



**General Terms of Sale Export (Version 03/2021)  
(valid for all cross-border transactions)**

**§ 1 Scope of application**

- (1) These General Terms of Sale Export („GTS-EXP“) shall apply to all offers, contracts and orders for goods and services („Transactions“) of Wacker Neuson SE or one of its group companies listed below (hereinafter each referred to as „WN“) to the customer.
- (2) These GTS-EXP, even if they are not expressly agreed upon again, shall also apply to future business transactions. The version of these GTS-EXP which are valid at the time of conclusion of the contract, and which can be retrieved any time at [https://wackerneusongroup.com/en/contact/GTS\\_EXP](https://wackerneusongroup.com/en/contact/GTS_EXP) shall be decisive.
- (3) These GTS-EXP shall always apply exclusively, i.e. any terms and conditions of the customer are expressly excluded, even if WN performs without reservation in the knowledge of such terms and conditions of the customer, unless WN has expressly agreed to their validity in writing.

**§ 2 Offer and conclusion of contract, information and cooperation of the customer**

- (1) All offers of WN are subject to change and non-binding, unless they are expressly designated as binding.
- (2) WN gives undertakings and warranties to customer only in writing, and only under explicit use of the aforementioned terminology.
- (3) Changes in the technical design by WN shall be permissible even after conclusion of a contract, unless this results in a significant change in function or customer proves that the change is unreasonable for the customer. Unreasonability shall not be considered if the change represents a technical improvement or is due to a market expectation or legal or official requirements.
- (4) WN's compliance with its obligations shall always be subject to the fulfilment of all of the customer's obligations and duties, under these GTS-EXP or otherwise. All obligations of the customer under these GTS-EXP are contractual obligations and not merely ancillary obligations or duties. The customer warrants that he will comply with his contractual and cooperation obligations under these GTS-EXP.
- (5) An order of the customer shall only become a binding contract upon an order confirmation by WN. In case of doubt, the content of the contract shall be determined by this order confirmation. In the absence of such, the transaction shall be concluded under the terms of the offer of WN if the customer accepts deliveries or services unconditionally.
- (6) If property rights of third parties are infringed by deliveries which are made according to drawings or other specifications of the customer, the customer shall be obliged to indemnify WN from all claims.
- (7) In case of deliveries to countries within the European Union („EU“), the customer shall be obliged to provide WN with its VAT identification number at the time of the order; otherwise, the customer shall indemnify WN from all consequences. In addition, the customer shall provide WN with the necessary EU confirmation of receipt within three months after receipt of the goods, otherwise the customer shall be obliged to pay WN the statutory value added tax in addition to the agreed purchase price. In case of export to countries outside the EU, the customer shall be obliged to provide WN with the required proof according to applicable tax regulations immediately after delivery of the goods, otherwise the customer shall indemnify WN from all consequences.

**§ 3 Prices and terms of payment, default of payment, retention and set-off, electronic invoicing**

- (1) Unless otherwise agreed, the prices quoted by WN are always in Euro and FCA factory/warehouse WN according to Incoterms@2020 without packaging plus the value added tax valid on the day of performance.

- (2) If, from the time of the conclusion of the contract until the time of performance, WN's costs have increased by more than 10 % (e.g. due to increased market prices for raw material or purchased parts, increased personnel costs or remuneration of third parties involved in the performance), WN shall be entitled to demand a correspondingly higher price.  
However, if this higher price is 20% or more above the originally agreed price, the customer has the right to withdraw from the contract. This right must be asserted by the customer immediately after notification of the increased price.

- (3) The deduction of an early payment discount requires an individual agreement.
- (4) Payments shall be made exclusively to the bank account designated by WN. The customer shall bear the costs of the payment transfer. Payments by bill of exchange or cheque are excluded, unless WN has expressly agreed to such payment method. If so agreed by WN, they shall only be accepted on account of payment (i.e. not instead of the actual receipt of money), i.e. they shall only be considered as payment after final encashment with the value date of the day on which WN has the equivalent value at its disposal.
- (5) Objections to invoices must be raised by the customer within 14 days of receipt of the invoice at the latest, otherwise the invoice in question shall be deemed to have been approved.
- (6) Unless otherwise stated in WN's order confirmation, the purchase price shall be due for payment without deduction immediately upon issuance of the invoice.
- (7) In case of a delay in payment, in addition to asserting the damage caused by the delay, WN shall be entitled to withhold the further performance of deliveries and services and to make performance dependent on the payment of all outstanding claims by the customer and/or to demand securities. Also, WN shall not be obliged to take any further measures to meet any delivery dates and quantities (e.g. purchasing, production preparation, etc.).
- (8) WN shall also be entitled to withhold deliveries and services until the customer has paid if it is evident that customer's willingness or capacity to perform is at risk. After setting an appropriate deadline for concurrent performance or provision of security, WN may also withdraw from the contract and claim damages.
- (9) Any right to refuse performance, right of retention or set-off by the customer is excluded.

- (10) WN shall be entitled to invoice the goods and services by electronic means. The customer revocably consents to the transfer of invoices, credit notes and overdue notices by e-mail in a suitable format (e.g. PDF) while at the same time waiving the requirement of providing paper documents, and undertakes to inform WN of its e-mail address for this purpose in order to ensure the receipt of these electronically sent documents.

**§ 4 Delivery, delay in delivery, delay of acceptance**

- (1) Unless otherwise agreed, all deliveries shall be CPT named place of destination Incoterms@2020, however, in deviation from the Incoterms rules, freight costs shall be charged by WN.
- (2) Delivery dates shall only be binding if they have been expressly agreed as binding. WN's compliance with specified delivery dates is subject to the timely and proper fulfilment of all obligations of the customer. Furthermore, it is subject to the correct and punctual supply to WN, as far as WN is not grossly negligent in the selection of the supplier or the specific procurement. If delays become recognizable, WN shall inform the customer thereof.

- (3) WN is entitled to partial deliveries.
- (4) In case of non-performance or delay by WN, the customer may withdraw from unfulfilled transactions if the legal requirements are met. The customer may only withdraw from partially fulfilled transactions if there is no interest in the partial delivery and performance. The customer shall only be entitled to claims for damages due to delay if and as far as WN's liability is not excluded or limited in accordance with these GTS-EXP. In any case, such claims shall be limited to the damage foreseeable at the time of the conclusion of the contract, but in no case more than 5 % of the value of the outstanding partial or total delivery, as far as such delivery, due to the delay or non-performance, cannot be used by the customer at all, in time or in accordance with the contract.
- (5) If the customer is in delay of acceptance, the risk of accidental loss shall pass to the customer; if impossibility or inability on the part of WN occurs during the delay of acceptance, the customer shall remain obliged to pay the consideration.
- (6) For the duration of a delay of acceptance (also in case of delayed pick up and call-off) by customer, WN shall also be entitled, without prejudice to other rights, to store the goods to be delivered at the customer's expense. The same shall apply if WN withholds the delivery due to outstanding payments or a deterioration of the financial situation of the customer. WN may also commission a carrier for such storage. WN shall be entitled to charge additional expenses incurred with a lump-sum compensation of 0.5% of the net purchase price for the concerned goods per commenced calendar day, up to a maximum of 5%. WN shall remain entitled to assert further claims and to prove a higher damage; any lump-sum compensation already paid hereunder shall be offset against such claims.
- (7) In case of delay of acceptance, WN may also request the customer to accept (or to call-off) the goods and, after a reasonable grace period, withdraw from the contract and assert its rights for non-performance. This shall include a penalty for breach of contract in the amount of 25% of the price of the goods not accepted/called-off.

#### § 5 Force majeure

- (1) If circumstances of force majeure, such as war, sabotage, natural disasters, epidemics, pandemics, business disruptions, labor disputes, political measures or official orders, embargoes, import or export bans, customs duties, or other unforeseeable circumstances which are independent of the will and influence of WN, prevent timely performance on the delivery date, the delivery date shall be postponed taking into account the delay caused by the circumstances. This shall also apply if these circumstances occur at WN's suppliers or their sub-suppliers.

- (2) If WN is not responsible for a not only temporary delay in delivery, WN shall have the right to withdraw from the contract, if the performance of the contract is unreasonable for WN. In this case, WN shall inform the customer about the unavailability and the withdrawal. WN shall be entitled to charge the customer for any costs already incurred; provided that any consideration already received in excess thereof shall be refunded to the customer. The customer shall not be entitled to claim damages against WN in such case.

#### § 6 Transfer of risk

The risk of accidental loss and accidental deterioration of the goods is transferred to the customer in accordance with § 4 paragraph (1) above and CPT Incoterms®2020, unless otherwise agreed.

#### § 7 Security, retention of title

- (1) For deliveries and services with a net invoice amount of EUR 250,000 or more, WN shall be entitled to demand from the customer an unconditional, unlimited and irrevocable security from a European bank or a bank letter of credit for the payment of the purchase price.
- (2) The goods shall remain the sole property of WN until all claims of WN arising from the business relationship have been fulfilled in full („retention of title“), unless security has been provided in accordance with paragraph (1). The customer authorizes WN to carry out any formalities (such as entries in appropriate local registers) in its name.

- (3) The customer is entitled to resell the goods subject to retention of title only in the ordinary course of business. With the resale of these goods, the customer hereby assigns its claims against its customers arising from the resale to WN. WN accepts the assignment.
- (4) The customer shall be entitled to continue to collect the assigned claims from the resale itself until revocation by WN, which revocation is admissible in case of a default of payment by the customer. As far as the claims of WN against the customer are due, the customer shall be obliged to transfer the amounts collected from its customers to WN immediately.
- (5) In case of a breach of contract by the customer, in particular in case of a default of payment, WN shall be entitled, after a reminder and setting a reasonable deadline for payment, to withdraw from the contract, to demand the return of the goods still owned by WN due to the retention of title, to pick up the goods and to claim damages if the customer is at fault.
- (6) The customer hereby declares its consent that the persons commissioned by WN to pick up goods subject to retention of title may enter and drive on the storage location of the goods for this purpose.
- (7) The customer may neither pledge the goods subject to retention of title nor assign them as security. The customer shall notify WN immediately of any seizure or other disposition by third parties.

#### § 8 Notice of defects, warranty

- (1) Immediately upon receipt, the customer must inspect the goods for compliance with the contract, in particular for completeness and condition, as well as for transport damages. Recognizable deviations, defects and damages shall be notified and reprimanded to WN with a detailed explanation immediately, but at the latest within five working days after receipt, and in any case before processing or treatment. For hidden defects, this period of notice shall begin upon discovery. Transport damages shall be noted on the consignment bill and the delivery bill and confirmed by the signature of the driver of the carrier. Otherwise the warranty will lapse.
- (2) A defect shall be deemed to exist if the delivered goods deviate not only insignificantly from the agreed quality and the usability of the goods is impaired not only insignificantly, or if at the time of delivery the delivered goods are encumbered with rights of third parties existing at the registered office of WN.
- (3) [intentionally left blank].
- (4) Warranty claims expire twelve months after delivery of the goods by WN, unless otherwise agreed. In addition, the respective current warranty policies of WN apply.
- (5) The assertion of a warranty claim is only justified if the goods have not been used excessively or beyond the customary use. A customary use is deemed to be an average operating time of the goods (equipment or machine) of max. 2,000 operating hours per year, which corresponds to an average operating time of eight operating hours per day on 250 working days per year.
- (6) WN shall not be liable for defects that have been (partly) caused by unforeseeable, improper or excessive use, by the use of unsuitable operating consumables, by faulty or negligent handling or storage, by insufficient or improper maintenance, repair or servicing, by the installation of wrong spare parts (in particular of incompatible spare parts or those not intended by the manufacturer) or by installation of add-on parts; or as a result of natural wear and tear, or by corrosion which is not resulting from a manufacturing defect.
- (7) WN shall also not assume any warranty for defects caused by an application of the goods by the customer not foreseeable by WN or by the fact that the customer modifies the goods or uses them together with third-party deliveries and services.
- (8) If, despite all the care taken, the delivered goods show a defect that was already present at the time of the transfer of risk, WN shall, at its own discretion and subject to a timely notification of defects, either repair the goods or deliver replacement goods. WN shall not bear the costs of installation and removal. The customer shall grant WN the necessary time and opportunity to carry out the supplementary performance.
- (9) If the supplementary performance fails, the customer is entitled to demand a corresponding reduction of the price or, in the case of significant defects, to withdraw from the purchase contract. Significant

defects are those which impair the suitability or value of the goods in such a way that they cannot be used by the customer in accordance with the conditions/use specified in the contract. In the case of merely insignificant defects which are not remedied by supplementary performance, in lieu of further legal remedies, only a reduction of the purchase price is possible .

- (10) Only after prior agreement or if required by law, the customer shall be entitled to remedy the defect itself or have it remedied by third parties and to claim from WN reimbursement of the necessary expenses in accordance with the contractual agreements and these GTS-EXP.
- (11) The customer's claims for reimbursement of expenses necessary for the purpose of supplementary performance, in particular for transport, travel, labor and material costs, are excluded to the extent that such expenses have increased because the goods delivered by WN to the customer were subsequently moved to another location.
- (12) Used equipment is sold by WN as inspected under exclusion of any warranty.
- (13) For further claims of the customer, the provisions of these GTS-EXP on liability according to § 9 below shall apply.

#### **§ 9 Liability for damages**

- (1) The following provisions apply both to contractual claims (e.g. within the scope of defects, delay, impossibility) and to statutory claims (in particular pre-contractual and tortious claims) of the customer.
- (2) WN shall only be liable for actions of its corporate bodies and executives in case of intent or gross negligence, in case of a defect that has been fraudulently concealed or the absence of which has been guaranteed, or if the health, body or life of persons has been injured due to breach of duty.
- (3) WN is expressly not liable for damages caused by an auxiliary person in the performance of her or his duties.
- (4) For consequential damages and indirect damages, i.e. in particular for damages that have not occurred to the goods themselves, such as loss of profit, loss of production, loss of use, expert's fees, etc., WN shall only be liable in case of intentional or grossly negligent breach of essential contractual obligations and limited to the amount of the foreseeable, typically occurring damage.
- (5) In any case, WN shall have unlimited liability for claims under mandatory product liability laws.
- (6) In all other cases, WN shall not be liable.

#### **§10 Rights to software and documents**

- (1) If the goods are sold together with an electronic device, WN grants to the customer a generally non-transferable and non-exclusive right of use of the associated software.
- (2) Such right to use only entitles the customer to the intended use of the software within the electronic equipment of the goods. In particular, the customer shall have no right to distribute, copy and/or edit the software.
- (3) A transfer is exceptionally permitted if the customer can prove a legitimate interest in the transfer to a third party while at the same time terminating the customer's own use, e.g. in case of resale of the goods. In this case, the customer shall contractually oblige its purchaser to observe the rights to which WN is entitled. In all other respects, the respective (license) terms and conditions for the transfer of use of WN's software provided with the delivered goods, as amended from time to time, shall apply.
- (4) The documentation and programs necessary for the operation of the goods are subject to copyrights and industrial property rights and remain the property of WN.
- (5) WN also exclusively reserves all property rights, copyrights, exploitation rights and other proprietary rights to all documents – including in electronic form – that have been provided to the customer in connection with the placement of the order, such as calculations, drawings and other documents, as well as to all information, know-how, inventions, industrial property rights, designs, samples and trademarks.

#### **§11 Indemnity**

The customer shall indemnify WN upon first request from all claims of third parties that are based on a breach of duty by customer. This

includes in particular the defence against direct claims or official measures against the customer or WN, the defence against indirect claims or official measures against WN, the provision of all necessary information and the assumption of legal costs and all other necessary expenses for defence. Without WN's prior consent, the customer shall not enter into any agreements to this effect with third parties or authorities to the detriment of WN.

#### **§12 Export control**

- (1) Delivered goods and software may be subject to the export control regulations of the Federal Republic of Germany, the European Union, the United States of America or other countries.
- (2) For this reason, each conclusion of a contract shall be subject to the reservation that no prohibition of delivery/performance according to the relevant customs and foreign trade regulations exists, or that the respective necessary official approvals, permits or other documents that WN may require for the fulfillment of the contract are granted.
- (3) The customer is obliged to comply with any export and/or import regulations. In addition, the customer shall provide WN with all relevant information; otherwise, the customer shall indemnify WN from all consequences. If the customer becomes aware of circumstances that prevent the export or import of the goods, he shall inform WN immediately. If the procurement of necessary export or import documents is uncertain, WN shall be entitled to withdraw from the contract after setting a further deadline of two weeks.

#### **§13 Disposal**

- (1) WN shall assume the product responsibility under applicable waste laws (including any obligations to take back and dispose of waste) only to the extent that the customer does not or cannot assume such responsibility in accordance with the applicable statutory provisions. In case of the responsibility of the customer, the customer shall indemnify WN and the suppliers of WN from the legal obligations and the related claims of third parties.
- (2) The customer shall contractually oblige commercial third parties to whom he passes on the delivered goods to dispose of the delivered goods after termination of use at their expense in accordance with the statutory provisions, and to impose a corresponding further obligation in the event of further passing on of the goods. If the customer fails to contractually oblige commercial third parties to whom he passes on the delivered goods to assume the obligation to dispose of the delivered goods and to impose a corresponding further obligation, the customer shall be obliged to take back the delivered goods after termination of use at the customer's own expense, and to dispose of them in accordance with the statutory provisions. In this respect, the customer shall indemnify WN from any claims of third parties.
- (3) The aforementioned claims for indemnification of WN by the customer shall not become time-barred before the expiry of two years after the final termination of the use of the goods. This period shall commence at the earliest upon receipt by WN of a written notice of the termination of use from the customer and/or its customers.

#### **§14 Reverse engineering**

- (1) The customer is prohibited from obtaining knowledge of the construction, technical functionality and other properties that are not generally known and readily accessible by examining, dismantling or testing the goods (so-called reverse engineering). The customer acknowledges that this would be a violation of WN's trade secrets.
- (2) In the event of a breach of the aforementioned obligations, for each case of breach and waiving the plea of continuation of the breach, the customer shall be obligated to pay a no-fault contractual penalty to WN in the amount of EUR 500,000 per individual case. Further (damage) claims shall remain unaffected by this provision.
- (3) This provision applies for a period of three years after the end of the business relationship.

#### **§15 Confidentiality**

All information not already in the public domain must be treated confidentially by the customer and may not be made available to third parties. Such information shall be returned or deleted immediately at any time upon request by WN or if no transaction is concluded.

## §16 Data protection

(1) Insofar as necessary for the business transaction, order-related customer data is collected and processed in the course of the business relationship. This customer data is transferred internally to WN sales and service staff and, if necessary, to group companies and/or external business partners for specific purposes.

(2) WN asserts its legitimate interest to use the data obtained in the course of the purchase of goods or services also for the purpose of advertising. The customer has the right to object at any time.

(3) WN ensures the confidential and secure handling of the data in accordance with the EU General Data Protection Regulation and other data protection regulations such as the German Federal Data Protection Act. In case of purpose-related transmission to third parties this is ensured – for instance – by concluding contracts for order processing under inclusion of suitable guarantees and by a careful selection of WN's partners and service providers.

(4) Other provisions of WN regarding data protection remain unaffected. WN recommends regular consultation of the WN privacy policy available at <https://wackerneusongroup.com/en/contact/privacy-statement>

## §17 Transfer of rights and obligations, place of jurisdiction, place of performance, applicable law

(1) Any transfer of the customer's rights and obligations under the business relationship require the prior written consent of WN to be effective.

(2) The place of jurisdiction for all disputes arising from the business relationship is the registered office of the respective WN group company. However, WN shall be entitled to bring an action at any other legal place of jurisdiction. Instead of bringing an action before a court of law, WN – as plaintiff – may at its own discretion resolve a dispute arising in connection with the business relationship according to the Rules of Arbitration of the German Institution of Arbitration e.V. (DIS) under exclusion of the ordinary course of law. The place of arbitration shall be Munich, the language of the arbitration proceedings shall be determined by the choice of WN (German or English).

(3) Unless otherwise agreed, the place of performance is the registered office of the respective WN Group company.

(4) Swiss law applies. The provisions of the UN Sales Convention shall not apply.

## §18 Special provisions for online orders

(1) Through its online store, WN sells only to commercial customers.

(2) The presentation of goods in the online store does not already include a binding sales offer. The offer to conclude a purchase contract is made by the customer by submitting a complete order to WN. Before submitting the order, the customer can also check and change the shopping cart and the details of the delivery and payment modalities. The customer shall remain bound to an order for 14 days, i.e. the contract shall be binding if WN accepts the order within this period.

(3) After submission of the order, the customer receives a confirmation by e-mail about WN's receipt of the order (order confirmation), which however does not already represent an acceptance of the contract. WN declares the acceptance of the contract within the acceptance period according to paragraph (2) by separate e-mail as soon as the goods leave the warehouse (shipping confirmation) or WN can confirm the production of its goods to customer (order confirmation).

(4) If the order comprises several items, the contract is only concluded for those items that are expressly listed in the shipping or order confirmation of WN. The foregoing shall also apply if the customer has already paid the purchase price or instructed payment prior to the conclusion of the contract due to the chosen method of payment. If in this case the contract is not concluded for any reason, WN shall inform the customer by e-mail (in case of partial acceptance of the contract together with the shipping or order confirmation for the deliverable items) and shall refund the advance payment immediately.

**Wacker Neuson Vertrieb Deutschland GmbH & Co. KG (DE)**  
**Wacker Neuson Aftermarket & Services GmbH (DE)**  
**Wacker Neuson Produktion GmbH & Co. KG (DE)**  
**Wacker Neuson Linz GmbH (AT)**  
**Kramer-Werke GmbH (DE)**  
**Weidemann GmbH (DE)**  
**Wacker Neuson SE (DE)**