

## **Conditions of Purchase (Rev. 7/2010) of Wacker Neuson SE and its affiliated companies (according to § 15 AktG)**

### **§1 Scope of Validity**

- (1) These Conditions of Purchase apply exclusively to our orders, order confirmations and contracts placed; any contradictory conditions or conditions of the Supplier, which differ from our Conditions of Purchase shall not be recognized, unless we have expressly confirmed the validity of such in writing. Our Conditions of Purchase shall also apply, if we, in the knowledge of any contradictory conditions or conditions of the Supplier, which differ from our Conditions of Purchase, unconditionally accept the consignment from the Supplier.
- (2) All agreements made between ourselves and the Supplier for the purpose of executing a contract must be confirmed in writing.
- (3) Our Conditions of Purchase also apply for future orders and contracts placed with the Supplier, without any express reference having to be made to these conditions.
- (4) These Conditions of Purchase apply only to contractors in accordance with §14 BGB (German Civil Code).

### **§ 2 Order and Confirmations of Order**

- (1) Orders and confirmations of orders and individual delivery call-offs must be placed in text form at least in order to be valid.
- (2) The Supplier shall be obliged to accept the order within a period of one week by returning the order countersigned by the Supplier to the specified place or otherwise to react in writing to our order.
- (3) If the Supplier does not accept the order within a period of one week from receipt by means of a written confirmation of order, we shall no longer be bound to such order.

### **§ 3 Prices, Invoices, Terms of Payment**

- (1) The agreed prices shall be net prices, quoted in euros and binding. Unless agreed otherwise, all shipments must be Delivered Duty Paid (DDP) as per Incoterms 2010, insurance included, to our company location specified in the order. The Supplier shall take back the packaging at its expense.
- (2) If the prices were not yet been determined at the time when the order was placed, they shall be specified in the acceptance of the order and approved by us in writing before delivery.
- (3) Invoices shall be sent in single copy to Wacker Neuson SE, Preußenstrasse 41, 80809 Munich, Germany. The invoice shall in particular contain the Supplier's and the purchaser's VAT ID Nos. to the extent required by law, Supplier number, business reference, order number and date of the order or delivery call-off, number and date of the delivery note, place of unloading, customs number, article number, type and quantity of the invoiced goods and account details, to the extent that such are printed on our order; the Supplier shall be responsible for any consequences resulting from the failure to comply with this obligation.
- (4) In the event of invoices issued incorrectly or incompletely, we reserve the right to credit the incorrect amount invoiced and request new correct invoices from the Supplier.
- (5) Unless agreed otherwise, payment shall be made within 30 days from delivery and receipt of an invoice compliant with paragraph 4.
- (6) In the event of a defective delivery or in the case of other counterclaims resulting from breaches of contract, we shall be entitled to retain payment until proper performance. Irrespective of contractual prohibitions on offset, we shall be entitled to offset any counterclaims to the full against the Supplier's receivables.

### **§ 4 Delivery, Product Requirements, Identification and Traceability of Products**

- (1) The Supplier is bound to the agreed delivery dates. Premature deliveries and part deliveries shall not be permitted.
- (2) If the delivery is delayed or a delay is foreseen, we must be notified immediately in writing indicating the reasons.
- (3) The decisive factor for compliance with the delivery date shall be the time of the transfer of risk pursuant to § 5 unless agreed otherwise.
- (4) In the event of delay, the Supplier shall be liable to compensate us for all losses from the delay, in particular for consequential losses such as lost profit, downtime costs, retooling costs, additional costs resulting from purchases necessary to bridge the delay and increased costs incurred for express dispatch that become necessary as a result of failure to meet deadlines due to the Supplier's delay. In the case that we demand damages, the Supplier has the right to prove that it is not responsible for the breach.
- (5) In the event of delivery delay, we shall be entitled to demand from the Supplier a contractual penalty for each working day or part thereof of the delay to the amount of 0.5 % of the contract value of the deliveries in arrears, up to a maximum of 5 % of the value of the delayed part of the order. We shall be entitled to assert claims to a contractual penalty even if a corresponding reservation has not been made when accepting the delivery. If damages are claimed on the grounds of a culpable failure to comply with the agreed deadline, the contractual penalty shall be offset against the damages claimed.
- (6) The contractual agreements shall determine the content, type and scope of deliveries, in particular quality, dimensions and quantities together with packaging and means of transport. Unless more extensive requirements are agreed, the goods shall be provided to the standards of quality common in the market and, if DIN, EN, ISO, VDE, VDI or equivalent standards apply, in accordance with such. In any event, the goods shall be produced and equipped such that on the day of delivery at the agreed place of performance pursuant to § 5 they satisfy the applicable statutory and public law provisions, in particular such of the German Equipment and Product Safety Act and the EC Machinery Directive and the standards concerning accident prevention and environment protection. In particular, the Supplier shall be liable for ensuring that the goods bear CE labeling and that they are accompanied by an EC declaration of conformity if such is required for the goods in Germany. The Supplier shall also apply any

other labeling to the goods and parts thereof and the packaging and means of transport as required by German law and EU law.

(7) The delivery note shall state the date of the order and the delivery, the delivery note number, our order form number, the type and quantity of the delivery and the type of packaging.

(8) We shall only be required to accept deliveries as being fully compliant with the contract if the contractually agreed documentation (e.g. technical documentation, operating instructions, safety data sheets etc.) are supplied in the agreed formats and languages.

#### **§5 Transfer of Risk**

Unless agreed otherwise, the risk shall only transfer to us when the goods are Delivered Duty Paid (DDP) as per Incoterms 2000 to the company location specified in the order. This shall also apply in the event that dispatch has been agreed.

#### **§ 6 Complaints and Liability for Defects -- German version**

(1) Complaints for defects filed by us shall be deemed to be submitted on time if received by the Supplier within a period of five working days from the receipt of goods or, in the case of concealed defects, from discovery thereof.

(2) We shall be entitled to the statutory warranty entitlements without restriction; in particular we shall be entitled at our discretion to demand remedy of the defect or delivery of new goods. The costs for the remedy or the delivery of new goods including all related costs, e.g. freight, dismantling and reinstallation costs and processing or working costs expended in vain shall be borne by the Supplier. We expressly reserve the right to claim damages, in particular the right to damages instead of or alongside performance.

(3) The limitation period for material and legal defects shall be 36 months, starting from the transfer of risk pursuant to § 5, unless the law provides for longer periods and unless agreed otherwise.

#### **§ 7 Liability for Damages, Product Liability**

(1) Irrespective of the degree of fault, the Supplier shall be obliged to reimburse us for losses incurred directly or indirectly as a consequence of a faulty delivery, on the grounds of infringements of official safety regulations or for other reasons attributable to the Supplier. The Supplier shall in particular be liable for all consequential losses and purely financial losses.

(2) To the extent that the Supplier is liable for product damage, it shall be obliged to indemnify us against claims for damages asserted by injured third parties at our initial request to the extent that the cause lies in its scope of control and organization and it is liable itself to the third party.

(3) Within the framework of its liability for claims for damages, the Supplier shall also be obliged to reimburse us for any expenditure that results from or in connection with any recall action we initiate.

A recall action shall in particular be deemed necessary as a result of an order issued by an authority authorized for such to us or another enterprise involved in the marketing of the products or as a result of the necessity to avoid possible injury to persons and/or damage to property.

(4) The Supplier undertakes to maintain product liability insurance with cover to the amount of EU 10 million per instance of damage to persons or property during the term of this contract, i.e. until expiry of the limitation period for defects or product liability period; if we are entitled to damages beyond the insurance amount stated above, this entitlement shall not be affected by the said insurance policy.

#### **§ 8 Copyright, Non-Disclosure**

(1) We shall retain all title and copyright to illustrations, drawings, calculations, samples, molds, models, matrices, templates and other documents that the Supplier receives from us; they shall not be made accessible to third parties without our express written consent. They are expressly to be used for the order issued and shall only be reproduced with our express consent. At our request, but at the latest after completion of the order without an express request from us, they shall be returned to us or, following consultation, destroyed or – In the case of electronic storage – deleted.

(2) Confidential technical, commercial and other information of ours, in particular concerning our business and trade secrets identified by us as confidential shall be kept strictly secret by the Supplier.

#### **§ 9 Return and Disposal of the Goods After End of Life**

(1) Electrical and Electronic Appliances Act: The Supplier shall at its own expense be obliged to take back and duly dispose of in accordance with the statutory provisions goods supplied that fall under the Electrical and Electronic Appliances Act following termination of use by our customers and/or the latter's further purchasers. The Supplier agrees to indemnify us against the obligations under § 10 paragraph II of the German legislation regarding electrical and electronic appliances (manufacturer's obligation to take back goods) and against all claims of third parties in connection therewith. Our entitlement to this acceptance/indemnity by the Supplier shall remain in effect for a period of two years after the final end of life of the supplied good. This period shall not start until we have received written notification of end of life from the customer or its purchaser.

(2) EU Batteries Directive and the Batteries Act: The Supplier shall be obliged to take back and dispose of at its own expense all batteries sold to us in accordance with the statutory provisions. However, it shall grant us the option to have batteries disposed of by our own officially authorized disposal channel and to charge it with the actual costs involved up to the amount of the usual market disposal costs.

(3) Other return and disposal regulations: The Supplier shall at its own expense assume responsibility for the return and disposal of goods and/or parts and packaging thereof and where appropriate their means of transport as required by other German laws or by EU laws, unless the parties have agreed otherwise. Paragraph (2) sentence 2 shall apply mutatis mutandis.

(4) The Supplier shall indemnify us against claims to return or disposal by our customers or their purchasers pursuant to Paragraphs (2) or (3) immediately at our request. Our claim to assumption of acceptance/indemnity by the Supplier shall not expire before the end of two years following the definitive termination of the life of the goods. This period shall commence at the earliest upon receipt by us of a written notification from our customer and/or its purchaser concerning the termination of use.

**§ 10 Legal Venue, Applicable Law**

(1) The contractual relationship between us and the Supplier shall be subject exclusively to German law and EU Community law to the exclusion of the United Nations Convention dated 11.04.1980 concerning Contracts for the International Sale of Goods.

(2) All disputes on the basis of the contractual relationships between us and the Supplier shall, at our choice, be subject to the jurisdiction of an arbitration tribunal of the International Chamber of Commerce in Paris or the ordinary courts at our registered office. In the event of arbitration proceedings, the place of the proceedings shall at our choice be either our registered office or the seat of the International Chamber of Commerce in Paris.