



HEINZGLAS

Działdowo | Poland

MEMBER OF THE HEINZ GLAS GROUP

General Conditions of Sale „Heinz Glas Działdowo” Sp. z o.o.

1. These General Terms of Sale (hereinafter: „GTS”) shall apply to all sale, supply and service contracts concluded by “Heinz Glas Działdowo” Sp. z o.o. with its registered office in Działdowo (13-200 Działdowo, ul. Jagiello 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 the number: 0000104955, share capital of PLN 10,000,000 (hereinafter: “HGD”) with customers (hereinafter: „Buyer” or „Buyers”), whose subject matter are goods or services covered by the activity of HGD (hereinafter referred to as “Packaging”), with the exception of contracts concluded with consumers. These GTS apply both to contracts with Buyers who are Polish and foreign entities.

2. These GTS shall be binding for both HGD and the Buyer. HGD shall not be bound by any terms specified by the Buyer, even if HGD fails to make a separate disclaimer in this regard. The terms specified by the Buyer shall apply to HGD only if agreed by HGD in writing.

3. Where any of the provisions of GTS is contrary to the provisions of the contract, the provisions of the contract shall prevail.

4. Where any of the provisions of GTS is contrary to documents other than the contract, the provisions of these GTS shall prevail.

5. Placing an order by the Buyer shall mean that the Buyer has read GTS published www.hgd.pl

6. HGD’s prices are given on the assumption of Ex-Works delivery (INCOTERMS) and are net prices to be increased by VAT or other applicable taxes, fees and public charges resulting from the provisions of tax law, in the amount applicable as of the date of the VAT invoice.

7. Deliveries of Packaging shall be carried out in accordance with the clause EXW INCOTERMS 2010, address: ul. Wł. Jagiello 40, 13-200 Działdowo.

8. Packaging will be packaged in a manner as agreed upon by the Parties, whereby the cost of packaging will be included in the unit price of the Packaging.

9. Deliveries of Packaging beyond the place indicated in paragraph 7, shall be at the expense and risk of the Buyer. HGD shall not be liable for any damage, destruction or loss of Packaging during transportation.

10. The delivery times shall commence upon confirmation by HGD of the acceptance of the order for execution and shall apply only if all details of the order are agreed upon on time and all obligations of the Buyer are carried out on time.

11. Execution of individual orders may deviate from their contents within the acceptable margin for: quantities +/-15%, for deliveries +/-2 weeks. Also a variation in size, content, weight and colour tone of the Packaging resulting from production is acceptable. Deliveries referred to in the preceding sentences are considered to be duly executed by HGD, and the Buyer is obliged to accept the Packaging. HGD, according to its best knowledge, will provide information about the size and weight of Packaging shipped, and materials used as their packaging. This is not a guarantee that such information will be scrupulously complied with, therefore HGD shall not be liable for damage resulting from inconsistency of actual condition with information provided based on this paragraph.

12. Force majeure and other events which seriously limit the production or possibility to execute the order or cause logistical difficulties, shall form grounds for changing the lead times or for withdrawal from the contract by HGD. In this case, HGD shall be obliged to notify the Buyer in writing of such event, within 3 days of the occurrence of circumstances described in this paragraph. In the event of withdrawal from the contract under this paragraph, HGD shall not be liable for any damages arising from its withdrawal from the contract.

13. In the event of withdrawal by the Buyer from the contract less than 4 weeks before the confirmed date of manufacture, HGD may charge liquidated damages of 10% of the value of the order, as indicated in order confirmation. HGD may seek compensation in excess of liquidated damages.

14. The ordered Packaging must be collected within 90 calendar days of the date specified in order confirmation or within another time limit as agreed by the Parties. In the case of delay in collection of Packaging by the Buyer, HGD has the right to:

- 1) charge liquidated damages of 0.1% of the value of uncollected Packaging for each day of delay in collection, and
- 2) charge a sum of PLN 15 per day for each pallet of uncollected Packaging.

HGD may seek compensation in excess of the damages referred to in this paragraph. Liquidated damages referred to in item 1) above shall not apply, if the Buyer pays HGD 100% of price for uncollected Packaging.

15. Where the delay in the collection of Packaging exceeds 15 calendar days, HGD has the right, after ineffectively requesting the Buyer in writing to collect the Packaging within the additional time limit of 15 days from the date of receipt of such request, to destroy uncollected Packaging, and charge the Buyer with their value and any costs associated with the destruction and storage, including liquidated damages referred to in the preceding paragraph, to which the Buyer agrees.

16. HGD reserves the right to change the confirmed or agreed prices in the case of increased costs, changes in foreign exchange rates or foreign exchange regulations, changes in duties or changes in other factors beyond the control of HGD. HGD shall in such case notify the Buyer of the price change and of the order fulfillment status. In the case of price increase, the Buyer shall have the right to withdraw from the contract in respect of the unfulfilled order, of which the Buyer must notify HGD in writing within 5 working days of receipt of the new prices. After this date, the withdrawal is no longer possible. Changes in foreign exchange rates do not entitle the Buyer to cancel the confirmed order.

17. The date of payment shall be deemed to be the date on which the payment amount is credited to HGD’s bank account. Where the Buyer fails to pay on time, HGD shall be entitled to charge interest for late payment at the statutory rate, as determined by the regulations issued pursuant to the Civil Code, paid to HGD’s bank account.

18. Where the Buyer is late with payment of any sums due to HGD, HGD shall be entitled, without prior request to pay the sums due, to:

- 1) stay the execution of all orders confirmed until the sums are paid in full by the Buyer, and
- 2) require prepayment of the total price for the ordered Packaging.

If the late payment gives rise to withholding the release of the previously ordered and manufactured Packaging, HGD shall have the right to sell it to a third party, which also includes the possibility of HGD selling to the third party Packaging that has been manufactured according to design provided by the Buyer, to which the Buyer agrees.

19. The Packaging shall remain the property of HGD until it has been paid for in full.

20. The Buyer, in connection with purchasing the standard Packaging, will not acquire any intellectual property rights or any licence to use such rights, including any rights to copyrighted works, industrial designs, trademarks, patents, know-how related to the Packaging

21. The Buyer shall bear the costs of manufacture, delivery and replacement of tooling used for the production of customized Packaging. All rights to the technical documentation prepared in connection with the production of Packaging and know-how covered by such documentation, as well as all tooling used for the production of customized Packaging (including moulds and blank moulds), shall be vested in full in HGD, both throughout the term of the contract and thereafter, even if they have been paid for. At the same time HGD is required to maintain the tooling (moulds and blank moulds) and keep it ready for production throughout the term of the contract, until it has been worn due to normal wear and tear or for a maximum period of two years from the date of the last delivery.

22. The Buyer warrants that Packaging designs provided by the Buyer do not affect the existing laws, or any intellectual property rights of any third party, including copyrights, industrial property rights and personal rights of third parties, and their use, including the manufacture of Packaging based on such designs, will not violate any rights of third parties, will not constitute acts of unfair competition and will not violate the applicable laws. Furthermore, the Buyer ensures that it has the power to grant licenses to HGD referred to in the paragraph below, including permission to make modifications, changes, additions and redesigns of the supplied design of the Packaging. In the event where any of the representations made by the Buyer referred to in this paragraph is found to be incomplete or inaccurate, the Buyer agrees to indemnify HGD for any damage resulting therefrom (either pecuniary or non-pecuniary, direct and indirect), and satisfy any third party claims for infringement of intellectual property rights, and – where satisfaction of these claims is impossible – to cover all costs associated with it.

23. For the purpose of the exercise and fulfilment by HGD of any rights and obligations arising from these GTS, the Buyer shall HGD licence to:

- 1) use the supplied design of the Packaging in all fields of exploitation known at the time of conclusion of the contract, in particular those set out in Article 50 and Article 46 of the Law on Copyright and Neighbouring Rights of 4 February 1994 on (Journal of Laws of 2006, No. 90, Item. 631, as amended.), make modifications, changes, additions and redesigns, and
- 2) manufacture and/or use any works in which such design used or incorporated, and store these works for such purposes.

24. All catalogues, designs of Packaging, price lists and other documents obtained by the Buyer from HGD, shall remain the property of HGD. They must be returned to HGD at its request. The above requirement does not apply to: orders; order confirmations; contracts entered into between the Buyer and HGD; documents to be held by the Buyer under the provisions of law.

25. To be effective, any complaints must be made in writing at the following dates:

- 1) quantity related complaints – on the date of collection/receipt,
- 2) quality related complaints:
 - a) overt defects - within 5 working days from the date of discovery
 - b) hidden defects - immediately after their discovery, no later than 60 days from date of sales invoice.

A failure to comply with the requirements referred to in this paragraph shall result in the forfeiture of any claims for defects by the Buyer.

Slight deviations in quality, colour, size, weight, finish, design, etc., commercially permitted and/or technically unavoidable, shall not form a valid reason for complaint.

Along with the complaint, the Buyer shall be obliged to submit a complaint protocol to HGD and secure the Packaging covered by the complaint. HGD shall be obliged to consider the complaint within 14 days, with the right to check the Packaging covered by the complaint at Buyer’s premises or any other place in which they are stored, within 10 working days from the date of receipt of the complaint. Where the complaint is granted, HGD shall, at its option:

- a) deliver to the Buyer, at HGD’s own expense:
 - in the case of a quantity related complaint: the same amount of non-defective Packaging in place of defective Packaging,
 - in the case of a quality related complaint: the missing quantity of Packaging,
- b) lower the price:
 - in the case of a quantity related complaint: in proportion in which the value of Packaging is free from defects relative to the value thereof, taking into account the existing defects
 - in the case of a quality related complaint: by the value of missing Packaging.

Provisions of this paragraph cover all the Buyer’s claims in respect of HGD for defects of Packaging. HGD’s statutory warranty for defects shall be excluded from the regulation of this paragraph.

26. HGD’s liability shall be limited to the damage caused by wilful misconduct. To the extent permitted by mandatory provisions of Polish law, any HGD’s liability in excess of that arising from this paragraph and paragraph 30 below shall be excluded.

27. HGD does not assume any liability for the manner in which the Buyer uses the purchased Packaging.

28. The Buyer represents that it will not use the Packaging in a way that would lead to the creation of a dangerous product. Where any claims for damage caused by a dangerous product manufactured by the Buyer with the use of Packaging are made against HGD, the Buyer shall immediately indemnify HGD for such claims. In particular, the Buyer agrees to participate in the proceedings in place of HGD or support HGD in any court, arbitration or settlement proceedings, and bear all related costs and expenses, including the costs of legal services. The Buyer also agrees to take part, at its own cost, at the request of HGD or any competent authority, in any judicial or non-judicial proceedings in which HGD is involved, and relating to the damage caused by a dangerous products produced by the Buyer with the use of Packaging. Where HGD incurs any expenditure or costs in connection with third party claims for damage caused by a dangerous product produced by the Buyer using the Packaging, the Buyer shall reimburse HGD all expenses and costs incurred by HGD.

29. Buyer shall be obliged, during the term of the contract and after its expiry, to keep all information obtained from HGD in connection with the conclusion and execution of the contract confidential, not to disclose or transfer it to any third party and not to use it in its business activity. This confidentiality obligation shall not apply to information that:

- 1) has been made public without violating the law,
- 2) must be disclosed at the request of an authorized State authority or of the Court, acting within the limits of their powers,
- 3) must be disclosed to comply with the publication requirements required by law.

30. Matters not covered by these GTS, shall be governed by the provisions of the Civil Code and other laws applicable in Poland. Any disputes that may arise in connection these GTS or contracts concluded with the use of these GTS, shall be referred to the common Court with jurisdiction for the registered office of HGD or to the Court in Toruń.

31. The invalidity or unenforceability of any provision of these GTS shall not affect the validity and enforceability of the remaining provisions and the validity and enforceability of these GTS or a contract in which these GTS are used as a whole. In the event of invalidity or unenforceability of any provision of these GTS, the parties agree to make every effort to replace the invalid provision with a new provision that reflects the will and intention of the parties to the fullest extent possible.

32. In order to implement the contract and maintain ongoing relationships with customers, HGD is authorized to process the data of the Buyers. The Buyer hereby gives its consent to the processing of its data in order to implement the contract.

33. All contracts shall be governed by the provisions of Polish law.

34. These GTS shall take effect from 1 November 2012.