

**General Terms and Conditions (GTC)  
of the company Güde GmbH, Dieselstraße 8, 58840 Plettenberg  
-Terms of sale- Status: June 2019**

**1. Scope; General provisions**

**1.1**

These T&Cs apply to all business relationships between Güde GmbH, Dieselstraße 8, 58840 Plettenberg (hereinafter referred to as "Güde") and our customers, regardless of whether they are customers to whom we sell goods or for whom we provide services; uniformly our customers are hereinafter referred to as "Buyers".

**1.2**

The GTC apply in particular to contracts for the sale and/or delivery of movable goods ("goods"), regardless of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the General Terms and Conditions in the version valid at the time of the Buyer's order or at least in the version last communicated to him in text form shall also apply as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.

1.3 The legal relationship between Güde and the Buyer shall be governed exclusively by these General Terms and Conditions of Sale and any other agreements concluded between the contracting parties. General terms and conditions of the buyer that conflict with or deviate from or supplement our terms and conditions of sale do not apply even if they have not been expressly contradicted in the individual case, but only if we have expressly confirmed them in writing. This consent requirement applies in any case, for example even if we execute the delivery to the buyer without reservation in knowledge of the buyer's terms and conditions.

**1.4**

Individual agreements made with the buyer in individual cases (including ancillary agreements, additions and amendments) shall in any case take precedence over these T&Cs. Subject to evidence to the contrary, the content of such agreements shall be governed by a written contract or our written confirmation.

**1.5**

Legally relevant declarations and notifications that are to be submitted by the buyer to us after the conclusion of the contract (e.g. deadlines, notices of defects, declaration of withdrawal or reduction) must be made in writing in order to be effective.

**1.6**

References to the applicability of statutory provisions are only of clarifying significance. Even without such clarification, the statutory provisions shall therefore apply insofar as they are not directly amended or expressly excluded in these GTC.

## **2. Offer; Conclusion; written form requirement; Brochure information**

### **2.1**

Unless otherwise stipulated in the offer, our offers are valid for a maximum of four weeks and are subject to change and non-binding. This also applies if we have provided the buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – to which we reserve ownership and copyright. We expressly reserve the right to sell goods in advance.

### **2.2**

The order of the goods by the Buyer shall be deemed to be a binding contractual offer. Unless otherwise stated in the order, we are entitled to accept this contract offer within four weeks of its receipt by us. Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the buyer.

### **2.3**

Verbal agreements are not valid if they have not been confirmed in writing by us. This also applies to an agreement on the waiver of the above written form requirement. Transmissions by fax, e-mail or remote data transmission are equivalent to the written form.

2.4 The information and illustrations contained in brochures, catalogues and on the Internet are approximate values across all industries, unless they have been expressly designated as binding by us.

### **2.5**

Güde reserves the right to make an intermediate sale.

### 3. Long-term and call-off contracts; Price adjustment

3.1 Contracts of indefinite duration may be terminated with a notice period of 12 months, unless otherwise expressly stipulated in the relevant contract.

3.2 In the case of long-term contracts (contracts with a term of more than 12 months and open-ended contracts), there is a significant change in wage, material or energy costs, each party to the contract is entitled to demand an appropriate adjustment of the price taking into account these factors.

3.3 If a binding order quantity has not been agreed, we shall base our calculation on the non-binding order quantity expected by the Buyer for a certain period of time (inquiry quantity). If the buyer buys less than the requested quantity, we are entitled to increase the unit price appropriately. If it takes more than the inquiry quantity, we will reduce the unit price appropriately, provided that the buyer has announced the additional demand at least 6 months before delivery.

3.4 In the case of supply contracts on call, unless otherwise agreed, binding quantities must be notified to us by call-off at least 1 month before the delivery date. Additional costs caused by a late call-off or subsequent changes to the call-off in terms of time or quantity by our buyer shall be borne by the buyer; our calculation is decisive in this regard. Unless otherwise agreed, on-demand supply contracts are valid for 12 months and must be delivered in full during this time. After 12 months, Güde has the right to deliver the goods.

### 4. Confidentiality

#### 4.1

The Buyer shall use all documents (including samples, models and data) and knowledge obtained from the business relationship only for the purposes jointly pursued and shall keep them secret from third parties with the same care as their own documents and knowledge. This applies even if they have not been expressly designated as confidential.

4.2 The obligation shall not apply to documents and knowledge which are generally known or which were already known to the Contracting Party at the time of receipt without the Contracting Party being obliged to maintain secrecy, or which are subsequently transmitted by a third party entitled to pass them on, or which are developed by the receiving Contracting Party without using documents to be kept secret or knowledge of the other Contracting Party.

## 5. Drawings and descriptions

If we provide the buyer with drawings or technical documents about the goods to be delivered or their production, these remain our property.

## 6. Intellectual Property Rights

6.1 The Buyer is obliged to examine any possible infringement of industrial property rights and copyrights by placing the order and, if necessary, to draw our attention to the fact that the order is effectively protected by industrial property rights or copyrights of third parties.

6.2 If the goods have been manufactured in accordance with drawings, models, designs, labels, trademarks or other specifications of the Buyer, the Buyer shall indemnify us against any liability for infringement of any intellectual property rights to which we may be exposed with respect to the Buyer's drawings, models, designs, labels, trademarks or other specifications. The indemnification obligation refers to all expenses and damages that we incur from or in connection with the claim by a third party.

## 7. Proof of export with VAT identification number

7.1 In the case of deliveries to EU member states, the buyer must provide us with his VAT identification number before delivery. Otherwise, he must pay the amount of VAT legally owed by us for our deliveries in addition to the agreed purchase price.

### 7.2

If it is an intra-Community supply in accordance with sec. 6a of the German VAT Act, the buyer is obliged to issue a confirmation of arrival in accordance with sec. 17a of the German VAT Implementing Ordinance. For this purpose, the buyer receives a form from us, which must be filled out by the buyer and returned to us immediately.

7.3 If the buyer who is domiciled outside the Federal Republic of Germany collects goods from us and transports or ships them to non-EU countries, the buyer must provide us with the proof of export required for tax purposes. If this proof is not provided, the buyer must pay the statutory VAT attributable to the invoice amount for delivery within the Federal Republic of Germany applying the applicable VAT rate.

## 8. Tooling and Samples

8.1 Unless otherwise agreed, the production costs for production equipment (tools, devices, gauges, etc.) and samples shall be invoiced separately from the goods to be delivered and shall be due upon the dispatch of the failure sample or, if such a sample has not been requested, upon the first delivery of the goods.

8.2 If the Buyer suspends or terminates the cooperation during the production period of the samples or production equipment, all production costs incurred up to that point shall be borne by the Buyer as well as the expenses incurred or still incurred in reliance on further cooperation.

8.3 The means of production are and remain our property regardless of payment or partial payment, unless an acquisition of ownership by the Buyer is agreed otherwise.

8.4 We may only use customer-related production equipment for deliveries to third parties with the prior written consent of our buyer.

8.5

If a series order (reminder for delivery or similar) is placed before the initial samples are released, we understand this as release.

## 9. Prices

Our current prices at the time of conclusion of the contract apply. Subject to a different regulation, these apply ex works and in EURO are exclusive of VAT, packaging, freight, tolls, postage, insurance and other ancillary costs.

## 10. Terms of payment

10.1

Our invoices are due and payable immediately within 8 days from the date of invoice less 3% discount and within 30 days from the date of invoice net. However, we are entitled at any time, even in the context of an ongoing business relationship, to carry out a delivery in whole or in part only against advance payment. We declare a corresponding reservation at the latest with the order confirmation. Other payment terms require our written consent. Upon expiry of the 30-day payment period pursuant to sentence 1, the buyer shall be in default and default interest in the amount of 9 percentage points above the applicable base interest rate shall be charged (Section 288 (2) of the German Civil Code (BGB)), plus a lump sum for default in the amount of EUR 40 (Section 288 (5) of the German Civil Code). We expressly reserve the right to assert further damages for delay. Our claim to commercial interest (§ 353 HGB) remains unaffected vis-à-vis merchants.

10.2

We expressly reserve the right to accept bills of exchange or cheques; in principle, they are only accepted on account of performance and are only considered a payment with discharging effect after redemption. Discount charges are calculated from the day the invoice amount is

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due and are at the expense of our buyer. A guarantee for the timely presentation of the bill of exchange and cheques and for the non-collection of bills of exchange protest is excluded.

10.3 If it is undisputed that we have delivered partially defective goods, our buyer is nevertheless obliged to make payment for the defect-free portion, unless it can be proven that there can be no interest in the partial delivery. The buyer is only entitled to offset, withhold or reduce if the counterclaims asserted by him in this regard have been legally established or expressly acknowledged by us.

#### 10.4

In the event of default in payment pursuant to paragraph 1, we may, upon written notice to the purchaser, suspend the performance of our obligations until payment has been received.

10.5 If, after conclusion of the contract, it becomes apparent that our claim for payment is endangered by the Buyer's inability to pay, we may refuse to perform and determine a reasonable period of time for the Buyer to pay against delivery or to provide security. In the event of refusal by the buyer or unsuccessful expiry of the deadline, we are entitled to withdraw from the contract and demand damages. The statutory provisions on the dispensability of setting a time limit remain unaffected by this.

### 11. Delivery

11.1 Binding for the execution of the parts are either the drawings of the parts prepared by us and approved by the buyer before the production of the parts or the drawings of the parts and/or the relevant DIN regulations for bent wire and stamped parts. If we deliver according to drawings, specifications, samples, etc. of our buyer, the buyer assumes the risk of suitability for the intended use (design risk). The decisive factor for the contractual condition of the goods is the time of the transfer of risk in accordance with Section 13.3. All deliveries are subject to the reservation of self-delivery, unless the incorrect or untimely self-delivery is our fault. In any case of improper self-delivery, we will inform our buyer of this as soon as possible.

11.2 Unless otherwise agreed, we deliver "ex works". The decisive factor for compliance with the delivery date or the delivery period is the notification by us of the readiness for dispatch or collection.

11.3 The delivery period begins with the dispatch of our order confirmation and is subject to the reservation of self-delivery referred to in section 11.1 above; it shall be extended appropriately if the conditions of Section 18 are met.

11.4 Partial deliveries are permissible to a reasonable extent. They will be invoiced separately. Over- and under-deliveries of up to 20% of the ordered quantity are permitted; such over- or under-deliveries cannot be objected to by the contractual partner.

#### 11.5

The goods are packaged in accordance with industry standards. The packaging will be charged, unless the free packaging has been agreed, and can only be taken back in compliance with the legal requirements for the return of packaging material, but not otherwise.

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#### 11.6

Delivery times may vary due to incorrect or late receipt of the input material.

### 12. Examinations

The usual inspection of parts includes testing for dimensional accuracy and surface defects in accordance with DIN 267 Part 26, insofar as these can be determined by visual inspection. The cost of the usual inspection is included in the unit price. The type and scope of additional tests and test methods to be used, crack testing and defect testing by ultrasound, etc., must be specifically agreed and specified in the drawing of the parts or in the order and order confirmation.

The release of the documentation will be charged separately.

The basis for all standards (DINs, EN ISO, NFE, ASME, etc.) is the current edition of the relevant standardization.

If our parts are surface-coated, packaged, sorted, etc. by the customer or end user, we exclude all defects.

All tolerances apply to parts in the bare state. Dimensional or technical changes (in particular hardness) due to subsequently applied surface coatings are not the responsibility of Güde.

Since these are bulk parts, impact marks can occur.

The goods are properly packed by us. Storage, transport or the like can lead to environmental influences. This is especially true if the goods are not coated.



### 13. Shipping and Transfer of Risk

#### 13.1

The delivery time is complied with if the delivery item has left the supplier's factory by the time it expires or if it is reported to be ready for shipment. Goods reported ready for shipment on the delivery date must be taken over by the buyer immediately. Otherwise, we are entitled to ship them at our own discretion or to store them at the expense and risk of the buyer.

13.2 In the absence of a special agreement, we will choose the means of transport and the route of transport.

#### 13.3

The risk of accidental loss and accidental deterioration of the goods ("transfer of risk") shall pass to the Buyer at the latest upon handover. In the case of mail order purchases, however, the risk of accidental loss and accidental deterioration of the goods is transferred to the buyer as soon as they are handed over to the freight forwarder, the carrier or any other person or institution designated to carry out the shipment, or at the beginning of storage, but at the latest when they leave the factory or warehouse, including: when we have taken over the delivery.

#### 13.4

Transport surcharges such as tolls or other fees are borne by the buyer and will be invoiced transparently with the respective delivery.

#### 13.5

Our warranty and guarantee ends at the time when the goods are cleaned, in particular pickled, surface and/or heat treated after delivery.

### 14. Delay in delivery

14.1 If delivery is delayed due to a circumstance listed in Section 18 or due to an act or omission of the Buyer, the Buyer shall grant us an extension of the delivery period appropriate to the circumstances. This also applies if information, cooperation or final product requirements on the part of our buyer that are required for the dispatch or delivery of the goods are only received after the order confirmation has been sent.

14.2 The buyer is only entitled to withdraw from the contract if we are responsible for the non-compliance with the delivery date and he has set us a reasonable grace period without success and in writing.

14.3 Our delivery obligation is subject to correct and timely self-delivery of input material or correct and timely delivery by our sub-suppliers who work for us on a wage basis, unless the incorrect or delayed self-delivery is our fault.



## 15. Material defects

### 15.1

The basis of our liability for defects is above all the agreement made on the quality of the goods. An agreement on the quality of the goods shall be deemed to be all product descriptions which are the subject of the individual contract; it makes no difference whether the product description comes from the buyer, the manufacturer or us. If the condition has not been agreed, it must be assessed in accordance with the statutory regulations whether a defect exists or not (§ 434 para. 1 sentences 2 and 3 BGB). However, we do not assume any liability for public statements by the manufacturer or other third parties (e.g. advertising statements).

### 15.2

Notices of defects will only be accepted by us if they are reported in writing by our buyer within the deadlines specified below. Externally recognisable defects in the state of delivery must be reported immediately after receipt of the delivery. Internal defects that cannot be discovered immediately after delivery of the goods, even with the most careful examination, must be asserted immediately after discovery and any processing or processing or deliveries must be stopped immediately. If the goods are sent abroad or directly to third parties, the inspection and acceptance must be carried out in our factory, otherwise the goods shall be deemed to have been delivered in accordance with the contract without any complaint. It must be clearly established that it is our delivery. If the buyer fails to properly inspect and/or report defects within the above-mentioned periods, our liability for the defect not reported is excluded.

### 15.3

Defective parts will be repaired by us at our discretion by way of subsequent performance either by remedying the defect (rectification), replaced by delivery of a defect-free item (subsequent delivery) or credited. Subsequent repair or subsequent delivery can only be demanded by the buyer if the defective parts fall below the minimum quantity limit specified in the relevant DIN regulations. Our right to refuse supplementary performance under the statutory conditions remains unaffected by this. We are entitled to make the owed subsequent performance dependent on the buyer paying the purchase price due. However, the buyer is entitled to retain a part of the purchase price that is appropriate in relation to the defect. In the event that the selected supplementary performance has failed, the buyer is entitled to a right of withdrawal or reduction. The remuneration for the buyer's own repair and additional labour costs requires a special agreement.

15.4 We shall not be liable for material defects caused by unsuitable or improper use, incorrect installation or commissioning by the Buyer or third parties, normal wear and tear, incorrect or negligent handling, nor for the consequences of improper modifications or repair work carried out by the Buyer or third parties without our consent. The same applies to defects that only insignificantly reduce the value or suitability of the goods.

### 15.5

By way of derogation from Section 438 (1) No. 3 of the German Civil Code (BGB), the limitation period for claims arising from defects of quality and title shall be one year from delivery. If acceptance has been agreed, the limitation period begins with acceptance.

15.6 If an acceptance of the goods or a first sample inspection has been agreed, the complaint of defects that the buyer could have discovered during careful acceptance or initial sample inspection is excluded.

#### 15.7

The buyer must give us the time and opportunity necessary for the subsequent performance owed. In any case, he must give us the opportunity to determine the defect complained of. To this end, the goods complained of must be returned to us immediately at our request; we will cover the transport costs, which must be agreed with us if the notice of defects is justified. Otherwise, we may demand reimbursement from the buyer for the costs incurred from the unjustified demand for the removal of defects (in particular inspection and transport costs), unless the lack of defectiveness was not recognizable to the buyer. If the buyer does not comply with these obligations or makes changes to the goods already complained of without our consent, he loses any material defect claims.

15.8 Statutory recourse claims of the Buyer against us shall only exist to the extent that the Buyer has not entered into any agreements with its Customer that go beyond the statutory claims for defects.

## **16. Simple, extended and extended retention of title, processing clause**

### **16.1 ("Retention of Title")**

We only deliver on the basis of the retention of title described in more detail below. This also applies to all future deliveries, even if we do not always expressly refer to it.

### **16.2 ("Extended Retention of Title")**

Until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims), we reserve ownership of the goods sold. We are entitled to take back the purchased item if the buyer behaves in breach of contract.

### **16.3 ("Extended Retention of Title")**

The buyer is entitled to resell and/or process the goods subject to retention of title in the normal course of business. The buyer assigns the claims from the resale of the reserved goods to us in the amount of the final invoice amount (including VAT) agreed with us. This assignment applies regardless of whether the purchased item has been resold without or after processing. The buyer remains authorised to collect the claim even after the assignment. Our authority to collect the claim ourselves remains unaffected. However, we will not collect the claim as long as the buyer meets his payment obligations from the proceeds received, is not in default of payment and, in particular, no application has been filed for the opening of insolvency proceedings or there is a cessation of payment.

### **16.4 ("Processing Clause")**

The retention of title extends to the products resulting from the processing, mixing or combination of our goods at their full value, whereby we are considered the manufacturer. If, in the event of processing, mixing or combination with third-party goods, their right of ownership remains, we acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same applies to the resulting product as to the goods delivered under retention of title.

### **16.5**

The buyer is obliged to treat the purchased item with care as long as ownership has not yet passed to him. In particular, he is obliged to insure them at his own expense against theft, fire and water damage sufficiently at replacement value. If maintenance and inspection work has to be carried out, the buyer must carry it out in good time at his own expense. The goods subject to retention of title may neither be pledged to third parties nor transferred as security until the secured claims have been paid in full. As long as ownership has not yet been transferred, the buyer must notify us immediately in writing if an application for the opening of insolvency proceedings has been filed or if the delivered item is seized or exposed to other interference by third parties. Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of a lawsuit pursuant to Section 771 of the Code of Civil Procedure, the buyer shall be liable for the loss incurred by us.

#### 16.6

In the event of breach of contract by the buyer, in particular in the event of non-payment of the purchase price due, we are entitled to withdraw from the contract in accordance with the statutory provisions or/and to demand the return of the goods on the basis of the retention of title. The demand for surrender does not at the same time include a declaration of withdrawal; rather, we are entitled to demand only the return of the goods and to reserve the right to withdraw. If the buyer does not pay the purchase price due, we may only assert these rights if we have previously unsuccessfully set the buyer a reasonable deadline for payment or if such a deadline is dispensable under the statutory provisions.

### 17. Other claims, liability

#### 17.1

Unless otherwise stated below, other and further claims of the buyer against us are excluded. This applies in particular to claims for damages due to breach of obligations arising from the contractual relationship and from tort. We are therefore not liable for damage that has not occurred to the delivered goods themselves. Above all, we are not liable for lost profits or other assets of the buyer.

17.2 The above limitations of liability do not apply in the event of intent or gross negligence on the part of our legal representatives or executives or in the event of culpable breach of essential contractual obligations. Essential contractual obligations are those whose fulfilment is essential for the proper fulfilment of the contract in the first place and on whose compliance the buyer regularly relies and may rely. In the event of culpable breach of essential contractual obligations, we shall only be liable for the reasonably foreseeable damage typical of the contract – except in cases of intent or gross negligence on the part of our legal representatives or senior employees.

17.3 The limitation of liability also does not apply in cases in which, according to the Product Liability Act, liability is incurred in the event of defects in the delivered goods for personal injury or property damage to privately used objects. It also does not apply in the event of injury to life, limb or health and in the event of a warranty claim, if and to the extent that the warranty was specifically intended to protect the buyer against damage that did not occur to the delivered goods themselves.

17.4 Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, employees, employees, legal representatives and vicarious agents.

17.5 The statutory provisions on the burden of proof remain unaffected by this.

## 18. Force majeure

Force majeure, labor disputes, unrest, official measures, failure to deliver from our suppliers and other unforeseeable, unavoidable and serious events release the buyers from their performance obligations for the duration of the disruption and to the extent of their effect. This also applies if these events occur at a time when the buyer concerned is in default, unless he has caused the delay intentionally or through gross negligence. Buyers are obliged to provide the necessary information without delay within the scope of what is reasonable and to adapt their obligations to the changed circumstances in good faith. If these events continue for more than 30 days, we have the right to withdraw from the contract with immediate effect, without the buyer being entitled to compensation for any damage or loss.

## 19. Data processing

We collect personal data in accordance with the regulation of § 28 BDSG. Accordingly, the buyer's data is only collected, stored, changed or transmitted or used as a means for the fulfillment of one's own business purposes if it is necessary for the establishment, implementation or termination of a contractual or quasi-contractual obligation with the buyer.

## 20. Transferability, Place of Performance, Place of Jurisdiction and Applicable Law

### 20.1

The transfers of rights and obligations of the buyer from the contract concluded with us require our written consent in order to be effective.

20.2 Unless otherwise stated in the order confirmation, our place of performance shall be our place of performance.

20.3 For all legal disputes, including in the context of a bill of exchange and cheque process, our place of jurisdiction shall be our place of jurisdiction. We are also entitled to sue at the buyer's registered office.

20.4 The law of the Federal Republic of Germany shall apply exclusively to the contractual relationship. The application of the United Nations Convention of 11 April 1980 on Contracts for the Sale of Goods (CISG – "Vienna Sales Law") is excluded. If versions of these T&Cs are used in other languages, the German version of these T&Cs shall be the exclusively authoritative version.

### 20.5

Only the German version is decisive for the T&Cs.