

**General Terms and Conditions of Sale (GTC-S)  
issued by Dätwyler IT Infra GmbH  
for the Supply of Goods and Services (as of August 2022)**

**1. General – Scope of performance and definitions**

- 1.1. The following General Terms and Conditions of Sale (GTC-S) apply exclusively to goods and services supplied by Dätwyler IT Infra GmbH (Datwyler) to customers who are entrepreneurs as defined by §14 of the German Civil Code (BGB) as well as to legal persons governed by public law and special funds subject to public law.
- 1.2. If the “customer” also uses General Terms and Conditions of Business (“GTC”) the contract will take effect even in the absence of explicit agreement on the inclusion of General Terms and Conditions of Business.
- 1.3. Providing that the GTC-S and the GTC are substantively consistent, these shall be deemed to have been agreed. Contradictory individual provisions shall be replaced by the provisions of discretionary law. The same applies should the customer’s GTC incorporate provisions not included within the scope of these GTC-S. Should the GTC-S incorporate provisions not included in the customer’s GTC, the provisions of the GTC-S shall apply.
- 1.4. If, once the contract has been signed, Datwyler becomes aware of the fact that the business partner does not belong to the category of persons referred to in provision 1.1, Datwyler may withdraw from the contract within a reasonable period of time.
- 1.5. The GTC may be viewed, printed or downloaded from our website and are sent to the customer with the order confirmation when orders are placed online.

**2. Offer – offer documents**

- 2.1. Our offers are made without engagement in respect of price, quantity, delivery date and delivery option, and are subject to timely delivery by our own suppliers. The offer serves as the basis of a specific customer offer for the conclusion of a contract. A contract based on the offer is effected only by means of an order confirmation from Datwyler.
- 2.2. The subject matter of the contract is formed only by the descriptions of the goods and (works and service) performance rendered (“performance”) of the offer, the order confirmation and the GTC-S.
- 2.3. Unless otherwise agreed, the quality of the goods due under the contract are solely as set out in the current written product specifications. Particulars relating to quality, durability and other attributes constitute a guarantee only if expressly agreed and designated as such in writing.
- 2.4. Amendments, additions and/or the mutually agreed cancellation of a contract or of the GTC-S, including this clause, must be made in writing.
- 2.5. The customer is bound to the order for a period of seven (7) days from order placement. We can accept the offer by order confirmation or by delivery. If we have not stated our acceptance within this time, contract conclusion shall be deemed to have been refused.
- 2.6. We reserve the proprietary rights and copyrights to all illustrations, drawings, plans, calculations and other documentation. These must not be copied, otherwise duplicated or made accessible to third parties without our written consent.
- 2.7. Should a contract fail to materialize the customer undertakes to return to us immediately any documentation given to him.

**3. Online ordering**

- 3.1. The customer may also place a purchase offer (order) using the online shopping basket system. Here the goods intended for purchase are placed in the “shopping basket”. The customer can view the “shopping basket” by pressing the appropriate button on the navigation bar and can make changes there at any time. After the “checkout” page has been accessed and the personal data as well as the payment and dispatch conditions have been entered, all the order data are again displayed in the order overview. Before sending off the order the customer can once again check or change any of the particulars – including via the “back” function in the browser – or can cancel the procedure completely. Only when submitting the order via the “buy now” button at the end of the ordering process does the customer make a legally binding offer of contract.
- 3.2. We confirm receipt of the order immediately by e-mailing the customer (order confirmation). This order confirmation does not represent acceptance of the customer’s offer, but is only intended to let the customer know that we have received the order.

#### **4. Prices**

- 4.1. The prices for our products are “ex works”, inclusive of loading – but excluding the cost of drums, packing, reusable pallets and the cost of cable cutting. Each of these costs will be invoiced separately, the cost of cable cutting being at a flat rate of € 50 plus value added tax at the statutory rate. Our prices are shown on our current price lists which the customer already has or can request from us. The online shop price applies to orders placed online. On small orders with a net price of up to € 500 we charge a minimum quantity surcharge of € 75 in each case. Discounts, offers and/or other allowances are not given on small orders. The sales price of the copper cables is calculated on the basis of the daily copper quotation on the day of the written order confirmation (respective publication on our website). The difference between the listing and the copper base of the cables (€ 0, € 100 or € 150 /100 kg) increases the selling price accordingly.
- 4.2. Services relating to system construction and repair work outside our premises and in our workshops require prior written agreement. The charge will be in line with the actual time spent and material used. Time spent will be charged on the basis of our current rates for service engineers carrying out the work and the personnel costs actually incurred plus a reasonable additional charge. The material used is charged against proof of purchase, with an additional fixed fee for small parts.
- 4.3. The prices for our goods and services are net. They do not include value added tax. This is shown separately on the invoice at the rate valid on the billing date and is added on.
- 4.4. We reserve the right to alter our prices if cost reductions or increases occur after contract signature, in particular due to wage agreements or increases in the price of materials. We shall provide our customer with evidence of same upon request.
- 4.5. All payments shall be free of transaction charges and made to Datwyler’s designated account.

#### **5. Payment terms – Payment arrears – Counterclaims**

- 5.1. Our invoices for goods supplied are always due immediately and are payable without deduction within 14 days of the invoice date. Any different longer payment periods are also always calculated from the invoice date and are shown in our order confirmation.
- 5.2. Invoices for servicing and other performance within the meaning of clause 3.2 are payable without deduction within 14 days from date of invoice.
- 5.3. If the customer fails to pay within 30 days of the invoice date (servicing and other performance within the meaning of clause 3.2 not within 14 days of the invoice date) he shall be in default of payment even without a reminder. In this event we calculate interest on arrears at 9% above the base rate. If we are in a position to prove greater damage due to default we are also entitled to claim for same. An additional charge of up to € 40 will also be made to cover the dunning expenses incurred.
- 5.4. All our outstanding claims will become due immediately in the event of payment arrears, suspension of payment, and if circumstances become known which might reduce the credit worthiness of the customer. In these cases we are also entitled to perform outstanding services only against advance payment or security, or to withdraw from the contract.
- 5.5. Our customer can only claim right of retention in relation to a claim for payment with pleas based on the same contractual relationship as said claim for payment. He is only entitled to withhold payments or offset claims if the counterclaim is uncontested or is legally established.
- 5.6. Our prior written consent must be obtained before a customer’s claims against us can be assigned or pledged to third parties.

#### **6. Passage of risk relating to deliveries – packaging**

- 6.1. Unless otherwise stated on the order confirmation, it is agreed that delivery is “ex works Hattersheim” Loading and dispatch are uninsured and at the customer’s risk.
- 6.2. If we make free delivery in exceptional cases, the customer undertakes to claim any externally visible transit damage from the carrier on delivery and to inform us immediately in writing. Failure to do so will mean that the customer is liable to us for the loss incurred.
- 6.3. If delivery, service or performance are delayed due to circumstances within the customer’s control or for other reasons due to which the customer fails to accept delivery on the due date, the risk will pass to the customer from that date onwards.
- 6.4. It is preferred that cables be delivered on company-owned reusable or non-returnable drums. Non-returnable drums will not be taken back. Following notification of availability by the client, company-

owned reusable drums will be collected by the contractor (Notification of availability: Tel +49 6190 8880-21, Fax +49 6190 8880-80, [www.itinfra.datwyler.com](http://www.itinfra.datwyler.com)).

If Datwyler will not receive a notification of availability of their drums within 6 months from delivery the costs for the reusable drums will be invoiced at fair value. The same applies to reusable pallets.

- 6.5. If deliveries are made on KTG reusable drums, the contractor must reach agreement with the client prior to delivery.
- 6.6. KTG General Terms and Conditions of Business apply to the transfer of KTG cable and wire spools. The GTCs and notifications of availability may be obtained and pick-up arranged at the address below:  
Kabeltrommel GmbH & Co. KG  
Schanzenstraße 30, 51063 Köln  
Tel +49 221 6788-0, Fax +49 221 6788-205.

## **7. Conditions of supply – Deadlines for deliveries and services – Consequences of delay**

- 7.1. Unless otherwise expressly agreed, we are in principle entitled to deliver up to 5% more or less than the quantity ordered.
- 7.2. If, notwithstanding clause 6.1, we are responsible for organizing the transportation of the goods, our policy is to send goods as part of a consolidated consignment carriage forward to the delivery address – ground floor delivery on building sites – within the Federal Republic of Germany, or duty unpaid to the border. This notwithstanding, goods with a net value of € 1500.00 and over are delivered carriage free as a rule, providing we have confirmed same to the customer in the offer.
- 7.3. Agreed periods for deliveries and services are deemed to be only approximate. This is contingent on correct and punctual delivery to ourselves.  
The delivery period begins on the date the order confirmation is sent and is met when the goods have left our factory by the expiry of the delivery period or upon notification of readiness for dispatch if dispatch is delayed through no fault of our own.
- 7.4. The meeting of deadlines for deliveries and service performance is contingent on the customer meeting his contractual obligations. Should this not be the case, the deadline for Datwyler shall be extended by an appropriate period.
- 7.5. The period will be extended appropriately if failure to meet the deadline for deliveries or performance is demonstrably due to mobilization, war, riot, strike, lock-out or the occurrence of unforeseen obstacles. This applies equally when the obstacles arise at our upstream suppliers or during an existing delay.
- 7.6. Should delivery or service provision be delayed due to circumstances within our control, the customer undertakes to grant Datwyler a reasonable period of grace. For each full week of delay he shall be entitled to demand flat-rate compensation amounting to 0.5% but up to a maximum of 5% of the net value of the delayed delivery or delayed performance. This does not affect compensation in lieu of performance pursuant to clause 9.
- 7.7. If, after we are already in default, the customer grants us a reasonable period of grace, he is entitled to terminate the contract if we fail to meet the extended deadline.
- 7.8. Datwyler is entitled to effect partial delivery or partial performance to a reasonable extent.

## **8. Export control, export ban, embargo regulations**

- 8.1. Products supplied by us are intended to be used and to remain in the country of delivery agreed with the customer. Technical products, hardware and computer software in particular may be subject to embargo regulations and the export thereof from the country of delivery may be prohibited or may require a permit. We may also be under a contractual obligation to observe an export ban. The customer is responsible for complying with these regulations at his own expense as far as the end consumer. In particular it is incumbent on the customer to keep himself informed on current export and import regulations (e.g. at the Bundesamt für Wirtschaft und Außenkontrolle [Federal Office of Economics and Export Control] and at the US Department of Commerce, Office of Export Administration), to comply with these regulations and any export bans declared by us, and to obtain the necessary permits themselves. We would explicitly draw our customer's attention to the fact that we are not obliged to make reference to any export bans. Such references do not relieve the customer of his obligation to keep himself informed.

## **9. Delayed acceptance of delivery – Delivery on call**

- 9.1. If our customer fails to accept delivery as per contract, he must nevertheless make the payments dependent on delivery as if acceptance had taken place. The same applies if delivery has to take place on call and the customer does not call the delivery or agreed part delivery in the contractually agreed period.
- 9.2. The customer undertakes to compensate us for the loss caused by delay inclusive of any additional expenses.
- 9.3. If even after a written request the customer fails to meet his acceptance or call obligation within a reasonable period set by us, we are entitled to refuse to fulfil the contract and demand compensation in lieu of performance. We shall be freed from our obligation to deliver in respect of the delivery not yet accepted or called.  
The same applies to (part) deliveries not yet called as well as to any (part) deliveries yet to be called in future.

## **10. Customer claims for defects**

- 10.1. The customer's claims for defects are conditional on the customer having duly complied with his inspection and complaint obligations pursuant to §377 of the German Commercial Code.
- 10.2. Damage to transport packaging and obvious damage in transit should be claimed from the carrier on delivery and confirmed by same in writing. Hidden damage shall be determined by a thorough inspection of the goods and a complaint submitted to the carrier in writing within the legal period for the notification of defects (7 days as a rule).
- 10.3. The agreed quality within the meaning of §434 paragraph 1 sentence 1 of the German Civil Code is vouched for only by our product description. Public statements, recommendations or advertising messages do not constitute a contractual description of quality.
- 10.4. In the event of defective supply or performance we are entitled to rectify the defect or make a replacement delivery at our discretion. We undertake to cover the requisite expenditure, in particular the cost of transportation, travel, labour and material, providing that after delivery or performance these are not increased by the goods being moved to a place other than the customer's place of business.
- 10.5. Should we be unwilling or unable to rectify the defect/make replacement delivery, same be delayed beyond reasonable periods for reasons within our control, or defect rectification/replacement delivery fail for any other reason, in the case of not insignificant defects the customer shall be entitled to withdraw from the contract or reduce payment and demand compensation in lieu of performance pursuant to clause 10.
- 10.6. Claims in respect of defects shall lapse after one year from the legal beginning of statutory limitation. The above limitation period is not applicable if Datwyler has acted in bad faith, fraudulently concealed the defect or has failed to comply with a guarantee of quality. If, however, the goods supplied have been used in a structure in accordance with their usual purpose and if the goods have caused a deficiency thereof, the period of limitation will be five years unless the goods supplied were used for the structure on the basis of a contract in which Part B of the German Contract Procedures for Building Works (VOB/B) was included in its entirety. In this case the shorter limitation periods of the VOB/B apply.
- 10.7. The periods of limitation begin to operate on delivery of the goods, in the case of services within the meaning of clause 4.2 on acceptance, or alternatively on the customer's definitive refusal to accept. If Datwyler's delivery is defective and this defect entails an insignificant reduction in value or fitness for purpose, termination of the contract due to this defect is ruled out.

## **11. General liability**

- 11.1. Liability for the customer's claims for compensation and reimbursement of expenses is limited to foreseeable losses typical of such contracts insofar as said losses were caused as a result of slight negligence by Datwyler, its employees or vicarious agents. A customer's claim for compensation arising from an insignificant defect is ruled out. This limitation of liability applies neither in the event of physical injury nor if a contractual warranty was given nor in the event of a breach of essential contractual obligations which jeopardise the performance of the contractual purpose. At the same time, however, our liability is limited to the scope of the warranty or, in the event of a negligent breach of material contractual obligations, to the foreseeable losses typical of such contracts. This does not affect claims under the German Product Liability Act.

- 11.2. With the exception of claims arising from liability for defects, the Product Liability Act and for fatality, physical injury or damage to health, claims for compensation shall lapse after one year from the customer becoming aware of the damage and replacement obligation or after he must have become aware of same in the absence of gross negligence.

## **12. Reservation of title**

- 12.1. We reserve the right to retain ownership of the goods pending the customer's settlement of all outstanding accounts arising from the business relationship inclusive of claims arising in future, and including from contracts concluded at the same time or at a later date. This applies also when individual or all claims have been included by us in a current account and the balance has been established and recognised.
- 12.2. While retention of title exists the customer may not pledge the goods or use them as security. Should the goods subject to retention of title be pledged or otherwise interfered with by third parties the customer undertakes to refer immediately to our ownership and contact us by telephone followed by written notification by fax or e-mail so that we can file a claim in accordance with §771 of the German Code of Civil Procedure (ZPO). If the third party is unable to reimburse us with the judicial and extrajudicial costs of an action according to §771 ZPO, the customer shall be liable for the loss we incur.
- 12.3. If our reserved goods are mixed, bonded, worked or processed with other items this shall be at no cost to ourselves. If the goods are worked or processed, we shall co-own the new item in the ratio of the invoiced value of our reserved goods to the other items at the time of the activity. If an item is regarded as the main item, we shall co-own the main item in the ratio of the value of our reserved goods to the total value of same at the time of the activity. The customer shall hold all the items for us free of charge.
- 12.4. The customer may resell the reserved goods only in the proper course of business. He hereby assigns to us all claims in the amount of the final invoiced sum (including value added tax) with all ancillary rights against his purchaser accruing to him from the resale of the reserved goods. We accept the assignment. The customer remains entitled to collect these claims as long as he fulfils his obligations to us. If rights to the reserved goods are held by third parties, the customer's claim transfers to us in the ratio of the value of our co-ownership share to the total value of the items. The customer shall immediately remit to us amounts collected to the extent that our claims are due.
- 12.5. The right to resell and to collect the claims assigned to us in the ordinary course of business ceases when payment is outstanding or suspended. In such cases the customer undertakes to release the security collateral at our request and to provide us with all the documentation and information enabling us to claim our security rights ourselves.

## **13. Data protection**

- 13.1. The customer agrees to Datwyler collecting, processing and using the requisite data in accordance with statutory regulations (e.g. the German Data Protection Act).
- 13.2. To allow contract execution Datwyler may collect, process and use the requisite personal data (inventory data). These include the customer's name, address, e-mail address and telephone number as well as the account details necessary for participation in direct debit transactions.
- 13.3. At any time the customer has the right to obtain information on the scope and content of the personal data stored.

## **14. Place of performance, jurisdiction and applicable law**

- 14.1. The place of performance for all the obligations arising from the contractual relationship shall be our registered office unless the order confirmation stipulates otherwise.
- Any legal disputes arising from the contractual relationship or from its creation and effectiveness shall be settled before the competent court of law having jurisdiction for our registered office in Hattersheim insofar as our customer is a trader.
- Irrespective of the value in dispute, however, we are also entitled at our discretion to bring an action before the competent local or regional court with jurisdiction over the customer's registered office.
- The law of the Federal Republic of Germany will apply with the exception of the UN Convention on the International Sale of Goods of 11 April 1980.