

**EquipCare Terms & Conditions**  
**Last modified: March 2019**

**Part I: General provisions**

**1. Contract subject**

- 1.1 Wacker Neuson SE, Munich, Germany (“Wacker Neuson”) with its affiliated enterprises (collectively the “Wacker Neuson Group”) is an international manufacturer of construction machinery and equipment (“Machinery”), which is distributed both directly by Wacker Neuson Group companies and by downstream external dealers (collectively the “Distributors”) to customers of the Distributors (“Customer(s”).
- 1.2 “EquipCare” is a Wacker Neuson telematics solution for its Customers and their Machinery. A key feature of EquipCare is that Customers can use it in many different ways (the following possible types of use collectively the “Telematics Services”). A telematics hardware module (“Module”) installed in certain Machinery sends specific machine and master data to Wacker Neuson servers by mobile transmission. These data are as a basic function sent on behalf of the Customer to its Distributor as the basis for providing its additional related service packages and services (collectively “EquipCare Services”). If available in the country in question, the Customer is, after appropriate registration, also given access to a web-based portal (“Portal”) operated by Wacker Neuson at [www.equipcare.wackerneuson.com](http://www.equipcare.wackerneuson.com) (“Access”), which enables Customers to use various software-based services relating to specific machine or master data generated by their Machinery. Using other means to access the Telematics Services in addition to the Portal, such as via a mobile software application (“App”) or direct server access via API is, if available in the Customer’s country, additionally/alternatively possible.
- 1.3 Which specific Telematics Services the Customer may use is based on the availability of individual Telematics Services in the individual country, the offering of the Customer’s Distributor and the model, model year and specifications of the relevant Machinery and Module. The Telematics Services and their components are described in the relevant product and pricing information as amended from time to time that can be obtained from the Distributors. The further development of machine and information technology and Internet-based services occasionally makes it necessary to adapt and further develop the Telematics Services in line with new technological possibilities and changed user behaviour. Wacker Neuson reserves the right in this respect to adapt the Telematics Services in a way that is reasonable for the Customer, taking the Customer’s interests into account. If such adaptations lead to more than non-material usage-related changes, Wacker Neuson will inform the Customer about the type and scope of the changes directly or via the Distributors.

**2. Contract structure**

- 2.1 The Telematics Services are intended exclusively for businesspersons acting in exercise of their commercial or self-employed professional activities (“Entrepreneur”) when concluding the contract for Telematics Services and are governed by these EquipCare Terms & Conditions. (“EquipCare T&C”). Conflicting terms and conditions or terms and conditions that deviate from these EquipCare T&C are not recognised, unless Wacker Neuson has expressly consented to their application in writing.
- 2.2 The EquipCare T&C are as a master agreement the basis for and an integral part of any provision of Telematics Services. This also applies if the Telematics Services are used by the Customer as the basis of other EquipCare Services provided by the Distributors. The EquipCare T&C apply as a master agreement for all Machinery, Modules and Portal user accounts of the Customer. The EquipCare T&C are a constituent part of all additional contracts which the Customer may enter into with its Distributor in connection with the Telematics Services. In addition to these EquipCare T&C, additional contractual terms may apply to the use of websites, Apps or APIs in connection with the Telematics Services, which are provided to the Customer in an appropriate manner for information and confirmation and the prior acceptance of which by the Customer is likewise required in order to use the relevant services or means of access.
- 2.3 The Telematics Services include the collection, storage, processing and use of Machinery-specific and personal data to the extent required for the Telematics Services to work and described in the Data Processing Agreement (“DPA”) (available at [www.wackerneuson.com/equipcare-downloads](http://www.wackerneuson.com/equipcare-downloads)).

### **3. Conclusion, entry into force and term of contracts, relationship to contracts with third parties**

- 3.1 The relevant Distributor is the Customer's first point of contact for all questions relating to the Telematics Services. The Telematics Services are, notwithstanding Part 1 Clauses 6.4 and Clause 9, likewise sold, activated and deactivated by the Distributor on behalf of the Customer. The Distributor assists the Customer as first point of contact with registration on the Portal, the creation, transfer and blocking of Portal user accounts ("User Accounts"), the deactivation of the Telematics Services, technical malfunctions and other problems. The price conditions and scope of the Telematics Services are based on the Distributors' individual offers.
- 3.2 The Customer's contractual partner for the Machinery, Modules and EquipCare Services is the relevant Distributor. Wacker Neuson, however, grants the Customer the rights to use the underlying Telematics Services directly on the basis of these EquipCare T&C, which apply as a master agreement for all the Customer's User Accounts, Machinery and Modules. The use of the Telematics Services by the Customer is therefore governed by these EquipCare T&C.
- 3.3 These EquipCare T&C also have to be agreed as a binding contract between the Customer and Wacker Neuson when requesting a User Account, ordering Machinery with a Module or ordering an individual Module (both referred to as a "Individual Module Contract") from a Distributor. These EquipCare T&C are entered into or incorporated respectively in accordance with applicable German law. As a basic rule these EquipCare T&C are in any case incorporated and applicable when the Customer (a) during initial registration on the Portal or (b) on any other platform in electronic form or (c) by signing a corresponding order form provided to the Customer by the Distributor has validly consented to the EquipCare T&C as amended and the conclusion of a DPA (both accessible at [www.wackerneuson.com/equipcare-downloads](http://www.wackerneuson.com/equipcare-downloads)).
- 3.4 The EquipCare T&C come into force for the Customer in accordance with Part 1 Clause 3.3 above and apply to the Customer as long as the Customer has at least one active Module (i.e. at least one active Individual Module Contract) or a User Account. Unless agreed otherwise, each individual contract for the use of Telematics Services entered into within the scope of the EquipCare T&C comes into force on the date concluded and ends at the end of the term agreed with the Distributor in the respective contract. In deviation from the aforesaid, for the term of licence and/or subscription agreements for Telematics Services the date on which the Machinery/Module is delivered or handed over to the Customer generally is deemed to be the date on which the relevant individual contract comes into force, unless agreed otherwise between the Customer and the Distributor for individual Modules or Machinery.
- 3.5 The parties' right to termination for cause remains unaffected. Wacker Neuson in particular has a right to termination for cause if Part I Clause 7 is breached by the Customer.
- 3.6 Any termination of Telematics Services issued to Wacker Neuson by the Customer is to be sent by e-mail to [deactivation.equipcare@wackerneuson.com](mailto:deactivation.equipcare@wackerneuson.com). Any termination of EquipCare Services or Independent Customer Transactions (cf. Part I Clause 3.7 below) by the Customer is to be sent to its relevant Distributor as contractual partner.
- 3.7 The Customer's contractual partner for the purchase/acquisition of the Machinery and the Module and the ordering of additional EquipCare Services that go beyond the Telematics Services is the relevant Distributor from which the Customer purchases the Machinery and/or orders the relevant EquipCare Services ("Independent Customer Transactions"). The terms agreed between the Customer and the third party apply to all Independent Customer Transactions. Any termination, invalidity or default in connection with Independent Customer Transactions shall have no impact on the validity and scope of the contractual relationship between Wacker Neuson and the Customer relating to the Telematics Services.

### **4. Prices and payment terms**

- 4.1 As between Wacker Neuson and the Customer, the Telematics Services are generally free of charge, unless agreed otherwise between Wacker Neuson and the Customer; the contractual relationship between the Distributor and the Customer (Independent Customer Transactions) remains unaffected by this.
- 4.2 The Customer is aware and acknowledges that the Telematics Services may be the technical requirements for certain, in some cases fee-based products and other EquipCare Services within the scope of Independent Customer Transactions of the Distributors. Costs and/or fees may, depending on the model available, offered and agreed, be incurred for the Customer for the use of such fee-based products and other EquipCare Services within the scope of Independent Customer Transactions. The prices and payment terms of the Distributors apply to Independent Customer Transactions.

## **5. Service requirements**

- 5.1 In order to use the Telematics Services, the Machinery must be equipped with a functional Module, either factory-installed or purchased as an optional extra retrofitted by a Distributor.
- 5.2 In order to use the Telematics Services, the Customer requires a functioning Internet connection, a state-of-the-art Internet-capable end device and a User Account with log-in data for the Portal, provided that access to the Portal is available in the Customer's country and has been agreed with the Distributor.

## **6. Availability and service restrictions**

- 6.1 The Telematics Services are only offered by Wacker Neuson in the countries listed at [www.wackerneuson.com/equipcare-downloads](http://www.wackerneuson.com/equipcare-downloads). If the Machinery with a Module is located outside these countries, no service can be provided due to the requirements for Telematics Services not being met. There is therefore no entitlement to Telematics Services outside the specified countries.
- 6.2 The Telematics Services and the service requirements of the Customer set forth in Part I Clause 5 may, considering the state of the art, be subject to restrictions and inaccuracies that are beyond Wacker Neuson's control. This particularly concerns the availability of the Module's mobile network connection provided by third parties, the mobile network connection of the Customer's own smartphone for the use of any Apps, the Internet and the communications hardware provided by third parties that are not part of Wacker Neuson's hardware and the Telematics Services.

Since the Telematics Services are provided via mobile telephone networks, it is expressly pointed out that any use of the Telematics Services is dependent on the availability of the mobile phone network. Claims for damages or recourse based on the incomplete availability of mobile telephone networks and the possibility and duration of data transmission are excluded. Further, an uninterrupted use of the Telematics Services is not possible from every location due to technical reasons. Disruptions may occur due to atmospheric conditions (e.g. thunderstorms), topographical conditions (e.g. mountains, valleys) or obstacles (e.g. tunnels, buildings, bridges). The same applies to the accuracy and availability of positioning, which uses a satellite-based positioning system, since this is carried out by third parties and may be subject to weather-related or other inaccuracies. In addition, disruptions and capacity bottlenecks can result from peak loads on the Telematics Services, mobile networks and the Internet.

- 6.3 Unavoidable, temporary disruptions, interruptions or a reduction in the performance (speed) of the Telematics Services may also occur due to force majeure (e.g. armed conflicts, severe weather, industrial action) or due to the execution of necessary maintenance, repairs or other measures at technical facilities of Wacker Neuson or at those of third parties providing data, content, information or transmission capacities. This does not constitute a defect and does not entitle the Customer to assert claims based on this.
- 6.4 Wacker Neuson may, without as a result establishing any claims of the Customer for damages, terminate the contract after giving prior written notice and temporarily, partially or completely suspend the Telematics Services, in particular if the following reasons exist: (a) the Customer culpably violates material contractual obligations despite a warning; (b) the quality of the Telematics Services is impaired or the function of the Telematics Services is disrupted by a culpable act or omission on the part of the Customer; or (c) in the event of a network failure or technical changes to the mobile telephone networks or other technical systems that become necessary for which Wacker Neuson is not responsible.
- 6.5 Wacker Neuson does not assume any liability for compliance with any statutory retention regulations or periods of the Customer. The Customer itself must therefore ensure that it meets its corresponding specific legal obligations.

## **7. Customer's cooperation obligations and liability**

- 7.1 If the Customer has created a User Account, it is obliged to keep its customer and contact data stored on the Portal up to date.
- 7.2 The Customer is obliged to carefully store all log-in data and passwords required for the use of the Telematics Services, to keep them secret from third parties and to prevent misuse. The Customer must impose the above obligation on its vicarious agents, employees, drivers and lessees of the Customer (in this Part I "Operators") of its Machinery equipped with a Module and to communicate to each Operator that the Machinery has a Module with connected Telematics Services.

- 7.3 The Customer is obliged to notify its Distributor without undue delay about damage and defects of the Machinery equipped with a Module that could impact the Telematics Services, the loss of any Machinery equipped with a Module, damage and defects of the Module itself as well as defects in the provision or use of the Telematics Services. If the Customer breaches its notification obligations, neither the Wacker Neuson Group nor the responsible Distributor are liable for any resulting damage.
- 7.4 The Telematics Services are generally Module- and Machinery-related. Therefore, the Customer is prohibited from removing any Module installed in its Machinery from the Machinery and using it in other Machinery (including third-party products). If the Customer breaches this obligation, the Customer loses the right to use the Telematics Services associated with the Module. Any contractual (payment) obligations of the Customer remain unaffected by such breach. A removal may also lead to the loss of any existing warranty and guarantee claims of the Customer for the relevant Machinery and Module.
- 7.5 With the Module the Customer receives a SIM card that is permanently installed in the Module (“eSIM”). The eSIM may not be removed from the Module by the Customer and may only be used in connection with the Telematics Services. The Customer shall indemnify Wacker Neuson against any and all losses, damage, penalties, costs or expenses (including legal costs) that result from or in connection with claims of third parties with respect to the mobile telephone providers used if the use of the eSIM by the Customer is in contradiction with the contract.
- 7.6 The Customer is obliged to inform Wacker Neuson without undue delay by e-mail sent to [support.equipcare@wackerneuson.com](mailto:support.equipcare@wackerneuson.com) in the event that the Customer becomes aware of any use of the Telematics Services in breach of these EquipCare T&C or any impermissible interference by unauthorised third parties with the Module, the eSim or the mobile telephone network.
- 7.7 The Customer itself is responsible for any storage of data on its compatible end devices.
- 7.8 The Customer is liable to Wacker Neuson in accordance with the applicable statutory provisions for any and all damage caused by any breach of the obligations under these EquipCare T&C.
- 7.9 If any claims are made against Wacker Neuson by third parties in connection with any breach by the Customer of statutory regulations, third-party rights or these EquipCare T&C, the Customer will indemnify Wacker Neuson against any and all, claims, costs, damage and losses (including the costs of reasonable legal defence).

## **8. Privacy and data use**

- 8.1 Wacker Neuson processes personal data in the course of providing the Telematics Services for the Customer as a processing on its behalf in accordance with the provisions of the DPA (accessible at [www.wackerneuson.com/equipcare-downloads](http://www.wackerneuson.com/equipcare-downloads)).
- 8.2 The Customer is hereby informed that Wacker Neuson itself and/or via other Wacker Neuson Group companies and/or commissioned service providers intends to use the data transmitted by the Modules in non-anonymised, anonymised and/or aggregated form (i.e. with and/or without relation to an identified or identifiable person and with and/or without traceability to the Customer and its employees) for its own business purposes. These purposes in particular include an analysis of the condition of Machinery or individual components and, if applicable, their geolocation for product surveillance, quality control, improvement and further development of the Telematics Services and for the development of new services. The Customer allows Wacker Neuson to use the data transmitted by the Modules, including their transfer to third parties, by Wacker Neuson, other Wacker Neuson Group companies, Distributors and commissioned service providers and grants Wacker Neuson and other Wacker Neuson Group companies the non-exclusive, transferable and sublicensable right to use this data free of charge without any restriction of time or scope. The Customer grants the Distributors the non-exclusive, transferable and sublicensable right to use this data free of charge, restricted in terms of time and scope to the duration of the use of EquipCare Services.
- 8.3 If an Operator uses the Machinery, the Customer shall ensure in relation to the Operator of the Machinery that the data protection requirements for the relevant storage, processing and use of personal data have been met and, if applicable, existing rights of employees are observed. The Customer will, if and to the extent necessary, obtain the consent of the Operator concerned. Reference is made to the DPA (accessible at [www.wackerneuson.com/equipcare-downloads](http://www.wackerneuson.com/equipcare-downloads)).

## **9. Blocking of the Telematics Services, final deactivation of Modules**

- 9.1 Notwithstanding its statutory rights and its rights under Part I Clause 6.4 of these EquipCare T&C, Wacker Neuson reserves the right to suspend or block the Telematics Services if the Customer (a) has given rise to termination for cause, (b) does not use the Telematics Services in accordance with the contract or (c) breaches other contractual provisions, in particular Part I Clause 11.2.
- 9.2 The Customer has the right at any time to request the deactivation of the Telematics Services with respect to a specific Module and/or all Modules allocated to its User Account. Such a deactivation request is to be sent by the Customer to the e-mail address [deactivation.equipcare@wackerneuson.com](mailto:deactivation.equipcare@wackerneuson.com) and must contain the following information: Module number, reason for deactivation, name of Distributor. Wacker Neuson will within fourteen (14) days of receiving the deactivation request irreversibly deactivate the relevant Module and/or the User Account by remote access. The Customer is aware and hereby confirms that this irreversible deactivation does not release it from any contractual (payment) obligations entered into before the deactivation request. The renewed use of Telematics Services with the relevant Machinery is only possible after fee-based retrofitting of the Machinery with a new Module by a Distributor.

## **10. Permanent transfer of the Machinery with Module**

The Customer is obliged to inform Wacker Neuson in due time, i.e. at least fourteen (14) days in advance, about any permanent transfer (e.g. sale, transfer of ownership) of any Machinery equipped with a Module to a third party ("Buyer"). Receipt by Wacker Neuson is decisive for compliance with this deadline. Such notification by the Customer is to be sent to the e-mail address [support.equipcare@wackerneuson.com](mailto:support.equipcare@wackerneuson.com) and must contain the following information: Module number, Machinery number, contact details of the Buyer, reason for and date of the permanent transfer. If the Customer does not notify Wacker Neuson of the permanent transfer in due time or fails to notify Wacker Neuson, Wacker Neuson cannot ensure the correct functioning of the Telematics Services and/or the confidentiality of the Customer's data after sale.

If the Customer permanently transfers Machinery to a Buyer, it is responsible for informing the Buyer of the Machinery that the Buyer must conclude a new contract with Wacker Neuson specifying all required data as a requirement for using the Telematics Services.

In the event of any permanent transfer of Machinery notified by the Customer or which Wacker Neuson otherwise obtains knowledge of, the Customer's existing access for this Module will be deactivated as of handover to the Buyer or later knowledge by Wacker Neuson without further notification. The Customer itself is responsible for saving any data it may require from its User Account in due time beforehand.

## **11. Usage rights, intellectual property rights**

- 11.1 The Customer is granted during the term of the relevant contract the non-exclusive, non-transferable, non-sublicensable right to use the Telematics Services and the related content and information provided by Wacker Neuson, if applicable via Portal access. Usage may be restricted or excluded in certain countries or regions. More detailed information can be found in the specifications of the relevant service.
- 11.2 The software applications provided for the use of the Telematics Services may not be changed, modified, decompiled (this also includes reverse engineering), stored or otherwise reproduced. Notwithstanding Part I Clause 10 and the Special Terms and Conditions for Distributors (Part II of these EquipCare T&C), the Customer is not permitted to sell, rent out, lend, distribute, make publicly accessible or to otherwise allow third parties to use the Telematics Services and/or the software applications made available for their use for a fee or free of charge or to permit third parties to use these or tolerate such use.

## **Part II: Special Provisions for EquipCare Distributors**

### **1. Subject matter**

- 1.1 The following "Special Provisions for Distributors" in this Part II of the EquipCare T&C apply additionally and exclusively to Distributors that distribute EquipCare Services in their own name and for their own account to their own downstream Distributors ("Downstream Distributors") and to their Customers. Conflicting terms and conditions or terms and conditions that deviate from these EquipCare T&C and their Special Provisions for Distributors are not recognised, unless Wacker Neuson has expressed consented to their application in writing.

1.2 Any other existing distribution or dealer agreements between the Distributor and Wacker Neuson Group companies remain unaffected by this.

## **2. Granting of distribution rights, contract structure, conditions, payment processing**

2.1 Subject to acceptance of these EquipCare T&C (including the Special Provisions for Distributors in this Part II), the Distributor is granted the non-exclusive, revocable right to distribute EquipCare Services in its own name and for its own account to its Downstream Distributors and Customers.

2.2 The Distributor is not a representative, sales representative or (commission) agent of Wacker Neuson, but an autonomous and independent reseller. In the context of the resale of EquipCare Services, the Distributor therefore enters into separate contracts in its own name and for its own account with its Downstream Distributors and Customers (“Independent Distributor Transactions”). The terms and conditions agreed in each case between the Distributor on the one side and its Downstream Distributors and Customers on the other side apply to all Independent Distributor Transactions. Payments resulting from Independent Distributor Transactions are made between the Distributor on the one side and its Downstream Distributors and Customers on the other side.

## **3. Distributor’s obligations**

3.1 Prior to delivery of the first Machinery equipped with a Module, the Distributor must present to each of its Downstream Distributors and Customers these complete EquipCare T&C as well as the DPA (EquipCare T&C and the DPA referred to jointly as the “Basic Documents”) and obtain the written consent of its Downstream Distributors and Customers to the Basic Documents. The Basic Documents, as amended, can be obtained at [www.wackerneuson.com/equipcare-downloads](http://www.wackerneuson.com/equipcare-downloads). The Distributor is in particular obliged to pass on all obligations under the Special Provisions of these EquipCare T&C (including the obligation to obtain consent to the Basic Documents in accordance with this Clause 3.1) to its Downstream Distributors prior to delivery of the first Machinery equipped with a Module. The Distributor must document this, archive it for retention in an appropriate manner and forward it unsolicited to the Wacker Neuson Group without undue delay by sending a copy of the consent to the Basic Documents to [support.equipcare@wackerneuson.com](mailto:support.equipcare@wackerneuson.com).

3.2 The Distributor shall in connection with distribution of EquipCare Services observe, implement and disclose to its Downstream Distributors all product-related information communicated by the Wacker Neuson Group regarding the EquipCare Services to its Distributors or provided for their distribution (e.g. technical requirements, safety instructions, requirements regarding marketing campaigns, customer service etc.).

3.3 The Distributor shall ensure that the Telematics Services that are the requirement, the basis and/or a component of the EquipCare Services distributed by the Distributor are only provided by Wacker Neuson in certain countries. The list of countries, as amended from time to time, can be accessed online at [www.wackerneuson.com/equipcare-downloads](http://www.wackerneuson.com/equipcare-downloads). Reference is made to Part I Clause 6.1. If Machinery with a Module is located outside these countries, Wacker Neuson cannot provide any Telematics Services. The Distributor may therefore only distribute EquipCare Services to its Downstream Distributors and Customers in these available countries.

3.4 The Distributor is the first point of contact for its Downstream Distributors and Customers for all questions regarding EquipCare Services and will provide first-level support. This includes providing Downstream Distributors and Customers with advice and support on issues regarding any registration on the Portal, the creation and transfer of User Accounts, blocking and deactivation and in the event of technical malfunctions and other problems.

3.5 The Distributor is aware that Customers must report the loss of their Machinery equipped with a Module, damage and defects of the Module itself as well as defects in the provision or use of EquipCare Services to their Distributor. The Distributor will collect and evaluate such notifications and provide a remedy as part of its function as authorised Distributor.

3.6 The Distributor is aware that each owner of Machinery equipped with a Module has the right at any time to request the deactivation of the Telematics Services with respect to a specific Module or all the Modules allocated to its User Account. Such a deactivation request is to be sent by the Customer to the e-mail address [deactivation.equipcare@wackerneuson.com](mailto:deactivation.equipcare@wackerneuson.com). If a Customer sends such a deactivation request to its Distributor, in whatever form, the Distributor must forward this deactivation request without undue delay to the e-mail address [deactivation.equipcare@wackerneuson.com](mailto:deactivation.equipcare@wackerneuson.com). Any deactivation request or any forwarding thereof must contain the: Module number, reason for deactivation, contact details of the Distributor and the name of the Distributor.

- 3.7 The Distributor is aware that any permanent transfer by a Customer (e.g. sales, transfer of ownership) of Machinery equipped with a Module to a third party (“Buyer”) must be notified in due time in advance to the e-mail address [support.equipcare@wackerneuson.com](mailto:support.equipcare@wackerneuson.com). Should a Customer send such notification to its Distributor, in whatever form, the Distributor must forward this notification without undue delay to the following e-mail address [support.equipcare@wackerneuson.com](mailto:support.equipcare@wackerneuson.com). Any such notification shall contain the following information: Module number, Machinery number, contact details of Buyer, reason and date of permanent transfer.
- 3.8 If a third party (e.g. an employee or lessee of the Distributor; in this Part II in each case “Operator”) uses Machinery equipped with a Module, the Distributor must ensure in relation to this Operator of the Machinery that the data protection requirements for the individual storage, processing and use of personal data have been met and, if applicable, existing rights of the Operator are observed. If and to the extent necessary, the Distributor will obtain the consent of the Operator concerned. Reference is made to the DPA (accessible at [www.wackerneuson.com/equipcare-downloads](http://www.wackerneuson.com/equipcare-downloads)).

### **Part III: Common provisions**

#### **1. Subject of these provisions, transfer of rights and obligations under these EquipCare T&C**

- 1.1 The following common provisions of these EquipCare T&C apply to all Customers and all Distributors (Customers and Distributors also referred to in this Part III of these EquipCare T&C as “Contractual Partners”) and apply in addition to Part I and Part II of these EquipCare T&C.
- 1.2 Notwithstanding Part I Clause 10, the Contractual Partner may only transfer rights and obligations under this EquipCare T&C to a third party following the prior written consent of Wacker Neuson.
- 1.3 Wacker Neuson has the right to transfer its rights and obligations under these EquipCare T&C or individual services in whole or in part to another Wacker Neuson Group company by giving six (6) weeks’ notice in text form. The Contractual Partner in this case, however, has the right within one (1) month following receipt of the change notification to terminate the contractual relationship with effect on the date of the intended contract transfer by the Wacker Neuson Group company entering the contract concerned in place of Wacker Neuson. Wacker Neuson will expressly advise the Contractual Partner of this termination right in the change notification.
- 1.4 Wacker Neuson may use subcontractors or other vicarious agents to provide the Telematics Services.

#### **2. Liability, limitation of liability, statute of limitations**

- 2.1 The Contractual Partner is liable to the Wacker Neuson Group companies in accordance with the applicable statutory provisions for damage incurred by them due to any breach by the Contractual Partner or, if the Contractual Partner is a Distributor, its Downstream Distributors of the obligations under these EquipCare T&C.
- 2.2 If claims are made against a Wacker Neuson Group company in connection with any breach by the Contractual Partner or, if the Contractual Partner is a Distributor, its Downstream Distributors, against these EquipCare T&C, statutory regulations or third-party rights, the Contractual Partner will upon first request indemnify the relevant company from any and all claims, costs, damage and losses (including the costs of reasonable legal defence).
- 2.3 Subject to the following provisions of this Part III Clauses 2.4 to 2.8, Wacker Neuson is only liable for services in the countries in which the Telematics Services of Wacker Neuson are expressly available in accordance with Part I Clause 6.1. Wacker Neuson is not liable for services of third-party providers which are not services of Wacker Neuson in connection with the provision of the Portal (e.g. mobile telephone network, GPS system, Internet etc.).
- 2.4 If Wacker Neuson, due to statutory provisions, is liable for damage caused by slight negligence, Wacker Neuson’s liability is limited as follows: Any liability of Wacker Neuson only exists if material contractual obligations are breached, i.e. those obligations, the fulfilment of which is essential for the proper performance of the contract and the observance of which the Contractual Partner regularly relies on and may rely on. Liability is limited to the typical damage foreseeable at the time the contract is concluded to the exclusion of any liability for indirect and consequential damage. In the event of liability for slight negligence, liability for an individual case of damage for financial loss is limited to a maximum of EUR 10,000.00. The liability for property damage in the case of slight negligence is limited to an amount

of EUR 50,000.00. An individual case of damage is deemed to be the sum of the claims for damages of all claimants arising from individual, temporally connected, delimitable and therefore uniform performance. The damages are to be set higher if the Contractual Partner proves in the individual case that higher damage has been incurred.

- 2.5 If the damage is covered by an insurance policy concluded by the Contractual Partner for the damage in question, Wacker Neuson is only liable for any associated disadvantages of the Contractual Partner, e.g. higher insurance premiums or interest disadvantages until the claim has been settled by the insurance company.
- 2.6 Claims for damages against Wacker Neuson become statute-barred after two (2) years, unless they are based on gross negligence or wilful intent and unless they concern personal injury. The limitation period commences at the end of the year in which the Contractual Partner becomes aware of the damage and its underlying circumstances or should have become aware of without gross negligence. However, the aforementioned claims of the Contractual Partner against Wacker Neuson become statute-barred at the latest three (3) years after the damaging event without taking such knowledge into account.
- 2.7 Wacker Neuson's statutory liability for injury to life, limb and health and the breach of any guarantee of Wacker Neuson and for claims under applicable product liability law remain unaffected by Part III Clauses 2.4 to 2.7.
- 2.8 If Wacker Neuson's liability is excluded or limited, this also applies to Wacker Neuson's employees and vicarious agents.

### **3. Compliance with export control regulations**

- 3.1 When using and passing on the goods made available and/or delivered within the scope of the Telematics Services (hardware and/or software and/or technology as well as associated documentation, irrespective of the manner in which they are provided) or the work and services provided (including technical support of any kind) to third parties, the Contractual Partner shall comply with the applicable regulations of national and international (re-)export control law. In any case, it shall observe the (re-)export control regulations of the Federal Republic of Germany, the European Union and the United States of America when using and passing on such goods, work and services to third parties.
- 3.2 When using and passing on the work and services made available and/or delivered or provided within the scope of the Telematics Services made available and/or delivered or provided to third parties, the Contractual Partner shall review and ensure by taking appropriate measures that (a) it does not violate any embargo of the European Union, the United States of America and/or the United Nations by passing on such to third parties, by brokering contracts for such goods, work and services or by providing other economic resources in connection with such goods, work and services, also taking into account any restrictions on domestic transactions and any bans on circumvention; (b) such goods, work and services are not intended for any prohibited or authorisation-requiring arms-relevant, nuclear or weapons-related use which is prohibited or requires authorisation, unless such required authorisations have been obtained; and (c) the regulations of all relevant sanction lists of the European Union and the United States of America concerning business transactions with companies, persons or organisations named therein are complied with.
- 3.3 If required for conducting export control checks by authorities or Wacker Neuson Group companies, the Contractual Partner of the Wacker Neuson Group will following an appropriate request without undue delay provide all information regarding the final recipient, the final destination and the intended use of the work and services made available and/or delivered or provided and applicable export control restrictions in this respect.
- 3.4 The Contractual Partner will indemnify the Wacker Neuson Group companies fully against any and all claims asserted by authorities or other third parties against the Wacker Neuson Group companies due to non-compliance by the Contractual Partner with the aforementioned obligations under export control law and undertakes to compensate all damage and expenses incurred by the Wacker Neuson Group companies in this respect.

### **4. Miscellaneous**

- 4.1 These EquipCare T&C are subject to amendments and additions if they have a beneficial effect for the Contractual Partner or, taking the interests of the Wacker Neuson Group companies into consideration, are reasonable for the Contractual Partner. Wacker Neuson in particular reserves the right to expand the



functions of the Telematics Services and to add new functions and to amend or supplement these EquipCare T&C accordingly. Any other amendments and additions to these EquipCare T&C at the expense of the Contractual Partner will be communicated to the Contractual Partner in text form (e.g. e-mail) in due time, but at least 3 (three) months before they come into effect (“Change Notification”). They are deemed approved unless the Contractual Partner objects to these in writing within 6 (six) weeks of receiving the Change Notification. Wacker Neuson will specifically advise the Contractual Partner of this legal consequence of failing to file an objection in the Change Notification. In the event of an objection, the provisions of the existing EquipCare T&C continue to apply. In this case, Wacker Neuson has the right to terminate the contractual relationship with the Contractual Partner with 1 (one) month’s notice.

- 4.2 The Contractual Partner may only set off against Claims of Wacker Neuson if the Contractual Partner’s counterclaim is undisputed or a legally enforceable title exists. The Contractual Partner can only assert any right of retention if such is based on claims of the Contractual Partner under these EquipCare T&C or on any contract entered into in connection with the Telematics Services.
- 4.3 These EquipCare T&C and any and all claims arising from or in connection with these EquipCare T&C and the contracts entered into in connection with the Telematics Services, including non-contractual claims, are governed by the laws of the Federal Republic of Germany. The regulations of private international law and the UN Sales Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 4.4 The courts of Munich have exclusive jurisdiction for any and all legal disputes arising from or in connection with these EquipCare T&C and the Telematics Services. Wacker Neuson can also take legal action against the Contractual Partner at the location of its registered office. The above also applies if the Contractual Partner does not have any domestic legal venue.
- 4.5 Should any provision of these EquipCare T&C be or become invalid or unenforceable in whole or in part, this will not otherwise affect the validity of these EquipCare T&C. The Parties are to agree a provision to replace the invalid or unenforceable contractual provision that comes as close as possible to the economic objectives of the Parties at the time the relevant contract was concluded. Decisive is what the Parties would have agreed if they had recognised the unenforceability or invalidity of the contractual provision. The same applies in the event of any contractual gap.