

General Terms and Conditions of C.D. Wälzholz Asia Ltd.

1. The terms and conditions set out below shall govern, and be incorporated in, each contract made between C.D. Wälzholz Asia Limited (hereinafter "we", "us" or "our") and each customer (hereinafter "Customer") in place of any other terms and conditions, save only to the extent that we shall have accepted such other terms and conditions in writing. Any order placed by Customer will not be a binding contract unless and until we have accepted the same in writing.
2. Unless otherwise agreed by us in writing, in the case of call supply contracts, quantities to be delivered under such contracts shall be notified to us by Customer in writing not less than 3 months before the proposed delivery date. Customer shall thereupon be bound to accept and pay for such quantities. Any additional costs incurred by us as a result of Customer late calling or subsequently making amendments to the call in respect of time, quantity or otherwise shall be borne by Customer.
3. If either we or Customer make available to the other any drawings or technical documents relating to the goods to be supplied, or to their manufacture, such documents shall remain the property of the party which makes them available.
4. Any manufacturing costs for samples and production materials (including, without limitation, tools, moulds and templates) shall, unless otherwise agreed in writing, be invoiced to Customer separately from the goods to be supplied. This provision shall also apply to production materials which have to be replaced as a result of wear and tear.
5. In the event that any goods supplied by us are partially defective, as admitted by us or determined by a court of competent jurisdiction or arbitration tribunal, Customer shall remain obliged to pay for those goods which are free from defects.
6. Customer shall have no right of set off or withholding in respect of any amount payable to us unless we have approved such set off or withholding in writing or the same has been determined in favour of Customer by a court of competent jurisdiction or arbitration tribunal.
7. If payment is not made by Customer on or before the due date, we shall have the right to charge interest thereon at the prime lending rate (for the relevant currency) from time to time of The Hong Kong and Shanghai Banking Corporation Limited plus eight (8) per cent, accruing on a daily basis from the due date until the date of actual payment.
8. In the event of Customer not making any payment on or before the due date, we shall further have the right upon giving notice in writing to Customer, to suspend all further deliveries of goods to Customer until such time as such payment has been received.
9. If we determine in our absolute discretion that Customer may be unable, whether on account of its financial position or otherwise, to make any payment or otherwise perform its obligations under any contract, we shall have the right to suspend all further deliveries of goods to Customer unless Customer provides prepayment, deposit or other security for the performance of its obligations as we may, in our absolute discretion require not later than such date as we may stipulate. Failure by Customer to provide such prepayment, deposit or other security shall entitle us to terminate any outstanding contract without prejudice to our rights hereunder or as conferred by law.
10. Subject to any agreement in writing between us and Customer, we shall have the right at any time to make partial deliveries of goods to Customer and to render invoices in respect of the same.
11. We shall have the right to make production-related long or short deliveries with a tolerance of plus or minus 10 per cent of Customer's total order quantity. The total price payable by Customer shall be adjusted accordingly.
12. Upon receiving notification from us that any goods are available for delivery, Customer shall forthwith arrange for the same to be collected from our factory or warehouse stated in such notification. In the event that such goods are not collected within fifteen (15) days, we shall be entitled at our option either to place such goods in storage at our factory or warehouse or in such other location as we may, in our absolute discretion think fit, or deliver the same to Customer, in either case at Customer's sole risk and cost.
13. In the case of goods to be delivered otherwise than at our factory or warehouse, we shall, unless otherwise agreed with Customer in writing, select the transport method and routing.
14. All risk of loss of or damage to any goods shall be forthwith transferred to Customer as follows : (a) in the case of goods to be delivered at our factory or warehouse, at the time, as notified by us to Customer, when the goods are available for collection; and (b) in the case of goods to be delivered otherwise than at our factory or warehouse, at the time of handover to the relevant forwarding agent or freight carrier.
15. We shall use our best endeavours to deliver all goods on the agreed delivery date and, in any event, within thirty (30) days thereafter.
16. Notwithstanding delivery and the passing of risk in the goods, the property in the goods shall not pass to Customer until we have received full payment of the price of the same and of all other goods sold by us to Customer. Until such time as the property in the goods (hereinafter "reserved goods") passes to Customer : (a) Customer shall hold the reserved goods as our fiduciary agent and bailee and shall keep the reserved goods separate from those of Customer and third parties and properly stored, protected and insured and identified as our property.
Until such time, Customer shall be entitled to resell or use the reserved goods in the ordinary course of its business, but shall account to us for, and hold as our fiduciary agent and bailee, all proceeds of sale, receivables due from, or rights of action against, third parties or any other interests of any kind accruing to Customer in respect of the reserved goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds of sale separate from any moneys or property of Customer and third parties and, in the case of tangible items, properly stored, protected and insured; (b) provided the reserved goods are still in existence and have not been resold, we shall be entitled at any time to require Customer to deliver the reserved goods to us and, if Customer fails to do so forthwith, to enter upon any premises of Customer or any third party where the reserved goods are stored and repossess the same ; and (c) Customer shall not be entitled to pledge or in any way charge any of the reserved goods by way of security for any indebtedness.
17. Notwithstanding paragraph 16, Customer shall not process any of the reserved goods or inseparably mix the same with other items not owned by us without our prior written consent, and any such consent may be given on such conditions as we may, in our absolute discretion think fit, including (without limitation) our and Customer's respective ownership percentages of the processed or mixed materials containing the reserved goods and storage, protection and insurance of the same. In the event that Customer fails to seek such consent, then without prejudice to all other rights hereunder or as conferred by law, the provisions of paragraph 16 shall apply to all such processed or mixed materials as if no such processing or mixing had taken place.
18. Customer shall inform us immediately in writing of any action taken or threatened by any third party including (without limitation) any governmental authority, in respect of any reserved goods and shall provide us with copies of all relevant documentation relating to such action.
19. Without prejudice to our other rights hereunder or as conferred by law, if (a) Customer makes any voluntary arrangement with its creditors or any class of them or, being an individual or firm, becomes bankrupt or, being a company, enters into liquidation otherwise than for the purposes of amalgamation or reconstruction ; or (b) an encumbrancer takes possession of, or a receiver is appointed in respect of, any property of or assets of Customer; or (c) Customer ceases, or threatens to cease, to carry on business; or (d) we apprehend that any of the events mentioned above is about to occur in relation to Customer, we shall be entitled to terminate any contract between us and Customer or suspend further deliveries of goods to Customer without liability to Customer and, if any goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
20. The quality of the goods shall be determined solely by reference to the agreed technical supply specifications. In the event that any goods are manufactured or supplied by us in accordance with drawings, specifications, samples and other information provided by Customer, there shall be no implied term that such goods are fit for any particular purpose.
21. If Customer has been afforded an opportunity to inspect, analyse or test the goods or initial samples thereof prior to delivery and, following such inspection, analysis or testing, accepts the same, we shall have no liability of any kind in the event that the goods may subsequently be found to contain any defect.
22. Without prejudice to paragraph 20, in the event that Customer alleges that any goods are defective, it shall arrange at its own cost and expense to return such goods to us as soon as reasonably practicable, and in no event later than 3 months after delivery, for assessment. We shall have no liability of any kind if any defect is found to be wholly or partly due to any modification, or other procedure carried out in respect, of the goods by Customer or any third party without our prior written consent. If the goods are found by us to be defective, we shall (a) reimburse Customer in respect of all costs and expenses incurred in returning the goods to us for assessment ; and (b) at our option, either modify, reprocess or repair the goods or supply replacement goods free of charge. In such event, we shall have no further liability of any kind and all warranties, conditions or other terms implied by statute or common law as to the goods being of merchantable quality, fit for any purpose, free of defects or otherwise are excluded to the fullest extent permitted by law.
23. Except for death or personal injury caused by our negligence, we shall have no liability to Customer by reason of any implied warranty, condition or other term, or any duty at common law, or under the express terms of any contract, for any consequential loss or damage (whether for loss of profits or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by our negligence or that of our officers, employees or agents or otherwise) which arise out of or in connection with the supply of the goods or their use or resale by Customer, except as expressly stated in these terms and conditions.
24. We shall not be deemed to be in breach of any contract or otherwise liable to Customer as a result of any delay or failure in the performance of our obligations hereunder if and to the extent that such delay or failure is caused by any event or circumstance which is beyond our reasonable control including (without limitation) any flood, earthquake, storm, typhoon, subsidence, epidemic or other natural disaster or calamity, any war or threat thereof, terrorist action, riot, invasion, civil disorder, insurrection, any action or failure to act on the part of any, governmental authority in any jurisdiction, any trade embargo, industrial action, strike or lockout, any shortage or absence of raw materials, labour or components, any destruction, damage or malfunction of or to any factory, equipment, plant or materials and any breach of contract, default or insolvency by or of any third party, including (without limitation) any supplier or sub-contractor, or an employee or officer of such third party. In any such event or circumstance, the time for performance of our relevant obligation(s) shall be extended accordingly and we shall notify Customer, so far as we are able, of the nature, extent and possible duration of such event or circumstance.
25. Any dispute arising out of or in connection with any contract between us and Customer, including any question regarding the existence, scope, validity or termination of such contract, shall be referred to and finally resolved under the rules of the Hong Kong International Arbitration Centre as hereinafter amended or supplemented. The number of arbitrators shall be one, the language of the arbitration hearing and award shall be English and the place of the arbitration hearing shall be Hong Kong.
26. We may, at our absolute discretion, perform any of our obligations or exercise any of our rights hereunder either on our own account or through any other company which is a member of the group of companies of which we are also a member.
27. No waiver by us of any breach of contract by Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
28. Should any of the provisions of these terms and conditions be held to be illegal, invalid or unenforceable under the laws of any particular jurisdiction, such provision shall be severed from these terms and conditions, the legality, validity and enforceability of the remaining provisions in such jurisdiction shall remain unaffected and the legality, validity and enforceability of all provisions of these terms and conditions in any other jurisdiction shall not be affected.
29. Each contract between us and Customer and these terms and conditions shall be governed by, and construed in all respects in accordance with, the laws of the Hong Kong Special Administrative Region of the People's Republic of China. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11th April 1980 shall be excluded.