

## **Conditions of Purchase**

### **Heinze Gruppe and subsidiaries**

#### **§1 Miscellaneous / Scope of Application**

These purchase conditions are valid for all current and future deliveries and services ordered by the Buyer, even if they were not agreed upon explicitly or separately. Any deviating, opposing or supplementary terms and conditions of Seller will not become integral part of the Contract, even if Buyer has taken notice of Seller's terms and conditions and even if Buyer has not explicitly contradicted them, unless their validity was agreed upon and confirmed in writing.

#### **§ 2 Offer, offer documents, order and order confirmations**

Seller has to submit offers in written form as binding offers and free of charge. In its offer, Seller has to comply with the specifications mentioned in Buyer's inquiry or tender and has to exactly specify any deviations in regard to quality, quantity, tolerances, production processes, timing and payment conditions. In case of deviations, Seller has to explicitly mention these deviations. A contract is only valid with Buyer's written order confirmation. Buyer's drawings, specifications and tolerances in drawings shall be binding. Upon acceptance of the order from Buyer, Seller acknowledges and accepts to have obtained complete information on production requirements, conception and execution and scope of deliveries and services.

Obvious errors, spelling errors or errors in calculations in the documents and drawings presented by Seller are not binding for Buyer. Seller is obliged to inform Buyer of such errors so that he may correct and renew the order. This also applies to missing documents. Where reasonable, Buyer may require changes to the delivered products in regard to construction, performance and quantity. The consequences of such changes, in particular with respect to increases or reductions in cost and with respect to time of delivery, shall be mutually agreed and be settled in an appropriate manner. Deviations in quantity and quality and other deviations from Buyer's order are considered agreed only if Buyer confirms such changes or deviations in writing.

Orders and call-off orders have to be in writing duly signed by Buyer. They can also be made via EDI or a machine-readable data carrier. New developments of electronic communication technology will be actively supported in consultation with Buyer and will be agreed as legally binding.

Seller has to confirm orders and call-off orders within three (3) days in written form; otherwise the order is considered as accepted or Buyer is entitled to cancel the order. Drawings, plans and other documents belonging to the order remain in Buyer's sole ownership with Buyer reserving all rights for himself. If Seller does not accept Buyer's order within the fixed term, Seller has to return order documents to Buyer without any delay.

#### **§ 3 Prices, invoices and payments**

The agreed prices are fixed prices plus VAT. Prices include costs for packaging, insurance and others up to Buyer's location.

Seller ensures insurance coverage until goods receipt at Buyer's location. Seller is liable for damages due to deficient packaging. Seller shall not grant to Buyer less favourable prices and conditions than to other customers if and to the extent that these customers are offering to Seller similar or equivalent preconditions.

If at the time of an order placement no final price was fixed, Seller has to provide a price latest with its order confirmation. A contract only becomes valid as per Buyer's written price confirmation. Invoices have to include payment conditions and delivery conditions of the Buyer, order numbers, Buyer's item numbers and item description. Sales tax has to be listed separately.

Seller is aware that the agreed delivery quantities depend on orders from Buyer's customers. Provided, Buyer cannot comply with the agreed delivery quantities due to missing orders from his customers, Seller is not entitled to derive any claims hereof.

Seller is particularly not entitled to price changes, provided that pricing is not grossly unethical considering the amended quantity. Incorrectly issued invoices cannot be processed and are returned to Seller. Seller is responsible for delays in payment resulting thereof and no claims for default charges or other costs are justified based on such delays. Seller has to submit all documents (e.g. certificate of origin) necessary for customs declaration and the declaration of other dues or benefits.

Buyer's payments are made "on the 25<sup>th</sup> of the month following delivery less 3 % discount" or at Buyer's option within "90 days net" using cheque, bank transfer or electronic payment.

Unless otherwise agreed upon, the payment term starts after Buyer's receipt of the goods or after a correct invoice. Even if Buyer makes a payment without complaint, claims and damages for non-performance are allowed. In case advance payments/installment payments/down payments are agreed, Seller has to forward a bank guarantee including a waiver of objections and including the note "payment upon first demand" before receipt of the advance payment.

#### **§ 4 Delivery date, delayed delivery, receipt, Act of God (Force Majeure)**

If Seller does not deliver within the agreed time or in the agreed quality, Buyer reserves the right to reduce the payment to Seller by the share of the unperformed service and/or to respectively debit Seller with all costs and damages resulting from such deficiency or in respect of the agreed time unperformed/incomplete service or products. The delivery date set in Buyer's order is fixed and binding.

The receipt of the goods at Buyer's location is decisive for the compliance with the delivery date or the delivery deadline. Goods are received from Monday to Friday from 7:00 a.m. until 2:00 p.m. or by separate agreement. The delivery note has to include Buyer's order number, item number and item description. Deliveries are preliminarily accepted and have to be signed for receipt. Each package has to be provided with a label showing Buyer's order number, item number and item description. If delivery is not agreed on the basis of "free on Buyer's location", Seller has to provide the goods for collection in due time considering the usual time for loading and dispatching and has to inform Buyer in writing about the collection date. If Seller is not able or only presumably not able to strictly observe the fixed delivery dates due to a production breakdown, lack of raw materials, semi-finished products or as a consequence of Acts of God, it has to inform Buyer in writing without any delay and early enough, so that Buyer has the possibility to source the concerned goods and/or services from a third party. If such information is not sent or delayed, Seller is liable for any delivery delays and their consequences. Seller is liable to Buyer for any cost and damages caused by the delay. Additional charges for freight, production (such as but not limited to additional set-up costs, overtime compensation, third party supplies, machine standstill and others) as well as for claims, for all costs and damages of Buyer's customers are included. Seller ensures that it has reserved the necessary capacity to supply the contractually agreed quantities and that it is furthermore able to cover peak demands. The acceptance of the delayed delivery by Buyer does not mean that Buyer waives its claims caused by the delay.

Acts of God, strikes, riots, regulatory actions or other unpredictable, unavoidable and serious events release Seller from its obligations for the period of time and to the extent such events persist.

This also applies if these events happen while the concerned Seller is in default. The contractual parties are obliged to render necessary information immediately within the scope of reasonableness and to align their obligations to the changed conditions in good faith. Buyer is only obliged to accept the ordered goods if they correspond to specifications, quality and order date and to the samples released by it. Manufacturer's certificates have to be sent with the particular delivery. If the zero-defects-requirement is infringed, Buyer is entitled to reject the goods. Seller assures that it is able to produce and deliver the agreed quantities in such a way that they can be used immediately within the series production process of the Buyer. Based on the announced and concluded requirements Seller guarantees a general security of supply yet allowing flexible, short-term actions.

Seller commits itself to timely inform Buyer in any case of a change or discontinuation of materials or components. In such a case the information has to be given at latest 12 months plus delivery time prior to such a change or discontinuation. The receipt of such a notification has to be confirmed in writing by Buyer's purchase department.

**§ 5 Contractual penalty, damages**

If the agreed delivery date is delayed, Buyer is entitled to retain 0.5 % of the total order value per day started and a maximum value of 10% of the total order value. Seller is explicitly permitted to provide evidence that no damage or an essentially lower damage occurred to Buyer. Buyer's claims for fulfillment and claims for further and ulterior damages remain unaffected.

**§ 6 Transfer of risk, shipping and customs duty**

Where goods are supplied with installation or assembly and where services are to be rendered, the risk shall be transferred upon acceptance. Where goods are supplied without installation or assembly the risk shall be transferred upon receipt at the receiving location determined by Buyer. Unless otherwise agreed, the dispatch and packaging charges will be borne by Seller. In case of price setting "ex works" or "ex warehouse", Seller always has to ship at the lowest cost as far as Buyer had not required a special mode of transport.

Seller has to bear additional charges if dispatch instructions are not observed. If the pricing term is "free consignee", Buyer has the right to determine the mode of transport. Seller has to bear additional costs due to an accelerated transport that might become necessary in order to comply with the requested delivery date. Delivery notes with indication of contents and complete order information (order number, item number, item description and others) as well as necessary documents have to accompany each delivery. Notice of dispatch shall be provided immediately with the same information. Dispatch always has to follow the methods and packing instructions designated by Buyer and has to include the marking and delivery documents determined by Buyer. If requested, the packaging will be returned freight collect to Seller. Dispatch of goods is principally done on Seller's account and risk. If goods, machines and engineering facilities are imported/transported from dutiable foreign countries, Seller will contact Buyer for customs clearance and transport handling.

**§ 7 Examination of faults, liability for defects, complaints**

With its offer, Seller explicitly assures the compliance of the sold goods with those samples and models it supplied and which Buyer released. If the order was placed only referring to an offer made by Seller, Seller explicitly assures the compliance with such offer. Buyer is not constrained by deadlines in respect to investigations conducted on the goods supplied or on the notification of complaints of any nature whether obvious or concealed. If defects can only be recognized once goods are used or processed by Buyer or by Buyer's customers and even if defects had not been notified until then, such goods or services are still considered as claimed in due time. Insofar Seller waives any objection of delayed notice of defect. In case of defective goods, Buyer is at its option entitled to claim supplementary delivery, to withdraw from the contract, to reduce the purchase price or to claim damages or replacement of wasted expenditures. In any case, Seller has to bear all costs arising from deliveries of defective goods. In case of a complaint Buyer is entitled to charge Seller's account with a lump sum in the amount of 75 € plus VAT per individual case.

**§ 8 Warranty**

The period of warranty is 48 months starting from the transfer of risk. If and whenever Buyer has to observe longer terms of warranty towards his own customers, the warranty period between Buyer and Seller is determined by the warranty period agreed between Buyer and its own customers. In case of supplementary performances the respite for warranty claims starts with the acceptance of the supplementary performance. The correctness of supplementary performance is only regarded as being provided if confirmed in written form by Buyer. If machines and plants are supplied, the warranty period starts after the start-up by Buyer.

**§ 9 Retention of title**

Material supplied by Buyer remains Buyer's property. It must be stored separately and must be used exclusively for Buyer's orders. Seller is responsible for any reduction in value or loss even without Seller's default. Products manufactured with the material supplied by Buyer are and remain in Buyer's property in their particular manufacturing condition. Upon Buyer's demand, Seller is responsible for the release/return. Only with Buyer's prior written approval Seller is allowed to use this material and goods manufactured from this material beyond the scope of the contract and/or to pass this material to third parties or make it available to third parties. Seller has to store these goods/materials for Buyer. Costs for the storage are included in the purchase price.

### **§ 10 Property rights / General liability regulations**

Seller assures Buyer that no property rights of third parties are infringed neither with the delivery nor use of the delivery object/service within the execution of this contract. Seller keeps Buyer indemnified against claims of third parties from possible infringements of property rights. This implies that Seller also has to bear those costs necessary for the documentation of protective rights observation of third parties. Seller keeps Buyer indemnified from claims of third parties upon first demand, which they raise against it due to defective or deficient delivery of Seller's products. This indemnification is valid irrespectively of any limitation periods unless claims against Buyer itself have become time-barred. This does also apply for costs necessary for the protection against such claims. The same is valid for claims arising from product liability claims resulting from defective goods or services of Seller. Seller commits itself to conclude and to maintain a business and product liability insurance whose insurance cover is adequate to the volume of business as well as to the specific liability risk – depending on the particular product and determined individually. The proceeding of legal claims of Buyer is not affected by this.

### **§ 11 Sub-contracting to third parties, spare parts policy**

The sub-contracting to third parties shall not take place without Buyer's prior written consent and entitles Buyer to cancel the contract either partially or entirely and to claim compensation. Seller commits itself to ensure spare parts supply for at least 15 years after end of the serial production at unchanged conditions. Scrapping of tools and equipment requires Buyer's explicit written approval also after this period. Seller has to send the proof of scrapping to Buyer in written form.

### **§ 12 Assignment of receivables, offsetting and right of retention**

Legally effective, Seller may only assign receivables against Buyer with Buyer's prior written approval. Seller is only entitled to offset claims against Buyer if such claims have been recognized and acknowledged by a final court decision. This does also apply for the right of retention. Buyer is fully entitled to claim all legal set-off and retention rights.

### **§ 13 Secrecy**

Seller will treat Buyer's production equipment and Buyer's production methods, Buyer's orders and coherent provisions and details of the contractual relationship as a commercial secret. Drawings, samples, prototypes, templates or similar objects shall not be handed over or otherwise be made available to third parties. The reproduction of such items is only permissible within the framework of operational requirements and copyright law.

### **§ 14 Special Conditions**

Seller undertakes to announce in its order confirmation without specific request the country of origin, the currently valid customs regulations or other statutory provisions. All letters, dispatch notes, bills of lading, parcel addresses and invoices imperatively have to include Buyer's complete order data. Deliveries and services are only accepted when they are based upon an order form issued by Buyer.

The use of Buyer's orders for the purpose of references and/or sales promotion or similar purposes requires its prior consent.

### **§ 15 Management systems**

Essential aspects in the partnership between Buyer and Seller are, in addition to the quality and environmental protection, occupational health and safety, energy and related management systems.

The Seller assures that its quality, environmental, energy and occupational health and safety management systems are in operation and are actively improved on an ongoing basis. A certified management system according to DIN EN ISO 9001 is a prerequisite. The Seller is to develop its management system towards the regulations of the IATF 16949 and VDA 6.1 with the objective to be certified by this management system.

The fundamental basics of DIN EN ISO 14001 and DIN EN ISO 50001 should also be applied by the Seller. These management systems should be demonstrated by a certificate.

## **§ 16 Requirements for energy, environmental and ethics aspects**

The energy management system of the Heinze Gruppe is certified according to DIN EN ISO 50001. In this context, the Seller is encouraged to support the goals of the Heinze Gruppe for careful handling of the use of energy and energy conservation also through active proposals.

For this reason, the energy consumption or energy efficiency in procurement is a relevant decision-making criterion, which the Seller should proactively highlight in the offer details / texts also for the planned / expected useful life.

In particular, the Seller shall be responsible for environmentally conscious operations and meet the following criteria:

Dispatch of the EU material safety data sheets for raw materials, auxiliary materials and materials for initial delivery and any changes (new batch, amendments, ...) at least once a year, compliance with relevant environmental and occupational safety regulations, motivation of all employees to implement environmental measures, careful handling of resources in the production processes implemented, development of environmentally compatible products as well as the prevention and reduction of environmentally harmful production processes, commitment to an environmentally sound disposal of waste produced during production.

In addition, the Seller recognizes an appropriate behavior towards compliance with the Ethics Guideline of the Heinze Gruppe. The Seller shall be obliged, within the framework of the exercise of its corporate responsibility, to introduce and maintain appropriate ethical guidelines for its company, including an anticorruption policy, a code of conduct for employees and an ethics escalation policy. The content should cover at least the criteria of the ethics directives of the Buyer.

Within its management system, the Seller must draft policy guidelines and make them known. In this regard, we refer to our company guidelines (policy guidelines for quality / environment / work safety / energy) as well as to the ethics guidelines of the Heinze Gruppe, which can be viewed on the homepage under <http://www.heinze-gruppe.de/en/unternehmen/downloads/>.

## **§ 17 Tools, models, samples and drawings**

All drawings, models, tools, brands, layouts and such, furnished for the execution of orders remain in Buyer's property, must be clearly identified as such and may not be provided to third parties or used for promotional purposes without Buyer's written approval. Seller must return them to Buyer without being so requested immediately on completion of the order or at the end of the supply relationship.

Any moulds, tools, or equipment, fully or partly produced or procured at Buyer's expense become Buyer's property with their production or procurement. Seller has to store them carefully for Buyer and maintain or renew them so that they are ready for use at any time. In the case that Seller has problems in manufacturing and delivery, Buyer has the right to demand the surrender of the tools, moulds, equipment or drawings and similar items free of charge and Seller shall not be entitled to the right of retention. Manufacturing equipment, control units, metrology equipment and measuring instruments must be designed to be capable for calibration. Ordered items are supplied calibrated and this basic calibration is included in the offer price. Products that are produced or labeled with the above mentioned means of production may only be delivered to third parties with Buyer's written permission.

## **§ 18 Works at our plants**

Persons who carry out work on Buyer's premises in fulfillment of the contract must observe the respective factory regulations for entering and leaving the factory premises. They furthermore have to observe the respective plant regulations. The relevant and for Buyer's site applicable rules and regulations for accident prevention will be made available on request at any time. Liability for accidents on Buyer's premises, with the exception of the liability for damages due to the loss of life, physical injury or damage to health, in which Seller's personal is involved, shall be excluded, unless the management and/or its executive employees are charged with intention or gross negligence.

### **§ 19 Delivery / Final inspection by the Seller**

The defect-free nature of the products to be delivered to the Buyer shall be ensured by means of suitable final tests. These examinations shall be installed as an outgoing inspection. These inspections replace the goods receipt check at the Buyer's site, where no examinations are carried out. §377 HGB is completely waived between the parties. The acceptance of lots with defective units within a sample is not permissible. The results of the tests shall be recorded.

The Seller agrees that in certain circumstances inspections and acceptance tests may be carried out on the premises of the Seller subject to prior agreement. If a final inspection is required by an end customer of the Buyer at the Seller's site, this final inspection must be ensured by prior agreement. Due to these measures, the Buyer waives a goods receipt inspection. The Seller therefore waives the objection of a delayed notification of defects.

For plastic granules, lacquers and other defined operating materials, the Seller has to supply the relevant inspection certificate (DIN EN 10204-3.1) of each delivery with reference to the batch. The Seller must independently align with the criteria of specifications and tolerances before submitting an offer to the Buyer.

### **§ 20 Legal, regulatory and other requirements**

The Seller is responsible for verifying compliance with the latest applicable legal and regulatory requirements of the exporting and the importing country. With his offer to the delivery item, the Contractor confirms his examination and compliance with the requirements. If the destination country has also been designated by the end customer and the latter has been communicated to the Seller, the tests and confirmations shall also apply for these.

If the Seller has been advised that the delivery item is subject to special legal and regulatory requirements and the customer has specified specific monitoring measures for this, the Seller shall record these specific tests in its test documents, confirm the implementation and compliance with the measures and test plans such as confirmation and must submit them in the approval process.

Both the confirmation of the fulfillment of the aforementioned requirements and the implementation of the special monitoring measures are a prerequisite for the release of the delivery item.

### **§ 21 Additional Rules**

As far as these conditions of purchase comprise no regulations, laws and other legal regulations shall apply.

### **§ 22 Rescission of the contract**

Buyer is entitled to rescind the contract in whole or in part without any obligation to pay compensation if Seller's financial situation deteriorates in a way that the performance of the contract appears to be jeopardized or Seller has suspended payments or if insolvency proceedings are opened against Seller's assets or if the opening of insolvency proceedings is rejected due to a lack of assets.

### **§ 23 Contract modification**

Buyer may subsequently request changes in the design, condition, delivery or performance of ordered goods and/or services within Seller's technical capacity. All contractual changes require written form and have to be confirmed in writing.

### **§ 24 Final Regulations**

The laws of the Federal Republic of Germany shall apply. The provisions of the UN Convention on Contracts for the International Sale of Goods do not apply. Provided that Seller is a businessman, a legal entity, a legal entity under public law or a special fund under public law, Buyer's place of business is the place of jurisdiction for all disputes arising from this contractual relationship. The same applies, when Seller does not have a general place of jurisdiction in the Federal Republic of Germany or his residential address or place of residence is unknown at the time of filing the suit. Should individual terms of this contract be or become ineffective, this will not affect the remaining terms of this contract. The entire or partially invalid provision shall then be replaced by a provision whose economic purpose comes as close as possible to that of the invalid provision.

In case of doubt, our German Conditions of Purchase will dominate the respective English translation.