



**HEINZGLAS**

family-owned since 1622

## GENERAL TERMS AND CONDITIONS OF PURCHASE (GTCP) of the HEINZ-GLAS Group

(As of: October 2020)

### 1. General

a) For all business transactions between HEINZ-GLAS GmbH & Co. KGaA, HEINZ-GLAS Produktion GmbH & Co. KGaA, HEINZ-GLAS International GmbH & Co. KGaA, HEINZ Veredelungs GmbH & Co. KGaA, GTP Glastechnik Piesau GmbH & Co. KG, SP Spezialglas Piesau GmbH (hereinafter: "HEINZ-GLAS") and suppliers, service providers or other contractors (hereinafter: "Supplier"), only these GTCP (in addition to the other expressly agreed special contractual arrangements) shall apply. HEINZ-GLAS shall not recognize any other conditions, in particular general terms and conditions of the Supplier, even in the case of unconditional acceptance of delivery or service, unless HEINZ-GLAS has expressly agreed to their validity in writing.

b) The current version of the GTCP shall also apply to all future business relations between HEINZ-GLAS and the Supplier, without HEINZ-GLAS having to expressly refer to their inclusion in individual cases. The Supplier can view the current version of the GTCP at "Example: [www.heinzglas.com/download/agb.html](http://www.heinzglas.com/download/agb.html)".

### 2. Conclusion of contract

a) Orders or delivery call-offs from HEINZ-GLAS are binding if they are submitted in written or electronic form. Verbal or telephone orders are not binding and must be confirmed in writing or in electronic form.

b) The Supplier must confirm orders by an order confirmation stating the price, delivery time and the HEINZ-GLAS order number within one week of receiving the order in written or electronic form. Insofar as HEINZ-GLAS has an express written arrangement with the Supplier that waives the need to submit an order confirmation, the Supplier is obliged to accept the order within one week of receipt of the order through unconditional execution of it. Delivery call-offs based on existing framework agreements become binding – unless otherwise agreed in the framework agreement – if the Supplier does not object in written or electronic form within one week of receiving the respective delivery call-off.

c) The Supplier must notify HEINZ-GLAS of obvious errors (e.g. spelling and calculation errors) and incompleteness of the order or missing order documents for the purpose of correction or completion; otherwise the contract is deemed not to have been concluded.

d) HEINZ-GLAS shall be entitled to revoke the order up until receipt of the order confirmation or unconditional execution of the order.

e) An order confirmation by the Supplier that deviates in content from the order shall be deemed to be a new offer to conclude a contract, as shall order confirmations stating price or delivery time details for the first time. HEINZ-GLAS

may accept this new offer to conclude a contract in writing or in electronic form.

f) The Supplier's order confirmations must specially highlight any deviations or additions to orders from HEINZ-GLAS.

g) The Supplier shall not be entitled to make changes to the order without the prior written consent of the HEINZ-GLAS.

h) HEINZ-GLAS shall be entitled to change the time and location of delivery as well as the type of packaging through written notification with a notice period of at least five days before the agreed delivery date, if this is reasonable for the Supplier and can be implemented as part of normal production and business operations without substantial additional expenditure. The same shall apply to changes in product specifications and quantities. HEINZ-GLAS shall reimburse the Supplier for the additional costs incurred as a result of the change; these costs must be proven and reasonable.

i) HEINZ-GLAS shall not provide any remuneration for visits or the preparation of offers, projects, etc. unless HEINZ-GLAS and the Supplier have expressly agreed to this in writing.

### 3. Delivery

a) The ordered or called-off goods or services and work must be delivered or rendered by the agreed time. The receipt of the goods at the agreed point of destination or the complete provision of the service ready for acceptance shall be decisive as regards compliance with the agreed periods or deadlines. Delivery or service periods shall begin on the date the Supplier receives the order.

b) Unless otherwise expressly agreed, deliveries shall be made in accordance with the DAP clause of Incoterms 2020 to the point of destination designated by HEINZ-GLAS in the respective order or call-off. The Supplier shall bear the costs and the risk of accidental loss and accidental deterioration of the delivery items until the delivery items reach the designated point of destination or until acceptance of the agreed service.

c) The Supplier shall inform HEINZ-GLAS immediately of any difficulties that prevent him from delivering or rendering a service in the prescribed quantity or quality and in a timely manner, stating the reasons and the expected duration of the delay.

d) HEINZ-GLAS is entitled to demand a contractual penalty of 0.2%, maximum 5%, of the relevant order value in the case of delays in delivery, following prior written warning to the Supplier, for each commenced working day of default on delivery. The contractual penalty shall be offset

against the damage caused by delay to be reimbursed by the supplier.

e) The Supplier may invoke failure to receive necessary documents or goods to be provided by the HEINZ-GLAS only if he has issued HEINZ-GLAS a written reminder regarding the documents or goods and has not received these within a reasonable period.

f) Partial deliveries and services are permitted only with prior express consent from HEINZ-GLAS and must be specially labeled as such.

g) HEINZ-GLAS is not obligated to accept before the delivery or service date. If delivery is made earlier than agreed, HEINZ-GLAS reserves the right to return the goods at the Supplier's expense or to have the goods temporarily stored by a third party at the Supplier's expense. This shall not apply in the case of slightly early delivery or service provision. Should goods delivered early not be returned or not be stored by a third party, they shall be stored by HEINZ-GLAS until the delivery date at the Supplier's risk and expense.

h) With each delivery or service for further processing at HEINZ-GLAS there must be submitted a delivery note clearly specifying the order number, order date, supplier number, date and content of the delivery (e.g. part no., batch no., item no., quantity) or type of service, the agreed point of receipt and unloading as well as any particularities concerning the delivery.

i) Concerning import deliveries, all necessary accompanying documents, movement certificates, and certificates of origin must be included. This shall not apply if expressly deviating regulations have been agreed.

j) Should certificates of analysis or other manufacturing documents for the goods to be delivered have been agreed, these form an essential part of the delivery and must be handed over to HEINZ-GLAS along with the delivered goods.

k) Insofar as HEINZ-GLAS has not specified any concrete packaging, the Supplier shall package the goods in the manner customary in the industry. The Supplier shall be responsible for any loss and damages incurred during transportation, including unloading, up until acceptance at the point of destination. The Supplier shall also be liable for any transport or unloading damage that results from HEINZ-GLAS employees assisting the Supplier with unloading or HEINZ-GLAS taking over transport for the Supplier. The Supplier shall therefore take out sufficient transportation insurance for his deliveries at his own expense.

l) Goods shall be received during the business hours of HEINZ-GLAS or any goods reception times that HEINZ-GLAS has separately made known to the Supplier.

m) Ownership of the goods shall be transferred to HEINZ-GLAS place unconditionally and without regard to payment of the price. All forms of expanded or extended retention of title are excluded in every case, meaning that any retention of title declared effective by the Supplier is valid only until payment for the goods delivered to HEINZ-GLAS and only for said goods.

n) Insofar as the Supplier is working on the premises of HEINZ-GLAS within the framework of the delivery or performance of services, the Supplier must ensure that the

employees engaged comply with all requirements, in particular the applicable industrial safety regulations and any other special instructions from HEINZ-GLAS.

#### **4. Duty of inspection and objection**

a) Upon goods receipt HEINZ-GLAS shall inspect deliveries only in terms of quantity, identity, and obvious transportation and storage damage. HEINZ-GLAS is not obliged to conduct further inspections on goods receipt. HEINZ-GLAS shall notify the Supplier of defects and damage that it identifies during the incoming goods inspection immediately and at the latest within five working days of identification.

b) If acceptance has been agreed, there is no duty to inspect. Apart from that, it depends on the extent to which an inspection is feasible in the course of ordinary business, taking into account the circumstances of the respective case.

c) HEINZ-GLAS shall also immediately notify the Supplier of defects and damage that it identifies later, in the course of ordinary business, but at the latest within five working days of identifying defects and damage.

d) In the case of transitory transactions, any complaints from HEINZ-GLAS's customer shall be noted.

e) As such, the Supplier waives the defense of late notification of defects.

#### **5. Prices / invoicing / payment**

a) The agreed prices are fixed prices. All additional costs, in particular costs for packaging and transport to the agreed point of destination as well as customs duties, are already included in these prices. Value-added tax must be listed separately.

b) Supplier invoices must always contain the order number, order date, Supplier number and, if known, the ordering person or department assigned by HEINZ-GLAS upon ordering and addressed to the relevant company within HEINZ-GLAS; otherwise, the invoice shall not be considered received and the payment term shall not begin.

c) Unless otherwise agreed, payments shall be made with a discount of 3% within 30 days or net within 90 days following complete and defect-free delivery or service provision (including any agreed acceptance) and receipt of the invoice. Receipt of the transfer order at the bank of HEINZ-GLAS shall suffice as regards the timely nature of the payments due from HEINZ-GLAS.

d) If advance payments are made by HEINZ-GLAS, the Supplier must, at the request of HEINZ-GLAS, provide adequate collateral, e.g. in the form of a bank guarantee, the costs of which shall be borne by the Supplier.

e) The Supplier shall not be entitled, without the consent of HEINZ-GLAS, to cede claims against HEINZ-GLAS to third parties or have such collected by third parties. If the Supplier assigns claims against HEINZ-GLAS to a third party without the consent of HEINZ-GLAS, HEINZ-GLAS shall be entitled to make payment to both the Supplier and the third party with discharging effect.

f) HEINZ-GLAS shall be entitled to rights to refuse performance, rights of set-off, and rights of retention within the statutory scope. The Supplier shall have rights of set-off and rights of retention only if the counterclaim on which the

right to refuse performance, right of retention, or right of set-off is based is undisputed or established in law or where the counterclaim arises from the same contractual relationship.

#### **6. Quality assurance by the Supplier**

a) The Supplier shall organize his manufacturing and testing processes in such a way that the delivery of defect-free products and/or the rendering of defect-free services can be guaranteed and the quality specifications agreed by HEINZ-GLAS and the Supplier can be complied with. The Supplier shall be responsible for permanently and reliably ensuring compliance with the required properties and quality in his products and services, particularly implementing any necessary preventive measures.

b) The Supplier is obligated to implement quality control alongside the production process, as well as outgoing goods inspections; he shall comprehensively and reliably inspect products and services for quality and document the corresponding tests with test reports.

c) The Supplier shall use labeling to ensure traceability of his delivered products, in order for any potentially faulty products to be reliably identified should any products be delivered with defects.

d) The Supplier shall not be entitled to have the delivery or service owed by him carried out or rendered by third parties (e.g. subcontractors) without the prior written consent of HEINZ-GLAS. The Supplier shall bear the procurement risk for his services, unless expressly agreed otherwise in individual cases.

e) Should the Supplier procure his own materials, products, or services for the manufacture of products or rendering of services, or for implementing the relevant quality assurance, the Supplier shall be liable towards HEINZ-GLAS for the quality of such products and services. In his relationship with HEINZ-GLAS, the Supplier shall be responsible for ensuring compliance with the required properties and quality in upstream products and services, in particular by implementing any necessary preventive measures.

#### **7. Warranty**

a) The Supplier guarantees that the products that he delivers and/or services that he renders shall be free of defects, shall comply with the agreed properties, required characteristics, and other requirements specified by HEINZ-GLAS and confirmed by the Supplier, and shall be suitable for the purpose intended by HEINZ-GLAS and communicated to the Supplier.

b) Insofar as the Supplier recognizes the ordered deliveries or services as being subject to special requirements, the Supplier must ensure that the deliveries or services he provides to HEINZ-GLAS comply with the relevant legal provisions, guidelines and recognized rules in their most recent versions.

c) If there are any doubts or uncertainties on the part of the Supplier regarding the concrete requirements for the product or service, the Supplier undertakes to contact HEINZ-GLAS immediately to clear up the doubts and uncertainties.

d) Unless longer limitation periods in favor of HEINZ-GLAS are provided for by the statutory provisions, such as under Sections 438 Para. 1 No. 2, 634a Para. 1 No. 2 or 479 of the German Civil Code (BGB), or unless expressly agreed

otherwise, the limitation period for defect claims is five years. The warranty period shall begin upon delivery to HEINZ-GLAS or provision of services to HEINZ-GLAS and acceptance by the latter.

e) Apart from that, the statutory provisions shall apply with respect to the Supplier's warranty vis-à-vis HEINZ-GLAS.

#### **8. Supplier's recourse**

a) HEINZ-GLAS shall, in addition to the claims for defects, be entitled without restriction to its legally determined recourse claims within a supply chain (Supplier's recourse according to Sections 478 and 479 of the German Civil Code (BGB)). HEINZ-GLAS shall in particular be entitled to demand that the Supplier render precisely the type of supplementary performance (repair or replacement) that HEINZ-GLAS owes its customer in the respective case. This shall not limit HEINZ-GLAS in its statutory right to choose (Section 439 Para. 1 of the German Civil Code (BGB)).

b) Before HEINZ-GLAS recognizes or fulfils a claim for defects asserted by a customer (including reimbursement of expenses in accordance with Sections 478 Para. 3, 439 Para. 2 of the German Civil Code (BGB)), HEINZ-GLAS shall notify the Supplier and request a written statement regarding the facts of the case. If neither the statement nor an amicable solution is forthcoming within a reasonable time, the claim for defects effectively conceded by HEINZ-GLAS shall be regarded as owed to its customer; in this case the Supplier shall be responsible for proof to the contrary.

c) The claims of HEINZ-GLAS arising from Supplier's recourse shall also apply if the goods have been further processed by HEINZ-GLAS or by other customers within the supply chain before being sold to a consumer or have been used in an overall product as a result of installation or connection with other products.

#### **9. Liability / insurance**

a) Liability between the parties shall be governed by the statutory provisions, unless otherwise expressly stipulated in these GTCP.

b) If a customer or other third party asserts a damage claim against HEINZ-GLAS, the Supplier shall indemnify HEINZ-GLAS for the claim insofar as the damage was caused by a defect in the product delivered or service rendered by the Supplier and insofar as the Supplier is obligated under the statutory provisions to compensate HEINZ-GLAS for the damage.

c) Within the scope of his indemnity obligations, the Supplier must reimburse all costs and expenses according to Section 683, 670 of the German Civil Code (BGB) arising from or in connection with a claim by third parties including HEINZ-GLAS or product recalls by customers of HEINZ-GLAS. HEINZ-GLAS shall inform the Supplier – insofar as possible and reasonable – about the content and extent of said recalls and afford him adequate cooperation as well as giving him the opportunity to provide a statement. Any further legal claims shall remain unaffected.

d) The Supplier must take out and maintain business and product liability insurance that adequately covers his risks arising from delivery to or provision of services vis-à-vis HEINZ-GLAS. The Supplier's business and product liability insurance must include coverage of at least €5 million for personal and material damage and at least €5 million

for product-asset damage, with worldwide applicability, including in the USA, U.S. territories and Canada. Upon request by HEINZ-GLAS, the Supplier must immediately provide HEINZ-GLAS with a confirmation of insurance issued by his business and product liability insurer.

e) If the products the Supplier must deliver to HEINZ-GLAS are products whereby the Supplier feels that a product recall to prevent personal damage cannot reliably be ruled out in the event of a product defect, e.g. involvement of harmful substances, HEINZ-GLAS recommends that the Supplier, for his own protection, take out product-recall insurance in addition to his business and product liability insurance.

#### **10. Force majeure**

In cases of force majeure or industrial disputes, unrest, official measures and other unforeseeable, unavoidable and serious events HEINZ-GLAS shall, for the duration of the disturbance and to the extent of the relevant effect, be exempted from the obligation to accept the goods or work performance. This shall also apply to other acts of cooperation by HEINZ-GLAS in fulfilling the contract and if said events occur at a time when HEINZ-GLAS is in default. HEINZ-GLAS is obliged, within reasonable limits, to immediately provide the Supplier with the necessary information and to realign its obligations with the changed circumstances in good faith.

#### **11. Proprietary rights**

a) The Supplier shall guarantee that the goods delivered or services rendered are free from third-party rights.

b) Should HEINZ-GLAS be held liable by a third party in this respect, the Supplier shall be obliged to indemnify HEINZ-GLAS against such claims. The obligation to indemnify refers to all expenses inevitably incurred by HEINZ-GLAS from or in connection with any third-party claims.

#### **12. Provision**

a) Where HEINZ-GLAS provides the Supplier with goods or objects to facilitate manufacture of products and/or rendering of services, such as samples, tools, drawings, diagrams, programs, other documents or information, and/or where such are developed at HEINZ-GLAS's expense in conjunction with a delivery or service (hereinafter jointly referred to as provisions), HEINZ-GLAS shall retain ownership of and any relevant proprietary rights.

b) Provisions supplied by HEINZ-GLAS may be used only for deliveries or services to HEINZ-GLAS. Any processing, mixing or combination of goods provided by the Supplier in connection with the delivery or service shall be carried out exclusively for HEINZ-GLAS.

c) The Supplier shall label provisions from HEINZ-GLAS as such and shall take out sufficient insurance to cover their replacement value at his own expense. The Supplier shall cede claims for compensation under this insurance to HEINZ-GLAS; HEINZ-GLAS hereby accepts such assignment.

d) The Supplier shall carry out the necessary maintenance and inspection work, as well as servicing and repair work, or have such carried out, on the provisions, particularly production aids, in good time and at his own expense. In the event of reduction in value or loss, the Supplier must provide compensation, unless the reduction in value or loss is not attributable to the Supplier.

e) Provided items, especially documents, may be reproduced only with the express written permission of HEINZ-GLAS.

f) The Supplier is not permitted to make provisions from HEINZ-GLAS available to third parties without the prior express consent of HEINZ-GLAS.

g) All items provided and any existing copies must be returned to HEINZ-GLAS after refusal or execution of the order.

#### **13. Confidentiality**

a) The Supplier undertakes to treat all aspects of the business relationship as confidential, in particular any documents or information brought to his attention or provided. In particular, he shall treat as business secrets all commercial and technical details not publicly known that become known to him through the business relationship. Only information or aspects of the business relationship that were already publicly known at the time of disclosure, as well as information or aspects of the business relationship that were demonstrably already known to the Supplier prior to disclosure of the information by HEINZ-GLAS, are not subject to the obligation to confidentiality.

b) Documents and information from HEINZ-GLAS may be made available only to the persons executing the order from HEINZ-GLAS. The Supplier shall ensure that his employees also protect HEINZ-GLAS's legitimate interest in maintaining confidentiality.

c) The Supplier must not make documents and information from HEINZ-GLAS available to third parties without the prior express consent of HEINZ-GLAS.

d) The Supplier shall also be obliged to maintain confidentiality after the end of the business relationship.

#### **14. Other provisions**

a) The place of performance for all of the Supplier's deliveries and services, and the place of performance and payment for all of HEINZ-GLAS's services, shall be the headquarters of the respective company of HEINZ-GLAS designated as the point of destination.

b) The contractual relationship shall be subject to the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

c) The exclusive place of jurisdiction for all disputes arising in connection with deliveries and services of the Supplier of HEINZ-GLAS shall be the headquarters of the respective company of HEINZ-GLAS. However, HEINZ-GLAS shall also be entitled to file a suit at the Supplier's headquarters and at any other permissible place of jurisdiction.

d) Should individual provisions of this Agreement be or become invalid or contain loopholes, the remaining provisions shall remain hereby unaffected. In place of the invalid regulation, the Parties agree to implement a legally permissible regulation that comes as close as possible to the legal meaning and financial aim of the invalid regulation, or that fills the loophole.