

# General Terms and Conditions of Purchase (2015) of FMW Förderanlagen GmbH



Our orders shall exclusively be governed by the terms and conditions listed below unless expressly agreed otherwise in writing in such orders. These terms and conditions shall apply even if they are in contradiction to the General Terms and Conditions of the Contractor, unless we expressly confirm the applicability of the Contractor's conditions in writing.

**1. Validity:** Basically, only written orders shall be valid. Telex and telefax messages will also be deemed written documents. Oral agreements or agreements by telephone will be deemed binding in the form in which they are confirmed by us in writing. Our orders shall be signed and sent back to us, as order confirmation, within a period of 7 days. Any deviation from the order, in particular by transmitting different terms and conditions of sale or delivery or by including any modification in an order confirmation, shall only be valid if expressly accepted by us in writing. Silence on our part can never be deemed consent or tacit modification of our Terms and Conditions of Purchase. If we do not receive an order confirmation within the stated period, the delivery/performance will be deemed the unconditional and full acceptance of our Terms and Conditions of Purchase.

**2. Offer:** Offers shall be established free of charge and not binding on us.

**3. Scope of Deliveries and/or Work:** The work to be performed and/or deliveries to be made by the Contractor shall be performed and made in their entirety and in such way that they are state-of-the-art at the time of order, new and of best quality, as well as in accordance with any statutory provisions, relevant ordinances and regulations, technical standards, and regulations of professional associations, etc., all as applicable and in force in Austria and at the place of performance. Deliveries above or below the ordered quantity cannot be accepted unless we expressly consent thereto in advance; such consent shall be in writing. The scope of work and/or deliveries shall include any and all usual incidental services and other parts necessary to ensure the guaranteed properties, in particular the output of the object ordered, even if such parts or incidental services are not expressly specified. We may demand changes in the design or execution of the object of delivery, to the extent such changes can be reasonably expected of the Contractor. The effects resulting from such changes, especially any cost increases or decreases, as well as the delivery date shall be reasonably agreed upon by mutual consent. Requests for changes which are communicated in personal or telephone conversations shall be subject to subsequent confirmation in writing.

**4. Documents/Parts Supplied by the Customer:** Any specifications, drawings and other documents supplied by the Customer shall be compared with the text of the order and shall also be examined for their correctness in other respects. If any discrepancy found is not communicated to the Customer immediately after receipt of such documents, the Contractor shall be liable for such discrepancy. The said documents are our sole intellectual and physical property to which we reserve all rights. The documents may only be used for the agreed purpose and may neither be copied nor made available to third parties or published without our written consent, and shall at all times be treated confidentially. Parts supplied by the Customer (existing material, components, etc.) shall in any case remain the property of the Customer, even after processing by the Contractor and/or mixing or combination by the Contractor with other products. In invoices for goods delivered, all such parts shall be designated as "supplied by the Customer, free of charge", specifying their quantity and value. Any and all attachments, annexes and schedules to the order shall be integral parts of the order.

**5. Prices:** All prices quoted are fixed prices and will be deemed to cover any and all incidental services and other expenses, including transport, unloading and necessary packaging. Unless agreed otherwise, we are entitled to make payment in euros.

**6. Delivery Date:** Unless expressly agreed otherwise, all periods of time/dates/deadlines stated in the order shall be fixed dates and will be deemed to have been observed if the goods arrive at the indicated address within or prior to such periods of time/delivery dates/deadlines, respectively. In case of an impending delay of delivery we shall be informed thereof immediately in writing, stating the causes and the estimated duration of the delay; our right to rescind the contract without granting a grace period shall not be affected thereby. If it becomes obvious already before the delivery date that the Contractor is unable to execute the respective order properly and/or in time, we are entitled to carry out and make such work/deliveries ourselves or through third parties, with the extra costs thus incurred by us to be borne by the Contractor. We are entitled to carry out all appropriate on-site checks and inspections at any time to satisfy ourselves of the due progress of the ordered work as to quality and delivery date. Delivery dates will only be deemed met if the necessary documentation is also delivered in due time. In case of early delivery without our consent we reserve the right to bill related costs (warehouse rent, etc.) to the Contractor.

**7. Delivery:** Usually each order shall contain the terms of delivery. Delivery shall be made at the risk and expense (including without limitation insurance costs) of the Contractor to the delivery address designated by us.

The Contractor shall guarantee careful packaging of a quality suitable for the delivered goods as well as a form of loading suitable for transport. Any and all damage caused by improper packaging or transport shall be at the expense of the Contractor. The Contractor shall notify us in due time of heavy cargo and/or special transports (including transport of hazardous goods) prior to dispatch of the transport. The place of performance concerning documentation shall be the place where the order is given.

The risk of accidental loss or destruction, damage, etc. of the goods shall pass to us only at the time of actual delivery and unloading at the indicated delivery address as well as acceptance of the goods by us, independent of the delivery of the goods to the freight forwarder.

If, however, the delivery includes erection, commissioning, or formal handover, the risk shall pass only after all these measures have been completed. Return deliveries shall be at the risk and expense of the Contractor. The place of performance shall be Kirchstetten, Austria, or the destination specified by us.

Delivery shall be made from Monday through Thursday from 6.00 a.m. through 11.45 a.m. and from 12.15 p.m. through 2.30 p.m. and/or on Friday from 6.00 a.m. through 11.00 a.m. Non-observance of the mode of dispatch, the forwarding instructions or the delivery address shall entitle us to raise claims for damages. Our confirmation on the duplicate of the delivery note will only be given on a conditional basis, i.e., the goods will be deemed accepted only if no shortfalls or defects are detected during the subsequent examination. The Customer is not obligated to make an immediate complaint pursuant to sec. 377 of the Austrian "HGB" (Commercial Code). The Customer will only be liable for damages in case of intent or gross negligence.

**8. Invoice:** The invoice shall be sent to us in duplicate in case of domestic deliveries and in triplicate in case of deliveries from foreign countries and shall specify the order number, the order date as well as our reference. Billing several orders in a single invoice, except for collective invoices agreed upon in writing, is not permissible. We reserve the right not to process and to send back invoices which do not fully correspond to our terms and conditions. Any such invoice will be considered not to have been issued until receipt of a new invoice.

**9. Payment, Assignment:** The payment period shall commence upon acceptance of the goods and presentation of the proper invoice (see also Section 8). In case of early delivery and invoicing, the payment period shall commence at the agreed delivery date, in case of complaints only after the issues raised therein have been settled in full; any discount agreed upon shall remain in force. C.O.D. consignments will not be accepted, except where this is agreed upon in writing in the order. In case of late payment by the Customer, the Contractor can only claim the statutory default interest, to the exclusion of any further claims. Payment does not constitute confirmation of correct delivery and thus does not imply a waiver of claims to which we may be entitled, such as claims for defective performance, warranty claims and claims for damages.

The Customer may at any time set off any claims of whatever nature against claims of the Contractor. Complaints about the work or deliveries shall entitle us to withhold payment. It is understood and agreed upon that all payments are only made on a conditional basis, fully taking into account any and all counterclaims arising out of other business transactions and/or orders placed by us or by companies of the NEUSON group.

The assignment of invoiced amounts shall only be permissible subject to our prior written consent.

**10. Penalty:** If any penalties have been agreed upon, the Customer shall not be barred from raising claims for damages in excess thereof. The payment of a penalty shall not release the Contractor from its performance obligation.

**11. Force Majeure:** In the event of force majeure (for the purposes hereof, this expression shall exclusively mean war or war-like events, attachment without any fault, acts of God and supplant strikes), the Contractor shall notify us without delay and submit a confirmation by the competent chamber of commerce. For the duration of such an event of force majeure, the contractual obligations will be deemed suspended.

**12. Guarantees:** The Contractor guarantees that the goods delivered are fit for use according to their intended purpose, of perfect quality, have the necessary and guaranteed properties, and are free of any industrial or intellectual property rights and other rights of third parties. Unless otherwise agreed in writing in the order, the guarantee shall be valid for a period of 24 months as from the use of the goods according to their intended purpose, however for not more than 36 months as from delivery of the goods. The Contractor undertakes to immediately remedy, on site and at its own expense, any and all defects occurring within such period and to compensate any damage related to such defects, including the costs for the detection of such defects, the disassembly costs and costs of re-assembly, etc. Other statutory relief notwithstanding, we are entitled to demand either cancellation of sale, or replacement delivery (free of charge), or removal of defects (free of charge), or a reasonable discount. In case of minor defects, when a project is at a critical stage regarding its time schedule, or in case of default we are entitled to carry out any necessary repair work or replacement deliveries either ourselves or through third parties, at the expense of the Contractor and in a manner deemed suitable by us, without having to grant a grace period. In cases where defects are remedied by us or by third parties, the guarantee of the Contractor for deliveries shall remain in force.

In case of replacement deliveries or the remedying of defects the guarantee period shall start anew. Acceptance, or the approval of drawings presented, does not mean that we waive our right to raise claims under warranty.

If defects occur repeatedly or if defects are of a fundamental nature, any like parts delivered, even if they are not directly affected, shall be improved accordingly. The Contractor shall be responsible for all the necessary storage, operating and safety regulations being correct and complete.

**13. Product Liability:** We do not accept any restriction or limitation by the Contractor or its suppliers of the obligations, liabilities and compensation claims of whatever nature to which we are entitled pursuant to the provisions concerning product liability, and any such restriction or limitation shall be invalid.

**14. Liability, Collateral:** We may use the collateral to be furnished by the Contractor, such as letters of guarantee/comfort, bank guarantees, and retention money, for the satisfaction of any claim whatsoever. In case of damage, if any, related to the order placed, the Customer will be liable only if the Customer is proven to have acted with gross negligence or intent, and such liability, if any, shall be limited to half the order value. The Customer cannot be held liable for indirect or consequential damage, such as, e.g., loss of profit or interest income, loss of production, etc.

**15. Qualification of the Contractor:** By accepting the order, the Contractor represents that it has procured all such licenses, permits and qualifications necessary for the production and acceptance of the object ordered as are prescribed under the law, the technical rules and regulations, the regulations of the acceptance- or any other third party organizations, the relevant industrial standards, and the terms and conditions of the order. The Contractor is obligated to maintain such licenses, permits and qualifications for the entire duration of the execution of the order and to furnish proof thereof, upon request, at any time. We shall be notified without delay of the expiration or of the withdrawal of such licenses and permits. The Contractor shall perform its work and make its deliveries according to the generally acknowledged technical regulations, observing all relevant laws, ordinances and regulations as well as "ÖNORMEN" (Austrian industrial standards).

Services, such as erection work, after-sales service, etc., shall be rendered by duly authorized and qualified staff which must have valid working permits; such staff must always be available in a sufficient number. We are entitled to reject staff considered inappropriate by us. The Contractor shall be responsible for the relevant safety measures.

**16. Confidentiality:** The Contractor is obligated to treat any and all information confidentially of which it becomes aware in the course of negotiations or in any business relationship which has actually come into existence; this obligation shall survive the termination of the contract. In case of non-compliance with this obligation we are entitled to claim damages.

**17. Place of Performance, Place of Jurisdiction, Applicable Law.** The place of performance concerning the work and deliveries shall be the destination specified in the order. The place of performance concerning payments shall be Kirchstetten, Austria. This agreement and its performance shall exclusively be governed by Austrian law; the provisions of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, shall not apply. The exclusive place of jurisdiction is agreed to be Vienna, Austria.

**18. General Provisions:** The Contractor shall be liable for its suppliers' compliance with our Terms and Conditions of Purchase. If one or more of these terms and conditions are invalid, the validity of the remaining terms and conditions shall not be affected thereby.

If either contracting party ceases its payments and if bankruptcy proceedings are opened against such party or if a petition for settlement, in or out of court, is filed, the other party shall have the right to rescind the contract with regard to such part thereof as has not yet been executed.

These General Terms and Conditions of Purchase (2015) shall fully supersede the preceding Terms and Conditions of Purchase of FMW printed overleaf.