



# DATATECHNIC GENERAL TERMS AND CONDITIONS OF SALES

Version dated February 27, 2017

## 1. GENERAL CONDITIONS

The present general conditions of sales govern the relationship between DATATECHNIC (hereafter the "Supplier") and its customer (hereafter the "Customer") with regard to the supply of equipment (hereafter the "Equipment") and provision of services (hereinafter the "Services") as set out in the Order (hereinafter the "Order").

By signing and sending an order, the Customer agrees to the present General Conditions of Sales and makes its general conditions or any similar document void as against the Supplier, unless express and written agreement of the Supplier in the Order acknowledgement.

The contract (hereinafter the "Contract") will only be concluded upon receipt by the Customer of the Order acknowledgement from the Supplier and upon fulfillment of the conditions stipulated in article 2.

The minimum order value is 150 euro exclusive of VAT. Where the total value exclusive of VAT of the ordered items is lower than 150 euro, a surcharge will be invoiced in order to meet this minimum order value.

The special conditions (hereafter the "Special Conditions") may validly appear on the Order with the prior and express agreement of the Supplier and may also appear on the Order acknowledgement from the Supplier.

The Contract is made up of the following documents which have precedence according to the following documents:

- ▣ the Order acknowledgement;
- ▣ the Order;
- ▣ the Supplier's offer (hereafter the "Offer");
- ▣ the present General Terms and Conditions of Sales.

## 2. COMING INTO FORCE

Unless otherwise agreed in the Special Conditions, the Contract will come into force once the following conditions have been met:

- (a) receipt by the Supplier of the advance payment provided for in article 11 hereafter or in the Special Conditions;
- (b) provision by the Customer of all data needed for the contract performance;
- (c) sending of the Order acknowledgement by the Supplier to the Customer.

If conditions (a), (b), and (c) listed above are not carried out within two (2) months of receipt of the Order, the Contract will no longer be binding on the parties and they will be able to revise their conditions and decide freely whether or not to enter into a new contract..

The effective commencement date of the Contract will constitute, unless otherwise stipulated in the Special Conditions, the beginning of the Supplier's contractual obligations and the contractual time limit for delivery of Equipment and completion of the Services.

If the effective commencement date of the Contract is delayed due to conditions stipulated in the present article to the extent that the Supplier is unable to adhere to the works schedule set out in the Contract, the time limit for carrying out the work will be automatically adjusted to take into account the new effective commencement date of the Contract, without the customer being entitled to any damage or penalty.

## 3. EXECUTION OF THE CONTRACT

### 3.1 SUPERVISION

Where provided for by the Special Conditions, the Customer may supervise the execution of the Contract. In this case, the Customer or his representatives will have access to the premises of the Supplier and his suppliers or sub-contractors during their working hours. If the Special Conditions provide for inspection, the Customer will be responsible for the full cost of such inspection. If such inspection should in any way interfere with the execution by the Supplier of his obligations under the Contract within the agreed time limits, those time limits will be automatically adjusted as a result.

### 3.2 PERFORMANCE – FEATURES OF EQUIPMENT

The performance and features of the Equipment will be measured and guaranteed according to technical supply conditions or, failing that, according to current laws and regulations at the date of the Supplier's offer or, in the absence of specific laws or regulations, according to the manufacturer's conditions.

Unless otherwise stipulated in the Special Conditions or the Offer, control tests carried out by an outside organization will be paid by the Customer.

### 3.3 SUB-CONTRACTING

The Supplier reserves the right to sub-contract all or part of the manufacture of Equipment and/or the execution of the Services.

### 3.4 PARTS / EQUIPMENT PROVIDED BY THE CUSTOMER

The Supplier can only be liable for the parts / equipment entrusted to it by the Customer if such parts/ equipment are handed over in good working order and the Customer can prove that the Supplier used them in an unintended manner.

Unless stipulated otherwise in the Special Conditions, the Supplier will use the parts / equipment which are entrusted to him by the Customer as received, without modifying them in any way.



### **3.5 GENERAL OBLIGATIONS OF THE CUSTOMER**

The Client must provide in time and throughout the execution of the contract any authorizations and/or instructions, equipment, facilities (electricity, water, etc.), services (cleaning, supervision, etc.) and works, as well as access to the site and the equipment being worked on by the Supplier and, in general terms, anything that the Supplier may require in order to execute his contractual obligations, even if not expressly stipulated in the Contract.

The Client shall inform the Supplier, prior to the conclusion of the Contract, any information and documentation needed by the Supplier to carry out his Services. Information that was unavailable to the Customer at the coming into force of the Contract must be transmitted to the Supplier promptly according to the execution schedule for the Services.

The Customer also undertakes to communicate to the Supplier all applicable laws, standards and regulations to draw up his offer, it being specified that the supplier is bound only by laws and regulations applicable at the time of the offer.

The Customer must promptly obtain from the competent administrative authorities any necessary authorizations in order to start the installation within the time limits allowed for in the execution schedule, in particular so that the Supplier can make the trials as scheduled in the Contract, if necessary.

The Customer must inform the Supplier in time and keep the Supplier informed of any special conditions associated with the site or with existing equipment that is part of the background to or covered by the Services such as safety standards on the site and any possible dangers related to nearby installations and/or equipment.

The Supplier may at any time refuse to execute the Services if he believes that the necessary conditions, particularly in terms of safety, are not fulfilled, without the customer being entitled to any damage or penalty.

## **4. AMENDMENTS**

No modification to this Contract shall be valid unless confirmed by a written document signed by the authorized representatives of the Supplier and the Customer. The Supplier cannot be held liable for the execution by his employees of any Services requested by the Customer other than those expressly specified in the Contract.

Any modification of the Contract, whether made necessary in the course of the execution of the Services or requested by the Customer that increases or decreases the volume of Services will give rise to a supplementary payment being made to the Supplier.

The Supplier will not be obliged to accept any modification of the terms of the Contract which, taking into account the modifications that have already been made, would decrease the initial price of the Contract by more than five per cent (5%).

Any modification made at the request of the Customer will result in a corresponding adjustment of the time limit for execution and/or contractual guarantees, as the Supplier shall deem necessary.

The price stipulated in the Contract shall exclude taxes, shall cover the Equipment and the Services and is based on the provision of the Services under normal conditions, without interruption or suspension by the Customer or third parties.

Supplementary Services resulting from the modifications described in the above paragraphs shall be invoiced in accordance with the provisions contained in the Special Conditions.

Without prejudice to the provisions mentioned in article 3.2 above, the Supplier may, during the execution of the Contract, modify the Equipment and the content of the Services in the event of imperative circumstances affecting the execution of the Contract such as changes in technical standards, manufacturing methods or laws or regulations. If the effects of these modifications make it impossible or more difficult to carry out certain obligations mentioned in the Contract, particularly with regards to delivery times, or justify a price supplement, the Supplier will pass relevant supporting documents on to the Customer. The parties will then sign an amendment to the Contract containing the modifications needed to take into account the new restrictions and their consequences, particularly in financial terms.

## **5. DELIVERY**

Unless otherwise agreed in the Special Conditions, delivery occurs when the Equipment is made available to the Customer in the workshops or shops of the Supplier or sub-contractors of the Supplier, by whatever means delivery may be made.

The Customer will then carry out an in-depth examination of the delivered Equipment. The acceptance of the Equipment without any reservation releases the Supplier from the warranty of apparent defects and the obligation to deliver Equipment in accordance with what was agreed.

Unless otherwise agreed in the Special Conditions, Equipment delivered and stored on Purchaser site will be at the risk of the Purchaser. As such, the Purchaser bears responsibility for the theft or deterioration of the Equipment.

The Contract will be subject to the quality control procedures of the Supplier, who will carry out his usual checks and/or tests.

## **6. ACCEPTANCE**

Acceptance will be established by both parties in a written report and be pronounced with or without reservation.

Any material used by the Customer before acceptance means acceptance.

The acceptance by the Customer nullifies all claims from him for apparent conformity defects formulated according to the contract, unless stated in reservation.

### **6.1. ACCEPTANCE AT THE SUPPLIER'S PREMISES**

Unless otherwise agreed in the Special Conditions the acceptance takes place in the Supplier's premises or in the ones of his own suppliers or sub-contractors. By Non-Signature of the acceptance by the Customer, the acceptance will be deemed to have occurred fifteen (15) days after the Supplier has requested the Customer to confirm receipt by mail or fax.

## 6.2. ACCEPTANCE AT THE CUSTOMER'S PREMISES

The special conditions may allow the Equipment to be mounted or installed at the Customer's offices or site by the Supplier or his own suppliers or subcontractors. In this case the acceptance of thus mounted or installed material will take place in the said premises or site.

In absence of a signed confirmation of the acceptance by the Customer, the assembled or installed Equipment will be deemed accepted on the first of the following dates:

- ▣ one (1) month after the start of production of the Equipment by the Supplier;
- ▣ the day on which the Equipment is first used by the Customer;
- ▣ fifteen (15) days after the Customer has been notified to accept the Equipment.

The Customer will not be able to refuse or defer acceptance as long as the characteristics and principal performances of the installation are respected. The potential Customer's contestations concerning points not affecting these characteristics and performances will be subject to reservation which will be registered in the pre-acceptance.

Those reservations, when justified and not contested by the Supplier, will be lifted by the Supplier within a reasonable period of time. Then, the Customer will have to sign the final acceptance.

If the Contract obliges the potential Supplier to respect one or several obligation(s) or use(s) such obligations will only be valid if their substance and criteria for methods of evaluating the performed work are clearly explained and unambiguous. To this end, the Customer provides the Supplier with sufficient quantities of the products (of appropriate quality) to be implemented as well as the items to be processed so that the Supplier can if necessary carry out test runs of the uses specified in the Contract in satisfactory conditions and at a time when the Supplier is ready to conduct them.

## 7. DELAYS

If the Special Conditions provide for the application of penalties for delay payable by the Supplier, they will only be applicable if the delay results of the exclusive responsibility of the Supplier and after the Supplier have received a notification to carry out the delayed work. The total amount of these penalties cannot in any case exceed 5% of the amount of the Contract excluding taxes.

The payment of penalties provided for in the above clause will constitute a lump sum, representing full compensation to the Customer for any damages he may have suffered due to the delayed fulfillment by the Supplier of his contractual obligations.

No penalty or compensation of any sort will be due by the Supplier in the event of a delay caused by an event attributable to the Customer, particularly in the case of default or delay by the Customer the fulfillment of his contractual obligations or where the Customer orders extra work that affects deadlines provided for in the Contract, an event of Force Majeure as defined in article 8 below, the actions of a third party or where the Customer is unable to prove that the delay caused damage.

The Customer will indemnify the Supplier for all extra costs and/or damages that may have arisen as the result of his failure to perform or delay in performing any of his obligations within the Contract, or any event which is attributable to him, notably those resulting from the extended presence of the Supplier's employees on the site and those resulting from a consecutive delay in further payments provided for under the Contract.

Extra costs specified by the Supplier in order to meet a new deadline in the works schedule at the request of the Customer will be payable by the Customer.

## 8. FORCE MAJEURE

If the execution of a contractual obligation is prevented, restricted or delayed for reasons of force majeure, i.e. any unforeseeable, external cause including, but not limited to, any natural catastrophe, arbitrary act of government, war, hostility, industrial disputes (whether arising from one or other of the parties or elsewhere), shortages or delays in supply of raw materials or capital goods, fire, explosions, accidents or breakdowns in machinery or essential equipment, which the party whose contractual execution is compromised, could not overcome by reasonable efforts, this party shall be exonerated of all responsibility, penalties due to the prevention, restriction or delay in execution and the time limit for completion of the work will be extended as a result.

The Party claiming the circumstances mentioned above must immediately inform the other Party in writing of their occurrence and cessation. In the absence of information about the circumstances in question, the interested Party cannot rely upon them unless the circumstances also prevent such information being given.

If execution of the Contract becomes impossible for more than three (3) months due to an event of Force Majeure as defined above, the parties must negotiate the terms of the Contract to enable the total or partial completion of the project. Otherwise, the Contract will be automatically terminated and the Customer shall pay to the Supplier the price of the Equipment delivered and the Services provided or in progress.

## 9. WARRANTY

### 9.1 DEFINITION AND LIMITS OF THE WARRANTY

The Supplier's contractual warranty covers defects in the design, material and manufacture of the Equipment. The Supplier will remedy these defects in the way he deems appropriate, whether by repair, modification or replacement. The Supplier shall pay for the cost of replacement parts and labour relating to the execution of his warranty.

Replacement parts used under the warranty are the property of the Supplier. They must be returned to him by the Customer on request at the place from which they were delivered.

The Supplier reserves the right to modify the delivered Equipment in order to satisfy its warranty obligations.

Unless otherwise agreed, the replacement of a liquid, of a worn part and of any consumable product is not included in the warranty.

The warranty is conditional firstly on the Customer notifying the Supplier without delay of any defect, accompanied or followed as soon as possible by any available information relating to the observed defect, and secondly, on the Supplier and, if necessary, the Supplier's insurer's representative being able to examine the defect and its material consequences.

Unless otherwise stipulated in the Special Conditions, the Supplier will only perform work under the terms of the warranty on its normal working days and in the presence and with the assistance of the Customer's representatives, and within a reasonable time limit taking into account the extent of the problem. The time limit begins once the Customer has informed the Supplier of the problem by fax or e-mail.

Extra costs related to work carried out more quickly and/or at night and/or on working days as requested by the Customer and authorized by the competent administrative authority, if necessary, will be payable by the Customer.

However, the Supplier is not obliged to guarantee the Customer in the following cases:

- ❑ defects arising from the design, material, manufacturing techniques or assembly imposed by the Customer and about which the Supplier had issued written reservations,
- ❑ defects in the Equipment imposed by the Customer in his tender offer and about which the Supplier had issued a written reservation in the Offer,
- ❑ defects in the plans, specifications, Equipment or Services that are not part of the Supplier's obligations under the Contract, even if the Supplier has commented on them,
- ❑ defects arising from products or materials supplied by the Customer and used together with the Equipment in the running of the installation including the said Equipment,
- ❑ work on the Equipment carried out by the Customer himself or a third party under conditions that the Supplier had not agreed to in writing beforehand,
- ❑ defects or deterioration caused either through the fault or negligence of the user of the Equipment, or by an event of Force Majeure or an act of God,
- ❑ non-compliance with the Supplier's instructions, particularly if the Equipment is used other than for its intended purpose, and/or the correct operation of the Equipment or the installation including the Equipment, particularly in terms of maintenance,
- ❑ normal wear and tear of the Equipment,
- ❑ exposure of the Equipment to weather conditions or to an environment likely to damage it,
- ❑ use of the Equipment by non-competent and/or unqualified employees of the Customer.

## 9.2 DURATION AND START DATE OF THE WARRANTY

The warranty is limited to two (2) years following the start of production. The repair, modification or replacement of a part during the warranty period, will not lead to an extension of the warranty.

## 9.3 WARRANTY CONDITIONS

In order to claim under the warranty, the Customer must notify the Supplier in writing of the defects he perceives in the Equipment and provide any evidence it may have of such defects. The Customer must prove the fault of the Supplier during the execution of his services. The Customer cannot rely on the warranty in order to delay or suspend payment.

## 10. PRICE

The prices contained in the Offer are valid from two (2) months from its delivery to the Customer. Beyond this time limit, the Supplier reserves the right to modify his prices at any time.

The prices are valid for delivery EXW (ex works - in accordance with the International Chamber of Commerce's Incoterm 2010) unless otherwise stated on the Order.

However, the price contained in the Offer will remain valid during the above-mentioned time limit only under current laws and regulations. Any change in standards or legal or regulatory restrictions applicable to Equipment and/or Services that form part of the Offer will automatically be reflected in the prices of the said Equipment and/or Services.

The total amount of the present Contract is set out in the Order.

The prices of the delivered Equipment will be automatically revised using applicable official indices in the case of an increase in the price of raw materials and/or semi-finished products and/or services that form part of the Equipment.

## 11. PAYMENT

The payment conditions are mentioned in the specific conditions. Payments are made at the registered office of the Supplier net and without discount.

Unless stipulated otherwise in the Special Conditions, the conditions of payment are set out at 30 days back to invoicing.

Unless stipulated otherwise in the Special Conditions an advance payment of 50% of the total price of the Contract will be paid by the Customer once the Order has been issued.

- In the event of payment delay, the Customer will be indebted full penalties and the not paid sum will bear interest according to the current European Central Bank Interest rate raised of ten points. Furthermore, the Customer will also owe a 40 euro compensation per overdue invoice for recovery costs to the Supplier, according to clause 121 of French law 2012-1387. When the recovery costs are higher than this fixed compensation, the Customer will pay an accountable supplementary compensation.

If the order to pay does not result in payment after fifteen (15) days, the Supplier has the right to suspend the Contract until payment of the sums due. If both parties decide jointly to resume execution, the contractual time limit for completion of the Contract will be extended to take into account the period of interruption. Interest provided for in the above paragraph will continue to apply under the same conditions and following the same methods.

## 12. TRANSFER OF TITLE AND RISK

12.1. Ownership of the delivered equipment will not be transferred to the customer until the contract price is paid in full.

The Customer is prohibited from modifying, incorporating, pledging or re-selling the delivered Equipment until it is fully paid for at the Contract price except with the express prior authorization of the Supplier.





The Customer undertakes to take all steps necessary to protect and keep separate the delivered Equipment, to inform the Supplier of steps taken and to allow the Supplier free access to the premises where the Equipment is stored or installed.

Until the transfer of title to the Customer, the Supplier may at any time require the return of the Equipment already supplied. If such request is not satisfied within eight (8) days of receipt of the written request, the Supplier may, without prejudice to his other rights, take possession of the said Equipment, remove it and use it as he wishes, and to this end enter the premises where it is stored and remove it from any other goods into which it may be incorporated.

If the Customer fails to pay the Supplier the sums payable to the latter as they fall due, the Supplier may claim and sell the delivered Equipment if the order to pay results in no payment after eight (8) days.

In case of liquidation and or bankruptcy of the Customer, the Supplier will have the right to claim and sell the Equipment in accordance with the applicable laws and regulations.

12.2. The equipment risk transfer takes place at the acceptance.

### **13. INTELLECTUAL PROPERTY RIGHTS**

The Supplier has and will retain sole ownership of, without limitation, all drawings, plans, models, prototypes, software and all information related to its Services as well as intellectual property rights created or obtained by the Supplier before and during the preparation of the offer or during the execution of the Contract.

The purchase of Equipment provided by the Supplier, in no way confers on the Customer the right to use intellectual property rights attached to this Equipment.

Starting from the coming into force of the Contract and exclusively in the context of the above, the Supplier grants the Customer the non-exclusive right to use the documents and the information mentioned above solely for the purposes of operating the Equipment.

### **14. CONFIDENTIALITY - SECRECY**

The Supplier will retain ownership of its research transmitted as well as all plans, models and other documents issued by it that have been passed on to the Customer or that the Customer may have become aware of when researching the Offer and/or executing the Contract. Such items may only be used by the Customer and only, if necessary, for the purposes of execution of the Contract.

These documents are confidential and may not be distributed, published or in any way shared with third parties, without limitation of time, without the express prior and written consent of the Supplier. These documents must be returned to the Supplier at his first request if the Customer has decided not to place an order following the Offer or, once the Contract has expired, if the Customer places an Order with the Supplier.

If the Customer does not accept the Offer, he will return to the Supplier all technical documentation contained in the Offer and any copies that may have been made or else destroy them within one week with written confirmation to the Supplier.

### **15. LIABILITY**

The liability of the Supplier is strictly limited to the obligations expressly defined by the Contract and can be disputed only within the framework of the French law.

With the exception of contractual penalties described in article 7, the Supplier may under no circumstances be obliged to indemnify for operating losses, lost production, profits, contracts, income, losses of a financial nature and, more generally, for consequential or non-consequential damage, which the Customer may have suffered due to the execution of the Contract.

All penalties or damages provided for by the Special Conditions will be of a definitive, lump-sum nature and will be exclusive of any other sanction relating to the events that gave rise to them.

Except in the case of bodily injury, the Supplier's total liability under the Contract is limited – all causes and all damages included – to the Contract price excluding any amendments.

The Customer guarantees that his insurers will waive claim against the Supplier beyond the limits and exclusion referred to in this Article 15.

### **16. FIRE - EXPLOSION**

If the Special Conditions stipulate that the Equipment must be assembled and/or installed and/or activated by the Supplier or his own supplier or sub-contractors on the Customer's site or premises, the Customer is responsible for protecting the assembly areas against fire during assembly and/or installation and/or activation of the delivered Equipment, unless otherwise stipulated in the Offer or the Special Conditions.

The Supplier will not be held liable for damages caused by fire and/or explosion if the Customer had not previously taken all the customary precautions, and in particular if he had failed to obtain a hot-work permit prior to undertaking the work in accordance with current regulations, if he had failed to implement the fire safety measures needed to protect the Equipment during trial runs and, once production has commenced, or if he fails to equip any piece of Equipment with adequate, standard safety features when required, unless the Supplier was not given responsibility for these measures under the Contract.

### **17. TERMINATION**

17.1 If either of the parties fails to execute any of its essential contractual obligations, and keeps failing fifteen (15) days after a formal notice sent by the means of a registered letter with an acknowledgement of receipt, without prejudice to provisions stipulated in articles 8 and 11, the non-breaching party:

- if it is the Supplier, notify to the Customer the termination of the Contract, require the payment of services already performed or in progress, of delivered materials and of the remaining amount of the Contract, without prejudice to damages.

- if it is the Customer, notify to the Supplier the termination of the contract and pay to the Supplier on evidence, the services already performed or in progress, the amount of materials delivered or in progress.

17.2 The present Contract will be able to be unilaterally terminated by the Supplier, without prejudice to damages he will be able to claim at any time, automatically and without legal formality, fifteen (15) days after the sending date of a registered letter to the Customer with an acknowledgement of receipt, in case of :

- establishment of cessation of payments of the Customer,
- court-supervised recovery or insolvency procedure against the Customer,
- diligent action against the Customer under the law relating to court-supervised recovery and liquidation or under any other debtor protection law or under any other law with similar aims or effects,
- winding-up, liquidation procedure against the Customer.

## 18. SUPERVENING UNFORESEEABLE EVENTS

If a change in circumstances unforeseeable at the contract signing time makes its execution excessively expensive for the Supplier, the Supplier can ask the Customer – who has to accept - for a renegotiation of the contract price.

## 19. BREACH

In case of Supplier's breach of one of his substantive contractual obligations, if the Customer decides to continue or to make a third party continue the execution of the contractual duties, this will be at the Customer's risks and expenses.

The Customer who claims for a non-execution or a defective execution of the Supplier cannot :

- refuse to pay,
- make a clearing,
- decrease unilaterally the contract price.

Par ailleurs, when it is evident that the Customer will not fulfill his contractual duties, the Supplier can suspend the fulfillment of his own duties.

## 20. CHANGE OF LEGISLATION

If during the validity of the offer and after the signing of the Contract any law, regulation, ordinance, standard, norm, comes into force that leads to a decrease or increase in the cost of the Contract execution or which affects the Supplier's execution of its contractual obligations, the Contract price will be adjusted as a result.

## 21. SETTLEMENT OF DISPUTES – APPLICABLE LAW

Any dispute arising between the parties concerning the validity, interpretation, execution or cancellation of the Contract and which cannot be amicably settled will be brought before the Paris Commercial Court.

The Contract will be governed by and construed in accordance with French laws.