

# FN NEUHOFFER - CONDITIONS OF PURCHASE FOR MACHINERY AND EQUIPMENT

January 2023

In addition to the General Terms and Conditions of Purchase of Neuhofer Holz GmbH, the following special terms and conditions of purchase for Machinery and Equipment apply. In the event of a conflict with the General Terms and Conditions of Purchase, then these Terms and Conditions of Purchase for Machinery and Equipment shall take precedence:

## [1.] Delivery:

[1.1.] The supplier shall deliver a complete machine/equipment that includes all items that are necessary for ensuring satisfactory operation while maintaining the warranted characteristics, even if the necessary items are not itemized separately in the order. For this purpose, the Supplier shall provide the ordering party with a list to the corresponding Purchaser.

[1.2.] The Supplier establishes a specification together with the purchaser, in which all obligations of both the supplier and the purchaser are listed. The specification shall form an integral part of the contract.

[1.3.] The transfer of risk shall take place on the day of acceptance. The supplier shall take out insurance covering transport, installation of the machine/equipment as well as the commissioning phase up to the acceptance of the machine.

[1.4.] Unless otherwise expressly agreed, the supplier is - in coordination with the purchaser - required to install the machine/equipment at the chosen site fully connected and ready to operate. During unloading, the supplier must be present and take over the coordination of these activities.

The supplier must be present during unloading and take over the coordination. Lifting gear and means of transport shall be provided by the purchaser, if possible, with the commissioning being at the supplier's risk.

After complete delivery of the machine/equipment, a protocol shall be drawn up and signed by both the supplier and by the managing director of the purchaser. Subsequently, stage 2 of the terms of payment according to item [9.] shall apply.

## [2.] Delivery date:

[2.1.] The agreed delivery date is considered a fixed date.

[2.2.] In the event of a delay in delivery by the supplier, the purchaser shall be entitled to claim compensation for the delay in the amount of 5% per week and a maximum of 30% of the value of the part of the total delivery which cannot be used in due time as a result of the delay; the assertion of further claims shall remain unaffected.

## [3.] Installation, Commissioning, Trial Operation Acceptance, Acceptance Protocol:

[3.1.] The installation, commissioning and trial operation shall be performed according to the defined schedule mutually agreed with the purchaser.

[3.2.] The Supplier shall take appropriate consideration of the purchaser's operational interests during the installation, commissioning and trial operation and take into account that a partial or

total cessation of the purchaser's operational activities cannot be demanded. The supplier shall not disrupt or impede the purchaser's normal operations more than absolutely necessary.

[3.3.] Once the necessary assembly work has been completed, the machine/equipment will be commissioned. This includes the functional testing with and without load, of parts, groups and the entire equipment. After completion of the commissioning work, the machine/equipment must be handed over ready for operation. A protocol of this shall be drawn up and signed by both the supplier and managing director of the purchaser. Subsequently, stage 3 of the terms of payment according to item [9] sets in. Following this, the trial operation can start; the duration of the trial operation is 4 weeks. During this time, the purchaser's employees are trained by the supplier and the supplier has the opportunity to rectify defects.

[3.4.] After the 4-week trial operation, a one-week acceptance phase takes place. During the acceptance phase, a recording of the operating data ("BDE recording") about the availability of the equipment takes place. During this week a technical availability of 96% is to be achieved (interruptions caused by the customer will be deducted). At the end of the acceptance week, a performance test is carried out over 4 hours, whereby at least 98% of the performance according to the specifications must be achieved. If this is not achieved ("negative acceptance"), the supplier is granted a rectification period of two weeks, after which the one-week acceptance phase takes place again. The process will be repeated until the acceptance is successful. The associated costs shall be borne by the supplier.

[3.5.] Neither the transfer of risk, the system acceptance, nor the beginning of the warranty period are connected in any way to the beginning of the trial run.

[3.6.] The risk shall pass from the supplier to the purchaser upon successful acceptance by confirmation of acceptance in the acceptance protocol. Acceptance must take place on the agreed acceptance date. The acceptance protocol must be signed by the supplier and the managing director of the purchaser; if signed by another person, the machine/equipment shall be deemed not to have been accepted.

#### [4.] Training:

The supplier shall provide qualified technical staff at the site where the machinery/equipment is installed to provide both technical assistance and instruction to the purchaser's staff on the use of the machinery (production staff and employees who can carry out maintenance, IT employees, etc.); The supplier shall ensure that sufficient staff is made available at the purchaser's headquarters or if necessary, in any of the supplier's training centres where this training is to be performed. This user-training shall be provided free of charge to the purchaser. The supplier shall provide refresher training within an appropriate period also free of charge to the purchaser.

#### [5.] Warranty:

[5.1.] The supplier guarantees that all items supplied by him and all services provided by him are technically state of the art and that they meet the relevant legal provisions, as well as the rules and regulations of the respective authorities and professional interest groups. In addition, the respective obligations according to the specifications (see point [1.2] above) are to be observed.

[5.2.] The guarantee period is 36 months.

[5.3.] The warranty period is 24 months. This also applies to spare parts. For repaired or newly delivered spare parts the warranty period starts anew from the date of commissioning.

#### [6.] Service:

The supplier undertakes to provide service from Monday to Sunday and within 24 hours of being

requested by the purchaser. Remote maintenance shall be provided in the time frame from 00:00 and 24:00 hours, also from Monday to Sunday.

#### [7.] Spare parts availability:

The availability of spare parts is guaranteed for a period of 25 years, calculated from the acceptance of the machine/equipment. Spare parts are delivered within 24 hours of order placement by the purchaser.

#### [8.] Right to use software programmes:

The purchaser is granted a non-exclusive and non-transferable right of use to software programmes and the associated documentation. The use is limited to the products for which the programs and documentation are delivered in accordance with the contract. All other rights to these software programs and documentation, including copies and subsequent amendments, shall remain with the supplier. The purchaser undertakes not to make these programs and documentation available to third parties. However, the purchaser shall be entitled to make copies for their own archival and back-up or to support system troubleshooting. However, the provision of source code requires a separate written agreement.

#### The transfer of source code programmes takes place in two stages:

- The provisional source code is to be handed over with the ready-for-operation handover (payment schedule stage 3 is fulfilled when the machine/equipment is ready for operation and the provisional source code has been checked according to the provisions of the source code handover contract and demonstrably handed over in full)
- The final source code is to be handed over with the final acceptance (payment schedule stage 4 is fulfilled when the machine/equipment has been accepted and the final source code has been checked according to the provisions of the source code handover contract and demonstrably handed over in full)

#### [9.] Terms of payment:

- Stage 1:**      **Advance payment:** 20% after the order has been placed (order date) with a payment term of 45 days net for each order as well as against presentation of an abstract, irrevocable and unconditional bank guarantee of a major Austrian or German bank with a minimum term until the planned acceptance and performance plus another 45 days.
- Stage 2:**      **After complete delivery:** 30% with a payment term of 45 days net for each order as well as against presentation of an abstract, irrevocable and unconditional bank guarantee from a major Austrian or German bank with a minimum term until the scheduled acceptance and performance plus another 45 days.
- Stage 3:**      **After handover ready for operation:** 25% with payment term of 45 days net for each order as well as against presentation of an abstract, irrevocable and unconditional bank guarantee from a major Austrian or German bank with a minimum term until the scheduled acceptance and performance plus another 45 days.
- Stage 4:**      **After final acceptance:** 25% with 45 days payment term net.

#### [10.] Security deposit

Unless otherwise agreed, the purchaser is entitled to withhold 10% of the total order value as a non-interest-bearing security deposit to cover any claims covering damages, warranty or guarantee claims or unjust enrichment. This security deposit may be retained for a period up to 45 days after the termination of the guarantee period. Substitution of this security deposit by a bank

guarantee is only possible by prior arrangement. All possibly applicable fees for such a bank guarantee are to be paid for by the supplier.

#### [11.] Declaration of secrecy and confidentiality:

[11.1.] The supplier warrants to observe confidentiality towards third parties concerning all aspects of the contract terms and/or any additional agreements made between the contracting parties, both during the period of the contractual relationship and following its termination.

[11.2.]. The confidentiality obligation shall not apply in the event that:

[11.2.1.] an information was already generally available in the public domain, without such notification resulting from an indiscretion of the supplier, or

[11.2.2.] the information had already been given earlier to a third party before an obligation of confidentiality was known;

[11.2.3.] unless a legal duty of disclosure applies.

[11.3.] The supplier undertakes to treat the contract concluded with the purchaser, its facilities and all documents which have been or will be issued while carrying out the contract in a confidential manner and to ensure that its employees also fulfil this confidentiality obligation. The supplier shall not pass any technical and commercial information to third parties, which he has obtained in cooperation with the purchaser.

[11.4.] In the event of a culpable infringement of this confidentiality obligation, then the purchaser is entitled to impose, without concrete proof of damages, a contractual penalty on the supplier of 80 % of the net purchase price, but at least € 150,000.00 per violation. The purchaser expressly reserves the right to claim for further damages that go beyond this penalty. The assertion of further (compensation) claims is expressly reserved.

#### [12.] Data protection:

The purchaser expressly refers to the enclosed data protection declaration.

#### [13.] Miscellaneous:

[13.1.] Exclusivity: The supplier guarantees to the purchaser for a period of 15 years, that no identical or similar machine/equipment is planned and/or will be sold to any competitor of the purchaser. This obligation is also binding concerning any sale of even a similar machine/equipment to any third-party purchaser at all.

[13.2.] Documents: The general contractor (purchaser or supplier, depending on the individual case) shall prepare an interface description. The supplier shall confirm the correctness and the technical implementation by signature.

#### [14.] Safety:

[14.1.] Fire protection: The presence of the supplier's personnel must be announced at reception. They must be entered in the list provided for this purpose and the responsible project manager must be informed. For hot work, the project manager must always be informed and a „release certificate for activities involving a fire hazard“ must be signed.

The supplier shall bear the costs of any search/rescue or recovery operations resulting from failure to register at reception. Operations (e.g. fire department, rescue, police operations ...) of any kind that are attributable to non-compliance with the procedure for hot work shall be borne in full by the supplier.

[14.2.] Occupational safety: Before the supplier's personnel start working for the first time, a safety briefing must have taken place. This must include:

1. General information
2. Safety instructions
3. Fire safety instructions
4. Possible incidents
5. Work permits
6. Health issues
7. Traffic and transportation issues
8. Environmental topics

If this is not the case, the employee concerned must report to the project manager before starting to work. The project manager will organize a safety briefing. If aerial work platforms are required, the operating instructions for aerial work platforms must also be demonstrably taken note of.

The supplier shall bear the full costs of any operations (e.g. fire department, rescue, police operations ...) that are attributable to failure to carry out a safety briefing.