



General Terms and Conditions of Purchase of the Wacker Neuson Group – Americas

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- 1. Scope, Hierarchy, Form, Definitions**
- 1.1. These General Terms and Conditions of Purchase (“**General Terms and Conditions**”) apply exclusively to all purchases concluded within the framework of the business relationship between WACKER NEUSON and the SUPPLIER, whether relating to the purchase of goods and/or other items and/or rights to and/or the performance of works and/or services for WACKER NEUSON (“**Deliverables**”).
 - 1.2. The General Terms and Conditions shall apply even when the SUPPLIER has not expressly agreed to them. Conflicting or differing terms and conditions proposed by the SUPPLIER only apply where WACKER NEUSON has expressly agreed to them in writing.
 - 1.3. Supply agreements and other similar agreements concluded in writing between WACKER NEUSON and the SUPPLIER, if any, shall prevail over these General Terms and Conditions where such other agreement(s) include terms which conflict with these General Terms and Conditions.
 - 1.4. To this extent, the following hierarchy shall apply in the event of any such conflict:
 - I. Supply or similar agreement
 - II. General Terms and Conditions
 - 1.5. In the absence of any specific provisions to the contrary, all notices and declarations mentioned in these General Terms and Conditions or in connection with these General Terms and Conditions, especially any Orders or agreements, must be in written form to be effective.
 - 1.6. “**Order**” means the general demand for the Deliverables (e.g., by means of an individual purchase order) made to the SUPPLIER by WACKER NEUSON and any special demand by way of a call-off, to be agreed separately. All Orders from WACKER NEUSON must be in written form or transmitted by way of electronic data interchange (e.g., EDI).
 - 1.7. “**EDI**” (Electronic Data Interchange) means the electronic transfer of business documents between WACKER NEUSON and the SUPPLIER, in a standard format via a uniform standardised interface, as approved by WACKER NEUSON.
 - 1.8. “**Intellectual Property**” means all patents, utility models and designs, copyrights, trademarks, brand names and product names (regardless of whether they are registerable or have been registered), know-how and other similar rights worldwide, that exist or may come into being.
 - 1.9. “**SUPPLIER**” indicates the manufacturer, service provider and/or seller, from which WACKER NEUSON orders the Deliverables.
 - 1.10. “**WACKER NEUSON**” indicates the relevant company of the WACKER NEUSON Group companies named below, which orders the Deliverables from the SUPPLIER:
 - Wacker Neuson America CorporationFurthermore, WACKER NEUSON also refers to any other company of the WACKER NEUSON Group not listed here that orders Deliverables from the SUPPLIER using these General Terms and Conditions.
 - 1.11. “**WACKER NEUSON Group**” indicates an international group of companies, made up of the parent company Wacker Neuson SE, with its headquarters in Munich, Germany, and all Related Companies.



- 1.12. “**Working Days**” include all calendar days, which are not Sundays or bank holidays where WACKER NEUSON has its registered office.
- 1.13. “**Related Companies**” are all companies that are affiliated with Wacker Neuson SE within the meaning of §§ 15 *et seq.* of the German Stock Corporation Act (*Aktiengesetz, AktG*).

2. Offers, Orders, Order Confirmations, Call-Offs, Amendments

- 2.1. Offers made by the SUPPLIER upon the request of WACKER NEUSON shall be binding and free of any and all service charge.
- 2.2. The SUPPLIER shall accept Orders from WACKER NEUSON or otherwise respond to the Order without delay or at the latest within five (5) Working Days. WACKER NEUSON can withdraw the Order at any time in whole or in part until it has been accepted by the SUPPLIER. If the SUPPLIER fails to react to the Order within this time, WACKER NEUSON shall no longer be bound by the Order.
- 2.3. Call-offs shall result in a delivery obligation even if they are not confirmed by the SUPPLIER unless the SUPPLIER submits a reasoned objection within three (3) Working Days.
- 2.4. WACKER NEUSON retains the right to subsequently amend Orders. The SUPPLIER will transfer these changes into a new offer within a reasonable period, which such offer shall be subject exclusively to these General Terms and Conditions. The impact of the desired changes, included but not limited to on any additional or reduced costs and delivery times, shall be taken into account by the SUPPLIER, communicated to WACKER NEUSON, and subject to WACKER NEUSON'S written approval.

3. Performance, Quality and Spare Parts

- 3.1. The content, nature and scope, quality, dimensions, weight and amounts of the Deliverables as well as the packaging and means of transport must comply with the requirements set out in the Order by WACKER NEUSON (e.g., technical drawings, specifications, and company standards), the customary kind and quality, the current state of scientific and technical knowledge, and the relevant DIN, ISO or other comparable norms and industry standards. The most recent relevant company standards of WACKER NEUSON can be accessed at any time under <https://wackerneusongroup.com/en/suppliers/company-standards>.

- 3.2. All Deliverables must comply with the relevant legal provisions, especially those concerning product or machine safety and the standards for accident prevention and environmental protection.
- 3.3. The SUPPLIER shall ensure that it is able to provide WACKER NEUSON with spare parts for the relevant Deliverables on reasonable terms for a period of at least ten (10) years after the end of SUPPLIER'S series production or the business relationship. If the SUPPLIER plans to cease production of spare parts for the products it has supplied, it will inform WACKER NEUSON of this decision to cease production without delay in order to allow WACKER NEUSON to submit a last-time purchase order, if necessary. For this reason, there must be at least six (6) months between the decision to cease production and the cessation of production. The obligation under the first sentence remains unaffected.

4. Delivery, Transfer of Risk, Transport

- 4.1. Unless otherwise agreed on a case-by-case basis, the SUPPLIER will deliver DAP to the destination specified by WACKER NEUSON in accordance with the most recent Incoterms® observed by WACKER NEUSON, which is currently Incoterms® 2020.
- 4.2. Unless the agreed Incoterms® or another agreement otherwise provide, the SUPPLIER shall bear the risk of accidental loss, destruction or deterioration and the risk of price variation until the Deliverables have been delivered to WACKER NEUSON or the recipient designated by WACKER NEUSON.
- 4.3. Each delivery must include a delivery note issued in accordance with DIN 4991 or that at least describes the type, amount, and weight of the delivery. Delivery notes, bills of lading, invoices and all correspondence must include the WACKER NEUSON Order and material numbers. Datasheets, operating manuals, test certificates, approvals and other documentation shall be enclosed with the delivery note in the agreed format and languages.
- 4.4. The SUPPLIER shall also provide WACKER NEUSON with all documents in good time required for export, import and transit or transport. Without these documents, WACKER NEUSON shall have no obligation to accept delivery.
- 4.5. If the delivery note is missing, if it is incomplete or if one of the documents named in sections 4.3 or 4.4 is not included, WACKER NEUSON can refuse to accept delivery and is not at fault



for any resulting delay to the payment of the SUPPLIER.

- 4.6. The Deliverables shall be packed to prevent any damage during transport. The SUPPLIER commits to applying the packaging requirements set by WACKER NEUSON. If WACKER NEUSON does not make any special packaging requirements available, the transport handbook retrievable under <https://wackerneusongroup.com/en/suppliers/forms-policies> shall apply. Any damage to goods resulting from improper packaging or routing will be charged to SUPPLIER.
- 4.7. Upon delivery, the Deliverables shall become the exclusive property of WACKER NEUSON. Irrespective of any agreement concerning the retention of title, WACKER NEUSON shall always be entitled to use, process and/or sell the Deliverables in the normal course of business and to transfer ownership of the Deliverables to a third party, even if this would result in the loss of any purported right of retention in favor of SUPPLIER.

5. Delivery Times, Delays, Force Majeure, Termination

- 5.1. The delivery time specified in the Order by WACKER NEUSON or otherwise agreed shall be binding (date of delivery or deadline).
- 5.2. If delivery is delayed or if it becomes clear that it will be delayed, the SUPPLIER shall promptly inform WACKER NEUSON of these circumstances and shall provide the reason for the delay.
- 5.3. The fulfilment of all obligations by the SUPPLIER within the agreed delivery time shall be decisive for determining adherence to the delivery times.
- 5.3.1. If a delivery fails to reach the agreed destination within the agreed delivery time and this failure is the fault of the SUPPLIER, WACKER NEUSON shall be entitled, without limitation to other rights and remedies of any kind, to demand liquidated damages in the amount of half a per cent (0.5%) of the value of the affected Order from the SUPPLIER for each Working Day that has commenced without delivery, with a maximum penalty of five per cent (5%) of the value of the delayed Order.
WACKER NEUSON has the right to claim these liquidated damages even if it did not reserve this right when accepting the delivery. Where other damages are claimed for the delay, the liquidated damages shall be deducted from the

amount of any damages claimed. The SUPPLIER agrees that the above liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

- 5.3.2. To the maximum extent permitted by law, the SUPPLIER shall be liable for any damages caused by the delay. This applies especially for consequential loss, such as, e.g., lost profits, downtime costs, conversion costs, additional costs of goods bought to replace the delayed goods, as well as increased costs for any expedited delivery that becomes necessary because of the missed delivery deadline.
- 5.3.3. If the SUPPLIER fails to deliver within the delivery deadline, WACKER NEUSON shall be entitled, irrespective of Section 5.3.1 and 5.3.2, to cancel the Order concerned and all related Orders after a reasonable grace period of ten (10) Working Days. The grace period shall be dispensable when the SUPPLIER refuses to deliver, the strict adherence to the performance period is specifically agreed ("absolute fixed date transaction") or special circumstances exist, which would justify the immediate cancellation of the Order considering the interests of both sides. Such circumstances exist, for example, where, due to the delay, the Deliverables cannot be incorporated into the WACKER NEUSON production process without excessive delay or unreasonable economic expense.
- 5.3.4. Early deliveries and/or partial deliveries are equally impermissible. In these cases, WACKER NEUSON shall be justified in refusing to accept the delivery, returning the delivery, or storing the delivery at WACKER NEUSON until the delivery date at the cost and risk of the SUPPLIER.
- 5.4. The SUPPLIER may only rely on force majeure, meaning an objective impossibility brought about by an exceptional, external event caused by an act of nature or of third parties that was unforeseeable in reasonable human judgment and experience, and which could not reasonably have been prevented ("**Force Majeure**"), when
- the event concerned cannot under any circumstances be attributed to the matters within SUPPLIER'S control (i.e., matters which would be expected to be within SUPPLIER'S control had it exercised reasonable care) and
 - the SUPPLIER has a risk management system in place which makes provisions such as, e.g. the selection and develop-



ment of numerous suitable suppliers/sub-contractors, planning alternative production resources and capacities, maintaining adequate inventories, the development of hygiene concepts, the organisation of alternative transport options (even if these involve reasonable additional costs) and comparable measures, and the event concerned still makes it impossible to perform the Order or the SUPPLIER demonstrates an inevitability even considering such measures without actually having an explicit risk management system.

- 5.5. Agreed time periods will be extended by the duration of the disruption caused by the Force Majeure provided that WACKER NEUSON is informed about the occurrence of such a disruption without delay in accordance with Section 5.2.
- 5.6. If there is no foreseeable end to the disruption caused by the Force Majeure or if the disruption continues for more than two (2) months, WACKER NEUSON has the right to terminate the Order with immediate effect.
- 5.7. If WACKER NEUSON is prevented from accepting the Order due to Force Majeure, WACKER NEUSON can also rely on objective impossibility and terminate the Order with immediate effect where it is not reasonable for WACKER NEUSON to accept the Deliverables. In this case, any obligations of payments due or owed by WACKER NEUSON related to such Order are permanently terminated.

6. Prices, Invoices, Terms and Conditions of Payment, Set-Off and Crediting

- 6.1. The agreed prices are net and, unless otherwise agreed, in United States Dollars (“USD”). In addition, prices are binding fixed prices and include all services, auxiliary services and delivery DAP to the destination specified by WACKER NEUSON in accordance with Incoterms®.
- 6.2. Invoices shall be sent to WACKER NEUSON electronically. Where an agreement is reached with the SUPPLIER, an invoice can be submitted via EDI (see Section 1.7.). Invoicing shall generally follow DIN 4991, or at least the invoicing requirements of WACKER NEUSON. These requirements can be accessed at any time under <https://wackerneusongroup.com/en/suppliers/forms-policies>.
- 6.3. Payment of the agreed price shall be due within thirty (30) calendar days of complete delivery

and performance (including any agreed acceptance procedure) and the receipt of a correct invoice within the meaning of Section 6.2. Alternatively, WACKER NEUSON can use the credit procedure to effect payment.

- 6.4. WACKER NEUSON shall not be in default of payment until it has received at least a reminder from the SUPPLIER and three (3) Working Days have passed since such notice.
- 6.5. In the case of misperformance or other counterclaims for breach of contract, WACKER NEUSON is justified in withholding part payment until the Order has been performed properly.
- 6.6. Further, WACKER NEUSON is entitled to offset with and against due claims that WACKER NEUSON or a Related Company has against the SUPPLIER.
- 6.7. The assignment of claims of the SUPPLIER arising out of this business relationship requires the prior approval of WACKER NEUSON.

7. Quality Assurance, Subcontractors

- 7.1. The SUPPLIER shall use its general and specialist knowledge to independently review the designs, calculations, specifications, company standards and other requirements provided by WACKER NEUSON for potential errors or inconsistencies. WACKER NEUSON shall be informed without delay of any concerns so that clarifications can be undertaken jointly. The same applies to any missing technical specifications.
- 7.2. The SUPPLIER ensures that it will maintain and implement a quality assurance system that complies with the most recent standards for the relevant supplier industry/ sector. It will independently undertake the foreseen and agreed quality assurance measures, including completing the necessary documentation. Upon request, the SUPPLIER will make this documentation available to WACKER NEUSON. The applicable requirements of WACKER NEUSON can be accessed at any time under <https://wackerneusongroup.com/en/suppliers/forms-policies>.
- 7.3. WACKER NEUSON is entitled to carry out on-the-spot controls and checks at the production site of the SUPPLIER upon prior notice and during normal business hours to verify the implementation of and compliance with the quality assurance measures (“Audit”). WACKER NEUSON is entitled to inspect the documents related to the quality assurance measures, including any guidelines, handbooks and inspection



records, and to inspect the storage facilities, production lines and shipping areas to verify compliance with the quality assurance measures and, where obvious defects are detected, WACKER NEUSON may supplement its Audit with interviews. Each party shall generally bear the corresponding costs themselves. If the Audit uncovers material deficiencies in the quality assurance system of the SUPPLIER or identifies material breaches of contractual obligations, the SUPPLIER will reimburse WACKER NEUSON for the costs of the Audit, providing these costs do not exceed 110% of the normal levels of such an audit.

- 7.4. The SUPPLIER may only subcontract all or part of an Order with the prior consent of WACKER NEUSON, unless such subcontractors simply supply standard goods, catalogue articles or raw materials.
- 7.5. Consent does not release the SUPPLIER from its responsibility for the performance of the Order. The SUPPLIER shall bear the risk of procurement for the agreed Deliverables. The SUPPLIER shall be liable for its subcontractor/supplier as if it were the breach, fault or negligence of the SUPPLIER itself.
- 7.6. The SUPPLIER shall inform WACKER NEUSON in good time of any planned changes to the Deliverables themselves, to the production process, materials or supplied components for the Deliverables, the relocation of production sites, changes to the production process or other measures, that could affect the quality or safety of the Deliverables (e.g., change of subcontractors), and about the nature, content, and scope of these changes. The SUPPLIER will only implement these changes after prior consent of WACKER NEUSON, which WACKER NEUSON shall not unreasonably refuse.

8. Defects, Notice of Defects and Liability for Defects (Warranty)

- 8.1. The rights of WACKER NEUSON in the case of defects of material, workmanship, design, or title of the Deliverables and other breaches of duties by the SUPPLIER shall be governed by the following procedure.
- 8.2. Where, upon the transfer of risk, the Deliverables are not (i) in accordance with the design, specifications, or other descriptions in the Order, (ii) free from defects in material or workmanship, (iii) in compliance with all applicable rules, regulations, and laws, and (iv) free from all security interests, liens, encumbrances, and restrictions on transfer, such Deliverables shall

be deemed to contain a defect ("**Defect**"). Where ISO or other equivalent standards apply to the Deliverables, the Deliverables must comply with such standards upon the transfer of risk and must also be free of any rights of third parties.

Those product descriptions, designs and material numbers and similar information constitute an agreement on the quality that becomes an object of the relevant Order through the designation or reference to it in the Order or, in the same way, is included in the Order through these General Terms and Conditions. It does not make a difference whether the product description stems from WACKER NEUSON, the SUPPLIER, or a subcontractor/sub-supplier. The rule contained in this provision also applies in the case that the SUPPLIER carries out construction or assembly work in relation to the Deliverables.

The acceptance or approval of samples or specimens presented does not constitute a waiver of any claims for breach of warranty.

- 8.3. WACKER NEUSON will notify SUPPLIER of any obvious Defects in the Deliverables without delay. WACKER NEUSON'S duty to inspect is limited – to the extent that this is feasible in the ordinary course of business – to Defects that are obvious from an external examination during the incoming goods inspection, including of the shipping documents (e.g., transport damage, incorrect or short delivery) or which are identified from spot checks carried out as part of quality control procedures. A notice of Defects by WACKER NEUSON shall be considered as being submitted without delay where it is submitted within five (5) Working Days of the delivery to WACKER NEUSON. Where a Defect is detected at a later stage, WACKER NEUSON shall inform the SUPPLIER within 2 weeks of the discovery of the Defect.
- 8.4. If the Defect of quality appears within six (6) months of the transfer of risk, it will be assumed that the Deliverable was already defective when the risk was transferred unless the assumption is inconsistent with the nature of the Deliverable or the Defect.
- 8.5. If an acceptance procedure was agreed, WACKER NEUSON can declare its acceptance within four (4) weeks of receiving notification from the SUPPLIER that the Deliverables are completed. WACKER NEUSON shall not be obliged to accept the Deliverables in part. The acceptance report prepared by WACKER NEUSON shall be used for acceptance and shall list



any obvious Defects. Unconditional acceptance can only be assumed for obvious Defects that are not recorded in the acceptance report. For work performances, it is generally assumed that acceptance is agreed.

- 8.6. Unless otherwise agreed, all warranty claims from WACKER NEUSON shall become time-barred within two (2) years of the transfer of risk except where the statutory provisions provide for longer time limits. If an acceptance procedure has been agreed, this time limit shall start with acceptance without reservations by WACKER NEUSON.
- 8.7. When a notice of Defects is received by the SUPPLIER, the limitation period for warranty claims is suspended until the SUPPLIER declares in writing that the Defects have been remedied with respect to the warranty claims of WACKER NEUSON.
- 8.8. WACKER NEUSON can, at its discretion, demand to either have the Defect removed or to receive a replacement Deliverable without Defects ("**Warranty Remedy**"). If the SUPPLIER delivers a replacement, the time periods in Section 8.6 shall begin anew for the replacement.
- 8.9. Any expenses necessary for inspection and the Warranty Remedy shall be borne by the SUPPLIER even where there is no actual Defect unless WACKER NEUSON was aware that there was no Defect.
- 8.10. If the SUPPLIER fails to fulfil its duty to rectify the Defects within a reasonable deadline set by WACKER NEUSON, WACKER NEUSON can eliminate the Defects itself or have a third party eliminate the Defects and demand reimbursement from the SUPPLIER for any necessary expenses. If the Warranty Remedy would be unreasonable for WACKER NEUSON, there does not need to be any deadline. It shall be assumed to be unreasonable where urgency or operational safety is concerned, or there is a likelihood of disproportionate damage occurring. WACKER NEUSON will inform the SUPPLIER of this fact as soon as possible. The right to assert further rights is reserved.
- 8.11. The SUPPLIER shall bear all necessary costs of rectifying the Defect where the defective Deliverable is situated, including any installation costs.
- 8.12. SUPPLIER shall obtain and assign or otherwise provide to WACKER NEUSON, without charge, the benefits of warranties and guarantees pro-

vided by suppliers of material or equipment incorporated into SUPPLIER'S goods and/or services and shall perform its responsibilities so that such warranties and guarantees remain in full force and effect.

- 8.13. The warranties set forth in Section 8 are cumulative and in addition to any other warranty provided by law or equity. All rights and remedies provided in these General Terms and Conditions are cumulative and not exclusive, and the exercise by WACKER NEUSON of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties, or otherwise.

9. Liability for Damages, Indemnity, Product Liability, Insurance

- 9.1. Regardless of the degree of fault, the SUPPLIER shall be liable for all damages suffered directly or indirectly by WACKER NEUSON as a result of the breach of duties of the SUPPLIER, its staff or other third parties employed by the SUPPLIER in the performance of the Order. This applies to damages resulting from defective goods and services, delays, failure to deliver and the breach of a collateral warranty, or due to the breach of a regulatory safety provision, or any other ground to be attributed to the SUPPLIER. To this extent, any limitation of liability shall not exist.
- 9.2. The SUPPLIER shall defend, indemnify against, hold harmless from, and reimburse for ("**Indemnify**") WACKER NEUSON against all actions, suits, claims, proceedings, investigations, audits, and demands ("**Claims**") from third parties arising out of or in relation to a breach of duties of the SUPPLIER. This includes Indemnifying WACKER NEUSON against any direct or indirect Claims or regulatory measures, making all necessary information available, and assuming the costs for legal proceedings and all other necessary expenses for the defence.
- 9.3. If any product liability Claim is brought against WACKER NEUSON by a customer or third party, the SUPPLIER shall Indemnify WACKER NEUSON from such Claims provided that and as far as the damage is caused by a Defect in the Deliverable from the SUPPLIER. Within the scope of this liability, the SUPPLIER is obligated to reimburse WACKER NEUSON for all expenses resulting out of or in connection with



any recall action carried out by WACKER NEUSON. Such a recall action will especially be taken where it is ordered by an authority or, in the reasonable discretion of WACKER NEUSON, is advisable to avoid impending damage to persons or property. WACKER NEUSON will share with the SUPPLIER the subject matter and scope of the recall action to be conducted in good time.

- 9.4. The SUPPLIER shall maintain extended corporate and product liability insurance (where necessary for the relevant shipment, with a clause covering the supply of defective machinery) including full coverage for personal injury or damage to property for up to 10 million USD using the so-called product liability model and with effect until the respective expiration of the statute of limitations for defects or the absolute statute of limitations for claims of product liability. Upon request, the SUPPLIER shall present WACKER NEUSON with an insurance certificate evidencing such insurance. The SUPPLIER shall inform WACKER NEUSON of any termination of contract or change of coverage, regardless of the reason; in particular, it shall inform WACKER NEUSON without delay if the insurance contract expires without the conclusion of a subsequent contract. Should WACKER NEUSON be entitled to any claims for compensation that exceed the amount of the insurance coverage, the claim shall be unaffected.

10. Intellectual and Industrial Property Rights

- 10.1. Intellectual property developed by the SUPPLIER in connection with a specially agreed development ("**New Intellectual Property**") will be transferred to WACKER NEUSON to the greatest possible extent under law. This transfer shall be compensated by the payment of the price of the Deliverables. Irrespective of this obligation to transfer the New Intellectual Property, the SUPPLIER hereby grants WACKER NEUSON in advance and at no cost, an unconditional, irrevocable, transferrable, exclusive worldwide licence to the New Intellectual Property. The SUPPLIER shall use the New Intellectual Property solely for the purposes of providing the Deliverables. Unless otherwise agreed in writing, this Section shall also apply to software.
- 10.2. WACKER NEUSON exclusively reserves full ownership and all rights to all drawings, 3D models, images, matrices, models, templates, plans, and other documents and information in tangible and intangible form, especially in electronic form, as well as to all intellectual property

that the SUPPLIER receives from WACKER NEUSON for the purposes of manufacturing the Deliverables.

- 10.3. The SUPPLIER shall be liable towards WACKER NEUSON for any Claims arising in relation to the infringement of an intellectual property right and/or applications for industrial property rights from the use of the Deliverables supplied by the SUPPLIER. To this extent, the SUPPLIER shall indemnify WACKER NEUSON against all Claims arising out of or in relation to such infringements and shall bear all costs associated costs, including the costs of any licencing fee to be paid and all reasonable costs of legal proceedings. In addition, the SUPPLIER will support WACKER NEUSON in judicial and extrajudicial proceedings against the holder of the industrial property rights. This shall not apply where the SUPPLIER can show that it is neither responsible for the infringement of the industrial property right nor would it have known about the infringement had it used the diligence of a prudent businessperson at the time of the delivery.
- 10.4. Furthermore, this warranty shall not apply to the extent that the Deliverables are produced exclusively according to the plans, documents and models provided by WACKER NEUSON and the SUPPLIER neither knew nor should it have known that the production of the Deliverables or rendering the services constituted an infringement as defined above.

11. Tools and Provided Production Materials

- 11.1. Moulds, tools, production facilities, devices, and similar equipment ("**Tools**") made available to the SUPPLIER by WACKER NEUSON remain the sole property of WACKER NEUSON.
- 11.2. The SUPPLIER shall store the Tools properly and mark them so that they are clearly identifiable as the property of WACKER NEUSON. These Tools may not be given to third parties by either the SUPPLIER or its legal successors or used for the production of the same or similar articles by or for third parties. The Tools are to be protected against any misuse, kept confidential from unauthorised persons, and surrendered to WACKER NEUSON without delay upon request from WACKER NEUSON. The SUPPLIER shall have no rights of retention or other counterclaims against this duty to surrender – for any legal reason whatsoever.
- 11.3. The same applies to Tools that were produced by the SUPPLIER for the purposes of manufacturing the Deliverables and were paid for by



- WACKER NEUSON. Upon payment, such Tools immediately become the property of WACKER NEUSON.
- 11.4. Amendments may only be made to the Tools with the prior consent of WACKER NEUSON.
- 11.5. The SUPPLIER shall examine the Tools regularly to check that they function properly and are accurate. If defects are found, WACKER NEUSON shall be informed of these defects without delay and the further steps clarified.
- 11.6. The SUPPLIER shall be liable for any replacement or repair costs resulting from improper handling of the Tools.
- 11.7. The costs for the replacement or repair of Tools due to normal wear and tear shall be borne by WACKER NEUSON after a prior agreement on the assumption of costs, which WACKER NEUSON shall not unreasonably refuse.
- 11.8. The SUPPLIER will store the Tools at its own costs for at least ten (10) years after the last use and will return the Tools upon the request of WACKER NEUSON. The Tools may only be disposed of or returned with the written consent of WACKER NEUSON.
- 11.9. The SUPPLIER shall inform WACKER NEUSON without delay in the case of any enforcement measures against the SUPPLIER.
- 11.10. To the extent that WACKER NEUSON makes products, raw materials, or other materials available to the SUPPLIER for production of the Deliverables ("**Production Materials**"), WACKER NEUSON retains ownership of these Production Materials. The joining, mixing, processing, installation, or remodelling ("**Processing**") of the Production Materials by the SUPPLIER takes place for WACKER NEUSON. If the Production Materials are processed together with other products, raw materials or materials that are not owned by WACKER NEUSON, WACKER NEUSON shall acquire joint ownership to the Deliverables produced in proportion to the value of the Production Materials that were used in production.
- 11.11. The SUPPLIER shall have no right of retention for the Production Materials, regardless of the reason. The Production Materials may not be used for any other purpose other than the agreed purpose, nor may they be made available to third parties without the prior agreement of WACKER NEUSON.

- 11.12. WACKER NEUSON shall have the right, without further authorization, to make such public filings as WACKER NEUSON deems reasonably necessary to notify third parties of WACKER NEUSON's interest in such Tools or Production Materials, including, without limitation, Uniform Commercial Code notice filings.

12. Customs and Export Controls

- 12.1. The SUPPLIER shall inform WACKER NEUSON in its business documents of any licencing requirements for export or re-export of the Deliverables under German, European or US export and customs regulations, the export control regulations of the United Nations, or the export and tariff provisions of the country of origin of the Deliverables. Where such requirements apply, the SUPPLIER shall provide at least the following information in the relevant positions in its offers, Order confirmations, delivery notes and/or invoices:
- 12.1.1. The export list number under Annex AL of the German Foreign Trade and Payments Ordinance (*Aussenwirtschaftsverordnung, AWV*) or comparable list items of relevant export lists;
- 12.1.2. The ECCN (Export Control Classification Number) or EAR 99 under US Export Administration Regulations (EAR);
- 12.1.3. The country of origin of the Deliverables; and
- 12.1.4. The HS Code of the goods.
- 12.2. The SUPPLIER shall ensure that it provides WACKER NEUSON with a long-term supplier's declaration for products with preferential origin status in accordance with the relevant EU legal requirements, without the need for WACKER NEUSON to first request such a declaration.
- 12.3. The SUPPLIER guarantees that it is either an Authorised Economic Operator (AEO-F or AEO-S) or that it fulfils the following requirements of security in the supply chain:
- 12.3.1. Deliverables that are produced and/or stored for WACKER NEUSON or transported and/or delivered to WACKER NEUSON are produced, stored, and processed in secure facilities, and loaded at secure freight handling centres.
- 12.3.2. The Deliverables are protected against unauthorised access during production, storage, processing, loading and transport;
- 12.3.3. The employees in charge of the production, storage, processing, loading, transport and acceptance of the Deliverables are reliable (within



the meaning of Article 24 (1) of Regulation (EU) No. 2015/2447); and

- 12.3.4. Subcontractors or suppliers of the SUPPLIER are informed that they must also take measures to secure the above supply chain.
- 12.4. The SUPPLIER shall inform WACKER NEUSON of the grant of AEO-F or AEO-S status without delay and at the latest with the first delivery by providing a copy of the official certification.

13. Confidentiality

- 13.1. The SUPPLIER shall keep confidential all information, files and documents that WACKER NEUSON makes available to the SUPPLIER or that the SUPPLIER otherwise receives in the course of the business relationship regarding WACKER NEUSON or which the SUPPLIER creates or will create in connection with the fulfilment of its obligations towards WACKER NEUSON ("**Confidential Information**"). The SUPPLIER is prohibited from using the Confidential Information for purposes other than the fulfilment of its obligations towards WACKER NEUSON and from making the information available to third parties without the prior consent of WACKER NEUSON.
- 13.2. This obligation shall remain in force notwithstanding any cancellation or termination of the respective Order, regardless of the reason; these provisions shall not apply to information, files or documents that are generally available or become generally available without a breach of the obligations of the SUPPLIER or where the SUPPLIER provides the information to a subcontractor and/or supplier to the extent necessary to fulfil the respective Order.
- 13.3. Upon request, at the latest automatically after the end of the business relationship, the Confidential Information shall be returned to WACKER NEUSON or, where agreed, destroyed or – where it is stored electronically – deleted. Upon the request of WACKER NEUSON, the SUPPLIER shall confirm the performance of these obligations in writing.

14. Data Protection

- 14.1. The SUPPLIER shall comply with the provisions of the EU General Data Protection Regulation ("GDPR") and the relevant laws and implementing provisions.
- 14.2. Where, when performing the Order, the SUPPLIER processes personal information from WACKER NEUSON within the meaning of the

GDPR ("**Order Processing**"), an agreement shall be concluded in accordance with Article 28 (3) of the GDPR providing that the relevant conditions are fulfilled.

- 14.3. Where it transfers personal data to third countries, the SUPPLIER shall comply with the specifications of Article 44 *et seq.* of the GDPR and, upon request, shall present the Data Protection Officer of WACKER NEUSON with the appropriate safeguards for the transfer.
- 14.4. The SUPPLIER shall ensure that persons involved in the performance of the Order will be trained in data protection law and be bound to comply with data secrecy during and after the end of their employment.
- 14.5. The Data Protection Officer from WACKER NEUSON shall, upon request, be supplied with the information and proof that WACKER NEUSON requires to fulfil its obligations under the GDPR.

15. Compliance, Code of Conduct

- 15.1. All supplies and services shall be provided in accordance with the latest version of the "Code of Conduct for Business Partners of the Wacker Neuson Group" ("**Code of Conduct**"). The latest version can be accessed under <https://wackerneusongroup.com/en/suppliers/forms-policies>. The SUPPLIER will communicate the Code of Conduct to its subcontractors and demand compliance from these third parties, where they are tasked with performing services for WACKER NEUSON. In the case of serious violations of the Code of Conduct, WACKER NEUSON shall be entitled to extraordinarily terminate all Orders and contracts with immediate effect.
- 15.2. In this connection, the SUPPLIER shall grant WACKER NEUSON the right, where it has justified doubts about the SUPPLIER'S compliance with the Code of Conduct and minimum social standards and where WACKER NEUSON has given advanced notice, to visit the offices and production sites of the SUPPLIER during normal business hours to ensure that the SUPPLIER is complying with the Code of Conduct and minimum social standards. To this end, WACKER NEUSON may view documents and industrial safety measures such as guidelines and handbooks, inspect the workplaces to assess whether the work and safety measures are complied with and, where a manifest abuse is found, supplement the examination with interviews.



16. Product / Material Compliance

- 16.1. The SUPPLIER will comply with all requirements of Regulation (EC) No. 1907/2006 (REACH) in relation to the Deliverables.
- 16.2. Where the Deliverables do not contain any substances of very high concern (SVHCs) within the meaning of Article 59 in combination with Article 57 of the REACH Regulation in a concentration above zero-point-one per cent (0.1%) by weight, a so-called negative declaration shall be made. This should state that the product does not contain any SVHCs or, where it does contain SVHCs, that these do not exceed the threshold of zero-point-one per cent (0.1%) by weight. In the latter case, the SVHCs concerned should be named. Article 33 of the REACH Regulation remains unaffected. If there is a change to the SVHC list, the supplier declaration shall be updated immediately after the notification of the change for all Deliverables to be delivered after the change.
- 16.3. In addition, the substance restrictions of Regulation 2011/65/EU (RoHS) are to be complied with fully, even if the Deliverables themselves do not fall within the scope of the RoHS Regulation. WACKER NEUSON shall be informed of any deviation from this Section 16.3, especially of any reliance on the relevant exemption request, before delivery and shall be provided with evidence to justify the reliance on the relevant exemption request.
- 16.4. The SUPPLIER shall make available to WACKER NEUSON without delay and upon delivery at the latest all information necessary for the notification under Article 9 (1) (i) of Directive 2008/98/EC on waste for every (single) product and, if applicable, for the packaging. The SUPPLIER shall also make the relevant SCIP number available to WACKER NEUSON.
- 16.5. The SUPPLIER shall be responsible for ensuring that the Deliverables comply with Directive (2006/42/EC) on machinery, as amended, that they have the CE label and that they are accompanied by an EC declaration of conformity if this is prescribed in the EU for the Deliverables. The SUPPLIER shall also affix any labels to the Deliverables, their components, packaging, and all other transportation aids as are required at the destination of the Deliverables, as specified by WACKER NEUSON.
- 16.6. In addition, the SUPPLIER shall ensure that it will not supply any products that contain conflict minerals within the meaning of Section 1502 of the US Dodd-Frank Act of 2010, Regulation

(EU) 2017/821 or other similar national or international laws and provisions. If the SUPPLIER is not able to rule out that Deliverables may contain such minerals, the SUPPLIER shall inform WACKER NEUSON without delay using the most recent version of the CFRI Conflict Minerals Reporting Template (see: <http://www.responsiblemineralsinitiative.org/reporting-templates/cmrt/>) and providing the material number for WACKER NEUSON.

17. Product Responsibility, Take Back and Disposal

- 17.1. All electrical and electronic devices delivered to WACKER NEUSON shall comply with laws, orders, and regulations, including those regarding take back and disposal. Upon request, the relevant information for the notification or registration, as applicable (date of the notification/registration, registration number, brand(s) in the register, manufacturer name in the register), as well as confirmation of participation in a take-back system shall be provided to WACKER NEUSON without delay. Upon request from WACKER NEUSON, the SUPPLIER will assume the obligation to take back and properly dispose of the relevant Deliverables, as far as legally permissible, after the end of use by WACKER NEUSON, customers of WACKER NEUSON and/or its customer's customers at the SUPPLIER'S expense in accordance with the statutory provisions. Wherever permissible, the SUPPLIER shall release WACKER NEUSON from the take-back obligations for waste electrical and electronic devices and from related third-party claims. WACKER NEUSON'S entitlement to the release/indemnification by the SUPPLIER shall not become time-barred until two years since the final discontinuation of use of the Deliverable. This period begins at the earliest with the receipt by WACKER NEUSON of written notice from the customer and/or its customer about the end of use.
- 17.2. All applicable laws, orders, and regulations shall be complied with for all rechargeable and non-rechargeable batteries delivered to WACKER NEUSON, regardless of their shape, volume, weight, material composition or use and irrespective of whether the batteries are the Deliverable or part of the Deliverable. Upon request and without delay, the SUPPLIER shall provide the relevant notification or registration information (date of the notification/registration, registration number, brand(s) in the register, manufacturer name in the register) and make available all necessary documents to show that the batteries may be placed on the market.



WACKER NEUSON is free to dispose the batteries via its own disposal method, as approved by the relevant authority, and to charge the SUPPLIER the costs involved up to the normal market value for disposal.

- 17.3. All packaging delivered to WACKER NEUSON shall always comply with all applicable laws, orders, and regulations, including those regarding packaging waste.

Upon request from WACKER NEUSON, the relevant notification or registration information (date of the notification/registration, registration number, brand(s) in the register, manufacturer name in the register), if applicable, shall be provided without delay and confirmation of participation in a take-back system shall be presented.

- 17.4. The SUPPLIER shall, at its own costs, take back any packaging that is not required to participate in a system as well as Deliverables and/or their component parts including the packaging and transportation aids, where this is prescribed by law. WACKER NEUSON is free to dispose of these items via its own disposal method, as approved by the relevant authority, and to charge the SUPPLIER for the actual costs involved in disposal up to the normal market value for disposal.

18. Choice of Law and Place of Jurisdiction

- 18.1. The laws of the State of Wisconsin, U.S.A. shall apply exclusively to the business relationship between WACKER NEUSON and the SUPPLIER. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 18.2. If the registered office of WACKER NEUSON is in the State of Wisconsin, any action, demand, claim, suit or proceeding arising out of this General Terms and Conditions or in connection with goods provided hereunder, not amicably resolved by the parties, shall be brought exclusively in the Federal court for the Eastern District of Wisconsin, and the parties hereby consent to personal jurisdiction in such courts and waive any objection based on jurisdiction or venue of any such action.
- 18.3. WACKER NEUSON is also entitled to file an action before any other competent court. Instead of bringing an action before an ordinary court, WACKER NEUSON can, where it would be the plaintiff in a dispute arising in connection with the business relationship, decide at its complete discretion to have the case decided in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC"), without

recourse to the ordinary courts of law. The place of arbitration shall be Milwaukee, Wisconsin; WACKER NEUSON shall select the language of the arbitration proceedings (German or English). The arbitration court shall consist of three (3) arbitrators, as appointed by the ICC Rules, and the law of the State of Wisconsin shall apply to the dispute.