

## **H. J. HEINZ GROUP COMPANY STANDARD TERMS AND CONDITIONS OF PURCHASE FOR GOODS**

### **CONTENTS**

<b>Condition</b>	<b>Heading</b>	<b>Page</b>
1	Definitions and Interpretation .....	1
2	Contractual Basis.....	3
3	Food Safety & Quality .....	4
4	Warranty.....	6
5	Product Recall .....	7
6	Delivery .....	9
7	Acceptance of Goods .....	9
8	Title and Risk .....	10
9	Provision of Services.....	10
10	Prices and Payment .....	10
11	Tooling .....	11
12	Indemnity and Liability .....	12
13	Insurance .....	13
14	Confidentiality.....	13
15	Intellectual Property .....	14
16	Supply of Personnel .....	14
17	Termination .....	14
18	Data Protection .....	16
19	Assignment, Sub-Contracting and Third Parties.....	16
20	General .....	17
21	Anti-corruption Practices .....	18
22	Law and Jurisdiction .....	18

# **1 Definitions and Interpretation**

## **1.1 In these Conditions unless the context otherwise requires:**

**“Auditor(s)”** means, unless expressly stated otherwise, either Heinz’ own internal staff performing an audit or external third party auditor(s) as selected by Heinz;

**“Change of Control”** will occur in respect of the Supplier where control of the Supplier is obtained (whether directly or indirectly) by any person (either alone or together with persons acting in concert with it) who did not at the date of the Contract hold control (whether directly or indirectly) of the Supplier. For this purpose, “control” means the power to direct the management and policies of an entity whether through ownership of voting capital, contract or otherwise and “acting in concert” means acting together pursuant to an agreement or understanding (whether formal or informal);

**“Conditions”** means these H.J. Heinz Group Company Standard Conditions for the Purchase of Goods;

**“Contract”** means an agreement between Heinz and the Supplier for the supply of Goods as set out in these Conditions and the Contract Details, and as may be specified in an Order;

**“Contract Details”** means the details of the Contract as set out in the document headed “Heinz Contract for The Purchase of Goods” or in such other document setting out the details of the contracting parties and other specific information (and in case of any inconsistencies between the Contract Details and the Conditions, the Contract Details will prevail);

**“Goods”** means the goods (including any part or parts of them) which the Supplier is to provide to Heinz pursuant to an Order and in accordance with the Contract, and where the context so requires shall include any ancillary services to be provided by the Supplier pursuant to the purchase of such Goods;

**“Heinz”** means the Heinz Company set out in the Contract Details and/or any such other member(s) of the Heinz Group from which the Supplier accepts an Order;

**“Heinz Company”** means a company within the Heinz Group;

**“Heinz Group”** means Heinz and each company that holds shares in Heinz (whether directly or indirectly), and each company in which the holding company (or companies) of Heinz holds shares (whether directly or indirectly);

**“Incoterms”** means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2010;

**“Intellectual Property Rights”** means any patent, copyright (including moral rights and software), database right, design right, registered design, trade mark or service

mark (registered or unregistered), domain name, logo, know-how, utility model, unregistered design, recipe formulation or other industrial or intellectual property right subsisting in any part of the world and, where relevant, any application for protection or proprietorship of any such right and any right to make an application for registered protection for any such rights;

**“Legislation”** means all statutory requirements, regulations, rules, orders, directives, codes of practice, or other instruments having the force of law, all secondary legislation made under such legislation, and any amendments to such legislation that may from time to time be in force, all other standards or requirements enforceable by any authority within the European Community or European Union that are or may come into force relating to manufacturing, packaging, labelling, storage, carriage, delivery, traceability, recall and use of the Goods and/or performance of the Services;

**“Losses”** means all liabilities (including any tax liability), direct, indirect or consequential losses, damages, claims, proceedings or legal costs (on an indemnity basis), judgments, costs (including costs of enforcement) and expenses;

**“Order”** means any order from a Heinz Company to the Supplier for the supply of Goods as set out in the Contract Details or placed in accordance with Condition 2;

**“Product Recall”** means the recall or withdrawal from consumers or from any part of the distribution chain of Goods or products into which Goods have been incorporated or products that have been manufactured using the Goods, as a result of a determination by Heinz under Condition 5.4 or a requirement under the Legislation;

**“Recalled Goods”** means goods which are the subject of a Product Recall;

**“Services”** means any services ancillary to the provision of Goods which the Supplier may provide to Heinz as a result of the parties entering into a Contract;

**“Specification”** means Heinz’ specifications or stipulations for the Goods notified in writing to the Supplier;

**“Subcontractor”** means any entity of any tier (i) to whom the Supplier subcontracts any of its obligations under this Contract ; or (ii) who supplies any raw materials, packaging, ingredients or other components comprising or required in the manufacture or processing of the Goods;

**“Supplier”** means the person, firm or company which receives an Order from Heinz;

**“Tooling”** means tools, plates or other materials supplied or paid for (in whole or in part) by Heinz;

**“Working Day”** means a day which is not a Saturday, Sunday or Bank or Public Holiday in the country of registration of Heinz.

- 1.2 The headings to clauses and conditions are inserted for convenience only and shall not affect the interpretation or construction of these Conditions. Words importing the singular shall include the plural and vice versa. Words importing a gender include

every gender and references to persons include an individual, company, corporation, firm or partnership.

- 1.3 The words and phrases “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

## **2 Contractual Basis**

- 2.1 These Conditions must be read together with the Contract Details and the Order, including any schedules and documents mentioned therein. To the extent only of any conflict or inconsistency between these Conditions, the Contract Details and any Order, the order of precedence shall be as follows (in descending order of precedence): the Order; the Contract Details; the Conditions. All Orders shall be governed by and the Goods shall be supplied to Heinz in accordance with the Contract to the exclusion of all other terms and conditions which the Supplier purports to apply (including any terms or conditions which the Supplier purports to apply under any quotation, acknowledgement or any other document issued by the Supplier).

- 2.2 Subject to Conditions 2.3 and 2.6, an Order is an offer by Heinz to purchase Goods from the Supplier upon the terms and conditions set out in the Contract Details, these Conditions and the Order, and a binding obligation to supply the ordered Goods shall come into effect upon acceptance of the Order by the Supplier. The Supplier shall promptly inform Heinz, in writing, of its acceptance of the Order. However, unless the Order is previously withdrawn by Heinz, Orders shall be deemed accepted if not rejected in writing within 24 hours of Heinz placing the Order (and should there be any uncertainty, commencement of supply of the Goods will be deemed conclusive evidence of the Supplier’s acceptance of the terms and conditions set out in the Contract Details, these Conditions and the Order). The Supplier must quote the Contract Reference number on all correspondence and all invoices relating to any Contract.

- 2.3 No Order shall be capable of acceptance by the Supplier unless:

- (a) it is in writing on Heinz’ official order form and is signed by an authorised representative on behalf of Heinz; or
- (b) the Order is made electronically by a system agreed between the parties and the Order made has characteristics which in the circumstances indicate that it has been made by an authorised representative of Heinz.

- 2.4 If these Conditions are provided by Heinz to potential suppliers pursuant to a tendering process for the supply of Goods Heinz may order Goods electronically, by publicising its anticipated requirements and inviting bids from potential suppliers. All such bids shall be deemed to be offers to supply Goods to Heinz in accordance with these Conditions. If a supplier is successful in being selected by that process to supply Goods to Heinz, then Heinz shall notify the Supplier accordingly and a Contract shall come into effect.

- 2.5 There is no minimum volume obligation for any Contract, unless indicated in the Contract Details or otherwise agreed in writing. Any commitment by Heinz to a minimum volume obligation may be cancelled or amended by Heinz upon 6 (six)

months written notice to the Supplier.

- 2.6 If the Contract expressly refers to a Term then, subject to the early termination provisions set out in Condition 17, the Contract will commence on the stated commencement date and automatically terminate on the stated expiry date. During that Term then unless expressly agreed otherwise in writing, the Supplier may not refuse to accept an Order, Heinz will have no commitment to purchase any quantity of Goods except to the extent stated in an Order or in the Contract Details, and the price of the Goods will remain fixed for the Term.
- 2.7 Unless expressly stated otherwise, the supply of Goods by the Supplier shall be on a non-exclusive basis, and Heinz shall not be prevented from acquiring the Goods or similar goods from other suppliers.
- 2.8 No Heinz Company shall be liable for the undertakings or obligations of any other Heinz Company. Only the Heinz Company placing an Order shall be liable for Heinz' obligations in relation to such Order.

### **3 Food Safety & Quality**

- 3.1 The parties acknowledge that food safety and quality of Heinz' products is of paramount importance and is a key priority for Heinz. The Supplier shall commit to sourcing, producing and delivering safe and quality goods by establishing, implementing, documenting and maintaining a quality (including but not limited to food safety) management system and continually monitoring and improving the effectiveness of such system.
- 3.2 The Supplier shall only order or source all or any raw materials, packaging, ingredients or other components comprising or required in the manufacture or processing of the Goods from locations and/or suppliers approved by Heinz in writing from time to time. Any amendment to agreed approved suppliers and/or locations proposed by the Supplier shall be subject to Heinz' prior written consent which will only be granted if it is, in Heinz' sole opinion, justifiable on the basis of improved quality or added value, and in any event subject to compliance by the proposed source supplier or the Supplier's proposed location with Heinz' quality assurance requirements set out in the Specification. In the event of any change by the Supplier in the source suppliers used or the locations selected which results from any introduction or recommendation made by Heinz, the Supplier agrees that it will pass to Heinz the benefit of any reduction in the cost of producing the Goods (including any reduction in the costs of the raw materials, packaging, ingredients or other components).
- 3.3 Any changes proposed by the Supplier, including but not limited to changes to ingredients, packaging, design, formulae, process methods or production and-or storage facilities (notwithstanding the fact that the Supplier may continue to comply with the Specification), shall be subject to Heinz' prior written consent, which will only be granted if it is, in Heinz' sole opinion, compliant with Heinz' quality assurance requirements and, in particular, the industry standard guidelines set by the Hazard Analysis Critical Control Point assessment. Any such change shall be in compliance with the Heinz vendor change control process as notified to the Supplier from time to time.

- 3.4 The Supplier shall, and shall ensure that its Subcontractors shall, keep all records relating to the Goods (and their manufacture) and Services, as may be required by all Legislation or as would otherwise be kept as good business practice or under the principles of orderly accounting. The Supplier shall maintain a validated and accurate traceability system to ensure raw materials and/or finished goods can be traced throughout their entire life cycle. The Supplier shall make such traceability information and records available to Heinz as Heinz may reasonably require for a period of six years after the end of this Contract. Before it destroys such information and records after such six-year period, the Supplier shall offer them to Heinz at no cost.
- 3.5 The Supplier shall at all times comply with the H. J. Heinz Company Supplier Guiding Principles as notified by Heinz to the Supplier from time to time, or as published at [www.hjheinz.com](http://www.hjheinz.com).
- 3.6 To assure Heinz of the Supplier's quality control the Supplier shall:
- (a) where required by Heinz provide samples from each production batch of Goods for inspection or testing;
  - (b) upon request by Heinz demonstrate to Heinz' satisfaction that it uses quality procedures and systems for the production of Goods and performance of Services which will ensure conformity to the Specifications and the Contract; and
  - (c) upon request by Heinz, deliver all records as maintained by the Supplier in accordance with Condition 3.4.
- 3.7 Without prejudice to any other rights under the Contract Heinz shall have the right at any time to conduct an audit of the Supplier and/or any Subcontractor and/or its or their operations, facilities, procedures, systems and insurance arrangements to ensure compliance with Heinz' requirements, all Legislation and the Specification, Order and Contract. Heinz and its Auditors shall be entitled to have access to the Supplier's and its Subcontractors' premises to conduct such audits. The Supplier shall, and shall procure that its Subcontractors shall, permit Heinz or its Auditors to have access to and take copies of records and documentation necessary to allow Heinz to comply with all applicable Legislation or otherwise reasonably required by Heinz. The Supplier shall, and shall procure that its Subcontractors shall, promptly co-operate with Heinz and its Auditors. The Supplier shall and shall procure that its Subcontractors shall implement the recommendations of the Auditors at the Supplier's cost and within the timeframe specified by Heinz. In the event of an audit being deemed necessary by Heinz as a result of a material non-conformance or failure within the supply chain, the Supplier shall pay the full costs of the audit. In the event of an audit and/or quality investigation being performed as a consequence of a quality issue, Heinz reserves the right to withhold payment of any sums payable for any of the Goods until it is confirmed that the Goods, the Supplier and any Subcontractors complied with Heinz' requirements, all Legislation and the Specification, Order and Contract. No interest shall be chargeable on any withheld sums.
- 3.8 Heinz shall where reasonably possible give the Supplier and its Subcontractors reasonable notice of an audit pursuant to Condition 3.7, and carry out such audit in

normal working hours.

#### **4 Warranty**

4.1 The Supplier undertakes, represents and warrants to Heinz that the Goods and their packaging and labelling shall:

- (a) be accompanied with accurate, complete and comprehensible instructions for the treatment, assembly use and/or storage of the Goods;
- (b) conform to the Specification and with any instructions of Heinz, and shall otherwise meet the requirements of the Contract and the Order;
- (c) be of satisfactory quality, free from defects in materials and workmanship, fit for their intended purpose (whether such purpose is implied or expressly stated in the Specification or Contract), be safe, and where intended for human consumption, be fit for the same purpose, be wholesome, healthy and not injurious to health and meet standard product quality attributes, including but not limited to those of appearance taste and aroma;
- (d) be free from design and other inherent defects (save to the extent that the Goods have been supplied in accordance with designs of Heinz);
- (e) comply with all Legislation in the country of manufacture and the country in which the Goods are to be delivered, processed and/or marketed;
- (f) conform strictly as to quality, quantity and description with any samples provided by the Supplier for the purpose of supply of Goods of that type;
- (g) conform with Heinz' European Quality Policies from time to time to the extent relevant including but not limited to the H.J. Heinz policies on Meat and Animal Welfare, Pesticide, Ethics and Allergies Policies, as set out in the Specification;
- (h) unless otherwise required by Heinz having given written notice to the Supplier, not contain ingredients which have been subject to irradiation process; and
- (i) unless otherwise required by Heinz having given written notice to the Supplier, not contain ingredients wholly or partially composed of or containing materials produced by or derived from genetic modification, recombinant DNA technology or nano technology.

4.2 If Heinz so requests, the Supplier shall transfer or assign to Heinz or otherwise obtain for the benefit of Heinz any guarantee, warranty or other confirmation of quality, title or fitness for purpose given by any manufacturer of the Goods in respect of the Goods (or part thereof) to the extent that the same is capable of such transfer or assignment to Heinz or otherwise providing such benefit for Heinz.

4.3 Where there is any breach of the Supplier's warranty in Conditions 4.1 or 9.1 or if any obligation, warranty or requirement imposed by, given or stated in the Contract in respect of the Goods or Services is not complied with, or the Goods or any instalment of the Goods are not delivered at the specified time or the Goods delivered are damaged Heinz shall be entitled, at its sole discretion without liability to the Supplier (arising out of such action) and without prejudice to any other right or remedy Heinz

may have (contractual, statutory or otherwise), to take one or more of the following actions to:

- (a) reject the relevant Goods (in whole or in part) and any Goods already delivered which cannot be effectively and commercially used by reason of the non-delivery of any undelivered Goods; and/or
- (b) refuse to accept any subsequent delivery of Goods; and/or
- (c) require the Supplier at its sole cost to replace or repair the unsatisfactory Goods or carry out such work as is necessary within a reasonable period to be indicated by Heinz in writing, but not to exceed 14 days so that the Goods conform to the Contract, Order and Specification; and/or
- (d) withhold payment of the price for the Goods until the requirements of the Contract, Order and any Specification are entirely fulfilled; and/or
- (e) require the repayment of any part of the price of the Goods which Heinz has paid whether or not Heinz has previously required the Supplier to repair the Goods, supply any replacement Goods or re-execute the Services.

4.4 Where Heinz has rejected the Goods (in whole or in part), the Supplier shall promptly contact Heinz and arrange for collection of the Goods as soon as possible. Where collection has not taken place within a reasonable period of time, to be notified in writing by Heinz, Heinz may recover from the Supplier any incremental storage and handling costs incurred by Heinz and, at a cost rechargeable to the Supplier, either;

- (a) destroy the Goods; or
- (b) return the Goods to the Supplier.

4.5 If Heinz claims that an Order has not been fulfilled or has been incorrectly fulfilled the Supplier shall be deemed to accept the validity of the claim unless it serves written notice on Heinz disputing the said claim and stating the reasons for its dispute within 7 (seven) days of the date of the said claim.

## **5 Product Recall**

5.1 The Supplier shall supply to Heinz in writing on execution of the Contract or on receipt of an Order (whichever event is the earlier) a contact name and telephone details of a person who will be available 24 hours a day, every day of the year. That nominated contact must be sufficiently competent to deal with any material crisis which affects Heinz, including Product Recall, at all times.

5.2 The Supplier shall have in place a Product Recall procedure to ensure that all quality incidents and Product Recall situations are managed effectively and in a timely manner and shall provide evidence thereof to Heinz upon request. Such procedure shall include a provision to ensure effective communication is maintained with Heinz.

5.3 Without prejudice to any obligation to inform any competent regulatory authority under the Legislation, the Supplier shall immediately notify Heinz in writing providing all relevant details if it discovers that there is:



- (a) any defect in the Goods which have been delivered to Heinz at any time (whether or not any such defect represents a breach of the warranty in Conditions 4 or 9 or any other Condition) which causes or may cause any risk of death, injury, damage to property or loss of reputation to Heinz or any of its brands; or
- (b) any reason to believe that any Goods are not in compliance with the Legislation;
- (c) any product recall or withdrawal pertaining to the Supplier's production or storage facilities regardless of whether or not involving Goods supplied to Heinz.

5.4 Heinz may withdraw or recall any Goods or any other products into which the Goods have been incorporated or products that have been manufactured using the Goods already sold by Heinz to its customers, if Heinz believes in its absolute discretion that the Goods may, for whatever reason, be not in accordance with Legislation, injurious to health or unfit for human consumption or where the continued sale of the Recalled Goods would be inconsistent with the principles and standards applicable to good food production or would cause loss of reputation to Heinz or any of its brands.

5.5 If there is a Product Recall the Supplier will cooperate with Heinz to ensure that the Product Recall is promptly and effectively dealt with. The parties shall have the following respective responsibilities:

- (a) the Supplier will enforce local procedures covering Product Recall subject to the Legislation and (to the extent not inconsistent with the Legislation) any directions received from Heinz;
- (b) the Supplier must ensure that it retains all batch records and product information pertaining to the Recalled Goods and shall make the same available to Heinz within four hours of notification of the recall of the Recalled Goods. The Supplier shall quarantine the Recalled Goods and Goods that Heinz or the Supplier believe are likely to be subject to the same defect or problem as the Goods that caused the Product Recall and shall not destroy such quarantined Recalled Goods without Heinz' prior written approval. The Supplier shall advise Heinz of the location of all Recalled Goods so that a reconciliation may be carried out;
- (c) as required by the Legislation and/or on request from Heinz the Supplier will cease delivering Goods that Heinz believes are likely to be subject to the same defect or problem as the Goods that caused the Product Recall;
- (d) the Supplier will ensure all of the Supplier's relevant personnel are aware of and prepared for applying the Product Recall proceeding set out in or referred to in this Condition 5;
- (e) the Supplier will only supply Goods replacing the defective Goods on Heinz' request;
- (f) all press or other enquiries relating to Recalled Goods or the Product Recall shall be dealt with by Heinz and the Supplier shall not, without the written consent of

Heinz, deal with such enquiries. Any enquiries received by the Supplier shall be immediately referred to Heinz;

- (g) Heinz shall be solely responsible for the publication of any notices or press releases associated with a Product Recall.

## **6 Delivery**

- 6.1 Delivery of the Goods shall take place strictly in accordance with Heinz' delivery instructions whether given in the Contract, or in an Order or separately. Heinz shall have the right to change its delivery instructions at any time. Each delivery must be clearly marked in accordance with the Specification and/or the Contract and/or the Order. If no delivery instructions are provided, then delivery will take place DDP (Incoterms 2010) (Heinz' place of business where deliveries of similar goods normally take place) and Heinz shall be responsible for unloading the Goods, unless otherwise agreed in writing.
- 6.2 Time of delivery is of the essence of the Contract, and all agreed timeframes shall be considered crucial. In the event that the Supplier attempts to deliver the Goods before the specified delivery time, Heinz shall be under no obligation to accept delivery of the Goods.
- 6.3 Heinz shall not be obliged to accept Goods which vary in quantity, weight or otherwise from those specified in the Specification, the Order and/or the Contract.
- 6.4 The Supplier shall ensure that the Goods will be properly and safely packed and secured in such a manner as to i) reach their destination undamaged and in good condition and according to the Specification and ii) not cause damage or risk to any person or property. Heinz shall not be obliged to return to the Supplier any packaging materials for the Goods unless otherwise agreed in writing.
- 6.5 The Supplier shall maintain adequate labour and manufacturing facilities sufficient to meet the planned requirements of Heinz. The inventory is held at the Supplier's risk and cost and Heinz has no liability for the inventory. Heinz is only liable to pay for Goods ordered in accordance with the Contract and has no liability for any inventory which is not used or becomes obsolescent. Any forecasts by Heinz are indicative only and are not binding.
- 6.6 The provisions of any Incoterm specified in the Contract Details shall apply and take precedence over these Conditions.
- 6.7 The Supplier shall comply with all export and import legislation, regulation and controls, including obtaining export and import licences, and paying all applicable duties, and shall obtain all other consents required to deliver the Goods and perform any Services.

## **7 Acceptance of Goods**

- 7.1 No inspection or testing by Heinz whether before or after delivery of the Goods nor the signing of any delivery note or other document acknowledging physical receipt of any Goods shall be deemed to constitute or evidence acceptance or approval of the Goods nor be deemed a waiver of Heinz' rights or remedies (contractual, statutory or otherwise) where the Goods are found to be defective or not in accordance with the

Contract, Order or Specification.

- 7.2 The Supplier shall promptly inform Heinz of any matter relating to the storage, transportation, handling, assembly or use of the Goods by Heinz (including legislation or advice from responsible or professional or legal bodies in respect of raw materials used in the manufacture of the Goods) and the actions it has taken or proposes to take and those that Heinz should take in relation to such matters.

## **8 Title and Risk**

The Goods shall be at the risk of the Supplier until they are delivered in accordance with the Contract when, without prejudice to any right of rejection which Heinz may have under the Contract or by law, title to and risk in the Goods shall pass to Heinz, provided that if Heinz pays for the Goods prior to delivery, title to the Goods shall pass to Heinz when payment is made and the Supplier shall be liable for the safe and appropriate storage of the Goods on Heinz' behalf until the Goods are delivered.

## **9 Provision of Services**

- 9.1 If any Services are to be performed by the Supplier then, the Supplier undertakes, represents and warrants to Heinz that:
- (a) the Supplier shall carry out the Services strictly in accordance with the Contract, the Specification and all applicable Legislation and complying with any other requirements which Heinz notifies the Supplier of, including policies relating to the Site where the Services are to be performed;
  - (b) the Services will be performed by appropriately qualified and trained personnel with due care and diligence and to such high standard of quality as it is reasonable for Heinz to expect in all the circumstances.

## **10 Prices and Payment**

- 10.1 The price of the Goods and/or Services shall be stated in the Contract Details. The price shall be inclusive of all packaging, packing, labelling, insurance, delivery, installation costs and all other costs incurred by the Supplier in relation to the Goods and their delivery unless otherwise specified. Save as otherwise permitted under the Contract, the Supplier shall not apply any increases to the price or any other sums payable by Heinz to the Supplier under the Contract nor levy any additional charges whatsoever on Heinz without the prior written consent of Heinz.
- 10.2 All prices payable under the Contract are exclusive of VAT and any other applicable tax or duty payable upon such sums.
- 10.3 The Supplier may only invoice Heinz on or after delivery of the Goods and invoices submitted early shall be deemed received on the date of delivery of the Goods. Heinz' Contract and/or Order number shall be quoted clearly on each invoice and on all invoice correspondence and advice notes. Invoices shall be drawn up in compliance with any applicable Legislation (including any applicable tax and VAT requirements), in such form as Heinz specifies from time to time and shall be addressed to either:
- (a) the Accounts Department at the address of Heinz set out in the Contract Details;  
or
  - (b) the Accounts Department at the address of the Heinz Company placing the

Order (in the event that an Order is placed by a Heinz Company other than the Heinz Company named in the Contract Details).

- 10.4 Unless an other payment term is agreed in writing, Heinz shall pay the price of the Goods 3 (three) months and 7 (seven) Working Days from the end of the month in which the delivery was made or the invoice received by Heinz (whichever is the later) subject to any shorter payment terms which are mandatory under applicable Legislation, in which case the maximum payment term that can be agreed between the Parties under such Legislation shall apply.
- 10.5 If any sums are due to Heinz from the Supplier, then Heinz shall be entitled to exercise the right to set-off such sums against any payments due to the Supplier from Heinz under or in relation to the Contract or any other contract.
- 10.6 Any money paid by Heinz to the Supplier in respect of any Goods rejected under these Conditions together with any additional expenditure over and above the price specified in the Contract reasonably incurred by Heinz in obtaining other goods in replacement of any rejected Goods shall be paid by the Supplier to Heinz within 7 Working Days of the date of Heinz' notice demanding the same or, at Heinz' sole option, shall be deducted from the money still to be paid by Heinz to the Supplier in relation to such Goods.
- 10.7 Unless otherwise stated in the Contract, Goods shall be priced in, and payment made in Euros. If the Contract stipulates a different currency then Heinz may at its absolute discretion pay the Supplier in that currency or in Euros or UK Pounds Sterling, applying the spot exchange rate quoted by HSBC Bank plc at 5pm on the Working Day preceding the due date for payment.

## **11 Tooling**

- 11.1 All Tooling shall be and remain solely Heinz' property and shall not be used by the Supplier for any purpose other than the performance of its obligations under any Contract with Heinz. The Supplier shall not dispose of the Tooling without Heinz' prior written permission and shall return at the Supplier's sole risk and cost the Tooling to Heinz as Heinz requires.
- 11.2 The Supplier shall:
- (a) whilst not in use keep Tooling separate and readily identifiable as Heinz' property;
  - (b) at its own expense keep Tooling insured for full replacement value against all usual risks and apply proceeds of such insurance for replacement of Tooling;
  - (c) store safely, treat with due care and keep in good condition (fair wear and tear exempted) all Tooling;
  - (d) not charge by way of security for any indebtedness nor, without Heinz' prior written consent, sell dispose of or destroy Tooling; and
  - (e) at its own expense make good or replace all Tooling damaged or lost due to its own negligence.

## **12 Indemnity and Liability**

12.1 The Supplier acknowledges that Heinz places particular reliance upon the Contract and in addition to any other remedy available to Heinz, the Supplier irrevocably and unconditionally agrees to indemnify Heinz and other members in the Heinz Group, their customers, employees, sub-contractors and agents in full and keep them so indemnified against all Losses which are or are to be made against or incurred or suffered by any of them and whether wholly or in part resulting from the matters listed below whether or not such Losses or the consequences of the matters listed below were foreseeable at the date of the Contract:

- (a) any claims that the Goods or Services infringe the Intellectual Property Rights of any third party by reason of the use, purchase or sale by Heinz of the Goods, or any products in which the Goods have been incorporated (save to the extent that the Goods or Services have been supplied in accordance with the Specification or designs of Heinz), in which case Heinz' Losses will, without limitation, include any royalties paid or payable to any third party and any Losses incurred in relation to the defence and settlement of any claim relating to the infringement of Intellectual Property Rights;
- (b) any breach of the Contract by the Supplier, its employees, agents or sub-contractors or any act or omission by any of them including any delays in which case Heinz' Losses will, without limitation, include any costs or liabilities incurred by Heinz in having to cancel any Order as a result of any such breach, act or omission or any other warranty or condition concerning the Goods or Services whether express or implied by statute or otherwise;
- (c) any failure of the Goods to comply with Legislation in which case Heinz' Losses will, without limitation, include any liability incurred under Legislation relating to consumer protection and product liability in respect of the Goods;
- (d) any termination of the Contract pursuant to Condition 17;
- (e) any Product Recall which is initiated due to any failure by the Supplier to comply with its obligations under these Conditions, or due to any other defects in the Goods, in which case Heinz' Losses will, without limitation, include:
  - (i) the value of all Recalled Good(s) at the delivery price;
  - (ii) all costs incurred or to be incurred by Heinz in the testing, sorting and destruction of affected stock;
  - (iii) all incremental storage and transportation charges incurred or to be incurred by Heinz;
  - (iv) any charges incurred or to be incurred by Heinz arising from any withdrawal from trade and retrieval from end user of Recalled Goods;
  - (v) any costs or penalties arising from any claim or prosecution brought against Heinz;
  - (vi) loss of sales caused by the Recalled Goods being out of stock at the point

of sale; and

(vii) any costs of public relations advice and publication of recall notices.

- 12.2 The Supplier shall provide all facilities, assistance and advice required by Heinz or its insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance, or purported performance of, or failure to perform, the Contract.
- 12.3 Subject to Condition 12.4, Heinz shall have no liability to the Supplier for any economic, consequential or indirect loss (including loss of profit, goodwill or reputation) howsoever arising whether in negligence, breach of contract or statutory duty or otherwise.
- 12.4 Nothing in the Contract shall exclude or limit liability for (i) death or personal injury arising from a party's negligence, (ii) fraud or fraudulent misrepresentation, or (iii) any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, liability.

### **13 Insurance**

- 13.1 The Supplier shall at its own cost take out and keep in place, with reputable insurers, such insurance policies as are appropriate and adequate having regard to its obligations and liabilities under the Contract (hereinafter referred to as the "Insurances") including:
- (a) Product Liability Insurance; and
  - (b) Public Liability Insurance; and
  - (c) Employers' Liability Insurance; and
  - (d) if Goods are for resale by Heinz, or are incorporated in any products sold by Heinz, Product Recall Insurance,
- each in the sum of not less than €5 million (five million Euros) for any one incident. The Supplier shall on the written request of Heinz provide reasonable details of its insurance cover and the translation of any documents shall be at the Supplier's cost. On the renewal of each policy, the Supplier shall send a copy of the new insurance certificate to Heinz when requested to do so in writing by Heinz. The Supplier shall do nothing to invalidate any of the policies maintained in force in accordance with this Condition 13. The Supplier shall name Heinz as an additional insured on the Insurances. Each policy of insurance shall stipulate that it is primary insurance and that no insurance that Heinz carries shall be called upon to contribute to or reimburse any loss that the policy covers.

### **14 Confidentiality**

- 14.1 The Supplier shall keep and procure to be kept secret and confidential all information disclosed or obtained as a result of the relationship of the parties under the Contract and shall not use nor disclose the same save for the purposes of the proper performance of the Contract or with the prior written consent of Heinz.
- 14.2 The obligations of confidentiality in this Condition 14 shall not extend to any matter which the Supplier can show is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under these Conditions; was in its written records prior to entering into the Contract; was independently disclosed

to it by a third party entitled to disclose the same; or is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

- 14.3 The Supplier shall not make any announcement or otherwise publicise the existence of or disclose to any person the provisions of the Contract without the prior written consent of Heinz.

## **15 Intellectual Property**

- 15.1 All materials including any Specification(s) supplied by Heinz, and any copies made by or for the Supplier shall be the property of Heinz, shall only be used for the purposes of the Contract, shall be treated by the Supplier as strictly confidential and, upon Heinz' request, shall be returned by the Supplier immediately at the Supplier's sole risk and cost.
- 15.2 Any and all Intellectual Property Rights created or acquired in the course of or as a result of any work carried out by the Supplier and/or its Subcontractors under or in pursuance of the Contract, shall, from the date of their creation or acquisition by the Supplier and/or its Subcontractors belong exclusively, in perpetuity, throughout the world, to Heinz. The Supplier will assign or procure the assignment with full title guarantee to Heinz of all such Intellectual Property Rights.
- 15.3 Without prejudice to the other provisions of this Condition 15, where necessary, the Supplier shall grant or procure the grant of an adequate licence or sub-licence to Heinz at no extra cost, of any Intellectual Property Rights which the Supplier does not own, incorporated or utilised in any work done or Goods or Services supplied by the Supplier for Heinz in pursuance of the Contract sufficient to enable Heinz (without infringing any third party's Intellectual Property Rights and without paying any royalty or payment) to make full use of the results of such work or such Goods or Services and to repair, update or maintain the work or such Goods or Services in which such results are incorporated.
- 15.4 The Supplier hereby agrees and undertakes promptly at the request of Heinz, but at its own cost, to do all such acts or deeds, or execute all such documents as may be required by Heinz to give effect to the provisions and intentions of this Condition 15.
- 15.5 The Supplier waives all its moral rights arising from any copyright in the Goods or Services insofar as it is lawful to do so.

## **16 Supply of Personnel**

Any personnel engaged by the Supplier for carrying out any of the Supplier's obligations under this Contract shall at all times be deemed to be in the employment of Supplier, and if working at Heinz' site shall comply in all respects with all site rules applicable to Heinz' premises.

## **17 Termination**

- 17.1 Heinz may terminate the Contract without payment of compensation or other damages caused to the Supplier solely by such termination by giving between 0 and 90 days' notice in writing to the Supplier if any one or more of the following events happens:

(a) the Supplier commits a material breach of any of its obligations under these

Conditions which, in Heinz' reasonable opinion, is incapable of remedy;

- (b) the Supplier fails to remedy, where in Heinz' reasonable opinion it is capable of remedy, or persists in any breach of any of its obligations under these Conditions after having been required in writing to remedy or desist from such breach within such reasonable period as specified by Heinz in writing;
  - (c) the Supplier has applied for or been granted a suspension of payments or the Supplier or its creditors have taken other measures or started negotiations with a view to proposing any kind of composition, compromise or arrangement involving the Supplier and any of its creditors;
  - (d) subject to mandatory Legislation applicable in the country where the Supplier is incorporated, any step or proceeding is taken (i) for the appointment of an administrator, liquidator, provisional liquidator, administrative receiver, receiver, trustee in bankruptcy or other similar officer in relation to the Supplier or over any or all of the Supplier's assets or undertaking, (ii) with a view to seeking a moratorium or a voluntary arrangement in relation to the Supplier, (iii) to enforce any legal process or execution against any of the assets of the Supplier or (iv) by any creditor of the Supplier to enforce its security;
  - (e) subject to mandatory Legislation applicable in the country where the Supplier is incorporated, the Supplier suffers or undergoes any procedure analogous to any of those specified in Conditions 17.1(c) and 17.1(d) above or any other procedure available in the country in which the Supplier is constituted, established or domiciled against or to an insolvent debtor or available to the creditors of such a debtor;
  - (f) the Supplier undergoes a Change of Control to any person which Heinz reasonably considers to be a competitor to any member of the Heinz Group.
- 17.2 If a Term is stated in the Contract Details Heinz may terminate the Contract, in whole or in part, by one month's written notice for each remaining year (or part year) of the Term subject to a maximum of 3 months.
- 17.3 Subject to Condition 17.4, the Supplier may terminate this Contract by giving not less than 30 days written notice to that effect to Heinz if Heinz fails to make any payment due to the Supplier under this Contract within a period of 30 days from the Supplier giving written notice specifying that such payment is overdue.
- 17.4 The right of termination set out Condition 17.3 will not arise in respect of any failure to make payment of any sum to the extent that such sum is and remains the subject of a bona fide dispute.
- 17.5 The termination of the Contract shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination. The right to terminate the Contract pursuant to this Condition 17, and the exercise of such rights shall be in addition to any other right or remedy of Heinz in respect of any breaches of the Contract.
- 17.6 Upon termination of the Contract for any reason whatsoever:



- (a) any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect;
- (b) the Supplier shall immediately return to Heinz (or if Heinz so requests by notice in writing, destroy) all of Heinz' property in its possession including any prints or moulds, Tooling, all confidential information, recipes or process information required by Heinz to produce the Goods or have the Goods produced on its behalf, together with all copies of such confidential information and shall certify that it has done so, and shall make no further use of such confidential information.

## **18 Data Protection**

### **18.1 The Supplier consents to Heinz and any Heinz Company:**

- (a) processing any personal data which the Supplier provides or is collected from the Supplier at any time (whether before, during or after the term of this Contract):
  - (i) in connection with Heinz and/or the relevant Heinz Company receiving the benefit of and/or performing its obligations under this Contract (including payment processing and supplier relationship management); and/or
  - (ii) otherwise in accordance with applicable data protection legislation;
- (b) processing and/or disclosing any such personal data in connection with any merger, sale or acquisition of a company or business in which Heinz or any Heinz Company is involved; and
- (c) transferring such personal data to countries outside the European Economic Area, where required under data transfer agreements incorporating standard contractual clauses approved by the European Commission:
  - (i) for the purposes of receiving the benefit of and/or performing obligations under this Contract and/or supplier relationship management; and/or
  - (ii) otherwise in accordance with applicable data protection legislation.

### **18.2 The Supplier will notify its relevant employees of Heinz' rights under Condition 18.1.**

## **19 Assignment, Sub-Contracting and Third Parties**

- 19.1 Heinz reserves the right to perform any of its obligations or exercise any of its rights under the Contract through any other member of the Heinz Group. Any member of the Heinz Group may enforce any provisions of the Contract on its own behalf or on behalf of any other member of the Heinz Group. Save as provided in this Condition 19.1, the parties do not intend that any term of this Contract will be enforceable by any person who is not a party to it. The parties may vary or rescind this Contract without the consent of any Heinz Company.
- 19.2 The Contract is personal to the Supplier. The Supplier shall not assign, delegate, transfer, charge, factor or otherwise dispose of all or any of its rights and responsibilities under the Contract without the prior written consent of Heinz.

- 19.3 Heinz may assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract to any member of the Heinz Group at any time without the prior written consent of the Supplier.
- 19.4 The Supplier may only sub-contract any of its obligations under the Contract if:
- (a) the Supplier obtains the prior written consent of Heinz (not to be unreasonably withheld or delayed), supplying all information reasonably required by Heinz;
  - (b) the Supplier shall at all times remain liable to Heinz for the performance of all its duties and obligations under the Contract;
  - (c) the Supplier shall require any Subcontractor to be bound by all appropriate obligations corresponding to those placed on the Supplier under the Contract;
  - (d) the Supplier shall require the Subcontractor not to sub-contract or otherwise delegate its responsibilities;
  - (e) the Supplier shall retain the right to terminate any agreement with any Subcontractor if there is any material breach by the Subcontractor of such an agreement; and
  - (f) the Supplier, on Heinz' option, shall require any such Subcontractor to covenant directly with Heinz to observe and perform the obligations placed on the Supplier by the Contract.

## **20 General**

- 20.1 The Supplier shall not exercise any right of lien, general or otherwise and howsoever arising, over any Goods or any other property including Tooling in the Supplier's possession, in respect of any sums owed by Heinz to the Supplier under the Contract or otherwise.
- 20.2 Nothing in these Conditions shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties and no employee of the Supplier shall be deemed to be or have become an employee of Heinz.
- 20.3 Except to the extent permitted elsewhere in the Contract no purported alteration or variation of the Contract shall be effective unless it is in writing, refers specifically to the Contract and is signed by a duly authorised representative of each of the parties to the Contract.
- 20.4 The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 20.5 If any judicial or other competent authority declares any provision of this Contract to be void, voidable, illegal, or otherwise unenforceable, such provision shall be severed from this Contract and the remaining provisions of this Contract shall remain in full force and effect. In any such instance, the parties undertake to negotiate in good faith a new Condition lawfully maintaining a fair balance between their respective rights and obligations.

20.6 Any notice given under the Contract shall be in writing and delivered by hand, sent by fax, or sent by pre-paid recorded delivery to the fax number and address of the party specified in the Contract, or such other fax number or address as is notified to the other party from time to time. Any notice so served by hand, fax or pre-paid recorded delivery shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, at 10 am on the second Working Day following the date of posting,

provided that in each case where delivery by hand or by fax occurs after 6 pm on a Working Day or on a day which is not a Working Day, service shall be deemed to occur at 9am on the next following Working Day. References to time in this Condition are to local time in the country of the addressee.

20.7 The Contract constitutes the entire agreement between the parties and supersedes all previous agreements, correspondence, discussions and negotiations between the parties relating to its subject matter.

20.8 Neither party has entered into the Contract in reliance upon, and, subject to Condition 12.4, it will have no remedy in respect of, any misrepresentation, representation or statement which is not expressly set out in this Contract.

## **21 Anti-corruption Practices**

The Supplier and any of its affiliated companies or persons involved in performing this Contract agree to comply with all applicable anti-corruption laws (including the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act 2010 and the laws of any other applicable jurisdiction) and agree not to pay any bribe (including any facilitating or expediting payment) in order to benefit Heinz. The Supplier's attention in this regard is specifically directed to Heinz' Global Code of Conduct, which is available on [www.heinz.com](http://www.heinz.com).

## **22 Law and Jurisdiction**

22.1 The Contract (and any non-contractual obligations arising out of or in connection with it) and any disputes or claims arising out of or in connection with it shall be governed by, and construed in accordance with the laws of England.

22.2 The courts of England will have exclusive jurisdiction to determine any dispute arising out of or in connection with this Contract (including (without limitation) in relation to any non-contractual obligations) provided that any party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.

22.3 The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) 1980 shall not apply.

22.4 These Conditions may be set out in the English language and a language other than English. If there is inconsistency between the English language version and any other language version of these Conditions or there is a conflict in the interpretation of these

Conditions, the English language version of these Conditions shall prevail.