these Terms or any PO, all of which individually or collectively are "Confidential Information".

2. GÜDEL shall maintain in confidence any information given to it by Supplier that Supplier identifies in writing as confidential.

§12 Default & Special Damages

1. Unless excused by way of Force Majeure Event, the failure of Supplier to perform any term, condition, or covenant made or undertaken by it, or the violation of any warranty or representation in any Agreement, PO or these Terms, shall be deemed a default by Supplier. If a default occurs, GÜDEL shall provide a Notice of Default to Supplier and GÜDEL shall then have the right, at its option, to: (a) terminate any or all PO's with Supplier; or (b) enforce specific performance; or (c) charge Supplier for any damages or losses GÜDEL sustains as a result of Supplier's default.
2. **Under no circumstance shall GÜDEL, at any time for any reason, be responsible for paying Supplier punitive, consequential, incidental, or exemplary type damages including, but not limited to, lost profits, lost business, and lost opportunities.**

§13 General

1. Supplier shall comply with all applicable export and import laws and regulations and any requirements of GÜDEL with respect to the import, export, re-export, or transfer of goods and technical data including restrictions against sanctioned countries and denied parties.
2. The invalidity or unenforceability of any provision of these Terms will not affect any other provision of these Terms, which shall continue in effect as if such invalid provision had not been inserted in these Terms. Any invalid provision shall be replaced by a valid enforceable provision whose effect comes closest to the intended commercial purpose of the invalid provision, without violating applicable laws.
3. A PO may not be assigned, subcontracted or delegated, in whole or in part by Supplier without GÜDEL's prior written consent.
4. These Terms and all POs shall be governed by the law of Michigan, USA, without regard to its conflict of law rules.
5. The rights, remedies and warranties set forth in these Terms are non-exclusive and cumulative. GÜDEL shall have the right to enforce against Supplier any and all other rights, remedies and warranties available to a purchaser of goods or services either in law or in equity.
6. All services are to be rendered by Supplier and any approved subcontractor of Supplier, as independent contractors. Supplier shall have complete control over the performance of, and the details for accomplishing, the work and services called for in the PO. Supplier's employees and subcontractors shall be paid exclusively by Supplier. Supplier shall be responsible for payment of all obligations to federal, state, and local governments including, but not limited to, income and payroll taxes and any other similar obligations arising out of its activities under any PO.
7. Any waiver of strict compliance with (or amendment of) any of these Terms or any PO by GÜDEL must be in writing and signed by an authorized officer of GÜDEL. Any such waiver shall not constitute a waiver of GÜDEL's rights under any other provision of these Terms or any PO.
8. Supplier will perform criminal background checks and pre-employment and random drug screenings on all personnel who perform work for GÜDEL and will provide written confirmation of results to GÜDEL upon request.

§14 Notice

1. Notice related to any GÜDEL PO shall be issued in writing to:

Güdel, Inc.
4881 Runway Blvd.
Ann Arbor, MI 48108

Ref: Güdel PO #
Attn: Purchasing

Notices shall be effective upon confirmation of receipt and acceptance.

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