

WACKER NEUSON CORPORATION AND SUBSIDIARIES

TERMS AND CONDITIONS OF SALE

In consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **GOVERNING TERMS AND CONDITIONS.** THESE TERMS AND CONDITIONS SHALL GOVERN THE SALE OF EQUIPMENT AND OTHER GOODS ("PRODUCTS") AND SPARE PARTS ("PARTS") MANUFACTURED OR PURCHASED BY WACKER NEUSON CORPORATION OR ANY OF ITS DIRECT OR INDIRECT SUBSIDIARIES (IN ANY SUCH EVENT, "SUPPLIER") AND SUBSEQUENTLY SOLD TO THE PURCHASER OF PRODUCTS OR PARTS ("PURCHASER"), WHETHER SUCH SALE IS MADE BY ISSUANCE OF A WRITTEN PURCHASE ORDER, ELECTRONIC PURCHASE ORDER OR OTHERWISE, AND ARE INCORPORATED IN THEIR ENTIRETY BY THIS REFERENCE INTO ALL OF SUPPLIER'S SALE DOCUMENTS. ALL SALE DOCUMENTS SUBMITTED TO PURCHASER AND CONTRACT FORMATION BETWEEN SUPPLIER AND PURCHASER ARE EXPRESSLY MADE CONDITIONAL ON PURCHASER'S ACCEPTANCE OF ALL OF THESE TERMS AND CONDITIONS WITHOUT MODIFICATION OR SUPPLEMENT. ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY PURCHASER, WHETHER PROPOSED ORALLY, IN ANY ORDER, OR OTHER DOCUMENT OF PURCHASER, OR OTHERWISE, ARE REJECTED IN THEIR ENTIRETY AND SHALL BE DEEMED A MATERIAL ALTERATION OF THESE TERMS AND CONDITIONS UNLESS SPECIFICALLY AGREED TO IN WRITING BY SUPPLIER, NOTWITHSTANDING SUPPLIER'S ACCEPTANCE OF PAYMENT FOR OR DELIVERY OF ANY PRODUCTS COVERED HEREBY OR ANY OTHER SIMILAR ACT OF SUPPLIER. IF, NOTWITHSTANDING THE FOREGOING, SUPPLIER'S ORDER SHALL BE DEEMED AN ACCEPTANCE OF A PRIOR OFFER BY PURCHASER, SUCH ACCEPTANCE IS LIMITED EXCLUSIVELY TO THESE TERMS AND CONDITIONS AND THE PRICE, QUANTITY, DELIVERY AND OTHER TERMS PROVIDED BY SUPPLIER. NO ORDER MAY BE CANCELLED OR ALTERED BY PURCHASER EXCEPT UPON TERMS AND CONDITIONS ACCEPTABLE TO SUPPLIER, AS EVIDENCED BY SUPPLIER'S WRITTEN CONSENT. AFTER 30 CALENDAR DAYS, ORDERS HELD FOR CREDIT REASONS ARE SUBJECT TO AUTOMATIC CANCELLATION.

2. **DELIVERY AND DELAY:** All quoted delivery dates and/or periods are approximate. Supplier reserves the right to make delivery in installments, and all such installments, when separately invoiced, shall be paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Purchaser of its obligation to accept remaining deliveries. Supplier shall not be liable for any damage or loss as a result of any delay due to any cause beyond Supplier's reasonable control, including but not limited to any act of God, act of Purchaser, embargo or other governmental act, regulation or request, accident, strike, slowdown, war, riot, delay in transportation, delayed delivery by suppliers, or inability to obtain necessary labor and/or materials. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay. All back orders will receive prompt consideration by Supplier for completion as soon as is commercially practical. Claims for shortages or other errors in delivery must be made in writing to Supplier within 30 calendar days after receipt of shipment, and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Purchaser.

3. **DESCRIPTIVE LITERATURE AND SUBSTITUTES:** Catalogs, product brochures, photographs, and other illustrations are a general representation of the Products or Parts offered, that shall not be taken as precise and shall not form part of the terms of the transaction between Supplier and Purchaser. Supplier reserves the right to make changes in design, specifications, or materials which in Supplier's discretion are an improvement or are necessary because of priorities or regulations established by governmental authority or non-availability of materials from suppliers, without imposing any obligation upon itself to install the same on Products or Parts previously sold.

4. **STORAGE.** If Purchaser fails to give shipping instructions or requests any delay in scheduled shipment, Supplier may store ordered Products and Parts at Purchaser's risk in a warehouse or yard or upon Supplier's premises, and Purchaser shall pay handling, transportation, and storage charges at Supplier's then effective rates upon submission of invoices therefor.

5. **PRICE AND PAYMENT:** Supplier reserves the right to establish and change payment terms at any time without notice, however changes will not apply to previously accepted orders. If a credit card is used for on-line ordering, such credit card will be charged upon acceptance. Rental invoices are due upon receipt of the invoice. Interest shall accrue on overdue invoices at the rate of 1.5% percent per month. If such default rate of interest is prohibited by law, then the applicable rate will be the highest rate permitted by law. Supplier shall be entitled to recover from Purchaser all costs of collection of overdue invoices, including reasonable attorney's fees. Purchaser has no set-off or retention rights against any amounts owed by Supplier unless permitted by Supplier in writing. Supplier reserves the right, in its discretion, to establish a credit limit for Purchaser and to require payment in advance of or to require C.O.D. terms for any shipment for which Purchaser's financial condition or payment history does not justify the extension of credit, in Supplier's discretion.

6. **TAXES AND OTHER CHARGES:** Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value-added tax, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between Supplier and Purchaser, other than a tax on net income of Supplier, shall be paid by Purchaser in addition to the prices quoted or invoiced. In the event Supplier is required to pay any such tax, fee, or charge, Purchaser shall reimburse Supplier in the amount of such tax, fee, or charge on demand by Supplier.

7. **SHIPMENT:**

Domestic Shipments. All domestic shipments of Products and Parts are delivered F.O.B. Supplier's Regional Distribution Center and will be transported by truck from such point at Purchaser's expense, unless otherwise specified. Supplier's responsibility for damaged or lost goods ceases upon tender of delivery to the carrier. Parts are shipped prepaid with freight charges added to the invoice. Back-ordered Parts are shipped prepaid with no freight charge, except where Purchaser requests premium shipping service (e.g., air freight), in which case such Parts are shipped prepaid with freight charges added to the invoice.

International Shipments. All international shipments of Products are shipped EXW Supplier's Regional Distribution Center and will be transported by truck, unless otherwise specified. Supplier's responsibility for damaged goods ceases upon acceptance by the carrier. International shipments of Parts are shipped FCA Supplier's Regional Distribution Center with freight charges added to the invoice. International shipments of back-ordered Parts are shipped CPT Purchaser's place of business, except where Purchaser requests premium shipping service (e.g. air freight), in which case, such Parts are shipped FCA Supplier's Regional Distribution Center with freight charges added to the invoice.

8. **RETURNS:**

Domestic Return Shipments. No Products or Parts may be returned without prior written authorization from Supplier. Consideration will be given to all return requests, with the exception of Products or Parts that are no longer found in Supplier's then current Machine Ordering Guide, Service Parts Price List, or website. However, Supplier may, in its sole discretion, refuse to authorize, or place conditions on, any request for return authorization. Authorized domestic returns shall be shipped F.O.B. point of destination, with the destination to be designated by Supplier. Domestic returns are subject to a net restocking charge of 20% unless waived by Supplier in writing.

International Return Shipments. No Products or Parts may be returned without prior written authorization from Supplier. Consideration will be given to all return requests, with the exception of Products or Parts that are no longer found in Supplier's then current Machine Ordering Guide, Service Parts Price List, or website. However, Supplier may, in its sole discretion, refuse to authorize, or place conditions on, any request for return authorization. Authorized international returns shall be shipped DDP point of destination, with the destination to be designated by Supplier. International returns are subject to a net restocking charge of 20%, unless waived in writing by Supplier.

9. **WARRANTIES:** Supplier's standard written warranty policies at the time of sale apply to Products and Parts. These warranty policies are modified from time to time by Supplier. Copies of the standard warranties then in effect for a particular Product or Part can be obtained at <http://products.wackerneuson.com>. Except for coverage under Supplier's standard written warranty policies in effect at the time of sale, all Products and Parts are sold **AS IS. SUPPLIER'S STANDARD WRITTEN WARRANTY POLICIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES AND REMEDIES WHATSOEVER. SUPPLIER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. ANY OTHER WARRANTY, OR THE ASSUMPTION FOR SUPPLIER OF ANY LIABILITY IN CONNECTION WITH THE SALE OF SUPPLIER'S PRODUCTS AND PARTS OTHER THAN THOSE CONTAINED HEREIN, MAY BE MADE ONLY IN A WRITING SIGNED BY AN OFFICER OF SUPPLIER.**

10. **DISCLAIMER OF LIABILITY:** If Products or Parts do not conform to Supplier's standard written warranty policies, Supplier's liability shall be limited to the remedies expressly made available by Supplier in such written warranty policies. With respect to all other matters arising from or related to Supplier's and Purchaser's transaction, Supplier's liability shall in no event exceed the purchase price of the relevant Products or Parts purchased from Supplier. **TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, SUPPLIER SHALL NOT BE SUBJECT TO AND DISCLAIMS (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD BY SUPPLIER, OR ANY UNDERTAKINGS, ACTS, OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, AND CONTINGENT DAMAGES WHATSOEVER.** Without limiting the generality of the foregoing, Supplier specifically disclaims any liability for penalties (including administrative penalties), special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated equipment, cost of capital, facilities or services, downtime, shutdown or slowdown costs, spoilage of material, or for any other types of economic loss. Supplier shall make reasonable efforts to maintain the availability of on-line ordering for qualifying purchases. However, Purchaser acknowledges that periodic computer server and network failures are unavoidable, and Purchaser shall not hold Supplier liable for damages or losses incurred as a result of on-line ordering being unavailable. Purchaser further acknowledges that on-line ordering may not be available in the future, and that the availability of on-line ordering shall have no effect on Purchaser's obligation to comply with these terms and conditions.

11. **WAIVER RELATED TO DEMONSTRATION EQUIPMENT (WHERE APPLICABLE): IN CONSIDERATION OF THE RIGHT AND OPTION (IN SUPPLIER'S DISCRETION AND SUBJECT TO APPROPRIATE PRE-QUALIFICATION) TO DISPLAY, DEMONSTRATE OR OPERATE PRODUCTS IN PURCHASER'S SALES AND MARKETING EFFORTS, PURCHASER AGREES TO INDEMNIFY AND HOLD HARMLESS SUPPLIER FOR ALL DAMAGES, CLAIMS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING DIRECTLY OR INDIRECTLY FROM PURCHASER'S USE, STORAGE, OR TRANSPORTATION OF SUCH PRODUCTS. SUPPLIER MAY BE HELD LIABLE ONLY FOR CLAIMS ARISING OUT OF THE SOLE NEGLIGENCE OF SUPPLIER. PURCHASER IS RESPONSIBLE FOR ANY DAMAGE, THEFT OR LOSS OF ANY KIND TO SUCH DEMONSTRATION PRODUCTS AND MAINTENANCE UNTIL RETURNED TO SUPPLIER IN SATISFACTORY CONDITION. PURCHASER CERTIFIES THAT IT HAS HAD AN OPPORTUNITY TO INSPECT THE DEMONSTRATION PRODUCT(S) PRIOR TO RECEIPT AND FOUND IT OR THEM TO BE IN GOOD WORKING ORDER.**

12. **PATENTS, TRADEMARKS AND COPYRIGHTS:** Supplier will defend and control any suits, actions, proceedings and/or hearings that may be instituted by third parties against Purchaser for infringement of any United States patent, trademark, or copyright relating to any Products or Parts furnished by Supplier hereunder, and any allegations, claims or contentions relating to the same, provided Purchaser has (i) made all payments then due hereunder and is not otherwise in breach of these terms and conditions, (ii) given Supplier immediate notice in writing of any such suit, actions, proceedings, hearings, allegations, claims and/or contentions (iii) transmitted to Supplier immediately upon receipt all processes and papers provided to Purchaser, (iv) permitted Supplier through its counsel, either in the name of Purchaser or in the name of Supplier, to defend the same, and (v) given all needed information, assistance, and authority to enable Supplier to do so. If such Products or Parts in such suit are held (by the final, non-appealable order of a court of competent jurisdiction) in and of themselves to infringe upon any valid United States patent, trademark, or copyright, then: (a) Supplier will pay any final award of damages in such suit attributable to such infringement, and (b) if in such suit use of such Products by Purchaser is permanently enjoined by reason of such infringement, Supplier shall either (i) procure for Purchaser the right to continue using the Products or Parts, (ii) modify the Products or Parts to render them noninfringing, (iii) replace the Products or Parts with noninfringing goods, or (iv) refund the purchase price and the shipping costs (if any) paid by Purchaser for the Products or Parts. Notwithstanding the foregoing, Supplier shall not be responsible for (i) any compromise or settlement made without its prior written consent, (ii) infringement of combination or process patents covering the use of the Products in combination with other goods or materials not furnished by Supplier, (iii) infringement of patents covering the use of Products that have been modified in any way by Purchaser or any third party or (iv) infringement of patents covering the use of Products that are used other than for their intended purpose. The disclaimer of liability for damages of the type described in Paragraph 10 shall apply to this paragraph. The foregoing states the entire liability of Supplier for infringement.

13. **CONFIDENTIAL INFORMATION:** All blueprints, computations on estimates, sketches, models, samples, patents, trademarks, and copyrights used in Supplier's business are the property of Supplier and shall be treated as confidential information of Supplier unless Supplier has in writing indicated a contrary intent or such information has previously been disclosed to the public. No use or disclosure of such confidential information or any design or production techniques revealed thereby shall be made without the prior written consent of Supplier.

14. **CONTRACT DEVIATION.** These terms and conditions may not be modified, added to, superseded or otherwise altered except by a written instrument signed by an authorized representative of Supplier, notwithstanding any terms and conditions proposed to Purchaser orally or that may be contained in any purchase order, form or other document of Purchaser and notwithstanding Supplier's act of accepting any payment from Purchaser.

15. **GOVERNING LAW AND VENUE:** The rights of all parties hereunder and the construction of every provision hereof shall be governed by the laws of the State of Wisconsin, excluding any choice of law rules that may direct the application of the laws of another jurisdiction. **THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION OF CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.** Any dispute, claim or controversy relating to or arising under these terms and conditions or the dealings of the parties which cannot be resolved amicably by the parties shall be commenced and prosecuted exclusively in the state courts of Waukesha County, Wisconsin or the federal courts located in the Eastern District of Wisconsin (in either event, the "Forum Court"). The parties stipulate and consent to the exclusive jurisdiction, personal jurisdiction and proper venue of the Forum Court and waive and relinquish all right to attack the suitability or convenience of such venue or forum by reason of their present or future domiciles, or by any other reason. The parties acknowledge that all directions issued by the Forum Court, including all injunctions and other decrees, will be binding and enforceable in all jurisdictions.

16. **ASSIGNMENT:** Purchaser may not assign, in whole or in part, its rights or obligations under these terms and conditions without Supplier's prior written consent and any assignment or attempted assignment without such consent shall be null and void. These terms and conditions shall be binding upon and inure to the benefit of Supplier and its successors and assigns and Purchaser and its successors and permitted assigns.

17. **SEVERABILITY:** If any provision of these terms and conditions shall under any circumstances be deemed invalid or inoperative, these terms and conditions shall be construed with the invalid or inoperative provision deleted, and the rights and obligations of the parties hereunder shall be construed and enforced accordingly.

18. **SURVIVAL:** These terms and conditions which by their nature are intended to survive the cancellation or completion of the sale of Products or Parts shall continue as valid and enforceable rights and obligations of the parties, as applicable, notwithstanding any such cancellation or completion.

19. **ENTIRE AGREEMENT.** These terms and conditions, in combination with the respective quantities and delivery dates specified and agreed upon by both parties in a respective order, shall constitute the entire agreement between Supplier and Purchaser with respect to Purchaser's order and shall supersede all previous communications, warranties and representations, either written or oral, with respect to the subject matter hereof.

20. **NOTICES:** All notices, requests, demands and other communications with Supplier shall be in writing and shall be effective (i) when delivered by hand, (ii) when delivered by facsimile transmission, actually received by the receiving equipment with written confirmation thereof (provided that any facsimile sent on a Saturday, Sunday or legal holiday observed by Purchaser, or after 5:00 p.m. (Central Standard Time) on a business day, shall be deemed effective on the next business day, (iii) one (1) business day after being sent by nationally recognized overnight courier service, or (iv) three (3) business days after being sent by certified mail, return receipt requested, in each case to Purchaser at the following address or to such other address as may be designated by like notice, duly given: Wacker Neuson Sales Americas LLC, N92W15000 Anthony Ave., Menomonee Falls WI 53051.

21. **INDEPENDENT CONTRACTOR.** The relationship of Supplier to Purchaser is solely that of an independent contractor. Nothing in these terms and conditions or the business relationship between the parties shall be construed to establish a principal-agent, partnership, joint venture or similar relationship between Supplier and Purchaser and neither party shall have the authority to bind or obligate the other in any manner.

22. **MODIFICATIONS; WAIVERS:** These terms and conditions may not be amended, modified, supplemented or waived except in a writing signed by the parties and a party's failure to enforce any provision set forth herein shall not operate as a waiver thereof unless such waiver is set forth in a writing signed by the parties.

23. **MISCELLANEOUS.** The then current version of Uniform Commercial Code Article 2 shall apply to shipping terms used herein for domestic shipments. The then current version of INCOTERMS shall apply to shipping terms used herein for international shipments.