

General Terms and Conditions of Purchase for Dätwyler IT Infra GmbH (last updated: Oct 2020)

1. General - scope of application

- 1.1 The following Terms and Conditions of Purchase apply exclusively to all orders unless otherwise agreed in writing. The Terms and Conditions of a supplier or contractor (hereinafter both referred to as supplier) which conflict with or differ from our Terms and Conditions of Purchase will apply only inasmuch as we agree to the validity thereof in writing. Our Terms and Conditions of Purchase also apply when we accept delivery without reservation in the knowledge that the supplier's terms and conditions conflict with or differ from our Terms and Conditions of Purchase.
- 1.2 Our Terms and Conditions of Purchase apply only to customers who are contractors within the meaning of § 14 BGB [German Civil Code] as well as to legal entities under public law and special funds under public law.
- 1.3 Our Terms and Conditions of Purchase also apply to all future transactions with the supplier.

2. Offers - offer documents

- 2.1 Orders and agreements are binding only when made in writing. In particular our staff are obliged to confirm in writing any verbal supplementary agreements or undertakings which exceed the content of the written contract or which modify these Terms and Conditions of Purchase to our disadvantage.
- 2.2 The order will lapse unless accepted in writing by the supplier within one week of receipt. The factor determining timely acceptance will be the date of receipt by us.
- 2.3 We reserve the title and copyright to illustrations, drawings, plans, calculations and other documents. They shall be treated as strictly confidential and must neither be copied nor otherwise duplicated or made accessible to third parties without our express written consent. They shall be used exclusively for fabrication based on our order; on completion of the order they shall automatically be returned to us.

3. Prices - payment terms

- 3.1 The prices agreed are firm prices inclusive of packing and are carriage paid to destination.
- 3.2 In accordance with the provisions of our order, invoices must state the order number shown therein.
- 3.3 Unless otherwise agreed in writing payment shall be effected at our discretion either within 14 days of delivery and receipt of invoice with a 3% discount or within 30 days without any deduction.
- 3.4 We are at liberty to choose the means of payment. The payment term will begin once the goods have been received in full as specified in the contract and on receipt of the documents stipulated in paragraphs 3.2 and 4.7, but not prior to the agreed delivery date.
- 3.5 We are entitled to rights of offset and retention to the extent permitted by law.

4. Delivery period - conditions of delivery - passage of risk

- 4.1 Agreed delivery dates are binding. The factor determining compliance with a delivery date will be receipt of the consignment at its destination.
- 4.2 The supplier may not make part deliveries without written agreement.
- 4.3 The supplier undertakes to notify us immediately in writing should circumstances arise or become apparent under which he may not be able to fulfil all or part of his obligation on time. He must immediately inform us of the reasons for the delay and the anticipated length of the delay.
- 4.4 In the event of a delay we shall be entitled to demand a contractual penalty of 0.5 % of the agreed total price of the consignment for each complete week of delay, but no more than 5 % in total. Other statutory rights remain unaffected. The supplier is free to furnish proof of loss lower than the contractual penalty.
- 4.5 We are entitled to stipulate the method of dispatch and the carrier. Otherwise the supplier will be responsible for choosing the method of dispatch most favourable to us.
- 4.6 Within the European Union (EU) delivery shall be effected DAP named place of destination (Incoterms 2010). In the case of consignments from third countries delivery shall be made DDP named place of destination (Incoterms 2010). Otherwise the supplier will be responsible for choosing the method of dispatch most favourable to us.
- 4.7 Each consignment must be accompanied by delivery notes giving our order number, our order reference, our article number, the type of packaging and the quantity and weight of the consignment.
- 4.8 The supplier will not have fulfilled his delivery commitment until we have received the correct delivery and dispatch documents as specified in paragraph 4.7. Until then we shall have the right to store the consignment at the expense and risk of the supplier.
- 4.9 The risk will pass to us when the consignment has been duly transferred to us and accepted by us at the destination specified. This applies even if we use our own transport personnel.

5. Claims for defects

- 5.1 The supplier guarantees that at the time of transfer to us or our customers the delivery item is free from material defects or defects of title, reflects the state of the art, and complies with the relevant laws, safety and accident prevention regulations as well as normal and technical quality assurance standards. In the event of differences between these standards the German version will apply.
- 5.2 On receipt of the goods we shall inspect them for obvious defects, identity, shortfalls in quantity and transportation damage. There is no obligation to carry out further checks. We shall notify the supplier of defects within a reasonable time of discovering them. In this respect the supplier waives any objection to the delayed notification of defects.
- 5.3 If defects are found we shall be entitled at our discretion to request defect rectification or replacement delivery. In urgent cases or on the unsuccessful expiry of an appropriate period of grace, moreover, we shall have the right to undertake defect rectification ourselves, arrange for this to be carried out by a third party or otherwise obtain a replacement at the supplier's expense.
- 5.4 The supplier will be responsible for meeting all the expenses involved in defect rectification or replacement delivery at each place where the goods are used. We shall inform the supplier of the place of use on request.
- 5.5 The supplier will cover the cost of any more extensive incoming inspections necessitated by a defective consignment.
- 5.6 The period of limitation is 36 months from the date of delivery, or from acceptance – if such has been agreed. The period of limitation for materials commonly intended for use in construction is 6 years from delivery, or from acceptance - if such has been agreed.
- 5.7 We reserve the right of recourse against the supplier if we withdraw our products as a result of a deficiency in the supplier's product, if the purchase price is reduced for the same reason or if we are otherwise claimed against. There is no requirement for the time limit normally set. The supplier shall also compensate us for the expenditure incurred. Notwithstanding the provision in the first sentence of paragraph 5.6, the aforementioned claims will lapse no earlier than 2 months after the date on which we have satisfied the claims against our customer, but no later than 5 years following delivery.
- 5.8 The appropriate limitation period in paragraph 5.6 will start again whenever defective parts are repaired or replaced.

6. Product liability - indemnity - third party insurance cover

- 6.1 In the event of a claim being filed against us by a customer or other third party on the basis of product liability, the supplier will be responsible for indemnifying us from such claims on a first written request if and to the extent that the loss was caused or contributed to by a defect in the product delivered by the supplier. In cases of fault-based liability, however, this applies only when the supplier is at fault.
- 6.2 Insofar as the cause of damage is the supplier's responsibility, it will be sufficient to prove that the defect caused the damage. Apart from that the onus of proof is on the supplier.
- 6.3 The supplier will cover all costs and expenses proportionate to his share of responsibility or fault, including the cost of any legal action or product recall campaign initiated by us. This also applies to identifiable or impending serial defects.
- 6.4 The supplier is responsible for maintaining an appropriate amount of product liability insurance cover and supplying proof of same to us upon request.
- 6.5 The supplier is responsible for covering losses resulting from a failure to comply with these conditions. Apart from this he will also be liable for even simple negligence on the part of his employees or authorised representatives.

7. Industrial property rights

- 7.1 The supplier vouches for the fact that no third party industrial property rights are being infringed in connection with his delivery – including in the country of use.
- 7.2 Should a claim be made against us by a third party for infringing an industrial property right in connection with the delivery, the supplier will be responsible for indemnifying us from said claims upon the first written request. The indemnity obligation covers all expenses incurred by us arising from or in connection with such a claim by a third party.
- 7.3 The supplier will not be liable to the extent that he is producing goods solely in accordance with our drawings and models and did not know or was not to know that the manufacture of said goods infringed the rights of third parties.

8. Retention of title relating to provision of materials - manufacturing equipment - execution of work on our premises or those of our customer - secrecy

- 8.1 We retain the title to any parts provided to suppliers. Processing or transformation by the supplier is carried out on our behalf. If our goods subject to retention of title are processed with other items which do not belong to us, we

- shall acquire co-ownership of the new item in proportion to the value of our item to the other items processed at the time of processing.
- 8.2** If the item provided by us is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in proportion to the value which the item subject to retention of title has to the other items mixed at the time of mixing. If mixing occurs in a way that the supplier's item can be regarded as the main item, it is taken as agreed that the supplier will assign proportionate joint ownership to us. The supplier will preserve sole or joint ownership for us.
- 8.3** Tools or other manufacturing equipment made on our behalf and paid for by us will transfer to our ownership once full payment has been made. Transfer of ownership will be replaced by the supplier storing the items for us free of charge with due diligence and care. The supplier will keep the items owned by us separate from other items not belonging to us. Our ownership shall be marked on the items themselves and in the account books. Once the business relationship has been terminated the tools shall be handed over on request.
- 8.4** Products made in accordance with documentation drawn up by us (such as drawings, models or the like) or in accordance with confidential information provided by us or with our tools or tools modelled thereon shall neither be used by the supplier himself, nor offered or supplied to third parties.
- 8.5** The supplier's employees or authorised representatives carrying out work on our premises or our customer's premises under the contract must comply with accident prevention regulations, all other safety requirements and the relevant plant regulations. They shall not commence work unless they are familiar with said requirements.
- 8.6** Assembly and installation work must be accepted. Acceptance takes place when our authorised representative expressly approves the supplier's work in writing as having been performed according to contract. We may still, however, claim for defects during final invoicing. Should we fail to meet our acceptance commitment the supplier must grant us a period of at least 3 weeks' grace.
- 8.7** The hours of work put in and the materials provided by the supplier shall be confirmed in writing by an authorised representative of our plant immediately following execution of the work, but no later than on the day of execution.
- 8.8** The supplier is responsible for treating in strict secrecy all the details of our order, e.g. unit numbers, technical execution, conditions etc., as well as all the samples, illustrations, drawings, calculations and other documentation received and any confidential information which he acquires from us knowingly or by chance.
- 8.9** Documents and other items of any kind such as samples, drawings, tools, models and similar which we have made available to the supplier shall automatically be returned to us free of charge as soon as they are no longer needed to execute the order. Such items may not be used by the supplier for his own purposes nor shall they be made accessible to third parties.
- 8.10** In the event of infringement(s) of the confidentiality agreement according to paragraphs 8.8 and 8.9 the supplier undertakes to pay a contractual penalty of 25 % of the order value as a minimum amount of the claims for damages arising from the infringement, unless he is not responsible for the infringement. Apart from this, in the case of particularly serious infringements we shall be entitled to terminate the entire contractual relationship with the supplier without notice or compensation and, if applicable, reclaim payments already made. One particularly serious infringement is when the supplier passes on his acquired or received knowledge to third parties in competition with us.
- 9. Assignment**
Assignment or pledging of the rights accruing to the supplier under the contract shall take place only with our written consent. This does not apply to pecuniary claims. We may, however, make payment to the supplier in discharge.
- 10. Place of performance, court of jurisdiction and applicable law**
- 10.1** The place of performance for the goods is the place of delivery specified in the order. Our registered office will be the place of performance for any other obligations arising from the contractual relationship.
- 10.2** The court of jurisdiction is the court responsible for our registered office. We shall also be entitled, however, to appeal to the court responsible for the supplier's place of business.
- 10.3** German law applies.