

General Terms and Conditions of Supply and Payment of Waelzholz New Material Co. Ltd.

1. Our deliveries and services are provided exclusively on the basis of the terms and conditions below. The business terms and conditions of the customer, unless expressly recognised by us, are herewith refused and they have no validity for us. Orders will not be binding until they are confirmed by us in writing.
2. In the case of call supply contracts, unless otherwise agreed, binding quantities are to be notified to us in writing by call not less than 3 months before the delivery date. Any additional costs caused by our customer through late calling or subsequent amendments to the call in respect of time or quantity are to be borne by the customer.
3. Where one of the parties makes available to the other drawings or technical documents relating to the goods to be supplied, or to the manufacture of such goods, to the other party, these remain the property of the party submitting them.
4. Manufacturing costs for samples and production materials (tools, moulds, templates, etc.) shall, unless otherwise agreed, be invoiced separately from the goods to be supplied. This shall also apply to production materials which have to be replaced as a result of wear and tear.
5. Where we have indisputably supplied goods which are partly defective, our customer shall nevertheless be obliged to pay for the non-defective part.
6. Our customer can only offset with counterclaims that are undisputed or have been confirmed by a final court decision.
7. If the payment terms are not met, we shall be entitled to bill interest on arrears at the rate charged to us by our bank for current account overdrafts, but at a minimum of 8 percentage points above the base interest rate of the Bank of China at the time.
8. In the event of any delay in payment we may, after giving notice in writing to the customer, suspend our obligations until payments have been received.
9. If it becomes apparent after conclusion of the contract that our claim to payment is at risk owing to the customer's lack of adequate financial capacity, we shall be entitled to refuse performance and to set the customer a reasonable deadline within which it must make payment or provide security concurrently with delivery. If the customer refuses to do so or the deadline expires without result, we shall be entitled to withdraw from the contract and demand damages.
10. Partial deliveries are permitted, unless explicitly excluded by the customer in the purchase order. They shall be invoiced separately.
11. Production-related long or short deliveries are permitted within a tolerance of 10 per cent of the total order quantity. The total price shall be adjusted accordingly.
12. Goods which are notified as being ready for dispatch are to be taken over immediately by the customer. We are otherwise entitled, at our sole discretion, to dispatch them or to store them at the cost and risk of the customer.
13. In the absence of any special agreement, we shall select the transport method and routing.
14. The risk shall be transferred to the customer on handover to the railway, forwarding agent or freight carrier, or on commencement of storage, but in any case not later than departure from the factory or warehouse; this shall also apply if we have undertaken delivery.
15. The customer shall only be entitled to withdraw from the contract if we are responsible for the delivery date not having been met and we still fail to deliver the goods within a reasonable grace period given by the customer.
16. We reserve the right of ownership (i.e. we reserve title of ownership) in respect of the goods supplied until such time as all claims under the business relationship with the customer have been fully met (such goods subject to reservation of title of ownership hereinafter: "reserved goods").
17. However, the customer is entitled to sell the reserved goods in the regular course of business, provided it meets its obligations arising from the business relationship with us in good time. However, it may neither pledge the reserved goods nor transfer ownership of them as security. The customer is obliged to protect our rights if reserved goods are resold on credit.
18. With immediate effect the customer shall assign and be deemed to have assigned to us as collateral all claims and rights deriving from the sale, or any hiring for which we may have given the customer permission, of reserved goods. We hereby accept the assignment.
19. Any working or processing of the reserved goods shall at all times be carried out by the customer on our behalf. If the reserved goods are processed or inseparably mixed with other items not owned by us, we shall acquire joint ownership of the new product in the proportion of the invoice value of the reserved goods to the other processed or mixed items at the time of processing or mixing.
20. The customer must inform us immediately of enforcement measures being taken by third parties in respect of the reserved goods by handing over to us any documents required for any intervention. This shall also apply to infringements of any other kind.
21. In the event of any breach of contract by the customer, in particular in the case of delayed payment, we shall be entitled, if the customer has not remedied the breach after a reasonable grace period given by us, to withdraw from the contract and take back the goods; this shall not affect the statutory provisions concerning cases where it is not mandatory to allow a grace period. The customer shall be obliged to surrender the goods.
22. We shall be entitled to withdraw from the contract if an application is filed for insolvency proceedings to be instituted against the customer's assets.
23. The quality of the goods shall be determined exclusively by the agreed technical supply specifications. In the event of our having to supply in accordance with drawings, specifications, samples and the like provided by our customer, the latter will take over the risk of fitness for the intended use. The condition of the goods in accordance with the contract is determined as at the time of transfer of risk as stipulated elsewhere herein.
24. Liability for any material defects deriving from unsuitable or improper use, defective assembly or operation by the customer or third parties, normal wear and tear, defective or negligent handling, shall be excluded. Equally, all liability for any material defects deriving from unsuitable modifications or repairs undertaken by the customer or third parties without our approval shall be excluded.
- Finally, liability for defects which only reduce the value of the goods or their fitness for their intended use to an insignificant extent shall also be excluded.
25. Claims for material defects shall become statute-barred at the time stipulated by mandatory law, unless otherwise agreed.
26. Where it is agreed that the goods are to be accepted after completion or that initial samples are to be tested, liability for defects which could have been discovered by the customer under careful acceptance or testing of initial samples shall be excluded.
27. We must be given the opportunity of assessing any notified defect. The goods complained of must be returned to us immediately; we will take over the transport costs where the claim of defect is justified. In the event of the customer failing to observe these obligations, or carrying out modifications of the goods which are complained of without our consent, he will lose any claims for material defects.
28. In the event of notice of defect which is justified and made at the due and proper time, we will, at our sole choice, make improvements to the goods complained of or supply a replacement.
29. Unless otherwise specified below, any additional or more extensive claims by the customer against us are excluded. This shall apply in particular to claims for damages for breach of contract or from unlawful acts. We are not liable for any damage not deriving from the delivered goods themselves, lost profit, financial loss or any other consequential damage. These limitations of liability indicated above do not apply in the case of specific intent and gross negligence of significant contractual obligations.
30. As far as our liability is excluded or limited, this exclusion shall also apply to the personal liability of our employees, workers, personnel, legal representatives and vicarious agents.
31. Acts of God, industrial disputes, disturbances, official measures, non-arrival of deliveries from our suppliers and other unpredictable, unavoidable and serious events shall release the contracting parties from their duty to perform for the duration of the disturbance and to the extent of their effect. This is also applicable where these events occur at a time when the contracting party concerned is in default, unless the delay is caused intentionally or by gross negligence. The contracting parties are obliged, so far as can reasonably be expected, to provide the necessary information immediately and in good faith to adjust their obligations to the changed conditions.
32. The sole place of jurisdiction for all legal disputes arising out of or in connection with the contractual relationship with us shall be the arbitration court CIETAC in Shanghai. The arbitration proceedings shall be in English.
33. The contractual relationship with us shall be exclusively governed by and subject to the laws of the People's Republic of China. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG - "Vienna Sales Convention") shall be excluded.