

General Terms and Conditions of Sale of HEINZ-GLAS Działdowo Sp. z o.o.

1. These General Terms and Conditions of Sale (hereinafter: „GTCS”) apply to all sales, supply and service Agreements concluded by HEINZ-GLAS Działdowo Sp. z o.o. with its registered office in Działdowo (13-200 Działdowo, ul. Wł. Jagiełły 40), registered in the register of entrepreneurs of the National Court Register, kept by the District Court in Olsztyn, VIII Division of the National Court Register, under no: 0000104955, share capital PLN 11.440.000 (hereinafter: „HGD”) with contractors (hereinafter: „Buyer” or „Buyers”) the subject matter of which are goods or services covered by HGD’s business (hereinafter referred to as „Packages”), with the exception of agreements concluded with consumers. These GTCS apply both to Agreements concluded with Buyers who are Polish entities and those who are foreign entities.
2. The GTCS are binding on both HGD and the Buyer. HGD shall not be bound by any conditions stipulated by the Buyer, even if HGD does not make a separate objection to this effect. The terms and conditions stipulated by the Buyer shall only apply to HGD if it agrees to them in writing.
3. In the event that any of the provisions of the GTS are found to be in conflict with the contractual provisions accepted by both parties, then the contractual provisions shall prevail.
4. If any provision of the GTCS is inconsistent with documents other than the Agreement, then these GTCS shall take precedence.
5. By placing an order, the Buyer is deemed to have familiarised himself with the GTCS published at <https://heinz-glas.com/pl/ogolne-warunki-sprzedazy>
6. HGD prices are quoted assuming delivery FCA ul. Wł. Jagiełły 40 or ul. Przemysłowa 65, 13-200 Działdowo (INCOTERMS 2020) and are net prices, which should be increased by the value added tax or other taxes, fees and public charges payable pursuant to the provisions of the law, in the amount applicable on the day of issuing the VAT invoice.
7. In the event of other delivery terms, separate written agreements with the buyer shall apply.
8. Packaging will be packaged as agreed by the Parties, with the cost of packaging being included in the unit price of the Packaging.
9. The dispatch of the Packages, outside of the place indicated in section 6, shall be at the expense and risk of the Buyer. HGD shall not be liable for damage, destruction or loss of Packaging during transport.
10. Delivery periods shall commence upon HGD’s confirmation of acceptance of the order for fulfilment and shall only apply provided that all details of the order have been agreed in time and that all obligations on the part of the Buyer have been fulfilled in time.
11. The execution of individual orders may deviate from their content by an acceptable margin for: quantity +/-10%, for delivery +/-2 weeks. Variation in the size, content, weight and shade of the Packaging resulting from production is also permitted. The deliveries referred to in the preceding sentences shall be deemed to have been duly made by HGD and the Buyer shall be obliged to accept the Packages. HGD will, to the best of its knowledge, provide information on the dimensions and weight of the Packages being transported, as well as the materials used as their packaging. This does not constitute a guarantee of scrupulous adherence to this information, so that HGD shall not be liable for any damage resulting from a discrepancy between the facts and the information provided under this section.
12. The parties consider Force Majeure to be any objectively unforeseeable, unavoidable and extraordinary events, including, in particular, natural disasters (e.g. the Parties recognise as Force Majeure any objectively unforeseeable, unavoidable and extraordinary events , including in particular natural disasters (e.g. floods, earthquakes, hurricanes), fires, explosions, epidemics, social unrest, shortages of raw materials, energy and workforce, a drop in the value of money, sudden increase and high level of inflation, limitations and interruptions in the supply of energy or raw materials enabling the operation, which were introduced by authorised bodies, as well as significant shortages on the market of these raw materials, a state of war, state of emergency, state of natural disaster and actions of public authorities - the occurrence of which could not have been foreseen at the time when the cooperation was established, and which at least significantly hinder or make impossible the performance of activities.

In the event of Force Majeure, HEINZ-GLAS shall be relieved of any liability in the event of delays or inability to fulfil the order. In the event of Force Majeure, both HEINZ-GLAS and the Buyer undertake to inform the other Party immediately upon its occurrence.
13. The Buyer’s withdrawal from the Agreement (order) with HGD shall only be effective if the Buyer submits a declaration of withdrawal from the contract (order) together with the payment to HGD of a deviation amounting to 10% of the order value.
Irrespective of the payment of a compensation payment by the Buyer, HGD may claim additional compensation up to the amount of the damage suffered , including charging the Buyer for the ordered components necessary for confirmed production (e.g. trays, trusses).
If the Buyer’s withdrawal from the Agreement occurs after production has started or has been completed, the Buyer’s withdrawal from the Agreement with HGD is only effective if the Buyer has submitted a declaration of withdrawal from the Agreement (order) together with the payment to HGD of a withdrawal fee of 100% of the order value. Irrespective of the payment of a compensation payment by the Buyer, HGD may claim additional compensation up to the amount of the damage suffered , including charging the Buyer for the ordered components necessary for confirmed production (e.g. trays, trusses).
14. The ordered Packages must be received within 90 calendar days of the date indicated in the acknowledgement of acceptance of the order for fulfilment or any other date agreed by the Parties. In the event of the Buyer’s delay in taking delivery of the Packages, HGD shall be entitled to: 1) to charge a contractual penalty of 0.1% of the value of the unclaimed Packaging for each day of delay in acceptance. This penalty shall not accrue if the Buyer pays HGD an advance payment of 100% of the value of the uncollected Packaging 2) to receive remuneration for the delay in the purchase and collection of the ordered Packaging in the amount of EUR 10 net per month for each pallet of uncollected Packaging.
15. Delivery of the goods and the associated authority and transfer of risk of loss or damage shall take place at the time of delivery to the Buyer or to the carrier designated by the Buyer, unless otherwise agreed by the parties.
16. In the event that the delay in taking delivery of the Packaging exceeds 15 calendar days, HGD shall have the right, after giving the Buyer ineffective written notice to take delivery of the Packaging within an additional period of 15 days from the date of delivery of the notice, to destroy the uncollected Packaging and charge their value and all costs associated with their destruction and storage, including the penalties and contractual fees referred to in the preceding paragraph, to the Buyer, to which the Buyer agrees.
17. HGD guarantees the Packaging to the Buyer for a period of 180 calendar days from the date of manufacture for the Packaging in question, provided that it has been received in accordance with the conditions set out in clause 14 above.
18. Should the Buyer discover any discrepancies in the quantity of the Packages sent or in their quality and conformity with the order, the Buyer shall, within 3 days of discovering the aforesaid discrepancies, but no later than within the period of validity of the guarantee, notify HGD of the irregularities discovered (hereinafter „Notice of Discrepancy”).
19. HGD shall, at its own expense, carry out the following measures, in particular the sorting/recycling/ disposal of the Packaging covered by the Notification of Non-Compliance. HGD may, on the basis of a separate order and separately agreed rules, subcontract the aforementioned activities to the Buyer or another third party. In the event of an assignment to a third party, the Buyer is obliged to cooperate with this third party in respect of this assignment.
20. HGD reserves the right to change confirmed or agreed prices in the event of cost increases, changes in exchange rates or currency regulations, changes in customs duties or changes in other factors beyond HGD’s control. HGD will then inform the Buyer of the price change and the status of the order completed to date. In the event of a price increase, the Buyer shall be entitled to withdraw from the Agreement to the extent of the unfulfilled order, of which he shall notify HGD in writing within 5 working days of receipt of the new prices. After the expiry of this period, withdrawal is no longer possible. Changes in the exchange rate do not entitle the Buyer to withdraw from a confirmed order.
21. The date of payment shall be the date on which HGD’s bank account is credited. If the Buyer fails to meet the payment deadline, HGD shall be entitled to interest for late payment at the statutory rate, as defined by the Act on Prevention of Excessive Delays in Commercial Transactions (Journal of Laws of 2019, item 118 as amended), payable to HGD’s bank account.
22. In the event of a delay in payments due to HGD from the Buyer, HGD shall be entitled without prior notice to pay the arrears to: 1) withhold any confirmed orders until the Buyer has paid the arrears in full, and 2) to demand prepayment in full of the price for the Packaging ordered. If late payment is the reason for withholding the previously ordered and manufactured Packaging, HGD shall have the right to sell it to a third party, which shall also apply to the possibility of HGD selling Packaging manufactured according to a design provided by the Buyer to a third party, to which the Buyer agrees.
23. The packages remain the property of HGD until full payment is made for them .
24. The Buyer shall not acquire any intellectual property rights and licences for use in connection with the purchase of the Standard Packaging, including any rights to copyright works, industrial designs, trademarks, patents, know-how relating to the Packaging.
25. In the case of production customized packaging for the Buyer, the Buyer shall bear the costs of manufacture, delivery, replacement of tooling for the production of the Packaging. All rights to the technical documentation developed in connection with the production process of Packaging and the know-how covered by this documentation, as well as the tooling for the production of Packaging (including moulds and pre-moulds), shall vest in full in HGD both during and after the term of the Agreement, even in the event of payment for them. In the event that the Agreement expires and the Buyer has paid the full costs referred to in this section, HGD may transfer ownership of the moulds for the manufacture of Packaging according to the designs provided by the Buyer and destroy the pre-moulds for such manufacture at the written request of the Buyer. HGD is obliged to maintain the tooling (moulds and preforms) and keep it in production readiness during the course of the Agreement until it wears out naturally or a maximum period of two years from the date of the last delivery.
26. In the case of production customized packaging for the Buyer, the Buyer warrants that the packaging designs supplied by him do not infringe applicable industrial property rights and personal rights of third parties, and that the use of such designs, including the manufacture of Packaging according to them, shall not constitute an infringement of third party rights, an act of unfair competition or a breach of applicable laws. The Buyer further warrants that it is entitled to grant HGD the permissions referred to in the following paragraph, including permission to make modifications, alterations, additions and developments to the delivered packaging design. In the event that any of the Buyer’s representations referred to in this section turn out to have been incomplete or untrue, the Buyer undertakes to indemnify HGD for any resulting damage (pecuniary and non-pecuniary, direct and indirect), as well as to satisfy any claims of third parties for infringement of intellectual property rights, and in the event that it is not possible to satisfy such claims, to pay all costs relating thereto.
27. HGD warrants that the Packaging does not infringe the exclusive rights or intellectual or industrial property rights of third parties and that it may be freely used and marketed in light of the regulations in force in Poland. This guarantee shall not apply in the case of Packaging manufactured by HGD on the basis of the Buyer’s technical drawing or made in accordance with the Buyer’s instructions. HGD may not use Packaging made according to the Customer’s individual design for advertising, shows, fairs, etc.
28. The Buyer grants HGD, for the purpose of HGD exercising its rights and obligations under these GTS, permission to :
1) use the delivered design of the Packaging in all fields of exploitation known at the time of the conclusion of the agreement, in particular those specified in Articles 50 and 46 of the Act of 4.02.1994 on Copyright and Related Rights (Journal of Laws of 2019, item 1231, as amended), to make modifications, substitutions, additions and elaborations thereof, and
2) to produce and/or use any creations in which the design is included or applied, as well as to store such creations for such purposes.

29. All catalogues, packaging samples, price lists and other documents received by the Buyer from HGD shall remain the property of HGD. These must be returned to HGD upon request. The foregoing shall not apply to: orders; order confirmations; Agreements concluded between the Buyer and HGD; documents that the Buyer is required to hold by law.
30. All complaints must be made in writing within the following time limits in order to be effective:
- 1) quantity complaints - on the day of receipt,
 - 2) quality complaints: a) obvious defects - within 5 working days from the date of delivery of the Packages, b) hidden defects - immediately after their disclosure, no later than 60 days from the date of issue of the sales invoice, however, no later than 180 days from the date of manufacture as referred to in point 2.1 of this paragraph. 17 above. Failure to comply with the requirements referred to in this section shall result in the loss of the Buyer's rights in respect of defects. Slight deviations in quality, colour, size, weight, finish, design, etc. Acceptable in the trade and/or technically unavoidable, do not constitute a legitimate reason for complaint.
31. The Buyer shall be obliged to present the claim report to HGD together with the claim and to secure the claimed Packages. The Buyer should send a claim form with the required information to reklamacje.HGD@heinz-glas.com. HGD is obliged to consider the complaint within 14 days from the date of transmission of all information and receipt of the reference samples of the defective Packaging, with the right to inspect the Packages complained of at the Buyer's premises or at any other place where they are located, within 10 working days from the date of receipt of the complaint. If the complaint is accepted, HGD shall, at its option:
- a) deliver to the Buyer at its own expense:
 - in the event of a quality complaint: in place of the defective Packages the same quantity of non-defective Packages,
 - in the case of a quantity complaint: the missing quantity of packages,or
 - (b) reduce the value of the invoice:
 - in the event of a quality complaint: by granting a discount on Packages containing the defect or by correcting the value of the defect by the Packages that will be returned to HGD in the course of the complaint procedure,
 - in case of a quantity complaint: by the value of the missing Packages .
- The provisions of this clause cover the entirety of the Buyer's rights against HGD in relation to defects in the Packaging. In addition to the regulation covered by this section, HGD's liability under the warranty for defects is excluded.
32. Any action taken by the buyer prior to the complaint being made in writing (as described in para. 30) to rectify quantitative and qualitative irregularities (e.g. oversorting) on their own and the resulting claims will not be respected by HGD.
33. HGD's liability is limited to damage caused by wilful misconduct. To the extent permitted by mandatory provisions of Polish law, any liability of HGD beyond that provided for in this clause and in clause 34 below is excluded.
34. HGD accepts no responsibility whatsoever for the way in which the Buyer uses the Purchased Packages.
35. The Buyer declares that he will not use the Packaging in a manner that will lead to the creation of a hazardous product. In the event that claims are made against HGD for damage caused by a hazardous product manufactured by the Buyer using the Packages, the Buyer undertakes to immediately assume the obligations relating to such claims. In particular, the Buyer agrees to enter into a dispute in the place of HGD or to act on the side of HGD in court, arbitration, settlement proceedings and to bear all related costs and expenses, including legal fees. The Buyer further undertakes, at its own expense, at the request of HGD or a competent authority, to join any judicial or extrajudicial proceedings pending with HGD concerning damage caused by a hazardous product manufactured by the Buyer using the Packages. In the event that HGD incurs any expenses or costs in connection with claims by third parties relating to damage caused by a hazardous product manufactured by the Buyer using the Packages, the Buyer shall reimburse HGD for the expenses and costs incurred.
36. The Buyer undertakes, during the term of the Agreement and after its expiry, to ensure that all information obtained from HGD in connection with the conclusion and performance of the Agreement is kept confidential, including not disclosing or transferring it to third parties and not using it for business purposes. The obligation of secrecy does not apply to information which: 1) has been communicated to the general public without violation of the law, 2) must be disclosed at the request of an authorised state authority or a Court acting within the limits of its competence, 3) must be disclosed within the framework of publication obligations required by law.
37. In view of the aggression of the Russian Federation against Ukraine launched on 24 February 2022 and the sanctioning measures introduced on the basis of Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and Belarus' participation in Russia's aggression against Ukraine (OJ.EU.L.2006.134.1), Council Regulation (EU) No 269/2014 of 17 March 2014 on restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ.EU.L.2014.78.6), Council Regulation (EU) 2022/263 of 23 February 2022 on restrictive measures in response to the recognition of the non-government-controlled areas of Ukraine's Donetsk and Luhansk regions and ordering the deployment of Russian military forces in these areas (OJ.EU.L.2022.42L77) and the law of 13 April 2022 on special solutions to counter support for aggression against Ukraine and to protect national security (OJEU.2022.835) HGD has introduced and applies the Sanctions Policy located on the HGD website at <https://heinz-glas.com/pl/polityka-sankcyjna>.
38. The Sanction Policy fully binds both HPP and the Buyer in their cooperation. The Buyer is obliged to read and comply with the contents of the Sanction Policy when dealing with HGD.
39. In matters not covered by these GTCS, the provisions of the Civil Code and other laws applicable in Poland shall apply. Disputes which may arise in connection with the GTS or Agreements concluded with the application of the GTS shall be settled by the common court with jurisdiction over the seat of HGD or the Court in Toruń.
40. The invalidity or unenforceability of any of the provisions of these GTS shall not affect the validity and enforceability of the remaining provisions, and the validity and enforceability of the GTS or the Agreement concluded using the GTS as a whole. In the event of the invalidity or unenforceability of any provision of these GTS, the parties undertake to endeavour to replace the invalid provision with a new provision that most closely reflects the will and intention of the parties.
41. For the purpose of fulfilling the Agreement and maintaining ongoing customer relations, HGD is entitled to process the Buyers' data. The Buyer hereby consents to the processing of his data for the purpose of fulfilling the Agreement.
42. All Agreements shall be governed by Polish law. The competent court for any disputes arising in connection with the performance of Agreements, deliveries or services will be the court having jurisdiction over the registered office of HEINZ-GLAS Działdowo Sp. z o.o. or the court in Toruń.
43. HEINZ-GLAS Działdowo Sp. z o.o. is not obliged to fulfil the General Terms and Conditions of Sale if their implementation is impossible due to any obstacles resulting from domestic and foreign trade requirements, customs requirements or embargo or other sanctions.
44. Any information provided by the Parties to each other will be treated as confidential. Confidential information is, in particular, that relating to design, production, technology, know-how, intellectual property rights, drawings, diagrams, models, prices and commercial terms. The Parties undertake to keep the aforementioned information confidential during the period of cooperation and for 5 years from the date of execution of the last Order.
45. These GTCS are effective as of 12 January 2023.