

Terms of Use for the WACKER NEUSON Used Machinery Portal
Status: October 2019

1. General information about the Internet Service

- 1.1 Wacker Neuson SE, Munich, Germany, ("Wacker Neuson") provides an internet-based platform with this used machinery portal ("Internet Service"), on which construction equipment and machinery can be advertised for sale by users and searched for by prospective buyers using a search function.
- 1.2 In the form of the Internet Service, Wacker Neuson merely provides the technical prerequisites for the transmission of information ("Advertisements"). Wacker Neuson has no influence on the content of the Advertisements. In particular, unless explicitly stated otherwise, Wacker Neuson is not itself the supplier of the construction equipment and machinery posted by third parties. Wacker Neuson is not involved in the relationship between the supplier and the prospective buyer or buyer as an intermediary, party or representative of any party. Contracts initiated as a result of an Advertisement placed via the Internet Service are concluded and fulfilled without the participation of Wacker Neuson.
- 1.3 The Internet Service is aimed exclusively at merchants acting in the exercise of their commercial or self-employed professional activity ("Entrepreneurs") and is subject to these Terms of Use. Any provisions to the contrary or deviating from these Terms of Use shall not be accepted unless Wacker Neuson has expressly consented in writing to their application.

2. Registration of the user with the Internet Service

- 2.1 The use of the Internet Service requires registration. Registration is free of charge. Upon registration, Wacker Neuson and the user enter into a contract for the use of the Internet Service ("User Contract"). There is no entitlement to the conclusion of a User Contract. Wacker Neuson reserves the right to refuse registration without giving any reasons.
- 2.2 Registration is only permitted for legal entities, partnerships and persons with unlimited legal capacity. In particular, minors are not allowed to register with the Internet Service. Reference is made to Section 1.3 these Terms of Use.
- 2.3 The data requested by Wacker Neuson during registration must be complete and correct. Registration is completed by entering a valid e-mail address and choosing a personal password. The personal password must be kept secret and may not be disclosed to third parties.
- 2.4 The user must check the correctness of the data provided after initial registration and each time a change is made. If the data provided by the user changes, the user is obliged to update this immediately in his user account.
- 2.5 Wacker Neuson may withdraw a user's rights if the information provided is inadequate or incorrect or if the user has failed to notify Wacker Neuson of any changes. Wacker Neuson may also deny the user the right to use the Internet Service and may cancel a user account if the user violates the Terms of Use.

3. Data protection

- 3.1 Wacker Neuson is controller within the meaning of the GDPR and responsible for the processing of personal data relating to the Internet service.
- 3.2 The nature, scope and purpose of the processing of personal data relating to the Internet Service are set out and linked in the currently valid version of the privacy statement of the Internet Service. The privacy statement applies together with these Terms of Use.

4. Publication of an Advertisement, responsibility for the content of the Advertisements

- 4.1 The user is obliged to place construction equipment offered via the Internet Service in the category provided for this purpose. The user of the Internet Service is responsible for ensuring that the data entered for the construction equipment and machines offered is correct and that he/she has the necessary rights to publish the corresponding content on the Internet Service. The contents may not infringe any intellectual property rights or the rights of any person or entity and may not contain any statements or material the publication of which could give rise to any claim for damages against or liability of Wacker Neuson. The user of the Internet Service shall reimburse Wacker Neuson for any loss or damage incurred as a result of content not complying

with this provision. Reference is made to Section **Fehler! Verweisquelle konnte nicht gefunden werden.** of these Terms of Use.

- 4.2 Wacker Neuson expressly points out that the data of the construction equipment and machines posted on the Internet Service originate from the offering user. The assessment of the condition of construction equipment and machinery is based on the subjective assessment of the offering user and corresponds to his/her perception.
- 4.3 The user of the Internet service is solely responsible for the content of the Advertisements. Neither the accuracy nor the completeness of the content of the Advertisements are checked by Wacker Neuson. Wacker Neuson assumes no liability for the accuracy and completeness of the Advertisements.
- 4.4 Wacker Neuson disclaims any warranty and liability that the Advertisements comply with the statutory provisions. In particular, Wacker Neuson excludes any warranty and liability which may arise from the fact that sales contracts which are initiated or concluded on the basis of the Advertisements are not enforceable under the national law of the country concerned or otherwise lead to legal or economic disadvantages for one or both parties to the sales contract.

5. Database update, deletion of Advertisements, backup copies

- 5.1 In order to make the internet-based search for construction equipment as interesting and successful as possible, Wacker Neuson strives to keep its data up to date. For this reason, Advertisements shall be deleted by the offering user as soon as the offered construction equipment has been sold or is no longer available for other reasons.
- 5.2 Each user is responsible for using the Internet Services to archive on a storage medium independent of the Internet Service any information which can be viewed and stored by Wacker Neuson and which he/ she requires for the purposes of preserving evidence, keeping accounts or for other purposes.

6. Availability

Wacker Neuson reserves the right to alter, remove, add to or otherwise modify the contents of the Internet Service, in whole or in part, without prior notice or to modify the operating hours, technical data or other data. Wacker Neuson has the right to temporarily restrict the services of the Internet Service for maintenance work or changes.

7. Prices and terms of payment

- 7.1 Registration with the Internet Service, reading Advertisements, contacting users who offer construction equipment and machinery, and publishing enquiries are free of charge.
- 7.2 If certain Internet Services are subject to a charge, the user will be clearly informed before the booking or the conclusion of the contract. In this case, Wacker Neuson's current general terms and conditions, price lists and terms of payment shall apply.

8. Manipulation of the search function, disturbance of the system integrity

- 8.1 Users of the Internet Service may only search for construction equipment and machinery using the search masks provided. It is not permitted to conduct a search by bypassing the search masks, in particular by using search software not authorized by Wacker Neuson which accesses Wacker Neuson's databases. Users must not extract, reuse, integrate into another website, link to and/or otherwise link to the Internet Services in whole or in part without the prior written consent of Wacker Neuson. The use of data mining, robots, scraping and/or similar data collection and extraction programs and techniques is prohibited.
- 8.2 Activities aimed at impairing the Internet Services are prohibited. The user may not take any measures that could place an unreasonable or excessive burden on Wacker Neuson's infrastructure. The user must not block, overwrite or modify any content generated by Wacker Neuson or interfere in any other way with the Internet Services.
- 8.3 The search function in the Internet Service enables users to quickly and easily find offers for construction equipment and machinery. In order for users to obtain the desired search results using suitable search words, the text content of an Advertisement must clearly refer to the construction equipment offered. It is therefore forbidden for users to falsify or manipulate the results of the search of the Internet Service by false or misleading information or terms, by placing them in a false category, by technical measures or any other misuse of functionalities of the

Internet Service. In particular, so-called keyword spamming is also prohibited. Keyword spamming refers to the use of terms that do not or only partially describe the actual construction equipment or machine and are only designed to attract interested parties to the Advertisement. This also applies to hidden HTML text and the illegal use of brand names.

9. Indemnification

The user shall indemnify Wacker Neuson against all claims asserted by third parties against Wacker Neuson for infringement of their rights by their Advertisement or for any other use of the Internet Service by the user. The user shall also bear the costs of the necessary legal defense by Wacker Neuson, including all court and attorney fees. This does not apply if and to the extent that the user is not responsible for the infringement.

10. Damages and limitation of liability

- 10.1 Wacker Neuson shall not be liable for ensuring that the Internet Service is free of errors, computer viruses or harmful mechanisms. Wacker Neuson shall not be liable for these costs if the use of the Internet Service necessitates the repair or replacement of equipment or data. The Internet service is provided "as is". Wacker Neuson shall not be liable for any damages resulting from the use of the Internet Service or from a malfunction or disruption of the Internet Service.
- 10.2 If an error occurs in Wacker Neuson's fee-based services, Wacker Neuson may either remedy the error or refund the advertising fee to the user. The amount of compensation shall not exceed the amount of the advertising fee paid by the user for the use of the Internet service.
- 10.3 The Internet Service provides links to external internet pages which are offered by independent third parties. Although Wacker Neuson offers links to these services, Wacker Neuson points out that these services are provided by the respective providers and are to be used in accordance with the provisions of these providers. Wacker Neuson is in no way responsible for the products or services of others.
- 10.4 If and to the extent that Wacker Neuson's liability is not limited or not excluded in accordance with the above provisions, Wacker Neuson shall be liable for damages, except in the event of a breach of essential contractual obligations, only if and to the extent that Wacker Neuson, its legal representatives, executive employees or other vicarious agents are guilty of intent or gross negligence. In the event of a breach of material contractual obligations, Wacker Neuson shall be liable for any culpable conduct of its legal representatives, executives or other vicarious agents.
- 10.5 Except in cases of intent or gross negligence on the part of legal representatives, executive employees or other vicarious agents, Wacker Neuson's liability shall be limited in amount to the damage typically foreseeable at the time of conclusion of the contract.
- 10.6 Wacker Neuson shall only be liable for compensation for indirect damages, in particular for loss of profit, in the event of willful intent or gross negligence on the part of Wacker Neuson's legal representatives, executives or other vicarious agents.
- 10.7 The aforementioned exclusions and limitations of liability shall not apply in the event that Wacker Neuson expressly assumes guarantees and for damages resulting from injury to life, limb or health or in the event of mandatory statutory provisions.

11. Force majeure

Wacker Neuson shall not be liable for breaches of contract caused by unforeseen hindrances (e.g. strike, lockout, data communication failure, fire, theft, water damage, sabotage, vandalism or other unexpected events) or hindrances which Wacker Neuson could not reasonably have foreseen at the time the contract was concluded and the consequences of which could not have been avoided.

12. Copyrights and rights of use

All data, information, logos, texts, programs and pictures of the Advertisements and other contents posted via the Internet Service may be subject to copyright. The modification, further processing and use in media of any kind by third parties is not permitted. The rights of the respective author and the user remain unaffected by this. The user can still freely dispose of his own data and information.

13. Assignment

Wacker Neuson is entitled to assign its rights and obligations under this contractual relationship in whole or in part to a third party with a notice period of four (4) weeks. In this case, the user is entitled to terminate the user contract. For this purpose, the user can delete his user account at any time.

14. Changes to these Terms of Use

14.1 Wacker Neuson reserves the right to make amendments and supplements to these Terms of Use if they are beneficial to the contracting party or - taking into account Wacker Neuson's interests - reasonable for the contracting party. In particular, Wacker Neuson reserves the right to functionally expand the Internet Services and add new functions at any time and to amend or supplement these Terms of Use accordingly.

14.2 Other changes and amendments to these Terms of Use at the expense of the contractual partner shall be notified to the contractual partner in text form (e.g. e-mail) in good time, but at least four (4) weeks before they come into effect ("Notification of Change"). They shall be deemed approved if the contractual partner does not object in writing within four (4) weeks after receipt of the notification of change. Wacker Neuson shall specifically draw the contracting party's attention to this legal consequence of failure to object when announcing the changes in the notification of change. In the event of objection, the provisions of the existing terms of use shall apply. In this case, Wacker Neuson shall have the right to terminate the contractual relationship with the contracting party with one (1) months' notice.

15. Validity of German law, place of jurisdiction

15.1 These Terms of Use and all claims arising from and in connection with these Terms of Use and the contracts concluded in connection with the Internet Services, including non-contractual claims, shall be governed by the laws of the Federal Republic of Germany. The provisions of private international law and the UN Convention on Contracts for the International Sale of Goods shall not apply.

15.2 The exclusive place of jurisdiction for all legal disputes between the parties arising from or in connection with these Terms of Use and the Internet Services shall be Munich. Wacker Neuson may also sue the contracting party at its registered office. The above shall also apply if the contractual partner has no place of jurisdiction in Germany.

16. Severability

Should any provision of these Terms of Use be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions shall remain unaffected. Instead of the invalid or unenforceable provision of the contract, the parties shall agree a provision which comes as close as possible to the economic objectives of the parties as they existed at the time the contract was concluded. The decisive factor is what the parties would have agreed if they had recognised the impracticability or invalidity of the contractual provision. The same shall apply in the event of the existence of a contractual gap.