



**WACKER  
NEUSON**

## **Conditions of Sale**

### **I. Effect of Conditions**

1. These conditions shall constitute the terms of the relationship between any part of Wacker Neuson Ltd, Beacon Business Park, Weston Road, Stafford, ST18 0WL, United Kingdom (hereinafter known as "Wacker Neuson") and the buyer and all or other terms and conditions which may be implied by law, statute or custom are hereby excluded save and insofar as such exclusion shall be prohibited by statute.
2. The buyer accepts that any order placed by him shall be deemed to be made subject to these conditions only, and no other terms or conditions purportedly contained in any other document whether from the buyer or from Wacker Neuson, save where such have been expressly signed by a director of Wacker Neuson, nor any oral statements on the part of or on behalf of the buyer or Wacker Neuson, shall be incorporated into any agreement between the parties.
3. No employee or agent of Wacker Neuson has any authority to vary these conditions and Wacker Neuson will not be bound by any purported variation or addition to these conditions save where such is expressly agreed in writing signed by a director of Wacker Neuson.
4. No employee or agent of Wacker Neuson has any authority to make any representation on behalf of Wacker Neuson whether as to the quality of any goods to be supplied or their fitness for any purpose or as to the effect of these conditions or the practice or intentions of Wacker Neuson or in respect of any matter which may create any liability on the part of Wacker Neuson, and the buyer hereby acknowledges that he has not been induced to order any goods pursuant to any representation whether made orally or contained in any document brochure advertising or promotional material.
5. Wacker Neuson reserve the right from time to time to alter the specification of any goods supplied by them, and any description or specification contained in any brochure or advertising or promotional material shall be for the purpose only

of giving a general description of the goods for guidance only.

6. Neither the buyer nor Wacker Neuson shall be bound to each other unless and until Wacker Neuson shall have either delivered or despatched the ordered goods to the buyer or have in writing accepted the buyer's order, whereupon these conditions shall come into effect.

### **II. Payment**

7. Unless specific agreement has been made between the parties and signed by a director of Wacker Neuson, the price for the goods and all payments required by these conditions shall be paid in cash at the head or main office of Wacker Neuson in Stafford, Staffordshire.
  - a. Unless a different price has been expressly agreed in writing between Wacker Neuson and the buyer the price to be paid by the buyer for the goods shall be the price specified in Wacker Neuson's published price list which is applicable on the day on which Wacker Neuson notify the buyer that the goods are available for delivery (hereinafter called "the notification date") or dispatch or deliver the goods to the buyer (whichever shall first occur) notwithstanding that any other price may have been quoted in any other quotation, estimate, negotiation, advertising or promotional material or other document or price list. Any such quotation as aforesaid shall have been only for the purpose of guidance.
9. The price specified in the appropriate price list shall be "ex works" and in addition the buyer shall pay to Wacker Neuson all charges incurred in respect of packing, insurance and transportation, if required by the buyer, and all other charges provided for by these conditions.

10. The notification date shall be the date on which a notice by Wacker Neuson to the effect that the goods are available for delivery and specifying the goods, the price, and any other charges then due, is delivered to the buyer, provided that such notice (hereinafter called "the deliver advice") shall be deemed to have been delivered on the first postal delivery date next following postage thereof by First Class pre-paid post (whether actually delivered or not) and in the event of any dispute between the parties a certificate by a director or officer of Wacker Neuson shall be conclusive evidence for all purposes of (a) the date and manner of posting, and (b) the contents of the notice. No mistake, omission or irregularity in the delivery advice shall avoid it or prevent the computation of the notification date as aforesaid.

11. The price and all charges as aforesaid shall be deemed due and payable on the notification date and the buyer shall pay to Wacker Neuson interest on all sums not so paid from the notification date until actual payment at the rate of 4 percent over Barclays Bank plc base rate from time to time applying calculated from day to day. Such interest shall be deemed to be charges to be paid by the buyer for all purposes of these conditions save that no interest shall be paid of arrears of interest.

12. In the event that Wacker Neuson shall accept any cheque, bill of exchange, promissory note or other negotiable instrument or security in respect of any sum due from the buyer (as to which they shall be under no obligation to do) the buyer shall pay to Wacker Neuson any bank or other charges incurred in respect thereof, whether the same shall be honoured or dishonoured. Actual payment of the price and charges shall be deemed not to have been made until the aforesaid cheque, bill of exchange, promissory note, negotiable instrument or security shall have been honoured.

13. The buyer shall pay the aforesaid price and the charges provided for in these conditions in full and shall not be entitled to make any deduction in respect of any claim or set-off or debt alleged by the buyer against Wacker Neuson, whether such claim, set-off or debt arises out of the same or any other

transaction between the parties and whether it is alleged that such has been admitted by Wacker Neuson or not.

14. Unless Wacker Neuson, by writing signed by a director of Wacker Neuson, has permitted the buyer to pay by instalments or has agreed to allow specific credit to the buyer, Wacker Neuson shall be entitled to cancel the order at any time after the buyer has failed to pay the aforesaid price and charges in full within 7 days after payment becoming due and before actual payment, without being under any obligation to do so and without prejudice to any other claim which Wacker Neuson may have arising out of such default. In the event of Wacker Neuson permitting payment by instalments or allowing credit as aforesaid, the whole of the unpaid balance shall fall due for payment if the buyer is in arrears with any instalment for 7 days or if he fails to comply with any terms of the said credit arrangement.

### **III. Delivery**

15. The expression of any delivery date or time for delivery contained in any document whatsoever or in any way advised by Wacker Neuson to the buyer shall be considered only to be an estimate and shall not form any part of any contract between the parties.

16. If, for any reason, Wacker Neuson are unwilling or unable to supply all or any of the goods referred to in the acceptance of order they may, at their absolute discretion, do any one or more of the following:

- a) Deliver such goods as are available for delivery and cancel the order in respect of the balance and the buyer shall pay the price and charges in relation to the available goods;
- b) Deliver those goods which are available and deliver the balance of the goods at a later date or dates, in which event the buyer shall pay the respective prices and charges referred to in the respective delivery advices;
- c) Deliver those goods which are available and substitute for all or any goods referred to in the

acceptance of order such goods which Wacker Neuson consider similar to those ordered by the buyer and the substituted goods shall be deemed for all purposes to have been specified in the acceptance of order save that the buyer shall be entitled to refuse the substituted goods and that part of the order shall abate;

d) Delay delivery of all goods;

e) Cancel the whole of the order; provided that whatever action is taken by Wacker Neuson, the buyer agrees to make no claim or complaint whether for compensation, damages or other relief against Wacker Neuson arising out of Wacker Neuson failure to supply all or any goods, or any substitution as aforesaid or any delay or any action as aforesaid on the part of Wacker Neuson.

17. Save as specifically provided for by these conditions the buyer shall not be entitled to cancel the order or any part of it by reason of any delay, partial delivery or incomplete delivery on the part of Wacker Neuson, save where the buyer has served notice on Wacker Neuson requiring delivery of any goods within a period of 20 weeks and Wacker Neuson has not served a delivery advice in respect of such goods within such period, but such notice shall not affect the liability of the buyer to accept any goods which are the subject of a delivery advice served at any time before the expiry of such period.

18. Wacker Neuson shall not be under any obligation to deliver into the possession of the buyer any goods referred to in any delivery advice until actual payment of all prices and charges specified in such delivery advice or provided for in these conditions. All machines are delivered complete with instructions-parts-repair manual

#### **IV. Title**

19. The ownership of all goods which are referred to in a delivery advice shall remain in Wacker Neuson until actual payment of all prices, charges interest and other sums provided for by these

conditions in respect of all goods referred to therein. This condition shall apply notwithstanding any agreement by Wacker Neuson to accept any delay in payment whether by means of instalments, extended or short-term credit, acceptance of any cheque, bill of exchange, promissory note, negotiable instrument or security or whatever and notwithstanding that Wacker Neuson may have permitted to have possession or use of the goods or any of them.

20. In the event that Wacker Neuson may permit the buyer to have the use of any goods, the ownership whereof remaining in Wacker Neuson in accordance with the preceding condition, the following shall apply:-

a) The buyer shall hold the goods as bailee, and not as a buyer in possession and shall pay to Wacker Neuson the weekly sum in respect of such bailment of an amount equal to 5% of the total sale price of the goods.

b) The buyer shall not without the previous written consent of Wacker Neuson signed by a director of Wacker Neuson do any of the following in respect of the goods: sell; charge or mortgage; part with or share possession; use or permit any other person to use; cause or permit them to become affixed to any land, building or other goods; permit them to become the subject of any execution or distraint; lose, damage, destroy or in any manner dispose of them.

c) The buyer shall at his own expense well and properly maintain and repair the goods and protect them from all damage and loss;

d) The buyer shall keep the goods within a building and shall keep them separate from all other goods and clearly marked to the effect that they are the property of Wacker Neuson;

e) The buyer shall at all times keep Wacker Neuson informed of the precise whereabouts and condition of the goods;

f) In the event of any of the following, the buyer said bailment shall forthwith determine and the

buyer shall deliver up the goods to Wacker Neuson:

- (i) If the buyer shall fail to comply with any of the conditions herein or any other terms agreed between Wacker Neuson relating to the goods or any payment in respect thereof;
  - (ii) If the buyer shall commit an act of bankruptcy or enter into any composition with his creditors, or, if a company, be wound up save for the purpose of reconstruction, or if a liquidator or receiver is appointed in respect of the buyer or his assets;
  - (iii) If any judgment, execution or distraint is levied upon the buyer or if any judgment against the buyer remains unsatisfied for 30 days;
  - (iv) If Wacker Neuson shall serve upon the buyer a notice in writing to the effect that in the opinion of Wacker Neuson the well-being of the goods is at risk (as to which such notice shall be conclusive evidence that the opinion is honestly held);
- g) For the efficacious operation of clause 20(F) hereof:
- (i) the buyer shall notify Wacker Neuson forthwith of the occurrence of any of the facts referred to in clause 20(f) hereof;
  - (ii) on the occurrence of any of the aforesaid facts, Wacker Neuson shall be entitled forthwith to recover possession of the goods from the buyer or any other person;
  - (iii) the buyer hereby irrevocably grants to Wacker Neuson a licence to enter upon any premises where such goods are held at any time for the purpose of inspecting the condition of the goods or any records held by the buyer concerning the use, maintenance and repair of the goods and in the event of Clause 20(f) coming into effect for the purpose of recovering possession thereof, and Wacker Neuson shall be entitled to use reasonable force to effect entry for the aforesaid purposes without compensation to the buyer;
  - (iv) the buyer shall indemnify Wacker Neuson and keep them safe against any claim by any person

whatsoever arising out of Wacker Neuson's effecting an entry to any premises for any of the aforesaid purposes;

h) In the event of the buyer selling, leasing, exchanging or in any manner disposing of the goods, whether in breach of these conditions or whatever, without prejudice to any remedy which Wacker Neuson may have against any other person, any proceeds of such disposition or leasing, or any exchanged goods, shall be held by the buyer as trustee for Wacker Neuson and to the order of Wacker Neuson, and shall be treated in like manner as the goods disposed of, save that proceeds comprising money shall forthwith be paid to Wacker Neuson insofar as such money does not exceed the sums owed by the buyer in respect of all goods ordered from Wacker Neuson. To the extent that the buyer has not received the full consideration for the goods he shall assign to Wacker Neuson on demand all rights to require any balance of the consideration from any other person. The buyer shall be responsible to Wacker Neuson and make good any loss of damage in respect of the goods from any cause whatsoever and whether such loss or damage is occasioned by the negligence of the buyer, his servants or agents, or any act or omission by any third party, or force majeure, act of the Queen's enemies or any insurable risk of any kind, whether or not attributable to any fault of any person.

## **V. Risk**

21. The risk shall pass to the buyer on the notification date notwithstanding that the goods may remain the property of Wacker Neuson and remain in Wacker Neuson's possession.

22. Unless and until the buyer delivers to Wacker Neuson documentary evidence that there is in force in relation to any goods of which ownership remains in Wacker Neuson, a policy of insurance for the benefit of Wacker Neuson against the usual risks, Wacker Neuson & may, but without any obligation to do so, insure such goods in their own name and the costs of such insurance premiums shall be a charge owed to Wacker Neuson by the buyer within the meaning of Clause 9 hereof.

23. The buyer hereby assigns to Wacker Neuson the benefit of any insurance payments which may be received by the buyer in respect of any loss or damage to goods whilst the same remained the property of Wacker Neuson, but Wacker Neuson shall, on receipt of such insurance payments, pay to the buyer any sums which are in excess of all sums owed by the buyer to Wacker Neuson pursuant to these conditions.

## **VI. Defects and quality**

24. Insofar as any goods have been manufactured by Wacker Neuson upon their own premises, Wacker Neuson will make good free of charge (save for the cost of transportation) any goods or part thereof which were defective when the goods were delivered to the buyer, provided that-

a) Wacker Neuson shall be under no obligation under this condition unless:-

- (i) the buyer notifies Wacker Neuson in writing of such defect within 3 months after the notification date in respect of the goods in question where the goods have been used for double-shift working or have been hired out by the buyer, or in any other case, 6 months after the appropriate notification date; and
- (ii) the defective goods have not been used by the buyer after discovery of the defect; and
- (iii) the buyer has, before such notification, complied with all his obligations under these conditions;

b) Wacker Neuson shall not under any circumstances be under any obligation under this condition in relation to the following: special designs; new designs; springs; flexible drives or any other goods or parts which have been declared by Wacker Neuson before the delivery advice to be excluded from this provision:

c) Wacker Neuson may, at their absolute discretion, replace or repair the goods or the defective part thereof, or substitute therefor goods or parts similar to those delivered to the buyer;

d) Any replaced, required or substitute goods shall be treated for all purposes of these conditions as if they had been specified in the original delivery advice.

25. In all other cases Wacker Neuson's liability is restricted to transferring to the buyer any rights against or the benefits of any warranty given, by the manufacturer of the goods to Wacker Neuson.

26. Save as specifically provided by these conditions Wacker Neuson give no warranty as to the condition of any goods, their quality, suitability or fitness for any purpose, and Wacker Neuson shall not under any circumstances whatever be under any obligation to make any compensation in money for any defect in the good or the performance thereof.

## **VII. Generally**

27. Each and every item referred to in the acceptance of order shall be deemed to be the subject of a separate agreement between the buyer and Wacker Neuson and the buyer shall not be entitled to reject any goods by reason of any failure on the part of Wacker Neuson to deliver any other goods ordered by the buyer.

28. The buyer shall indemnify Wacker Neuson and hold them safe against any claim of any kind by any person arising out of the use of the goods by the buyer for any purpose whether or not ownership therein has passed to the buyer and whether such claim arises out of any negligence, breach of duty or any fault on the part of Wacker Neuson, their servants or agents.

29. Wacker Neuson shall not be under any obligation or liability to make good any defect or pay any monetary compensation or pay damages to the buyer in respect of any breach of contract or negligence, save as specifically provided for by these conditions and Wacker Neuson shall not under any circumstances be liable to compensate the buyer in respect of any consequential loss or loss of profits howsoever caused.

30. In the event that the buyer shall be a limited

company or corporation, all directors thereof shall be liable, jointly and severally with the buyer for the due performance of all conditions expressed herein to be performed by the buyer, unless Wacker Neuson has expressly agreed in writing signed by a director to waive this condition. The signatories to the order placed by the buyer warrant thereby that they have the authority of the said directors to agree to this condition.

31. Insofar as Wacker Neuson may waive or relax any of the conditions herein such waiver or relaxation shall be in respect only of the specific facts concerned therewith, and shall not amount to any general relaxation or waiver of the condition for any other purpose.

32. In the event of any dispute or issue arising between the parties such issue or dispute is hereby referred to the arbitration of a single arbitrator to be appointed by the President of the Chartered Institute of Arbitrators in default of agreement between the parties who shall have power to make such interim awards as he considers appropriate.

33. These conditions and the relationship between the parties shall be governed by English Law.

#### **VIII. Special conditions for online purchase orders**

Insofar as the customer orders via our e-store ([www.shop.wackerneuson.com](http://www.shop.wackerneuson.com)), the following conditions apply additionally:

34. Via our e-store, we only sell to companies (§ 14 BGB). According to definition by law, a company is a natural or legal person or a partnership having legal capacity, who operates as commercial or independent professional activity when conducting a transaction. Sale to consumers (§ 13 BGB) shall be excluded.

35. Our presentation of goods in the e-store does not contain a binding sales offer. The offer to complete a purchase agreement is made by the customer by clicking on the "Place Order" button after having filled out the complete order page. Before that, the purchase order can be viewed and changed via the

"Cart" button. Before submitting the purchase order, the customer can verify and change their delivery and payment method details. The customer can view the Terms and Conditions during the order process via links, and can save them onto their computer and/or print them. The customer is bound to their order for 14 days, i.e. the contract will be bindingly completed if we accept the purchase order within this period.

36. After sending the purchase order the customer will receive an automatic e-mail with a confirmation about the receipt of purchase order with us (order confirmation), but which does not present a contract acceptance. We declare the acceptance of contract within the term of acceptance according to paragraph 2 by sending the goods or via a separate e-mail, as soon as the goods have left the Spare Parts Department (shipping confirmation) or we are able to confirm the manufacturing of the goods (order confirmation).

37. Insofar as the purchase order contains several items, the contract will only be concluded for those items expressly listed in our shipping or order confirmation. The preceding is also valid if the customer has already paid or authorised payment of the purchase price before conclusion of contract due to the selected method of payment. Insofar as the contract is not concluded for any reason, we will inform the customer via e-mail (with partial acceptance of contract together with the shipping or order confirmation for the available items) and refund the advance payment immediately.

38. The conclusion of contract shall occur in the language of the country of the customer's invoice and delivery address. The contract text will be saved by us maintaining data protection and is available to the customer for download at the e-store.

