

**General Terms and Conditions for Products and Services
of Heinz Walz GmbH**

**ARTICLE 1
General Provisions**

1.1 The buyer ("Buyer") herewith acknowledges and accepts that these General Terms and Conditions for Products and Services ("Terms") apply for all orders for products ("Products") and/or services ("Services") placed with Heinz Walz GmbH ("Manufacturer"). These Terms, written in the English language, are the Terms (and expressly not the Manufacturer's German language terms) exclusively applicable for all cross-border transactions and Buyers having their habitual residence (within the meaning of Art. 10 Rome I (EC No 593/2008)) outside of Germany. These Terms apply to current and future business relations between Buyer and Manufacturer. Any conditions of the Buyer are not binding on Manufacturer, irrespective of whether or not Manufacturer objects to Buyer's terms.

1.2 All agreements must be in writing. The process for placing an order begins with the transmission of the Manufacturer's proposal or quote for the sale of Products and related terms (i.e. an invitation to treat) to the Buyer. An order is made when the Buyer returns to the Manufacturer a signed written copy of the Manufacturer's invitation to treat. A valid purchase contract ("Contract") is only then formed when the Manufacturer confirms in writing an order. This also applies to ancillary agreements, commitments and subsequent changes to a Contract. Buyer's orders are binding upon the Buyer for a period of 1 month. Manufacturer's order confirmation alone determines the content of a Contract.

1.3 Manufacturer reserves the right to change the design, shape and color of the Products, provided the Products are not changed significantly and the Buyer can be reasonably expected to accept such changes.

**ARTICLE 2
Prices and Payment Terms**

2.1 Unless the Manufacturer has agreed otherwise, the price of the Products shall be considered the price ex works, inclusive loading costs ex works. Value added tax (VAT), where applicable, shall be charged. Postage, transportation, shipment and packaging costs and possible expenses for transportation insurance are to be borne by the Buyer.

2.2 Unless agreed otherwise, Buyer shall pre-pay Manufacturer in full at Manufacturer's principal place of business, without deduction or offset, in advance of shipment and delivery of Products or Services. All payments shall be made in EURO. All banking, transaction or wiring charges shall be borne by the Buyer.

2.3 The Buyer shall only have the right to set-off or retention as far as his claim is determined in a legally binding judgment or is undisputed.

**ARTICLE 3
Delivery Terms**

3.1 All Products shall be delivered FCA Effeltrich, Germany, Incoterms 2010. Manufacturer shall assist in German export clearance as needed.

3.2 A fixed delivery date may be included within the Contract. The ability to meet an agreed fixed delivery date is subject to the clarification of all technical and commercial matters regarding the Products to be

delivered as well as the satisfaction of other conditions, e.g. any obligation of the Buyer to procure official certifications and/or approvals, as well as payment of the purchase price. Any delivery dates, fixed or approximate, will be reasonably adjusted to accommodate any changes to Products or a Contract agreed to between the parties. Manufacturer may suspend any outstanding deliveries in case of a continuing payment default by the Buyer. Absent an agreed fixed delivery date, the parties will consult together and coordinate a reasonable delivery date, under consideration of required Manufacturer's production lead times.

3.3 Delivery schedules shall be extended in case of acts of God (force majeure), including but not limited to labor disputes, in particular strikes and lock-outs, and impediments to traffic routes, civil unrest and other unforeseeable impediments beyond the Manufacturer's control, e.g. currency or trade political measures and other governmental measures, insofar as such impediments have a significant influence on the completion or delivery of the Products. This shall also apply when such circumstances have occurred at sub-suppliers. Furthermore, Manufacturer is not liable for delivery delays or delivery failures by third party suppliers in Manufacturer's supply chain. The Manufacturer is also not liable in case any of the foregoing occur at a time while delivery has not occurred as scheduled.

**ARTICLE 4
Retention of title, Security Interest & Collateral**

4.1 To secure any outstanding amounts owed by the Buyer to the Manufacturer, (i) the Manufacturer retains the title over all Products delivered to the Buyer, until the amounts due have been paid in full, and/or (ii) to the extent retention of title is not recognized in the jurisdiction in which the Products are located (lex rei sitae), then the Buyer grants the Manufacturer a first ranking senior security interest, mortgage, pledge, purchase money interest, and/or equivalent interest in the Products to serve as security and collateral for the payment of outstanding amounts due. The Buyer shall use all reasonable efforts and do all things necessary and reasonably requested by the Manufacturer to secure, protect, perfect and register the Manufacturer's security interest. Any retention of title and/or security interest or similar shall be automatically released upon the payment of the outstanding amounts in full.

**ARTICLE 5
Limited Warranty**

5.1 Manufacturer warrants to Buyer that any Product delivered by Manufacturer to Buyer pursuant to this Agreement shall substantially conform in material respects to the Specifications. In these Terms, "Specifications" means the Product's features (as may be amended by Manufacturer from time to time), which are set out under the headings "specifications" and/or "technical specifications" within the Product's respective brochure, data sheet, or respective tab on the Manufacturer's website for such Product, and which may be included with the documents for the Product when delivered. The warranty period is limited to twenty four (24) months beginning on the delivery date of the Product to the Buyer. Manufacturer's obligation under this warranty, and Buyer's sole remedy, is limited to subsequent fulfillment in which case the Manufacturer may, at its sole option, replace or repair any Product or part thereof that is found by Manufacturer not to conform to this warranty. All other statutory or implied warranties, including but not limited to those within the meaning of §434 I 2, Nr. 1 and 2 BGB (German Civil Code) and remedies (including but not limited to those under §§ 437 et.seq. BGB) are excluded, unless otherwise provided for in this Agreement.

5.2 This warranty is subject to the condition that Buyer (or end-customer) inspects the Products when they arrive and gives prompt written notice to Manufacturer of any alleged apparent defects in the Product within ten (10) days of the earlier of either: (i) the time they have arrived at the Buyer, or (ii) the time they have been cleared for pick up by the relevant

customs office or authority. The written notice of alleged defect must specifically describe the problem.

5.3 Buyer shall prepay transportation charges to Manufacturer's facility. If returned Products are repaired or replaced under the terms of this warranty, Manufacturer will prepay transportation charges back to Buyer in the Territory; otherwise, Buyer shall pay transportation charges in both directions.

5.4 The foregoing warranties shall not apply to (A) batteries, cables, calibrations, fiberoptics, fuses, gas filters, lamps, thermocouples, and underwater cables, and (B) any Product: (i) used or operated in a manner inconsistent with the use intended by Manufacturer; (ii) modified or repaired by anyone other than Manufacturer personnel or Manufacturer's authorized service representatives; (iii) damaged because of accident, neglect or misuse by anyone other than Manufacturer personnel; (iv) damaged due to improper packaging during shipment or any force majeure events; (v) minor or immaterial defects that do not materially impair use of the Products, or (vi) for which the Buyer has an equivalent and adequate remedy available and/or utilized under a Manufacturer's guarantee.

5.5 Any statutory or implied warranties that the Product be free of legal defects is expressly limited to a warranty that the Product is free of third party intellectual property rights existing in Germany for protection within Germany.

ARTICLE 6 **Limitation of Liability**

6.1 Subject to the exceptions that follow, Manufacturer shall not be liable for any damages or otherwise to the Buyer. The following are the exceptions to Manufacturer's exclusion of liability: (i) liability caused intentionally (vorsätzlich) or through gross negligence (grob fahrlässig) of Manufacturer (including by Manufacturer's agents or assistants in performance), (ii) liability for simple negligence (fahrlässig verursacht) causing a culpable default (schuldhafter Verletzung) of a fundamental contract obligation (wesentliche Vertragspflicht); however, liability for damages in this case shall be limited to the typical and predictable damages, and shall not exceed EUR 3,000,000 per instance of damage (corresponding to the current amount of Manufacturer's commercial liability insurance), and (iii) liability for culpable injury (schuldhafter Verletzung) to life, body or health as well as liability under the German Product Liability Act (ProdHaftG). Unless the Buyer proves otherwise, typical and predictable damages shall be limited to the amount of the price paid or owing by the Buyer to the Manufacturer.

6.2 Notwithstanding anything herein to the contrary, to the extent permitted by law, Manufacturer shall not be responsible for special, punitive, indirect or consequential damages, loss of business or loss of profits or other indirect damages, including loss of profits and other damages which are not the consequence of a breach of a contractual duty. Such limitations shall apply to all liability and claims whether based upon breach of Contract, warranty, negligence, or any other claim, and whether grounded in tort, contract, civil law, or other theories of liability, including strict liability, even if advised before the possibility of such damages

ARTICLE 7 **Intellectual Property & Confidentiality**

7.1 Buyer agrees that Manufacturer retains all intellectual property and proprietary rights in and to all products, specifications, designs, discoveries, inventions, patents, copyrights, trademarks, trade secrets, and other proprietary rights relating to Products and related documents. Manufacturer shall have the unrestricted right to sell to other parties products identical or similar to the Products.

7.2 To the extent software is included within or in connection with the delivered Products, the Buyer is granted a non-exclusive right to use such software, including any pertinent documentation. The software is provided in integration with the Products for use with such Products. Use of the software on more than one system is prohibited. The Buyer may reproduce, rework and convert from source to object code only within the legally prescribed manner (§§69a et. seq. UrhG). The Buyer shall not remove

or modify any manufacturer or origin labels, especially copyright notices without the Manufacturer's prior written approval. The Manufacturer (or the software supplier) retains all further rights to the software and the documentation, including copies. The Buyer may not grant any sublicenses.

7.3 Buyer may receive information from the Manufacturer, or be exposed to information, which information is proprietary and of a confidential nature to the Manufacturer. The Buyer agrees to keep all such information strictly confidential and to not use such information except as permitted under, or reasonably consistent with, any Contract.

ARTICLE 8 **Data protection notices**

8.1 The Controller under Art. 4. par. 7 of the Regulation (EU) 2016/679 ("GDPR") is the Manufacturer. "Data subject" means herein the Buyer.

8.2 The Manufacturer processes personal data only to the extent processing is necessary (i) for the performance of a contract to which the data subject is party, or (ii) for the purposes of the legitimate interests pursued by the Manufacturer. Art. 6, par. 1, sent. 1(b) and 1(f) GDPR provides the legal basis for this processing.

8.3 Personal data provided by the data subject to the Manufacturer (e.g. name, address, telephone number, email address) are necessary for the completion and performance of the agreements and contracts between the Manufacturer and the Buyer.

8.4 The Manufacturer will delete the personal data of the data subject after the lapse of the later of either of the following periods: (i) the legally required records retention period, or (ii) the period of time equivalent to the typical use and life span of the Product (see Art. 13 par. 2(a) GDPR).

8.5 The data subject has the following rights regarding personal data: information rights, right to rectification or erasure, right to restrict the processing, right to object to the processing, right to data portability. Details are set out in Art. 15 et. seq. GDPR.

8.6 The data subject has the right to lodge a complaint with a supervisory authority if the data subject considers that the processing of personal data relating to him or her infringes the GDPR. Details are set out in Art. 77 par. 1 GDPR.

ARTICLE 9 **Miscellaneous**

9.1 If any provisions of these terms and conditions or any provisions in other agreements are or become invalid, the validity of the remaining provisions or agreements shall not be affected. The invalid provision is to be replaced by a valid provision that comes closest to the commercial purpose of the invalid provision.

9.2 In case of conflicts or ambiguities, unless the context reasonably requires otherwise, the following order of precedence shall apply: any individual agreement between the parties, terms in the Manufacturer's order confirmation, the Terms, the Manufacturer's Guarantee (if extended).

9.3 German words may appear in parentheses in these Terms to clarify the meaning of the preceding English word or words. Where German words in parentheses are included, the German words shall govern with respect to the interpretation of the meaning of such words. Any questions of interpretation which might occur in light of English not necessarily being the native languages of the parties shall be resolved in the spirit of good faith and fairness.

ARTICLE 10 **Applicable law, arbitration and jurisdiction**

10.1 These Term, any contract, all sales transactions, and any dispute arising from the relationship between the parties to any contract, shall

be governed by German law, SUBJECT TO THE EXCLUSION OF: (i) THE LAWS REGARDING GENERAL CONTRACT TERMS AND CONDITIONS UNDER § 305 THROUGH §310 BGB (GERMAN CIVIL CODE), (ii) laws that direct the application of another jurisdiction's laws, and (iii) UN Convention on the International Sale of Products (CISG).

10.2 All disputes between the Manufacturer and the Buyer shall be resolved by binding ad hoc arbitration. The forum and place of arbitration shall be Bamberg, Germany. The Arbitration will be held before a single arbitrator. Should the parties be unable to agree to an arbitrator within 10 days, then the single arbitrator shall be selected by the Chamber of Commerce in Bamberg (Industrie und Handelskammer). The language of the arbitral proceedings is English. German procedural law applies to the arbitration.

10.3 Subject to the arbitration clause herein, the courts of Bamberg, Germany, shall have exclusive venue and jurisdiction with respect to these Terms, all Contracts and any disputes, claims and litigation between the parties. Notwithstanding this, the Manufacturer reserves the right to adjudicate and pursue any claims against the Buyer at the Buyer's place of business or where the Buyer maintains assets.

Version: March 26, 2019