



# Terms and conditions QUNDIS Gateway Services (GSD-II)



# Terms and conditions of QUNDIS Gateway Services (GSD-II)

## 1. Scope of the terms and conditions

- 1.1 The following terms and conditions form the basis for all supply contracts, services and offers of QUNDIS Gateway Services (GSD-II). The GSD-II services are as follows: provision and/or transmission of the data from QUNDIS gateways by QUNDIS during the period of the individual contract for the individual gateway. QUNDIS is responsible for providing the readout data, but not for its contents. QUNDIS only provides data to the contractual partner involved in the individual GSD-II contract. The use of the GSD-II services is permitted to the customer only in connection with the use of QUNDIS gateways which the customer acquires from QUNDIS separately on the basis of the January 2018 version of the QUNDIS terms of supply and installation, the applicable service description for the purchase of the gateway and only on the basis of an individual GSD-II contract covering the specific gateway. In order to enable the data transmission QUNDIS makes the individual gateway available to the customer together with a SIM card. The services provided by QUNDIS in each case are subject to the specific individual service description.
- 1.2. The customer recognises the following GSD-II terms of contract applied by QUNDIS for all transactions with QUNDIS, even if they have not been expressly agreed. The customer's terms of purchase will not become part of the contract, neither implicitly nor on the basis of his acceptance of goods and services. The terms of contract below will also apply even if QUNDIS supplies the customer without reservation and in full knowledge of the divergent terms and conditions of the customer.
- 1.3. Divergent or differently formulated terms and conditions will only become part of the content of the contract if they are accepted in writing by QUNDIS. Any terms and conditions of the customer which contradict these GSD-II terms of contract will only apply if and to the extent that their applicability has been expressly accepted in writing by QUNDIS. Silence on the part of QUNDIS in relation to divergent terms and conditions applied by the customer – including letters of confirmation, confirmation of orders and similar declarations - does not imply acceptance or recognition of such terms. The terms of supply and payment applied by QUNDIS in their applicable version will be regarded as binding at the latest on acceptance by the customer of deliveries from QUNDIS.
- 1.4. These GSD-II terms of contract apply only in relation to companies.

## 2. Terms of supply and payment

Unless agreed otherwise QUNDIS performs the GSD-II services exclusively on the basis of its terms of supply and payment.

These apply for the entire duration of the business relationship with the customer.

- 2.1 Quotations and supply Quotations issued by QUNDIS are subject to confirmation. A binding contract comes into effect when QUNDIS confirms in writing an order placed by the customer.
- 2.2 If QUNDIS is prevented from fulfilling the contract within the agreed time by unforeseeable, unavoidable and extraordinary problems in procurement, manufacturing or delivery - either affecting QUNDIS or a QUNDIS supplier - QUNDIS will have the right to postpone the delivery or service by the duration of the obstacle to performance together with a reasonable preparatory period, without infringing a significant contractual obligation in doing so.
- 2.3 If it is impossible for reasons outlined in Section 2.2 for QUNDIS to fulfil the contract in whole or in part, QUNDIS reserves the right to withdraw from the contract either as a whole or in relation to the part which has not yet been fulfilled.
- 2.4 Claims on the part of the customer because of the circumstances listed in the above sections 2.2 and 2.3 are excluded, unless QUNDIS or those acting on its behalf are guilty of wrongful intent, gross negligence or failure to perform a significant contractual obligation.

## 3. Prices

Prices are quoted ex works, unless agreed otherwise, and are based on the applicable service description.

## 4. Payment

- 4.1 Unless agreed otherwise, the annual charge for the use of the GSD-II services will be due in advance for the period of one year in accordance with the invoice provided by QUNDIS. The first payment shall be due in advance on the first day of the month following the month of accounting and delivery of the gateway
- 4.2 If the customer is in arrears of payment, QUNDIS will have the right to charge interest on arrears at the level of 9%

- above the base rate. On the basis of the relevant proof higher interest on arrears may be charged.
- 4.3 If the customer fails to meet his payment obligations in accordance with the contract, terminates his payments or if other circumstances become known to QUNDIS which call the creditworthiness of the customer into question, QUNDIS will have the right to invoice the customer for the total outstanding balance and to demand advance payments or security.
- 4.4 If the customer is in arrears of payment QUNDIS will also have the right to assert its statutory right of retention, and to terminate the individual contract without notice after providing the customer with a reasonable extension period. This will also apply in the event of other breaches of contract on the part of the customer. In addition, QUNDIS will be entitled to all its statutory rights if the customer is in arrears of payment.

## **5. Obligations to make checks/product features/compensation**

- 5.1 In terms of product features, only the service description provided to the customer will be regarded as having been agreed. Public statements, recommendations or advertising by QUNDIS do not represent a contractually agreed description of the features of the product.
- 5.2 If the customer receives a faulty performance description, QUNDIS will only be under an obligation to provide a fault-free performance description.
- 5.3 The customer does not receive warranties from QUNDIS as defined by the law.
- 5.4 In the event of functional defects of the GSD, the customer shall notify QUNDIS in writing of the defective gateway. QUNDIS shall repair or provide the customer with a functional gateway in return if and to the extent that the SIM card located in the respective gateway is no longer functional for reasons for which the customer is not responsible. Further claims of the customer in connection with defects are hereby excluded. It is clarified that the above provisions do not apply to defects or claims in connection with the respective gateway that QUNDIS has delivered to the customer in accordance with the General Terms and Conditions of Delivery and Installation of QUNDIS January 2018; rights and obligations in connection with the gateway itself are exclusively governed by the separate sales contract for the gateway. If the warranty for the delivered hardware and software (gateway) has expired, i.e. the limitation period has expired, and if gateways fail thereafter, QUNDIS shall, at the express request of the customer, remedy the defects at the customer's expense and, if necessary, restore the function with new devices. The GSD services are temporarily unusable during the period of repair of such defects. Any liability on the part of QUNDIS for this failure is hereby expressly excluded. In the event of an extension of these GSD services beyond the originally agreed period, no new liability shall be established for hardware and software, in particular the gateway. The risk of failure with regard to the GSD-II and the respective gateway after the expiry of a contract term of 5 years is thus borne exclusively by the customer, which also applies, for example, to any battery failure or other defect at the gateway itself. In addition, it is pointed out that the „General Terms and Conditions of Delivery and Installation“ (see <https://qundis.de/agb/>) apply to the respective gateway.
- 5.5 If the customer asserts justified and proven claims for damages which are based on wrongful intent and gross negligence on the part of QUNDIS and those acting on its behalf, QUNDIS will be liable within the scope of the applicable mandatory statutory regulations. Any further liability, in particular relating to damage which has not been incurred by the supplied goods themselves, is excluded unless QUNDIS or those acting on its behalf have acted with wrongful intent, gross negligence or are in breach of a significant contractual obligation.
- 5.6 If the customer fails to follow operational or maintenance instructions, modifies the products, replaces parts of the products or if the gateway or part of it is damaged by incorrect installation or use, the customer will be responsible for compensating QUNDIS for the damage incurred. The customer undertakes to report any breakdowns to the gateways to QUNDIS without delay as soon as they become known. The customer will be responsible for the cost of any breakdowns which are attributable to the customer, those acting on his behalf or third parties, including breakdowns which are caused by factors within the customer's sphere of influence, such as dirt or corrosion resulting from chemical, electrical or electrolytic influences or other unavoidable circumstances for which QUNDIS is not responsible. This also applies to any costs which arise as the result of inappropriate breakdown reports by the customer or those acting on his behalf, or if a member of the QUNDIS service team has to make a fruitless journey to the customer's premises in response to an inappropriate breakdown report. In relation to a GSD -II agreement the customer will ensure the maintenance of the functional and operational readiness of the QUNDIS gateways in compliance with the applicable legal regulations and other recognised norms. In particular he will ensure that the QUNDIS AMR network nodes and networks to be read out by the gateway are functional, and have the appropriate wireless connection for the readout of QUNDIS AMR networks.

## **6. Prohibition of rights of setoff and retention**

The customer will be able to assert a right of retention only if it is based on the same contractual relationship. Set-off by the customer or the assertion of a right of retention is excluded unless the customer's counterclaim is not disputed, has been accepted by QUNDIS or has been recognised in law.

## **7. Product markings, property rights**

- 7.1 The customer will inform QUNDIS without delay and in writing if he is informed that a product supplied by QUNDIS infringes industrial property rights or copyright. Where such claims are based on a direct infringement by a product supplied by QUNDIS, QUNDIS will be solely entitled and obliged to indemnify the customer against the claims of the owner of such rights, and to settle such claims at its own expense. After that QUNDIS will ensure that the customer receives the right to use the product. If it is not possible for QUNDIS to achieve this on reasonable economic terms QUNDIS will, at its own discretion, modify or replace the product in such a way that the property rights are not infringed. Alternatively it will take back the product and refund the purchase price, less a charge for the possibility of use which has been provided.
- 7.2 In turn the customer will indemnify QUNDIS against all claims asserted against QUNDIS by the owner of property rights as a result of the fact that QUNDIS has followed the customer's instructions, or because the customer has modified a product or integrated it into a system. Any use or mention of the "QUNDIS" brand or other QUNDIS brands for advertising or other purposes is only permitted with the express prior consent of QUNDIS. There is no right to the provision of this consent.

## **8. Validity**

The customer hereby recognises these GSD-II terms and conditions as binding in relation to all future transactions with QUNDIS and waives the application of his own terms and conditions, which do not become part of the contract neither as a result of tacit acceptance on the part of QUNDIS nor the performance of the contractually agreed supply by QUNDIS.

## **9. Severability**

If individual provisions are ineffective – for whatever legal reason – this will not affect the validity of the remaining provisions.

## **10. Place of jurisdiction and fulfilment**

- 10.1 The place of jurisdiction for all disputes arising from legal relationships will be Erfurt.
- 10.2 The place of fulfilment is Erfurt, unless otherwise agreed between the parties.

## **11. Applicable law**

The terms of supply and payment and all legal relationships between the parties in connection with supplies by QUNDIS are subject to German law. The application of the United Nation's Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.

## **12. Special terms for mobile communication services**

- 12.1 **Mobile communication services /conclusion of an individual contract**  
The GSD-II services include mobile communication services and provision of SIM cards. These are provided by QUNDIS to the customer exclusively for the purpose of transmitting gateway data to the customer. The customer has the obligation to keep safe the SIM card and all data provided by QUNDIS.
- 12.2 **Use of the GSD-II services by the customer**
- 12.2.1 The mobile communication services may only be used for the purpose of automatic data exchange between a so-called QUNDIS gateway and an end device used by the customer within the individual national network for which QUNDIS offers the customer SIM cards and their use. Communication across national borders is not permitted. If after the conclusion of a GSD-II contract the customer uses the gateway in a different location from that indicated on the conclusion of the contract, QUNDIS will not guarantee full and fault-free functionality at the other location. If functionality is available at the other location, the customer will be responsible for any related additional cost. The customer is also responsible for checking and ensuring network availability at the place of installation for the gateway.
- 12.2.2 Communication via public telephone services for personal purposes, for example, is not possible. Accessing emails all browsing the Internet by means of an end device are also not part of the services covered by this contract and are therefore not permitted.
- 12.2.3 At regular intervals QUNDIS provides the customer with readout data by email or SFTP.

- 12.2.4 The services provided by QUNDIS are restricted to the countries listed in the individual service description.
- 12.3 Change in the services**
- 12.3.1 With a period of four weeks' written notice to the customer QUNDIS will have the right to modify the GSD-II services if this is required to meet legal or official specifications or out of technical necessity. Such modification can be to the extent to which the individual mobile communication services and/or the use of SIM cards change in order to fulfil mandatory legal or official specifications or for technical reasons.
- 12.4 Misuse/onward sale/duties of the customer**
- 12.4.1 The customer must ensure that any misuse of the SIM cards and mobile communication facility by third parties is excluded. In the event of any misuse he must report this to QUNDIS without delay so that QUNDIS can deactivate the SIM card immediately. In this case the customer will be liable for any damage arising from the use of the SIM card by unauthorised third parties.
- 12.4.2 Obligations of the customer  
The customer is obliged in particular
- a) To report the loss of a SIM card to Customer Service immediately,
  - b) To inform QUNDIS in writing without delay in the event of any change in his name, address, bank details or invoice recipient, or to have this information provided by an authorised third party. The services and data which are provided must not be misused, in particular
    - there must be no transmission of legally forbidden, unrequested information, material and other services such as unwanted advertising by email, fax, telephone or SMS, or illegal dialling programmes,
    - there must be no illegal initiation of contacts by means of telecommunications (§ 238 StGB),
    - no information with illegal or immoral content must be communicated or uploaded to the Internet, and no reference must be made to such content,
    - no transfer of connections by the SIM card is permitted, unless this is expressly provided for in the service description,
    - domestic and international copyright, brand rights, patent rights, name rights and trademark rights as well as other commercial property rights and the personal rights of third parties must be respected.
- In the event of technical changes QUNDIS will have the right to replace the SIM card.
- 12.5 Period of individual contracts/blocking of SIM cards**
- 12.5.1 The period of the GSD-II contract (individual contract) is listed in the service description of the tariff of provided gateways which is valid in the respective to the time of the order. During the contractual period neither party will have the right to terminate the contract. QUNDIS will have an extraordinary right of termination which can be exercised without notice in all cases in which QUNDIS is unable – for no fault of its own – to provide the data, or if the mobile communication network and other mobile communication providers are unable to provide any further local reception for the customer. At the end of the contractual period the contract is automatically extended by a further year, unless it is terminated by one of the parties with a period of notice of six months to the end of the initial contractual period, or after that to the end of the period of the individual extension.
- 12.5.2 The individual contract must be terminated in writing.
- 12.5.3 The right of both parties to terminate individual contracts for good cause remains unaffected.
- 12.5.4 QUNDIS will have the right to block the access of the customer to the mobile communication network with immediate effect, if there is evidence that the customer is misusing the service (e.g. use for personal communication, breach of statutory regulations, illegal conduct etc.). If this is reasonable for QUNDIS, before such intended blocking QUNDIS can inform the customer about it together with the reason, for the purpose of finding a mutually agreeable solution without delay.
- 12.5.5 If QUNDIS has not given notice of such blocking, QUNDIS will lift the blocking once the reason for it has been corrected and QUNDIS has learned of this.
- 13. Data protection**
- QUNDIS undertakes to comply with the applicable data protection regulations of the Federal Republic of Germany. QUNDIS will only record, process and use the personal data provided by the customer for the purpose of fulfilling its contractual obligations. In addition, in the recording, processing and utilisation of personal data QUNDIS will only use staff or third parties who are subject to maintaining data confidentiality.
- 14. Non-disclosure**
- 14.1 The parties undertake not to disclose any confidential information which is entrusted to them by the other party. This also applies to confidential information provided in relation to the contractual negotiations and all information and reports connected with the service or its use, in particular agreements made on tariffs and prices or price offers

made in the course of negotiations. Subject to the provisions below, the parties will not make this information accessible to third parties and use it only in the course of their cooperation.

- 14.2 If in the course of the fulfilment of this contract it becomes necessary for one contractual partner to involve a third party and pass on confidential information to this party, this contractual partner will obtain the prior written agreement of the other contractual partner and conclude the corresponding written agreement with the third party in order to subject it to compliance with the obligation of non-disclosure. This provision relating to the transfer of confidential information by a contractual partner to companies connected with this partner will be regarded as having been accepted on the signature of a mobile communication contract. All information which is expressly designated as confidential by the parties or is indicated as such by its subject or related circumstances will be regarded as confidential.