



## General Terms and Conditions of Business (as amended 08/2011)

### § 1 Scope

- (1) Our General Terms and Conditions of Business shall apply exclusively. We do not recognize any other terms and conditions of the customer unless we have explicitly agreed to these in writing. These T&Cs also apply if we carry out services to the customer without reservation whilst being aware of deviating T&Cs.
- (2) All agreements made between ourselves and the customer for the purpose of executing a contract are laid down in writing in the contract regardless of any case-specific oral agreements subsequently agreed upon between the contracting parties.

### § 2 Quotations

- (1) Our quotations are subject to change without notice and are not binding unless they are expressly described as being binding or a binding nature is dictated by the circumstances.
- (2) If the order is to be qualified as a quotation within the meaning of section 145 of the BGB, we can accept this within a period of two (2) weeks.
- (3) Documents such as illustrations, drawings and details of weights and dimensions forming part of our quotations are only approximate and non-binding unless expressly described as binding.
- (4) If a customer's order is classed as an offer within the meaning of section 145 of the German Civil Code (BGB) we may accept this within a period of two (2) weeks.

### § 3 Prices and terms of payment

- (1) All prices quoted by us apply EXW, Incoterms 2010, packaging excluded plus VAT valid on the date the invoice is drawn up.
- (2) The deduction of discounts requires express written approval from us.
- (3) Unless stated to the contrary in our order confirmation, the purchase price is payable net (without deduction) immediately. The prevailing statutory provisions shall govern the definition and legal consequences of default on the part of the customer.
- (4) The agreed fee shall be paid. If the price increases due to a change in the market price or an increase in the fee charged by third parties involved in providing the service at the time the service is provided in a contract with a customer who is a company the higher price applies. If this is 20% or more over the agreed price a customer who is a company has the right to withdraw from the contract. This right must be exercised immediately after the company has been informed of the higher price. For customers who are consumers price alterations are permitted if there are more than four months between the conclusion of the contract and the agreed delivery date. If wages or material costs subsequently increase up until delivery we are entitled to reasonably alter the price according to the increase or decrease in costs. The consumer is only entitled to withdraw from the contract if the price increase is significantly greater than the increase in the cost of living between the time of ordering and delivery.
- (5) Any right to refuse performance or right of retention for customers who are companies is excluded unless we have violated a cardinal obligation (see clause 8, para. (3) below for a definition of the term "cardinal obligation") or the claim underpinning the refusal to perform has been recognized by us, is not contested, has been finally decided by a court or is ready to be upheld by a court.
- (6) Any offsetting of payments by the customer is only permitted if the customer's counterclaims have been finally decided by a court, are ready to be upheld by a court, are not contested or are recognized by us.

### § 4 Delivery

- (1) Compliance with the agreed due dates for delivery presupposes that all the relevant obligations have been fulfilled by the customer in good time and in the appropriate way.
- (2) If non-compliance with an agreed delivery period is due to force majeure or other circumstances for which we are not responsible, the delivery period in business transactions with business entities will be extended to accommodate the events that caused the delay.
- (3) The delivery time in business transactions with business entities shall be deemed to have been complied with if, by the end of the delivery period, the goods have been dispatched or are ready for shipment and this has been notified to the customer.
- (4) We are entitled to make partial deliveries.

### § 5 Transfer of risk

- (1) Unless otherwise agreed, the risk of accidental loss and accidental deterioration of the goods passes to the customer when the goods are ready to be collected by the customer and we have informed the customer of this.
- (2) At the request of the customer, the shipment will be insured by us at his expense.
- (3) If the shipment is delayed due to circumstances for which the customer is responsible, the risk passes to him from the date of readiness for shipment.

### § 6 Retention of Title

- (1) We retain title to the goods pending complete and final settlement of all accounts receivable arising from the business relationship. In transactions with customers who are consumers, this only applies to our claims under the respective contract.
- (2) The goods subject to retention of title may only be resold in the course of normal business transactions. The customer transfers any claims vis-à-vis the buyer arising in connection with the resale of our goods subject to retention of title to us on the sale of such goods. We hereby accept the transfer of said claims.
- (3) The customer is entitled to collect the accounts receivable assigned in connection with resale up until the right of revocation vested in us in the event of default on the part of the customer. If amounts payable to us by the customer become due for payment, the customer is obliged to transfer any amounts collected from his customers without delay.
- (4) If the customer violates the contract, particularly in the case of payment default or enforcement proceedings by third parties that were unsuccessful due to bankruptcy on the part of the customer, we reserve the right, having issued a warning and allowed a sufficient period of grace, to withdraw from the contract and to reclaim the goods to which we retain title and to further seek compensation if the customer owes us money. Statutory provisions shall otherwise prevail.
- (5) The customer herewith states his agreement that the persons commissioned by us to collect the goods subject to retention of title may enter the place where the delivered item is stored for this purpose.
- (6) The customer may neither pledge nor assign the delivered item by way of security. The customer shall notify us immediately in the event of pledging or assigning or of similar arrangements being made by a third party with respect to the goods.
- (7) We undertake to release the securities due to us at the request of the

customer insofar as their realizable value exceeds the value of the account receivable to be secured by more than 20%.

## § 7 Rectification of defects

(1) If the customer is a business entity, we shall warrant for material and legal defects in the goods through subsequent performance where we – at our discretion – either repair or replace the goods at our expense. If our attempt to repair/replace the goods is not successful, the business entity is entitled – at his discretion – to demand a reduction in the purchase price or to withdraw from the purchase agreement. The business entity is not entitled to withdraw from the contract in the event of minor defects.

(2) If the customer is a consumer, we shall warrant for defects according to the statutory provisions subject to clause 7 (3) and clause 8 of these General Terms and Conditions of Business.

(3) If the customer demands compensation in addition to or instead of subsequent performance, the limits as defined below in clause 8 of these General Terms and Conditions of Business shall always apply.

(4) We accept no warranty in respect of damage caused by improper use, the use of unsuitable operating materials, natural wear and tear or corrosion which is not attributable to a manufacturing defect.

(5) For companies the period of warranty is one (1) year and for consumers it is two (2) years from delivery of the goods. The statutory periods of warranty shall apply in the cases described in clause 8 (2) and in cases of gross negligence.

(6) We sell used equipment “as is” to the exclusion of any warranty if the customer is a company. If the customer is a consumer, the terms as outlined in clause 7 (2) and (3) and clause 8 of these General Terms and Conditions of Business shall apply accordingly and the limitation period shall be one year as from delivery of the goods.

(7) We will not give the customer any guarantees within the legal meaning of the word unless we expressly issue written warranties in individual cases. Manufacturers’ guarantees from our suppliers are not affected by this.

(8) The provisions under clause 8 – liability for damages – apply to any further claims by the customer.

## § 8 Liability for damages

(1) The following provisions govern both the customer’s legal entitlements, related in particular but not limited to the rectification of defects, default and impossibility, and statutory entitlements, in particular claims in tort and claims dating back to the pre-contract stage.

(2) Unlimited liability in the event of intent and damage to life, body and health: We shall assume unlimited liability in the event of intent on our part and in the event of damage to the life, body and health of people resulting from our failure to meet a contractual obligation. We assume in particular unlimited liability for all claims asserted under the German product liability law (Produkthaftungsgesetz). We shall also be held liable for any express warranties confirmed in writing in individual cases. This para (2) shall have precedence over all following provisions.

(3) Definition of “cardinal obligations” and “non-cardinal obligations”: Under contract law cardinal obligation is deemed to be an obligation central to the realization of the purpose of the contract; failure to honor such an obligation would jeopardize the object and intent of the contract. It also refers to obligations which the customer, as a contracting party, expects to be executed on a regular basis. All other obligations are referred to as “non-cardinal obligations”. Unless the following provisions expressly differentiate between cardinal and non-cardinal obligations, they refer to both.

(4) We shall assume unlimited liability in the event of a grossly negligent contractual violation on our part subject to the following restriction: In the case of straightforward vicarious agents, our liability vis-à-vis business entities is limited to the foreseeable damage that may typically occur.

(5) In the event of a slightly negligent contractual violation on our part, we shall assume limited liability vis-à-vis both consumers and business entities to the amount of the foreseeable damage that may typically occur if the violation related to a cardinal obligation. In the event of a slightly negligent contractual violation of a non-cardinal obligation by a vicarious agent, liability vis-à-vis final consumers is limited to the foreseeable damage that may typically occur and is excluded vis-à-vis business entities.

(6) In the event of consequential harm caused by a defect and direct damages, in particular damages that did not occur directly through the delivery item, loss of earnings, production outages, loss of use, expert assessment costs, etc., we shall assume liability vis-à-vis consumers for

damages resulting from negligence, albeit limited to the terms as outlined in the above provisions. We shall be held liable for consequential harm caused by a defect and direct damages suffered by business entities only in the case of grossly negligent violations of cardinal obligations and such liability shall be limited to the foreseeable damage that may typically occur.

(7) All other liability on our part is otherwise excluded.

## § 9 Repair and Maintenance Services

These General Terms and Conditions of Business apply mutatis mutandis to repair and maintenance services; clauses 1, 2, 3, 4, 8, 11 and 12 of these General Terms and Conditions of Business in particular shall apply. In addition, the statutory provisions shall apply in particular to the rectification of defects, transfer of risk (acceptance) and contractors’ liens subject to the proviso that our warranty for defects as issued to business entities is limited to one (1) year as of acceptance. Our liability for damages is in all instances limited as per clause 8 above.

## § 10 Disposal

(1) If the customer is a business entity and the goods are subject to the German Electrical and Electronic Appliances Act, we offer this customer the option of conducting waste disposal as stipulated by law; This service is provided against reimbursement of the actual costs that have been incurred and on condition that it has been requested in writing in connection with the purchase agreement. Otherwise the customer himself shall be liable for the correct legally stipulated waste disposal of the delivered goods at his own expense upon termination of use. In such a case the customer shall indemnify us and our suppliers against any obligations arising from section 10 II of the German Electrical and Electronic Appliances Act (Reacceptance Duty of the Manufacturer) and thus also against any associated third-party claims.

(2) The customer shall impose a contractual commitment on any third-party commercial customers to which he passes on the delivered goods, specifying that the third party shall, at their own expense, ensure the correct legally stipulated waste disposal of the delivered goods upon termination of use and that the third party shall furthermore impose the same commitment on further third parties in the event that the relevant goods are passed on further. If the customer fails to impose a waste disposal commitment and a passing-on duty in respect of this commitment in his relationship with third-party commercial customers to which he passes on the delivered goods, then the customer shall be liable to reaccept the delivered goods upon termination of use at his own expense and to ensure correct legally stipulated waste disposal of the same. If the customer passes on the goods to non-commercial third parties, then the business relationship shall, in this respect, be subject to no more than clause 10 para. 2 of these General Terms and Conditions of Business.

(3) Our aforementioned claims towards commercial customers for take-over/indemnification shall not become time barred until the expiration of two years following the final termination of use of the appliance. This period shall start no earlier than our receipt of written notification from the customer and/or from the customer’s customer concerning termination of use.

## § 11 Data privacy

To the extent required by business transactions, project-specific customer data may be recorded, stored on an IT platform, evaluated statistically and made available to our internal sales and service employees, whereby the customer agrees thereto on placing an order. Customer data will be recorded, stored and made available solely for the purposes of the business relationship. The customer also hereby authorizes us to use his data for the purposes of sending information on our products and services to him. The customer is free to withdraw this consent at any time. Confidentiality of data both within and beyond Germany is assured at all times in accordance with the terms of the German Federal Data Protection Act (Bundesdatenschutzgesetzes) and the EU guidelines on data protection.

## § 12 Legal Venue – Place of Performance

(1) In the case of disputes arising out of the business relationship in business transactions with merchants Munich is agreed as the legal venue, or, at our option, the principal place of business or place of residence of our contractual partner, provided legal action has not already been taken. The statutory provisions governing legal venue shall apply to consumers.

(2) Unless otherwise agreed, the place of performance is Munich.

(3) German law shall apply. The provisions of UN sales law do not apply.

**Wacker Neuson SE**