

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

1. **GENERAL**
- 1.1 Unless otherwise agreed in writing, all sales and deliveries by Wacker Chemie AG or any of its affiliates as defined in Art. 15 of German Corporate Act (AktG) (hereinafter: "WACKER") to any of its customers shall be exclusively governed by the following General Terms and Conditions of Sale and Delivery ("GTC"). Other provisions, in particular the customers' General Terms and Conditions shall not apply, even if WACKER has not explicitly rejected such conditions. These GTC shall apply exclusively also in the event that WACKER provides services unreservedly while being aware that contrary or deviating terms and conditions exist.
- 1.2 Individual agreements between WACKER and the customer made in a particular case shall take priority. Such arrangements, as well as any amendments and supplements to, or the cancellation of an arrangement including these General Conditions between WACKER and the customer require the written form to be effective. The same applies to the repeal of the requirement of written form.
2. **OFFERS, PURCHASE ORDERS**
- 2.1 Offers made by WACKER shall always be deemed non-binding unless they are expressly marked as binding.
- 2.2 Customer purchase orders shall become binding for WACKER only upon written acceptance or the delivery of goods. WACKER may accept purchase orders within one week from receipt thereof.
3. **DELIVERY, ACCEPTANCE**
- 3.1 Unless otherwise agreed, deliveries shall be either Ex Works Burghausen (Incoterms 2010) or take place from another location to be specified by WACKER. If, in individual cases, it is agreed that WACKER shall undertake the dispatch of goods, the place of delivery of goods to the shipping company shall be the place of fulfillment.
- 3.2 Delivery terms and delivery dates specified by WACKER shall be non-binding, unless binding terms and dates were expressly agreed upon in individual cases. In case of non-binding delivery terms or dates, WACKER shall be in default only if a reasonable time for delivery set in writing by the customer lapses unsuccessfully. The customer shall set the expiry of such a term to a date at least four weeks after the expiry of the non-binding delivery term or non-binding delivery date.
- 3.3 WACKER shall not be in default of delivery, if suppliers fail to deliver in a proper or timely manner due to reasons beyond WACKER's sphere of responsibility.
- 3.4 WACKER shall be entitled to make partial deliveries provided that the acceptance of such partial deliveries is reasonable for the customer and, in particular, if the delivery of the remaining goods ordered is ensured and no significant additional expenditure or additional cost arise for the customer as a result thereof (unless WACKER agrees to bear such cost). Each partial delivery may be invoiced separately.
- 3.5 The customer shall be in default of acceptance, if it fails to accept the goods on the bindingly agreed delivery date. In case of non-binding delivery terms or dates WACKER may notify the customer when the goods are ready for collection within a period of four weeks. The customer shall be in default of acceptance, if it fails to collect the goods within that timeframe.
- 3.6 If the customer is in default of acceptance or if the usual time taken for unloading is exceeded at the time of acceptance, it shall be charged the additional cost arising as a result, such as container rental cost and other storage cost. WACKER shall be entitled to charge the customer 0.1% of the amount invoiced for the stored goods per calendar day of storage as lump-sum compensation for storage costs. However, the customer shall be charged a maximum of 1% per calendar month, unless it provides evidence that damages incurred are lower. WACKER reserves the right to submit evidence of greater damages. However, WACKER shall be entitled to find alternative ways to dispose of the goods, if attempts to determine a reasonable period of time are unsuccessful.
4. **PRICES, PRICE ADJUSTMENT**
- 4.1 Unless otherwise agreed, the price list valid at any one time given shall apply. Prices shall be EXW (Incoterms 2010) excluding packaging and shipping. Any applicable sales tax shall be calculated separately at the legal rate valid at the respective time and shall be paid by the customer.
- 4.2 WACKER reserves the right to implement price adjustments, if, following the conclusion of the contract until delivery, costs change on account of the following factors which WACKER is not responsible for and which were not foreseeable with reasonable certainty: wage settlements, changes in raw material prices, other suppliers' price changes or currency fluctuations. WACKER shall disclose the reasons for such price adjustments upon the customer's request.
5. **PAYMENT, DEFAULT OF PAYMENT**
- 5.1 Unless otherwise agreed, invoices shall be paid within 14 days of delivery and receipt of invoice without deduction and are payable via bank transfer into one of the accounts indicated by WACKER. Unless otherwise agreed, payments shall be made in Euro. Place of fulfillment shall be the registered office of WACKER.
- 5.2 If the customer exceeds the payment term, it shall be in default without further reminder. The timeliness of payment shall be determined by the date on which the invoiced amount is received on the account indicated.
- 5.3 In case of delayed payment, WACKER shall be entitled to claim default interest in the amount of 8 percentage points above the base interest rate, however, a minimum of 12% of the outstanding amount per year. The right to claim further damages shall remain unaffected.
- 5.4 If the customer falls in arrears with at least two payments arising from the business relationship with WACKER, all of its effective payment obligations from all business relationships with WACKER shall become due immediately.
6. **TITLE RETENTION**
- 6.1 WACKER shall retain ownership of the goods delivered until the receipt of all payments arising from the business relationship. If an open account relationship exists, WACKER shall retain ownership of the goods delivered until the receipt of all payments from the approved balances.
- 6.2 If the customer acts in breach of the contract, in particular in case of delayed payment, WACKER shall be entitled to take back the goods delivered subject to title retention ("Reserved Goods"). In case of delayed payments, setting a deadline beforehand shall not be required. Customer hereby grants WACKER, or a third party designated by WACKER, access to the customer's business premises and warehouses during usual business hours to take back the Reserved Goods. WACKER or the designated third party shall be granted access to the Reserved Goods and the customer shall provide sufficient support in removing the Reserved Goods. Further claims of WACKER shall remain unaffected.
- 6.3 Once the Reserved Goods have been taken back, WACKER shall be entitled to adequate utilization of the same, provided WACKER has informed the customer beforehand of its intention with reasonable prior notice. The utilization proceeds shall be set off against the customer's liabilities reduced by reasonable utilization costs.
- 6.4 Insofar as the customer resells the Reserved Goods for financing purposes or in the course of ordinary business activities, it shall undertake to sustain WACKER's title retention with respect to the buyer of such goods ("the buyer"). The customer hereby assigns to WACKER all liabilities against the buyer or third parties as well as all ancillary rights derived from the resale, in the amount of the final invoice (including sales tax), regardless of whether the Reserved Goods were resold in their unprocessed state or after having been processed, until the repayment of its entire debt owed to WACKER.
- 6.5 When reselling the Reserved Goods, the customer shall notify the buyer that it has assigned its right to receive payment of the purchase price. The customer shall not be entitled to sell the Reserved Goods to buyers who have either excluded or limited the assignment of payment claims against them. If the Reserved Goods were processed with objects not belonging to the customer, the assignment shall be effected in the proportion of co-ownership shares in the processed object as per item 6.10.
- 6.6 Following the assignment of claims, the customer shall remain authorized to collect claims. WACKER's right to collect claims itself shall remain unaffected. However, WACKER shall not collect claims if the customer meets its payment obligations from the proceeds received, does not fall in default of payment and or, above all else, has not applied for the opening of insolvency proceedings or ceases payments. If any of the above should be the case, WACKER shall be entitled to demand that the customer make known the assigned claims and the respective debtors, furnish all information necessary for collection, deliver the associated documentation and inform the debtors of the assignment. The customer's right to collect claims ceases to exist with the occurrence of such event.
- 6.7 Insofar as there is a current account relationship between the customer and the buyer in accordance with § 355 German Commercial Code (HGB), the claim previously assigned to WACKER by the customer shall also relate to the accepted account balance.
- 6.8 Apart from this, the customer shall not sell, pledge or transfer the title for the purposes of securities without having obtained prior approval by WACKER. In the event that the Reserved Goods are seized, confiscated or used for other purposes by a third party, the customer shall refer to WACKER's title to the Reserved Goods and notify WACKER immediately. Insofar as the third party is unable to reimburse WACKER for court costs and extra judicial costs of legal action pursuant to § 771 of the German Code of Civil Procedure (ZPO), the customer shall be liable for the loss WACKER incurs.
- 6.9 The customer shall undertake to handle the Reserved Goods carefully. Most of all, the customer shall take out adequate insurance based on the replacement value against damage caused by fire, tap water, storm/hail, burglary, sprinkler leakage and natural hazards.
- 6.10 Processing or altering/transformation of the Reserved Goods by the customer shall always be performed for and on behalf of WACKER. If the Reserved Goods are processed or altered/transformed with other objects not owned by WACKER, WACKER shall acquire co-ownership of the new object at the ratio of the Reserved Goods' value to the other processed or altered/transformed objects at the time of processing or alteration/transformation. Apart from this, the same shall apply to the new object produced and to the goods delivered subject to title retention.
- 6.11 If the Reserved Goods are inseparably mixed or combined with other objects not owned by WACKER, WACKER shall acquire co-ownership of the new object at the ratio of the Reserved Goods' value to the other mixed objects at the time of mixing or combination respectively. If objects are mixed or combined in such a manner that the customer's object is deemed to be the principal object, it shall be agreed that the customer assigns prorate co-ownership. The customer shall keep in safe custody the so created sole ownership or co-ownership for WACKER.
- 6.12 To secure WACKER's claims against the customer, it shall also assign such claims to WACKER which are created against a third party due to the Reserved Goods being connected with real property.

- 6.13 The customer shall make reasonable efforts to comprehensively support WACKER in safeguarding its rights pursuant to this section 6 in the country where the Reserved Goods are located (if necessary by means of other security).
- 7. DETERIORATION OF FINANCIAL SITUATION**
- 7.1 If, after having entered into a contract with the customer, it becomes clear that the customer may be unable to fulfill its contractual duties due to its financial status (particularly if payments are discontinued, insolvency proceedings have been instituted, seizure or forced execution measures have been taken, cheques and bills are protested and direct debits are returned, involving third parties as well), WACKER shall be entitled to retain deliveries until prepayment of the purchase price is effected or an adequate security is lodged. The same shall apply if legitimate doubts exist concerning the customer's creditworthiness or its ability to pay as a result of payments being delayed.
- 7.2 Furthermore, in the cases listed under section 7.1, WACKER shall be entitled to retain deliveries until all of the customer's outstanding debts have been paid in full or an adequate security is lodged. However, for all claims not yet due, including those where WACKER is required to render advance performance under contracts already concluded, as well as claims which lack an economic connection with the delivery, this rule shall apply only if there is a legitimate interest on WACKER's part.
- 7.3 If a current account relation exists within the context of the business relationship, WACKER shall be, in the cases listed under section 7.1, entitled to retain deliveries until all payments under the approved balances have been received or an adequate security has been provided.
- 7.4 If the customer does not provide the advance payment or the security in accordance with section 7.1 within two weeks, WACKER shall be entitled to rescind the respective individual contract or, if the contract comprises the performance of a continuing obligation (e.g. a framework supply agreement), even terminate such contract without notice.
- 8. QUALITY OF GOODS, INFORMATION AND USE, GUARANTEES**
- 8.1 As regards the quality of the goods, only the agreed upon specification shall apply. The customer shall be solely responsible for verifying that the goods are suitable for the desired purposes.
- 8.2 Information provided by WACKER in writing, verbally or in any other form with regard to suitability, including application, processing or another use, as well as technical support offered are rendered to the best of WACKER's knowledge; however, all of the above shall be deemed non-binding information only. The information shall not release the customer from verifying on its own behalf the suitability of goods delivered by WACKER for the intended purposes. Application, processing and any other use of the goods are beyond WACKER's control and shall therefore be the customer's responsibility. Guarantees, particularly guarantees of quality shall be binding on WACKER only to the extent that (i) they are included in an offer or order confirmation, (ii) they are referred to expressly as "guarantee" or "guarantee of quality", and (iii) WACKER's duties from such guarantee are expressly stated.
- 9. WARRANTY RIGHTS**
- 9.1 The customer's warranty rights shall be contingent on the customer having performed an inspection of goods upon delivery and defects being duly notified in accordance with § 377 of the German Commercial Code (HGB).
- 9.2 Notification of defects shall be made in writing and specify the defect. Defects on account of incomplete delivery or other evident defects shall be notified to WACKER in writing without delay, or, at the latest within one week from delivery. Hidden defects shall be notified without delay or, at the latest within one week from their discovery. Acceptance of goods shall not be refused on grounds of minor defects. Belated claims for defects shall be excluded. The customer shall bear the cost incurred from the inspection of goods. Defective goods shall be made available to WACKER for inspection on demand.
- 9.3 WACKER shall provide subsequent performance (Nacherfüllung) for defective goods by, at its sole discretion, either eliminating the defect (rectification of defects/Nachbesserung) or delivering goods free of defects (subsequent delivery/Nachlieferung). Subsequent performance shall be made without recognition of a legal obligation. If WACKER chooses to provide supplementary performance by eliminating the defect, the remaining part of the original statutory period begins as of the date the rectified goods are returned. The same applies in the case of subsequent delivery.
- 9.4 If subsequent performance fails, the customer shall be entitled to rescind the contract. The right to reduce the purchase price shall be excluded. Additional claims for defects, regardless of the type of claim, are excluded, except for claims for damages, which are subject to the limitations set out in section 10.
- 9.5 The customer shall bear any reasonable cost incurred from an unjustified enforcement of warranty rights (e.g. product was not defective); the same shall apply, if WACKER erroneously grants warranty rights without being obliged to do so.
- 9.6 The warranty period shall be one year from delivery. However, this limitation shall not apply, if (i) a defect was fraudulently concealed or (ii) if a guarantee for the quality of goods was provided, in which case the guarantee provision or limitation period as set out in the guarantee shall apply) or (iii) in the cases referred to in § 438 section 1 No. 2 BGB (German Civil Code). As for claims for damages, this limitation shall not apply in the following cases: (i) Damage to life, body or health, (ii) intent and (iii) gross negligence on the part of WACKER's management or executive staff.
- 10. LIABILITY**
- 10.1 As a basic principle, WACKER shall be liable to the customer in accordance with the legal requirements for all damages caused in connection with the delivery. However, the following liability limitations set out under section 10.2 through 10.5 shall apply for all claims for damages, independent of the legal base, and with the exception of claims raised by the customer (i) based on the belief that damages were caused intentionally, (ii) under the product liability act, (iii) due to fraudulently concealed defects, (iv) due to defects in regards to which a quality guarantee was provided (here too, a liability provision or limitation period due to the guarantee may apply), (v) resulting from the damage to life, body or health or (vi) due to gross negligence on the part of WACKER's management or executive staff.
- 10.2 In the case of ordinary negligence, WACKER shall be liable only for damages resulting from the violation of essential contractual duties the performance of which is required for the due execution of the contract and the observance of which the contracting partner relies on and may rely on, regularly. In this case, however, liability shall be limited to the typically foreseeable damage. This limitation of liability shall also apply to damages caused by gross negligence by WACKER employees or representatives who do not belong to the management or executive staff.
- 10.3 Liability for cases specified under section 10.2 shall be limited to double the purchase price of the delivery concerned.
- 10.4 For cases specified under section 10.2, the limitation period shall be two years after the date on which the claim arose and the customer gained knowledge of the circumstances substantiating the claim. The customer may not bring forth any claim against WACKER after three years from the event that triggered the damage independent of the customer's knowledge thereof. The statute of limitation for damage claims due to defects shall be determined in accordance with section 9.6.
- 10.5 The above limitation of liability shall also apply to damage claims raised by the customer against WACKER's management, executives, employees or representatives.
- 11. FORCE MAJEURE**
- In the event of WACKER being unable to fulfill their contractual duties as a result of force majeure (i.e. mobilization, war, terrorism, insurgence, natural catastrophes, fire) or due to other unforeseeable circumstances for which WACKER bears no responsibility (i.e. strikes or lawful lockouts, operation or transport interruptions, difficulties with the procurement of raw material, inadequate delivery from suppliers), the delivery terms agreed on shall be extended by the duration of the obstruction plus an appropriate resumption time. Furthermore, WACKER shall not be held responsible for the circumstances mentioned if they occur during an already existing delay. WACKER shall notify the customer as soon as possible of the start and expected end of such circumstances. If the obstruction lasts six months or longer, both parties shall be entitled to rescind the contract.
- 12. ADHERENCE TO REGULATIONS AND EXPORT**
- 12.1 The customer shall adhere to all legal regulations and official requirements as well as to all applicable laws and particularly to the export regulations and laws of the country in which the customer is conducting business. The customer shall obtain all required authorizations and licenses in due time as well as all other permissions, which are required as per such applicable laws for the use and export of goods.
- 12.2 WACKER shall be entitled to retain delivery from the customer if, without WACKER's fault or sharing in the responsibility in such, the customer violates such applicable laws or if not all of the required permissions have been obtained.
- 13. OFFSETTING AND RIGHT OF RETENTION**
- The customer shall not be entitled to either offset or exercise its right of retention on account of counterclaims which are contested or not yet stated as legally binding. Furthermore, the customer shall not be entitled to exercise its right of retention to the extent that the counterclaims are not based on the same contractual relationship.
- 14. ASSIGNMENTS**
- The customer shall not be entitled to assign any of its rights and duties in conjunction with deliveries either in part or in full without obtaining prior written approval by WACKER. WACKER shall be entitled to assign its rights and duties in conjunction with deliveries particularly to affiliated companies as defined in § 15 AktG.
- 15. APPLICABLE LAW, PLACE OF JURISDICTION, MISCELLANEOUS**
- 15.1 All legal relationships between WACKER and the customer shall be subject to German law under the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 15.2 Exclusive jurisdiction and legal venue for all disputes resulting from or in connection with a delivery shall be Munich. However, WACKER shall be entitled to institute proceedings against the customer at its place of business.
- 15.3 Should individual provisions of these General Conditions be or become null and void, the validity of the remaining provisions shall remain unaffected.