

General Purchase Terms for orders implemented for Newag S.A.

§1

Definitions

- In these General Purchase Terms for the orders implemented for Newag SA, the term:
 - 'GPT'** means these General Purchase Terms for the orders implemented for Newag S.A.;
 - ' Ordering Party'** means Newag S.A. established in 3 Wyspiańskiego Street, 33-300 Nowy Sącz, entered into the National Court Register kept by the District Court for Kraków-Śródmieście, XII Commercial Division under KRS No. 0000066315, VAT No. 734-00-09-400, REGON 490490757;
 - 'Supplier'** means the entity obliged to execute the Order;
 - 'Parties'** means a joint designation of the Ordering Party and the Supplier;
 - 'Order'** means a document issued by the Ordering Party, containing detailed terms of cooperation, including, among others: product specification, net price, delivery date and warranty period, constituting an offer within the meaning of the Civil Code;
 - 'Agreement'** means a civil law contract concluded between the Ordering Party and the Supplier, the subject of which is the implementation of the service specified in the Order by the Supplier for the benefit of the Ordering Party;
 - 'Goods'** mean movable items that are the subject of sale, delivery or service on the basis of the Order;
 - 'Defect'** means a physical or legal defect within the meaning of the Civil Code, in particular any non-compliance of the Goods with the terms of the Order;
 - 'System Defect'** means such defects that occurred during the warranty period, in at least 15% but not less than four Goods of the same type delivered on the basis of the Orders; if the Goods are delivered in meters, the occurrence of a quality defect in the length exceeding 40 meters is treated as a System Defect in total.
 - 'Working days'** mean all days except Saturdays, Sundays and public holidays (regarding other non-working days) in force in Poland;
 - 'End User'** means the entity that is the owner or holder of the Vehicle;
 - 'Vehicle'** means a rail vehicle;
- Further terms have been defined further in the GPT by writing them with capital letters, in brackets, quotation marks, and in bold letters. In all provisions of the GPT, the terms defined in such a way should be interpreted in accordance with the context of the sentence in which they were defined.

§2

General Provisions

- The GPT constitute a contractual standard referred to in Art. 384 of the Civil Code, binding for the Parties.
- If the Supplier provides the Ordering Party with another document of the general contractual conditions (contractual standard) when concluding it or uses his/her template in another way, the Agreement shall be deemed not concluded, unless the parties agree otherwise.
- These GPT constitute an integral part of each Order placed by the Ordering Party at the Supplier, unless the parties agree on other conditions in a documentary form in individual cases.

§3 Orders

1. The Agreement is concluded by placing an Order by the Ordering Party and accepting the Order by the Supplier.
2. The Supplier is obligated to send the confirmation of the Order acceptance to the Ordering Party in a documentary form within 3 (three) working days from the date of its receipt.
3. If the Supplier has neither confirmed, nor rejected the Order within the required period, the Order shall be deemed accepted in accordance with its content and these terms and conditions.
4. In a situation where the Supplier has information about the existence of a real threat to the delivery date indicated in the Order, he/she is obliged to communicate this fact to the Ordering Party immediately.
5. The Supplier is obliged to check whether the version of the documentation he has is in accordance with the Order.
6. Any items transferred to the Supplier in order to fulfill the Supplier's obligations under the GPT or the Order (in particular the documentation, elements for production) are the property of the Ordering Party and any action on these items may only be performed with the consent of the Ordering Party (in a documentary form otherwise null and void) to execute the Order, unless the Parties agree otherwise.
7. Any deviations from the terms of the Order (eg. regarding quality, timeliness, quantity, prices), other than those listed in §3 section 8 are valid after the Ordering Party has given its consent in writing form otherwise null and void. Requests for deviations may only be submitted to the contact person appearing in the Order, and the deviation itself must be confirmed by this person.
8. Any deviations from the terms of the Order regarding quality or other technical requirements are valid after the Ordering Party has given its consent in documentary form otherwise null and void. Requests for deviations may only be submitted to the contact person appearing in the Order, and the deviation itself must be confirmed by this person. Requests for deviations is available at the following addresses, should be applied:
https://www.newag.pl/Karta_odstepstw.xlsx
9. Any additional costs and expenses incurred as a result of the Supplier's failure to comply with the terms of the Order shall be borne by the Supplier.
10. The Supplier undertakes to maintain the confidentiality of all information and data (e.g. documentation) obtained in connection with the execution of the Order under penalty of contractual penalties specified in §7 section 8.
11. Any provisions of the Supplier's offer preceding the Order and its annexes inconsistent with the content of the Order or these terms shall be deemed invalid, unless the Parties have agreed otherwise in the documentary form, otherwise null and void.
12. The Customer shall be entitled one-sidedly to amend dates specified in the Order, however not later than 14 (ten) days before delivery dates provided in the Order. Such amendment shall be bounding for the Supplier and may be send to the Supplier in writing, by fax or e-mail.
13. The Ordering Party may withdraw from the Agreement in the event of the Final Recipient withdrawing or not signing the agreement with the Final Recipient, in connection with which the Ordering Party has placed the Order, which does not exclude the right to withdraw under the general rules of the Civil Code. The contractual right of withdrawal should be exercised within 60 days of the Ordering Party becoming informed about the event entitling to withdraw from the Order.
14. The contractual right of withdrawal should be exercised within 60 days of the Ordering Party becoming informed about the event entitling to withdraw from the Order.

15. Without the consent of the Ordering Party in writing, the Supplier may not transfer the rights or obligations under the Agreement to a third party otherwise null and void.
16. The Supplier is obliged to ensure the availability of spare parts for the Goods within 30 years from the end of the warranty. At the same time, the Supplier is obliged to inform the Ordering Party in writing about the withdrawal of the product from use 6 months before the planned withdrawal and to provide a replacement under the threat of contractual penalties specified in §7.
17. The Supplier declares that he/she has read the terms of the project implemented by the Ordering Party to which the Order relates, in particular the agreement between the Ordering Party and the End User. On this basis, the Supplier declares that he/she is aware of the legal consequences for the Ordering Party resulting from the failure or improper performance of the obligations covered by the Agreement by the Supplier.

§4

Control and supervision over the execution of the Order

1. In connection with the implemented environmental management system, the Supplier is obliged to analyze the product's environmental impact in terms of:
 - minimization of the product's environmental impact during operation,
 - inclusion of technological options in the design allowing for the harmless disposal of materials that are not subject to reuse,
 - minimization of harmful substances,
 - production in environmentally friendly technologies.
2. For energy and electrical devices, elements of the production installation (which are directly part of the production installation), during the device selection process, both the Supplier and the Ordering Party - in connection with the implemented energy management system at the Ordering Party, are obliged to analyze the correct operation of the device or installation component in order to obtain the optimal energy efficiency of the delivered device or installation component.
3. The Ordering Party takes into account energy parameters in the process of selecting the Goods, unless there are other criteria.
4. If the Order includes special processes related to plate sheet welding and bonding, the guidelines and conditions for performing the processes, available at the following addresses, should be applied:
https://newag.pl/NS_IN_108_Ogolne_warunki_spawania_dla_podwykonawcow_EN.pdf
https://newag.pl/F01_NS_IN_108_Ogolne_warunki_spajania_dla_podwykonawcow_EN.pdf
5. If the Order concerns an order of plate sheets or metallurgical products, the guidelines, available at the address, shall be applied:
https://newag.pl/PS_125_17_Wytyczne_dla_dostawcow_blach.pdf
https://newag.pl/PS_158_17_Wytyczne_dla_dostawcow_wyrobow_hutniczych.pdf
6. If the Order contains special gluing processes, the guidelines and conditions for performing the processes, available at the address, shall be applied:
https://www.newag.pl/Instrukcja_klejzenia_EN.pdf
7. Preparations included in the gluing system should have valid SDS - Safety Data Sheets and MSDS – Material Safety Data Sheets. These preparations should be transported in accordance with the records on the sheets. If information on transport conditions is not provided in the SDS or MSDS, the following guidelines should be followed:
 - Acceptable temperature range for transport 5oC ÷ 25oC,
 - Acceptable range of use suitability of the preparations included in the gluing system: a minimum of six months at the time of delivery of the preparation,

- It is forbidden to expose the Goods to sunlight during transport,
- It is unacceptable to expose collective packaging of preparations included in the gluing system to water, organic and inorganic solvents,
- Chemical preparations delivered with clearly damaged packaging will not be collected.

The supplier of a given chemical preparation shall deliver to the seat of the Ordering Party a declaration confirming that the transport of the gluing system components is being implemented in accordance with the conditions of transport acceptable to the Ordering Party. In addition, it is recommended to include an electronic recorder in the transported collective packaging for the time of transport from the Supplier to the Ordering Party's warehouse, which will monitor the environmental conditions during transport.

8. If in the Order placed by the Ordering Party there are special processes related to painting, the guidelines and conditions for performing the processes, available at the address, shall be applied: https://www.newag.pl/Ogolne_warunki_malowania_EN.pdf
9. If in the Order placed by the Ordering Party there are other processes of special importance than the above-mentioned, the Supplier is obliged to perform them under special supervision by qualified personnel.
10. The Supplier is obliged to ensure the Ordering Party the possibility to conduct audits of its sub-suppliers and is obliged to present all required documents and certificates necessary for the proper performance of the subject matter of the Order.
11. The Supplier shall provide the Ordering Party's representatives and / or Final Acceptance Inspectors with access to its plants and offices, as well as to its suppliers' plants and offices in order to carry out all necessary checks to ensure that the supplies comply with the terms of the order.

§5

Delivery

1. The place of delivery of the Goods is indicated in the Order, unless the Parties have agreed otherwise in the documentary form, otherwise null and void.
2. The order for the delivery of Goods will be carried out in the form of deliveries of complete Goods, i.e. containing products, materials and raw materials, with the required attestations and other documents specified in the Order.
3. The Supplier is obliged to attach a delivery note to each delivery, indicating the internal material indexes of the Ordering Party and the Order number. The Ordering Party has the right to indicate additional terms of marking the Goods in the Order. The goods must be labeled using labels printed from the portal <https://zamowienia.newag.pl>
4. In the case of a complaint delivery, the delivery note document must contain the following information: "Delivery after complaint notification" and the complaint number (if applicable).
5. On the date of delivery at the latest, the Supplier is obliged to provide the Ordering Party with all required attestations, certificates, inspection certificates, documentation specifying the conditions for repair and maintenance, homologation certificates, or other documents indicated in the Order, under the threat of contractual penalties provided for in §7 section.
6. The Supplier is obliged to attach to the delivery documents listed in §5 section 5 (eg. attestations, certificates, inspection certificate) in a paper version and for sending an electronic version of these documents to the address certyfikaty@newag.pl and to the address of the contact person indicated in the order.
7. On the day of delivery at the latest, the Supplier is obliged to register the EC Declaration of Conformity in the ERADIS database for the Goods being an interoperability constituent listed in the relevant Loc & Pas TSI, PRM TSI and CCS TSI. This requirement results from the Commission

Implementing Regulation (EU) 2018/545 of April 4, 2018 establishing practical arrangements for the process of granting authorizations for railway vehicles and type approvals for a type of railway vehicle in accordance with Directive (EU) 2016/797 of April 4 2018 of the European Parliament and of the Council, Art. 50. Failure to enter the EC Declaration of Conformity in the database is treated as an incomplete delivery, which will result in the imposition of contractual penalties on this account.

8. Before the shipment of the Goods, it is necessary to check the compliance of the quantity and quality of the goods shipped with the Order and confirm in the delivery certificate the fact that the inspection has been carried out in accordance with the inspection plan.
9. The supplier is each time obliged to make a delivery notification to the address magazyn@newag.pl
10. Goods are accepted at the Ordering Party's warehouses on working days, from Monday to Friday depending on the indicated location:
 - a) for the warehouse located in Nowy Sącz from Monday to Friday, from 07.00 to 14.00
 - b) for the warehouse located in Gliwice from Monday to Friday, from 0.00 to 14.00
11. If the required shipping documents are missing for any delivery, the Goods shall be kept at the Supplier's expense until the delivery of these documents, and the Supplier shall be liable for the Goods throughout this period.
12. The receipt is confirmed by the acceptance document signed by the Ordering Party. The qualitative and quantitative acceptance of goods may be preceded by a prior technical examination to be carried out by authorized representatives of the Ordering Party.
13. For partial or overdue deliveries, the Ordering Party's written consent is required, otherwise null and void.
14. The transfer of liability and the right of use takes place after delivery to the place of destination, and in the event that collection at the place of destination is required - after such collection.
15. The Goods are delivered at the Supplier's cost and risk, unless the Parties agree otherwise.
16. As part of the Order, the Supplier undertakes to provide the Ordering Party with the documentation necessary for the operation and maintenance of the Goods.

§6

Payment

1. The remuneration for the execution of the Order is specified in the Order, it is of a lump sum character and does not include VAT, which will be charged in accordance with applicable regulations.
2. The remuneration includes all costs necessary to perform the Order.
3. The Ordering Party declares that he/she is entitled to receive VAT invoices and authorizes the Supplier to issue a VAT invoice without the recipient's signature.
4. Payment shall be made by bank transfer to the bank account indicated by the Supplier on the basis of an invoice issued by the Supplier in accordance with the provisions of the Act of March 11, 2004 on tax on goods and services, within the payment date specified in the Order, counting from the date of receipt of the invoice issued after complete delivery performance, unless the Parties have agreed other conditions in the documentary form, otherwise null and void.
5. The date of payment shall be the date on which the Ordering Party's bank account is debited.
6. In the event of delay in delivery of the required material certificates, quality certificates and materials, the Ordering Party reserves the right to extend the payment deadline by the delay time.

7. The Supplier may not, without the consent of the Ordering Party, assign the payment for the Goods delivered on the basis of the Order.
8. Complaints about the Goods may withhold the obligation to pay for the invoice covering the claimed Goods until the complaint is finally resolved.
9. The Ordering Party declares that it is a large entrepreneur within the meaning of generally applicable law.
10. The supplier undertakes that the bank account number provided in the invoice issued by him:
 - a) will be included in the list referred to in Art. 96 b of the Act of March 11, 2004 on tax on goods and services (Journal of Laws of 2017, item 1221, as amended) from the date of issuing the invoice to the date of payment,
 - b) will be valid, and in the event of a change of the bank account number to which the payment is to be made, the Supplier shall immediately notify the Ordering Party of this fact in writing otherwise null and void.

In the event that the bank account specified in the invoice issued by the Supplier does not appear in the list referred to in Art. 96b of the VAT Act, the Ordering Party has the right to withhold payments until the date on which the Supplier's bank account indicated for payment appears in this list, and the period of withholding payment will not be considered a delay in payment.

§7

Contractual penalties and liability

1. In the event of a delay in the performance of the Order, in particular a delay in the delivery of the Goods or the performance of the service covered by the Order, the Ordering Party has the right to demand the payment of a contractual penalty in the amount of 1% of the (net) remuneration due for the implementation of the entire Order for each day of delay.
2. Incomplete or defective delivery of the Goods, as well as delivery without the required documentation, shall be treated as a lack of the entire delivery.
3. In the event of the Supplier's delay with the delivery of the Documentation, the Ordering Party has the right to demand the payment of a contractual penalty in the amount of 1% of the price (net) of the entire Order covering the delivery of the Goods to which the documentation relates and the delivery of which the Supplier is delayed for each day of delay. Delivery of incomplete or defective Documentation is treated as a lack of delivery.
4. In the event of the Supplier's delay in performing the obligations under the guarantee or warranty, the Ordering Party has the right to demand the payment of a contractual penalty in the amount of 1% of the (net) price for the repaired or replaced Goods (on the basis of the calculation of the price for the new and non-defective goods), for each day of the delay.
5. In the event of a breach by the Supplier of the obligation referred to in §3 sec. 16 of the GPT, the Ordering Party has the right to demand the payment of a contractual penalty in the amount of PLN 500,000.00 for each Product for which the availability of spare parts has not been ensured at any time during the period referred to in §3 sec. 16 of the GPT.
6. In the event of failure to remove or ineffective removal of a System Defect by the Supplier in accordance with the terms specified in §9, within the period referred to in § 9 sec. 2, the Ordering Party has the right to charge the Supplier with a contractual penalty in the amount of PLN 5,000.00 for each commenced week of delay in removing a System Defect.
7. In the event of withdrawal from the Agreement by the Ordering Party for reasons dependent on the Supplier, the Supplier undertakes to pay the Ordering Party a contractual penalty in the amount of 25% of the (net) remuneration due for the performance of the entire Order.

8. Disclosure of the technical documentation belonging to the Ordering Party to third parties without the written consent of the Ordering Party will be punished with the amount of PLN 100,000.00 for each case of infringement.
9. If the Supplier fails to perform or improperly performs his/her obligations under the Order, he/she is obliged to make all available efforts to minimize the damage to the Ordering Party. In particular, if the Supplier notices that he/she has delivered the Goods to the Ordering Party that are defective or inconsistent with the applicable law, he/she is obliged to immediately notify the Ordering Party, which does not release him from the liability provided for by the Order, GPT and the provisions of law.
10. The Supplier is fully responsible for the proper performance of the Goods in accordance with the documentation provided by the Ordering Party and with due diligence.
11. In the event that the contractual penalties do not cover the damage, the Ordering Party reserves the right to claim supplementary compensation on the general principles provided for in the Civil Code.

§8

Guarantee

1. The supplier shall bear full responsibility for the warranty physical and legal defects of the delivered Goods.
2. The Supplier grants a quality guarantee for the delivered Goods for a period of 36 (thirty six) months counted from the date of handing over the Vehicle for use, in which the Goods were installed, but not longer than 48 (forty-eight) months from the date of release of the Goods, unless otherwise stated in the Order.
3. Under the guarantee, the Supplier is obliged to remove the Defects of the Goods in place or replace the Goods with Goods free from Defects, if these Defects are revealed during the warranty period.
4. The guarantee period is extended by the time from the guarantee notification until the Defect is removed. If the Supplier, in the performance of its obligations under the guarantee, provided the Goods free from defects instead of the defective Goods or made significant repairs to the Goods covered by the guarantee, the guarantee period starts anew from the moment of delivery of the Goods free of defects or return of the repaired Goods.
5. The warranty period is equal to the guarantee period, with the provision, that it cannot be shorter than 24 months.
6. The removal of the Defect or the replacement of the Goods will take place at the place designated by the Ordering Party.
7. Unless otherwise stipulated, the Defect will be removed within 3 days from the date of receipt of the complaint.

§9

System Defect

1. In the event of a System Defect in the Goods, the Supplier is obliged to determine, not later than within 7 days, the reason for its occurrence and provide the Ordering Party with precise information in writing. Within the above period, the Supplier shall each time, in consultation with the Ordering Party, specify the method of removing the System Defect. The Supplier is also obliged to make available or provide access to the full documentation of the Goods at the request of the Ordering Party.

2. The Supplier is obliged to immediately undertake work aimed at removing System Defects and their causes. He/she performs these works at his own expense and risk. The Supplier is obliged to remove System Defects within 30 days from the date of reporting the System Defect.
3. The Supplier grants a quality guarantee for the period of 36 (thirty six) months for the Goods after the System Defect has been removed.
4. The removal of a System Defect is considered effective if it does not reappear within the extended guarantee period.
5. In the event of a System Defect, the Ordering Party may request the replacement of all Goods delivered under the Orders with new ones, free from Defects, or request preventive repair / modification of all delivered Goods.

§10

Notification of defects and deliveries inconsistent with the order

1. Upon delivery of Goods, the Purchaser may (but does not have to) perform quantitative and qualitative tests.
2. In case of any quantitative or qualitative deficiencies found by the Ordering Party, a Complaint Notification shall be issued in the form of a fax, an e-mail or in writing.
3. Inspection of the delivered Goods and notification of the Defects found and deliveries inconsistent with the Order shall be made by the Ordering Party as soon as possible, however the exact date shall not be specified.
4. The fact of payment for the Goods and the fact of acceptance of the delivered Goods does not mean a waiver of the right to make a complaint at a later date.
5. In case of detection of Goods Defects, the Ordering Party has the right, to choose:
 - a. to refuse to collect all the Goods and withdraw from the Order;
 - b. to withdraw from the Order in the part covering Goods affected by Defects and corresponding services of the Ordering Party, in particular the obligation to pay the Price for Goods affected by Defects;
 - c. to demand the Goods to be replaced with new, defect-free ones within 3 (three) days from the notification of the complaint, with the rights resulting from the Supplier's delay;
 - d. to demand repair of the Goods within 3 (three) days from the notification of the complaint with respect to the rights resulting from the Supplier's delay.
6. Regarding the defects of the Goods which the Ordering Party has not detected or reported upon reception, the Ordering Party is entitled to rights on account of guarantee, warranty and improper performance of the Order despite failure to detect the Defect upon reception. The resolutions of the GPT do not exclude or limit the Ordering Party's rights resulting from the sales warranty or legal regulations on liability for non-performance or improper performance of the Order.
7. The Supplier shall be obliged to conduct the complaint process in accordance with the scheme below:
 - 7.1. The supplier must present a reaction plan to the Ordering Party within 24 hours of notification of the defects found, in order to secure continuity of production. In order to secure continuity of production at the Ordering Party's site, the Supplier may perform one of the following actions:
 - a) repair the defective Goods at the Ordering Party's premises or replace the Goods with the Goods free from Defects, as soon as possible, as agreed with the Purchaser, but not later than 3 days, unless the Parties agree otherwise in a documentary form;
 - b) have the defective Goods repaired by the Ordering Party at the cost and risk of the Supplier, subject to the Ordering Party's consent in a documentary form under

otherwise null and void, where the Supplier may be charged with the costs of such repair (PLN 200.00/h).

7.2 The Supplier shall present an analysis of the causes of the Defect in the form of an 8D report together with an approved corrective action plan within 5 days from the notification of the Defects found.

7.3 The Supplier shall present a full 8D report together with closed and approved corrective actions within 30 days from the notification on the stated Defects.

8. If the Supplier rejects the complaint as unfounded, he/she is obliged to present a written justification of his/her position within 24 hours from having received the complaint. If the written justification is not delivered to the Ordering Party within the above-mentioned time limit, the complaint shall be deemed acknowledged by the Supplier.
9. Regardless of the obligation to remove the defect, the Supplier shall be liable for all damages incurred by the Ordering Party in connection with the defect.

§11

Force majeure

1. Force majeure shall be any events unforeseeable at the time of concluding the Order, which are beyond the control of either Party, in particular war, riots, flood, fire, hurricane, storm, earthquake and other natural disasters, documented interruptions in electricity supplies - as long as they prevent the Party from fulfilling its obligations under the Order.
2. The party that is unable to properly perform its obligations due to force majeure shall immediately, not later than within 7 days from the occurrence of these circumstances, notify the other Party. Failure to comply with the obligation referred to in the preceding sentence results in the loss of the right to invoke force majeure.

§12

Copyrights

1. In the case of delivering any documentation together with the Goods, the delivery of which is the subject of the Order, or if the Goods are a work, the Supplier grants the Ordering Party a non-exclusive, territorially unlimited, interminable license with the right to sub-license, for an indefinite period, to use the work provided as part of the Order implementation in all known fields of use, including those specified in Art. 50 of the Act on Copyright and Related Rights, together with the right to use dependent rights and allowing third parties to use dependent rights and the right to grant sub-licenses to third parties. The Supplier is not entitled to additional remuneration for granting the license, separate from the remuneration for the execution of the Order.
2. In the case of delivering software with the Goods, the delivery of which is the subject of the order, the Supplier grants the Ordering Party a non-exclusive, territorially unlimited, interminable license with the right to sub-license, for an indefinite period, to use the software in the fields of use specified in Art. 74 sec. 4 of the Act on Copyright and Related Rights and the right to grant sub-licenses to third parties. The Supplier is not entitled to additional remuneration for granting the license, separate from the remuneration for the execution of the Order.
3. The Supplier undertakes that entities who have personal copyrights to the work will not use them in a way that violates the interests of the Ordering Party.

§13

Final provisions

1. The application of the principles set out in Article 66 [1] § 1 to 3 of the Civil Code shall be excluded.
2. In matters not covered by these Terms, the provisions of the Polish Civil Code, as well as other relevant provisions of generally applicable law, shall apply.
3. The Agreement is governed by Polish law, excluding any acts of international law.
4. The Parties undertake to resolve any possible disputes amicably. Otherwise, these disputes will be settled by the court competent for the seat of the Ordering Party.