

GENERAL PURCHASING CONDITIONS

Daetwyler Switzerland Inc.
Militärstrasse 7
CH-6467 Schattdorf
(hereinafter referred to as 'Datwyler')

Last update: September 2020

1. General

- 1.1 These Purchasing Conditions of Datwyler (the “**Purchasing Conditions**”) shall be exclusively applicable and valid. Datwyler will not recognize any contrary or divergent conditions of the contractual partner, or will only do so subject to explicit written consent. The Purchasing Conditions shall exclusively apply even if Datwyler accepts the contractual partner's delivery without reservations in awareness of contrary or divergent conditions of the contractual partner. By confirming an order from Datwyler, the contractual partner accepts the Purchasing Conditions as well as all documents referred to herein.
- 1.2 The written form is required for all sorts of agreements between Datwyler and the contractual partner. This also applies to agreements with regard to the conclusion and performance of contracts already made or to be made with Datwyler. The Purchasing Conditions shall also apply to all future business transactions with the contractual partner. Datwyler may unilaterally change the Purchase Conditions at any time; the respectively applicable Purchase Conditions are available at www.datwyler.com under locations, Schattdorf site. By confirming an order from Datwyler, the contractual partner accepts the respectively applicable Purchasing Conditions as well as all documents referred to therein.

2. Conclusion of contract and subject of contract

- 2.1 Datwyler may cancel at no cost a purchase order before receipt of the order confirmation from the contractual partner.
- 2.2 The contractual partner shall confirm a purchase order towards Datwyler within three working days upon its receipt. Sundays are not deemed to be working days. Upon receipt of such confirmation by Datwyler, the contract enters into force.
- 2.3 The contractual partner shall notify Datwyler explicitly in case of any deviations in its order confirmation from Datwyler's purchase order.
- 2.4 As part of an agreed planning system for purchase orders and call-offs, the delivery call-off by Datwyler shall be binding for the contractual partner unless the latter objects within two working days upon receipt of the delivery call-off. Sundays are not deemed to be working days.
- 2.5 In addition to the Purchasing Conditions, order information from Datwyler (i.e. all product and delivery specifications) is an integral part of the contract. This includes all information to which Datwyler refers in connection with the purchase order or which is

contained in the documents appended to the purchase order (in particular performance specifications, technical documentation, etc.).

- 2.6 Subcontracting the whole order or parts thereof to third parties/subcontractors is only permitted with Datwyler's prior written consent.
- 2.7 In cases of contravention, Datwyler may withdraw from the contract with immediate effect without prejudice to its statutory rights.

3. Contractual documents and means of production

- 3.1 Documents and means of production of all types which Datwyler makes available to the contractual partner in connection with the purchase order/assignment, or which are manufactured or procured by the contractual partner on behalf of and at the expense of Datwyler, such as illustrations, calculations, drawings, drafts, manufacturing instructions, models, samples, prototypes, supplied materials and parts, tools, etc., shall remain or become the exclusive property of Datwyler insofar as no third-party property rights prevent this. Any protected rights to the aforementioned documents and means of production shall be exclusively reserved for Datwyler, insofar as no third-party rights prevent this. The contractual partner shall take all measures required for the transfer of these rights to Datwyler. Production documentation and means of production to which Datwyler has rights of ownership or copyright utilization rights must neither be used, reproduced, passed on, sold, pledged or made accessible to third parties, except for agreed or contractual purposes. In particular, said items must not be used to manufacture products for third parties. The information which is disclosed verbally or in writing to the contractual partner by Datwyler shall be treated by the contractual partner as confidential.
- 3.2 The processing or remodeling by the contractual partner of the materials made available by Datwyler pursuant to clause 3.1 shall be undertaken on behalf of Datwyler. If the contractual partner processes, inseparably mixes or combines the materials pursuant to clause 3.1 with other objects which do not belong to Datwyler, Datwyler shall acquire co-ownership of the new object in accordance with the proportion of the value of the object made available (purchase price plus value added tax) to that of the other processed, mixed or combined objects at the time of processing/remodeling. If the mixing or combination takes place in such a manner that the contractual partner's property is deemed as the main element, the contractual partner shall transfer co-ownership to Datwyler on a proportionate basis.
- 3.3 The contractual partner shall store Datwyler's materials separately as Datwyler's property in an appropriate and orderly manner prior to processing. The documents and means of production must be identified on each item as being Datwyler's property. The contractual partner shall also place Datwyler's co-owned property in appropriate storage.
- 3.4 The contractual partner shall insure tools belonging to Datwyler (and the materials and parts made available) at their value as new, at its own expense, against fire, water and theft losses. The contractual partner shall assign all compensation claims arising from this insurance to Datwyler. Datwyler hereby accepts such assignment.

- 3.5 The contractual partner shall carry out the necessary servicing and inspection work together with all maintenance and repair work on Datwyler's tools in time and at its own expense. The contractual partner shall notify Datwyler immediately of any incidents. In case of culpable omission, the contractual partner shall be liable for all resulting losses and damages incurred by Datwyler.
- 3.6 The contractual partner shall keep all production documents and means of production confidential. These may only be disclosed to third parties with explicit consent from Datwyler. The confidentiality obligation survives the termination of the contract and shall not lapse until the knowledge contained has become generally known.
- 3.7 If a contract does not come into force or if and when an order is completed, the contractual partner shall, without being requested, return to Datwyler the production documents and means of production belonging to Datwyler, semifinished and finished products (including those rejected by Datwyler as deficient) in proper condition, without retaining any copies, single parts, etc., or shall destroy or modify them so that they can no longer be used to manufacture the contractual products or any other goods. The contractual partner shall provide evidence of such destruction/modification at Datwyler's request. The contractual partner shall have no right of retention regarding the products due to Datwyler and regarding any rights pursuant to clause 3.
- 3.8 If the contractual partner culpably violates one of the duties set forth in clause 3., the contractual partner shall pay to Datwyler appropriate compensation in proportion to the gross value of the order affected by the violation of such duty. Datwyler explicitly reserves the right to claim higher damages incurred in each individual case.
- 3.9 The contractual partner is not permitted to mention or cite Datwyler as a reference in any marketing materials, publications or in any other way verbally or in writing unless with the explicit prior written consent of Datwyler.
4. Prices and payment conditions
- 4.1 The price stated by Datwyler in the purchase order is understood to exclude value added tax/sales tax and is binding. The price is understood to include packaging. Value added tax is always to be reported separately by the two parties. Price increase reservations require the explicit prior written consent of Datwyler. The prices are applicable 'DAP Datwyler factory' (Incoterms in the applicable valid version) unless agreed otherwise in writing.
- 4.2 Datwyler shall process invoices within the time limit if they show the order numbers as stated in the purchase order and are electronically forwarded to the e-mail address as indicated in the purchase order. The contractual partner is responsible for all non-compliance with this obligation. The contractual partner shall submit a certificate of origin or a corresponding declaration for goods not manufactured in Switzerland, at the latest together with the invoice.

4.3 Unless agreed otherwise, Datwyler shall pay in its own discretion as follows: within 30 days of receipt of invoice, with 3% discount, or within 90 days, strictly net. If the goods only arrive after the invoice, the date of receipt of goods is deemed to be the date of receipt of the invoice. Datwyler shall pay, in its own discretion, by transfer to banking or postal accounts or by sending collection-only checks. Cash on delivery and similar methods, and the costs thereof, shall not be accepted by Datwyler.

5. Offsetting and assignment

5.1 Offsetting of Datwyler's claims arising from the business relationship is only permitted if the contractual partner has a legally determined claim or a claim which has been explicitly recognized by Datwyler with which the contractual partner can offset. The foregoing also applies to the assertion of retention rights.

5.2. Assignments of claims are not permitted unless with Datwyler's prior written consent.

6. Ownership of contractual products

6.1 The contractual partner shall transfer ownership of the products manufactured according to Datwyler's production documents or with the help of Datwyler's means of production to Datwyler at the time of production. Clause 3.1 shall apply accordingly.

6.2 Retention of ownership by the contractual partner is excluded for any other deliveries.

7. Delivery and packaging

7.1 Partial deliveries by the contractual partner are basically not permitted, subject to Datwyler's prior explicit consent in writing.

7.2 The dates and deadlines stated in the purchase order are binding for the contractual partner. The ordered deliveries and services shall be received or performed at the location and on the date as determined by Datwyler.

7.3 If the contractual partner becomes aware that it will be prevented from performing the contract within the deadline set forth, it shall inform Datwyler immediately in writing. The contractual partner shall indemnify Datwyler for losses and damages incurred due to delayed or omitted notification.

7.4 The statutory provisions shall apply in respect of requirements and legal consequences of delayed delivery and/or performance. After expiry of an appropriate grace period, Datwyler is entitled to withdraw from the contract or to request compensation for damages in lieu of performance.

7.5 Datwyler may still withdraw from the contract in whole or in part even if the contractual partner is not responsible for exceeding the delivery deadline.

7.6 The contractual partner shall use packaging which conforms to the relevant applicable and valid environmental and disposal regulations. Datwyler reserves the right to return the packaging. Datwyler is only obliged to return it if a specific written agreement exists.

8. Transport and transfer of risk

8.1 Deliveries are made and services are provided 'DAP Datwyler factory' (Incoterms in the applicable valid version). Datwyler shall designate the factory on the purchase order. If, in exceptional cases, Datwyler bears the costs of transport, the contractual partner shall commission the forwarder designated by Datwyler. For customs clearance, the contractual partner shall use the customs clearance agent designated by Datwyler. If Datwyler does not issue an instruction, the contractual partner shall as a general rule select the most economical means of dispatch. Datwyler shall only refund higher costs if they are attributable to Datwyler's explicitly stated packaging and dispatch instructions. The contractual partner shall provide proof for these higher costs.

8.2 A delivery note stating Datwyler's order number shall be enclosed with every delivery. The delivery note shall also include information on the gross and net weight. In case of partial deliveries, the remaining quantity for subsequent deliveries shall be stated. The dispatch and delivery documents and any other documents relating to the purchase order/orders shall show Datwyler's order number which was included in the purchase orders/orders. If the contractual partner omits identification with the Datwyler order number, Datwyler shall not be responsible for delays in processing.

8.3 In a clearly visible manner, the contractual partner shall mark its delivery/objects delivered with the information according to the valid VDA guidelines, or at least with the following information: contractual partner including address, designation of delivered parts/products, Datwyler article numbers, quantity, delivery date, batch number.

8.4 In addition, Datwyler's transport and customs clearance guidelines shall apply.

9. Acceptance and warranty

9.1 If Datwyler is prevented from acceptance/approval of the deliveries or services and from performing the associated obligations and duties (such as the drawing up of the list of inspection and of defects) due to force majeure or other events which Datwyler cannot foresee and for which Datwyler is not responsible, and which only occur after conclusion of the contract, or of which Datwyler is unaware when the contract is concluded, or due to strikes and lawful lockouts, Datwyler shall be released from such obligations for the period and in accordance with the scope of the effects of such circumstances. Datwyler shall inform the contractual partner accordingly.

9.2 Datwyler is entitled to refuse acceptance/approval of deliveries made before the agreed delivery and acceptance dates. Goods delivered early may be sent back to the contractual partner at its expense and risk, or may be stored with third parties.

- 9.3 If the contractual partner violates the packaging or dispatch regulations, Datwyler may refuse to accept the contractual products without defaulting on acceptance.
- 9.4 The deliveries shall comply with the statutory and official provisions applicable to their distribution and use as valid at the time of delivery, in particular occupational safety, accident prevention and other safety regulations, the fire prevention regulations of the responsible area and the provisions concerning prevention of immissions and environmental damage as applicable at the set-up location (Datwyler expects environmental protection certificate ISO 14001), and with the recognized rules of engineering. The requirements of any quality assurance agreement concluded with Datwyler shall be adhered to. Without the need for special reference on the purchase order, the safety equipment required according to the valid accident prevention regulations shall also be delivered.
- 9.5 By confirming a purchase order from Datwyler, the contractual partner accepts the applicable valid version of the „Datwyler Supplier Code of Conduct“, available at www.datwyler.com under “Supplier”, and shall comply with its principles and requirements.
- 9.6 Warranty is based on the statutory provisions unless stipulated otherwise by these Purchasing Conditions.
- 9.7 Datwyler may raise complaints regarding defects as follows: for evident defects, within ten days after receipt of the delivery; for complex subassemblies, within twenty days after receipt of the delivery; and for hidden defects, within ten days of discovery.
- 9.8 The warranty period for contractual products is thirty-six months calculated from the transfer of risk.
- 9.9 In addition to statutory warranty claims, Datwyler may return the defective delivery at the contractual partner's cost and risk and may, in its sole discretion, request replacement or reworking. The contractual partner shall bear the necessary expenses. In imminent danger or especially urgent cases, Datwyler may, without setting a grace period, rectify itself the identified defects at the cost of the contractual partner, or may have them rectified by third parties. After replacement or reworking, the entire warranty period re-starts again.
- 9.10 The contractual partner shall inform Datwyler about potential errors and potential or actual dangers which have affected its customers (or their customers) due to its deliveries or services.
10. Product liability and insurance
- 10.1 If a damaged or injured party asserts claims arising from product liability and/or from any other basis of liability against Datwyler based on domestic or foreign law, the contractual partner is obliged to fully indemnify Datwyler in respect of the damage compensation claims upon first request, provided that the cause is to be found in the contractual partner's sphere of control and organization.

10.2 As part of its liability for cases of damage or loss as defined in clause 10.1, the contractual partner shall reimburse all expenses pursuant to Art. 41 ff. and 419 ff. OR (Swiss Code of Obligations) and to any other applicable provisions which arise from or in connection with a recall action launched by Datwyler. Insofar as possible and reasonable, Datwyler shall inform the contractual partner about the content and scope of the recall measures to be undertaken, and shall give it the opportunity to comment.

10.3 The contractual partner shall maintain a product liability insurance with a sum insured which is appropriate to the specific products and sectors. Datwyler explicitly points out that it acts among others as a supplier to the automotive industry as well as a manufacturer of food and pharmaceutical packaging, which is deemed to be already known to the contractual partner when it takes out insurance. Any further damage compensation claims due to Datwyler shall not be affected.

11. Commercial property rights

11.1 The contractual partner confirms that no rights of third parties are violated by Datwyler in connection with the contractual partner's deliveries and services.

11.2 Upon first written request, the contractual partner shall fully indemnify Datwyler in respect of claims which a third party asserts due to violation of its rights. The obligation to indemnify also relates to all expenses which Datwyler necessarily incurs due to or in connection with claims asserted by a third party. At Datwyler's request, the contractual partner shall assist Datwyler with court proceedings or shall enter into legal disputes at its own costs. Datwyler shall only conclude agreements, and in particular settlements, with third parties with the contractual partner's consent.

11.3 The statute of limitations is 10 years.

12. Liability

12.1 The contractual partner shall be liable towards Datwyler for all losses and damages caused and shall fully indemnify Datwyler regardless of negligence or fault.

12.2 Datwyler herewith excludes all liability to the fullest extent legally permitted.

12.3 The liability exclusion as per clause 12.2 shall also apply to the personal liability of the directors, officers, employees, staff, representatives and vicarious agents of Datwyler.

13. Confidentiality

The information communicated to Datwyler in connection with a purchase order is not deemed to be confidential, unless agreed otherwise in writing.

14. Prevention of corruption

- 14.1 Datwyler does not tolerate any corruption. This is understood to mean all actions by a person which are intended to offer a benefit to a natural person or legal entity, in order to induce an action or omission which is contrary to obligations, and every offer and acceptance of such benefits.
- 14.2 If the contractual partner violates the above provision, Datwyler may terminate the contractual relationship at any time with immediate effect and may demand compensation for damages. Claims for compensation for damages by the contractual partner are excluded in this case.

15. Place of performance

The place of performance for deliveries is the destination indicated by Datwyler or, in the absence of a specific indication, Datwyler Switzerland Inc. in Schattdorf, Switzerland. The place of performance for payments is the location indicated by Datwyler or, in the absence of a specific indication, Datwyler Switzerland Inc. in Schattdorf, Switzerland.

16. Final provisions

- 16.1 Exclusive place of jurisdiction for all obligations arising from the contractual relationship is the registered office of Datwyler, or at Datwyler's choice also the registered office of the contractual partner. The agreement on the place of jurisdiction also applies to contractual partners with registered offices abroad.
- 16.2 In respect of the contractual relationship existing between Datwyler and the contractual partner, all rights and obligations arising therefrom and all disputes in connection therewith, substantive Swiss law shall exclusively apply, to the exclusion of any conflict of law provisions, including without limitation the UN Convention on the International Sale of Goods (CISG, dated 11.04.1980).
- 16.3 If a provision of these Purchasing Conditions or a provision in connection with other agreements should be or become ineffective, the effectiveness of all other provisions shall not be affected.