

# TERMS AND CONDITIONS



**HEINZPLASTICS**  
member of **HEINZGLAS-Group**

## General Terms of Sale and Delivery

Applicable for use with Commercial Parties

Valid as of 3<sup>rd</sup> of August 2022 for the following companies:

Heinz Plastics Böhm GmbH

Heinz Plastics Group Holding HPGH GmbH

hereinafter severally referred to as Sellers

### I. General; Scope of Validity of these General Terms of Sale and Delivery

1. These General Terms and Conditions of Purchase form an integral part of all deliveries, services, and offers of the Seller with respect to customers, clients and orderers (hereinafter: Purchasers). They shall apply to all such present and future business relations, even if they have not been expressly agreed upon again. These conditions shall be deemed to be accepted when the Purchaser places an order and not later than when the goods or service is received.
2. Confirmations to the contrary by the Purchaser with reference to his own general terms of business are hereby excluded. Deviating or additional general terms and conditions of business of the Purchaser shall not become part of the contract even where the Seller performs services or accepts payment without reservation, except where their validity is expressly agreed in writing.

### II. Offer to Contract and Conclusion of Contract

1. All offers are subject to change without notice and non-binding. By placing an order for goods the Purchaser declares with binding effect that he wishes to purchase the ordered goods. The order should contain all information necessary for the order to be processed. The Seller may accept the offer contained in the order in writing or by e-mail, fax or electronic data interchange/automatic data transfer in the form of an order confirmation within 10 days. The agreed services of the Seller shall be established from the order confirmation with which the Seller has accepted the contractual offer of the Purchaser.
2. The Seller reserves the right to make changes to dimensions, content, weight or colors for technical or production reasons to the extent normal in the industry. Information given about the object of supply or service in product descriptions, offers, prospectuses, catalogs or price lists and images thereof are only provisional and approximate and are only binding where this is expressly agreed in writing.
3. Excess or short delivery quantities of up to +/- 10% are permissible in cases of special production runs or of serial items with special engraving or special lettering and/or the selected packaging unit requires this and/or these are normal for the industry.
4. Conclusion of contract shall be subject to the deliveries of our suppliers being correct and punctual unless the supplier's failure to deliver is due to the fault of the Seller. If the service is unavailable, the Seller must notify the Purchaser immediately. Any payment already made by the Purchaser shall in such cases be refunded immediately.
5. Additions and changes to the agreement made, including to these General Terms of Sale and Delivery, must be made in writing in order to be effective.

### III. Delivery, Shipment, and Transfer of Risk

1. Unless otherwise agreed, every shipment of goods is made on the account of and at the risk of the Purchaser. Unless otherwise agreed, the type and method of shipment and packaging are at the Seller's discretion. Information given by the Seller concerning the dimensions and weights of transportation and packaging items are made in good faith. No liability shall be accepted for damage in transportation that is beyond the Seller's control.
2. The risk of accidental loss and accidental deterioration of the goods is transferred at the time that the goods are passed to the Purchaser; in the case of a sales shipment, they are passed to the Purchaser at the time of delivery to the carrier, freight forwarder or other person responsible for performing the shipment.
3. If shipment is delayed at the Purchaser's request, the risk shall pass to him at the time that he is notified in writing that the shipment is ready.
4. Where free shipping of the delivery is agreed between the contractual parties, the Seller shall bear the shipping costs only to the destination point stated. The transfer of risk as per points 2 and 3 above remains unaffected by this.

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## IV. Export regulations

1. The seller is entitled to withdraw from the contract if its fulfillment is opposed by national, European, US-american or international regulations, in particular export and import control law, export control regulations, embargoes, sanctions as well as other legal regulations. In the event of a boycott by a state against another state, this shall only apply if such boycott meets the requirements of an economic sanction measure by a state against another state against which (i) the United Nations Security Council under Chapter VII of the United Nations Charter, (ii) the Council of the European Union under Chapter 2 of the Treaty on European Union or (iii) the Federal Republic of Germany have also resolved economic sanction measures.
2. The Purchaser shall comply with the applicable provisions of national, European and international (re-)export law when passing on the goods delivered by the Supplier.
3. The Purchaser is aware of the export law regulations in force at the time of conclusion of the contract and shall comply with the applicable national, European and US export and import control regulations as well as all other relevant regulations.
4. The parties shall support each other, in particular by providing all necessary information and documents, in order to be able to check any export control restrictions and to ensure compliance therewith (e.g. with regard to obtaining official permits/information or the fulfillment of notification obligations).
5. The Purchaser shall fully indemnify the Supplier against all claims asserted against the Supplier by authorities or other third parties due to the Purchaser's failure to comply with the aforementioned export control obligations and undertakes to reimburse all damages and expenses incurred by the Supplier in this context.

## V. Delivery and Performance Times

1. Delivery dates or delivery times that can be agreed either with or without binding effect must be stated in writing.
2. If the delivery is agreed to be "on demand" or is split over multiple delivery dates, the Purchaser should divide the quantities released as equally as possible over the demand period. The Seller may demand that the agreed services be drawn in full within 6 months of conclusion of contract.
3. The Seller shall not be liable for delays to delivery or performance arising through force majeure, weather disasters or other unforeseeable circumstances beyond the Seller's control or through occurrences that significantly impede delivery and are not merely temporary, in particular strikes, lockouts, administrative orders, shortages of energy or raw material or production interruptions or war, even where a delivery time has been agreed with binding effect. In such cases the Seller may delay the delivery or performance by the duration of the hindrance, plus a reasonable start-up time, or may withdraw wholly or in part from the contract owing to the part of the contract that has not been fulfilled.
4. If the delay lasts for more than 3 months, the Purchaser shall be entitled, following a reasonable extension of time, to withdraw from the contract with respect to the part that has not been fulfilled. If the period extends or if the Seller becomes free of his obligations, the Purchaser may derive claims for compensation from these circumstances.
5. The Seller is entitled to make partial deliveries or partial performance at any time unless partial deliveries are not in the Purchaser's interest or are not reasonable for him.
6. The observance of the delivery and performance obligations requires that the Purchaser perform his obligations punctually and correctly, e.g. by submitting or providing any information requested, by making pre-payments where necessary, or similar. If the Purchaser does not abide by such contractual obligations or duties toward the Seller punctually and if as a result the Seller can no longer maintain the original delivery periods or dates, the Seller shall be entitled to prolong or delay the original delivery periods or dates appropriately. The Seller reserves the right to plead non-fulfillment of the Contract.
7. The Seller shall be entitled to withdraw from the contract insofar as he does not receive the delivery or does not receive it in time through no fault of its own, despite the prior conclusion of a corresponding covering transaction with the upstream supplier. The seller will inform the purchaser immediately about the non-delivery and, if desired, makes use of his right of withdrawal immediately. The consideration will be refunded to the purchaser without delay.

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## **VI. Prices**

1. Unless otherwise agreed, all prices are understood to be "ex works" (EXW INCOTERMS 2010) in the currency agreed, excluding statutory sales tax. Unless otherwise agreed on an individual basis, the Purchaser shall be responsible for the cost of packaging where this is more than the standard level of packaging for the industry, freight, customs, and fees in cases of export deliveries and any other public charges.
2. Seller shall be entitled to change the agreed price appropriately if cost changes occur after conclusion of the contract, in particular due to collective agreements, changes in material, transport, packaging or energy prices. The change in costs shall be proven to the Customer upon request.

## **VII. Payment Terms**

1. Unless otherwise agreed, invoices of the Seller shall be due for payment immediately on delivery (including partial deliveries) without discount. Invoice deductions and credit terms shall require separate written agreement. Early payment discounts are only allowed where no previous invoices remain unpaid.
2. A payment is deemed to have been made only once the Seller can dispose of the payment amount. Checks and bills of exchange shall only be accepted in lieu of performance subject to the payment being honored and without obligation of timely presentation or protest. Any costs arising from this shall be borne by the Purchaser.
3. If the Purchaser is in default of payment, the amount of arrears shall be subject to the statutory rate of default interest (8% above the base interest rate) for the duration of the default. The assertion of further delay damages and claims to commercial maturity interest are not affected.
4. If the Seller becomes aware of circumstances such that the creditworthiness of the Purchaser may be cast into doubt, in particular if a check is not honored, the Purchaser suspends his payments or an application for insolvency is filed in respect of the Purchaser's assets, the Seller shall be entitled to demand immediate payment of the entire outstanding debt, even if he has accepted checks. In such cases the Seller shall also be entitled to demand advance payments or security deposits. If delivery of goods that have been ordered on demand and already manufactured is suspended for this reason, the Seller shall be entitled to sell these goods elsewhere. In such cases the Purchaser shall relinquish the assertion of any property rights.
5. Rights of set-off shall only be available to the Purchaser in respect of demands by the Seller if the counterclaim is recognized or established in law or where the counterclaim arises from the same contractual relationship. Assignment of claims made against the Seller shall require the Seller's consent.
6. The Purchaser shall only have the right to withhold payment where the counterclaim is based on the same contractual relationship and is recognized or established in law or if the Seller is in material breach of his obligations arising from the same contractual relationship despite written reminder and has not offered adequate assurance. If a performance by the Seller is undisputedly defective, the Purchaser shall be entitled to withhold payment only to the extent to which the amount withheld is in proportion to the defects and to the anticipated costs of remedying the defects.

## **VIII. Retention of Title**

1. The Seller reserves title over all goods until payment is received in full of the purchase price including any ancillary claims. In cases of contracts arising within ongoing business relationships, the retention of title shall apply until full compensation is made of all resulting claims.
2. The Purchaser must treat the goods with care and at no cost, and in particular to store and keep them safe in accordance with the Seller's specifications.
3. The purchaser is obliged to notify the Seller immediately of any seizure or other access by third parties to the goods and of any damage to or destruction of the goods. The Seller must also be notified if the goods change hands or if the Purchaser changes his business location.
4. In cases of infringement against the above provisions, the Seller may withdraw from the contract and to demand the return of the goods covered.
5. The Purchaser may resell the goods in the ordinary course of business. He hereby assigns to the Seller all claims arising to him from the reselling or other dispositions. The Seller shall expressly accept the assignment. Following assignment, the Purchaser is revocably entitled to collect the assigned claims. Where the Purchaser does not properly meet his payment obligations or falls into arrears, the Seller reserves the right to collect the claim himself. Any reworking or processing of the goods by the Purchaser shall always be in the name and on behalf of the Seller. If the goods are processed together with objects that are not the property of the Seller, the Seller shall obtain co-ownership in the resultant goods to those processed goods in proportion to the value of the goods supplied by him. The same shall apply if the goods are mixed with other goods that are not the Seller's property.

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6. If the realizable value of the securities exceed the claims of the Seller by more than 20%, the Seller shall release securities at his discretion on the request of the Purchaser.

## **IX. Molds and Tools**

1. The costs of the manufacture, purchase, modification, maintenance or provision of production molds and tools shall be borne by the Purchaser. Ownership of such molds and tools and all associated intellectual property rights shall remain with the Seller even after payment is made. This does not apply if the Purchaser provides his own production molds or tools for the performance of his order and the Seller has not significantly modified them.
2. The Seller undertakes to use production molds and tools of the Purchaser, provided that the Seller has not significantly modified them, solely for the performance of orders of the Purchaser.
3. The Seller undertakes to retain any production molds and tools paid for by the Purchaser until they reach the end of their natural useful life, but for a maximum of 2 years from the last delivery.

## **X. Proprietary Rights**

1. The Seller reserves title to and copyright in all offers submitted and all illustrations, drawings and other calculations, prospectuses, catalogs, sample books, price lists, models, tools and other documents and resources provided to the Purchaser physically or via the Internet. The Purchaser may not make these items available to third parties either as such or any content thereof, give disclosure of them or use or duplicate them himself or through a third party, without the express written consent of the Seller.
2. The Purchaser is liable for ensuring that the fulfillment of the order does not infringe, through his specifications and/or templates, any copyrights, industrial property rights or other third party rights. If claims are asserted against the Seller owing to breach of the above-mentioned rights or in respect of competition law, the Purchaser shall indemnify the Seller from all obligations and costs arising and shall, if so requested by the Seller, make appropriate advance payments or provide securities.

## **XI. Inspection and Complaint Obligations of the Purchaser**

1. The Purchaser must inspect goods delivered to him immediately on receipt for identity, quantity, and evident damage. Evident defects (including wrong deliveries or reduced quantities) must be notified to the Seller in writing immediately on receipt of the goods; if a defect becomes apparent later, notification must likewise be given immediately on discovery in writing (section 377 Commercial Code (HGB)). Otherwise any assertion of a warranty claim is excluded. Definitive for determining that notification is received within the notice period is the time of receipt of the notice of defects by the Seller. The purchaser shall bear the full burden of proof for all preconditions for claims, particularly for the fault itself, for the time at which the defect is discovered and for the punctuality of the notification of defects.
2. For performances of services and works, the provisions of section 377 Commercial Code (HGB) apply accordingly. Notification of defects must be made in writing.

## **XII. Warranty**

1. Where a defect of delivery or performance by the Seller exists, the Seller may opt to remedy the defect or offer a replacement delivery at his discretion.
2. The supplementary performance may only also be undertaken by the Purchaser himself by prior agreement with the Seller. In this case the Seller shall meet the costs necessary for the supplementary performance to the extent that these correspond to appropriate cost rates.
3. The Seller may withhold supplementary performance if the Purchaser is in default of payments. This does not apply where the withheld payment is commensurate in consideration of the defect.
4. No defect claims shall exist where there is only minor deviation from the agreed quality or only slight impairments to usability, and particularly in case of deviations of tolerances within the ranges typical of the industry. The Seller does not guarantee the correctness of information documents, technical data sheets, prospectuses, instructions or customer advice published by him. No guarantee is undertaken for the suitability of the goods produced by the Seller for the use intended for them by the Purchaser. Shipments known as "certificate shipments" do not constitute either a guarantee of properties or a warranty and do not replace the inspection and complaints obligations set out in section X of these provisions. If the Seller specifies actual parameters such as dimensions or weights or a particular quality in certificates, here again slight deviations such as are typical in the industry shall be treated as insignificant. The certificate provided by the Seller merely indicates the internal quality control structure of the Seller's business to the Purchaser and constitutes an additional service.

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5. If the Purchaser accepts defective goods in awareness of the defect, he shall have recourse to warranty rights in respect of defects only as set out in section 442 German Civil Code (BGB).
6. The Purchaser must give the Seller the time and opportunity necessary to perform the supplementary performance to which he is obliged, in particular for passing the rejected goods on for inspection purposes. If the Purchaser opts for a replacement delivery he must return the defective goods to the Seller in accordance with statutory provisions.
7. If the supplementary performance fails or if a grace period to be set by the Purchaser for the supplementary performance expires without successful outcome or is superfluous under statutory provisions, the Purchaser may withdraw from the purchasing contract or reduce the purchase price.
8. The warranty shall not apply if the Purchaser modifies the delivery item (or has modified by a third party) without the Seller's consent and as a result the rectification of the defect is made impossible or unreasonably difficult. In any case the Purchaser shall bear the additional cost of rectification of defect incurred as a result of the modification.

## **XIII. Liability**

1. The liability of the Seller shall be determined by the statutory provisions except where any regulations are set out below by way of derogation.
2. Any liability of the Seller for compensation for loss of profits is excluded. This shall however not apply in cases of breach of a significant contractual obligation or willful or grossly negligent breach of obligations.
3. Claims for damages asserted against the Seller in respect of property damage or financial loss caused by slight negligence are excluded. If however the Seller is liable through slight negligence for breach of significant contractual obligations, that is, is in breach of such obligations the fulfillment of which is necessary for the normal performance of the contract to be possible and on the fulfillment of which the purchaser can generally rely, the liability of the Seller shall be restricted to foreseeable damages that are typical of the contract.
4. The limitations and exclusions of liability in the above-mentioned provisions of section XII points 2 and 3 shall not apply in cases of claims against the Seller under the German Product Liability Act (Produkthaftungsgesetz) or claims arising from loss of life, bodily injury or damage to health of a person. For such claims, the liability of the Seller is not limited.

## **XIV. Limitation Period**

1. The limitation period for claims and rights in respect of defects in the Seller's products and for the damages arising is 1 year. The start of the limitation period shall be determined by the statutory provisions. This does not apply where the law prescribes longer periods under sections 438 Para. 1 No. 2, 479 and 634 a Para. 1 No. 2 German Civil Code (BGB).
2. The limitation period stated under section XII 1 shall not apply in cases of intent or gross negligence, if the Seller has fraudulently concealed the defect or generally in cases of demands for compensation for injuries to persons or to their freedom and to claims arising from the Product Liability Act (Produkthaftungsgesetz). In these cases the statutory periods shall apply.

## **XV. Final Provisions**

1. The place of performance for all obligations arising from the contractual relationship and the exclusive place of jurisdiction for all disputes arising from the contractual relationship is the Seller's headquarters.
2. The law of the Federal Republic of Germany shall apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
3. The Purchaser acknowledges that in the event of doubt or questions regarding interpretation of these General Terms of Sale and Delivery, or of the contract as a whole, the German-language version and German legal conception shall be authoritative.