General Terms and Conditions

I. General provisions

1. Following General Terms and Conditions apply for all deliveries and services by a member of the Waelzholz Group domiciled in Germany and/or all deliveries and services of the Waelzholz Group that are subject to the laws of the Federal Republic of Germany respectively.
2. The delivery of our products and services is effected only on the basis of the following terms and conditions. The customer's terms of purchase are here with excluded.
3. Our quotations are submitted without obligation. Contracts and other agreements become binding only upon written confirmation by Waelzholz.

II. Prices, conditions of payment

1. Unless otherwise agreed, our prices are calculated ex works; inland deliveries are subject to value added tax.
2. In the event that considerable changes in certain cost factors occur between signing the contract and the delivery date, in particular in costs for wages, prematerial or freight, the agreed price may be adjusted to an appropriate extent in accordance with the significance of the decisive cost factor. Payment shall be effected without deduction and should be received no later than the 15th of the month following delivery.
3. If the payment date is exceeded, we shall have the right to charge default interest at the amount of the rate that business banks charge for current account credits, but at least 8 % above the respective base interest rate of the European Central Bank. The Purchaser is only entitled to set off counterclaims resulting from the specific delivery or service or undisputed or legally acknowledged claims. He is only entitled to retaining liens if they are based on the same contractual relationship.
4. If, subsequent to entering into the contract, circumstances arise which result in a considerable deterioration of the financial position which could endanger our claim to payment, we are entitled to set a due date for the amount involved, regardless of the term of any bills of exchange received in payment.
5. If the Purchaser defaults in payment, thus indicating a risk to our claim, we are entitled to forbid any further processing of the delivered goods and recall the same. Such a recall does not constitute a cancellation of the contract.
6. In the cases depicted in subclauses 6 and 7 above, we are entitled to revoke any authorizations granted to collect debts arising from the resale of the delivered material and to demand advance payment for any outstanding deliveries.
7. The statutory regulations relating to default of payment remain unaffected.

III. Dimensions, weights, quality

1. Deviations from the dimensions, weights and quality are permissible in accordance with DIN or the established practice.
2. Weights will be determined on our calibrated scales and are decisive for invoicing. Packagings are included when weighting. Documentation of the weight is given by submission of the weight note.
3. At our request, packaging materials are to be returned to us carriage prepaid. If in such cases the packaging materials are returned in a condition which permit their reuse, two-thirds of the invoiced value will be credited to the Purchaser.

IV. Shipment and transfer of risk

1. In the absence of special instruction regarding the route and means of transport and the nomination of a freight forwarder or carrier, these matters will be decided by us.
2. If loading or transportation of the goods is delayed for any reason for which the Purchaser is responsible, we are entitled at our discretion to store the goods, to take all suitable measures to preserve the goods, and to invoice the goods as delivered. This also applies if goods which have been declared ready for shipment are not called up within 4 days. The statutory regulations relating to delayed acceptance remain unaffected.
3. In the event of transport damage the Purchaser shall have a statement of facts drawn up by the responsible quarters without delay.
4. All risk passes to the Purchaser upon transfer of the goods to the freight forwarder or carrier, at latest however upon leaving the plant or warehouse.
5. Partial deliveries shall be permitted at a reasonable scope. Reasonable in this sense shall be excess or deficit volumes not exceeding 10 % of the respective delivery volume. Partial deliveries shall be invoiced separately.

V. Delivery periods, delivery dates

1. The agreed delivery periods are only applicable provided all details of the contract have been clarified in good time and the Purchaser has discharged all his obligations promptly.
2. If the Purchaser fails to fulfil any contractual obligations in time – including cooperative or accessory obligations – such as opening a letter of credit, providing national or foreign certification, effecting an advance payment, or similar, we are entitled to postpone our delivery periods and dates within reason – without prejudice to any rights arising from the delay on the part of the Purchaser – to correspond with the requirements of our production process.
3. The time of leaving our plant determines the adherence to delivery periods and dates. If, through no fault of ours, the goods cannot be dispatched on time, the delivery periods and dates shall be regarded as met upon notifying that the goods are ready for dispatch.
4. If we are hindered in fulfilling our obligations by the occurrence of unforeseen events which affect us or our suppliers and which could not be averted, even with all reasonable diligence appropriate to the circumstances (e.g. by war, intervention on high authority, civil unrest, Acts of God, accidents, other industrial conflicts and delays in the delivery of essential factory supplies or prematerials, also including strikes or lockout actions), the delivery period shall be extended by the duration of the impediment and a suitable initial setting-up time. If the delivery is made impossible or unconscionable due to such as hindrance, we are entitled to revoke the contract. The Purchaser has the same right if the acceptance of the goods is unconscionable due to the delay; however the Purchaser's right of cancellation shall extend only to that part of the contract which has not yet been fulfilled.

VI. Defects of Material

1. The properties of the goods shall be exclusively according to the agreed technical delivery provisions. If the delivery is to be according to drawings, specifications, samples, et. Of the purchaser, the responsibility for completeness, correctness, accuracy and usability of the information and specifications submitted by the purchaser shall be solely with the purchaser. The time of passing of risk purs. to item IV no. 4 shall be decisive for the contractual condition of the goods.
2. We shall not be liable for defects of material caused by unsuitable or improper use, defective installation by the purchaser or other third parties, defective or negligent treatment and specifically storage, and also not for the consequences of improper or other work of the purchaser or other third parties.

VII. Warranty

1. In the event of a justified, promptly reported warranty claim, we will take back defective goods and deliver replacements. In addition, we are authorized to rectify the defect. The aforementioned obligations do not apply to defects that occurred after the goods were transferred to the buyer in perfect condition, in particular as a result of mishandling or modification, damage, or improper or inadequate packaging of the return shipment. The buyer is only entitled to exercise their statutory warranty rights if we fail to fulfill these obligations. In cases where promised characteristics are lacking, our liability for damages is limited to the extent that the promise was made specifically to protect the buyer against the defects that occurred.
2. If we fail to fulfill these obligations or do not fulfill them in accordance with the terms of the contract within a reasonable period of time, the buyer must set a final reasonable deadline in writing within which we must fulfill our obligations. After this period has expired without the defect being remedied, the buyer may, at their discretion, request a reduction in price, reject the delivery in question, or carry out the necessary corrective measures themselves or have them carried out by a third party.
3. The buyer must promptly give us the opportunity to confirm the defect, in particular by providing the rejected goods or samples thereof upon request, including an unambiguous means of identifying the defective goods, such as a work order, serial number, etc. If the buyer is unable to provide information that allows us to clearly identify the defective goods, we will be forced to reject the warranty claim.
4. After completion of a contractually stipulated acceptance inspection, warranty claims for defects that could have been identified during the acceptance inspection are excluded.
5. In the case of goods that have specifically been sold as downgrade material – e.g., what is known as IIa quality material – the specified defects and those that a buyer would normally be expected to encounter are explicitly excluded from any warranty.

VIII. Limitation of liability

1. Unless otherwise specified in these terms and conditions, we are only liable for damages arising from the infringement of contractual or non-contractual obligations in cases of gross negligence or intent.
2. We shall not be liable for any damage not caused to the delivered goods directly. Specifically, we shall not be liable for lost profit or other asset damage of the purchaser or other third parties. Claims in accordance with product liability legislation remain unaffected.
3. The above limitations shall also apply to the personal liability of our employees, workers, colleagues, legal representatives and servants.

IX. Retention of ownership

1. All delivered goods remain our property (retained goods) until all claims have been settled, in particular the respective payments due to us within the scope of the business relationship. This applies also for future and contingent claims, e.g. arising from any acceptorr's bills.
2. For us as manufacturers, the processing and finishing of the retained goods is carried out within the meaning of u 950 of the German Civil Code, without any obligation on our part. The processed and finished goods shall be regarded as retained goods within the sense of subclause 1.
3. In the case of the Purchaser processing, incorporating and intermixing the retained goods with other goods, we are entitled to a co-ownership in the new article in proportion of the invoiced value of the retained goods to the invoiced value of the other goods employed. If our property ceases to exist as the result of the incorporation, intermixing or processing, the Purchaser herewith assigns to us his rightful ownership or contingent interest in the new stock or article to the extent of the invoiced value of the retained goods, in the case of processing in proportion of the invoiced value of the retained goods to the invoiced value of the other goods used, and shall hold the same free of charge on our behalf. Our co-ownership rights shall be regarded as retained goods within the meaning of subclause 1.

4. The Purchaser may only resell the retained goods in the course of normal business transactions at his usual terms of business and in so far as he is not in default. He is not entitled to otherwise dispose of the retained goods.
5. Claims of the Purchaser arising from the resale of the retained goods are herewith assigned to us. They shall be regarded as security to the same extent as the retained goods within the meaning of subclause 1.
6. If the retained goods are resold by the Purchaser in conjunction with other goods, the claims arising from the resale are herewith assigned to us on in proportion of the invoiced value of the retained goods to the invoiced value of the other goods. In the event of reselling goods in which we hold co-ownership shares in accordance with subclause 3, a portion of the claim in proportion to our share of co-ownership shall be assigned to us.
7. The Purchaser is entitled to collect claims arising from the resale. If the value of the existing security exceeds the assured claims by more than 20% in total, we are obliged to release securities at our optional the Purchaser's request.

X. Confidentiality

1. Each contracting partner shall treat all information and documents provided orally or in writing, including samples, models and data, as well as knowledge that he gains from the business relationship, only for the mutually pursued purposes and keep them secret from third parties with the same care as the corresponding own information, documents and knowledge. The contracting partner shall not provide such information and documents to any third parties directly or indirectly without our previous written consent.
2. This obligation starts from the first receipt of the information, documents or knowledge and thus before conclusion of the contract. The obligation shall end 36 months after the end of the business relationship.
3. The obligation shall not apply to information, documents and knowledge in the sense of item 1 that are generally known or that have already been known to the contracting partner at receipt without any obligation to secrecy or that have been developed by the receiving contracting partner without using the information, documents or knowledge of the other contracting partner to be kept secret.

XI. No advertisement

The Purchaser must not advertise with or publish the business relationship with the Seller, its name or the goods without the advance written consent of the Seller. This shall not apply where deviation from this prohibition is required according to mandatory laws.

XII. Applicable law

The laws of the Federal Republic of Germany shall apply, excluding the uniform law regarding the international purchase of movable objects and the uniform law regarding the conclusion of international sales contracts relating to movable objects.

XIII. Place of performance and venue

The place of performance for both contractual parties is the producing plant of the Waelzholz group. Venue is the court of the producing plant of the Waelzholz group. We are also entitled to bring an action against the Purchaser at its general place of jurisdiction, provided that such place of jurisdiction is located in a Member State of the European Union or in a Contracting State of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Lugano on 30 October 2007 (Lugano II Convention).