



HEINZ IRELAND TERMS & CONDITIONS OF SALE

Our Contact Details

For ease of reference, please find set out below relevant contact details should you have any queries or comments:

H.J. Heinz Company (Ireland) Limited
Stradbrook House
Stradbrook Road
Blackrock
Co. Dublin

Tel: 00 353 (1) 280 5757

Fax: 00 353 (1) 280 2742

Please contact **Accounts Receivable** (Post Delivery):
For queries relating to invoices, uplifts, collections and deliveries

Please contact **Customer Service Team**:
For Customer Service queries (relating to orders, uplifts, deliveries and collections)

Heinz EDI Team:
All EDI Queries
edi.team@uk.hjheinz.com

If you would like a copy of these Conditions of Sale, please view our website at:

www.heinzcustomers.co.uk

1. GENERAL

- a) In these Term and Conditions "the Seller" means H.J. Heinz Company (Ireland) Ltd and/or any of its subsidiaries and/or trading divisions, and "the Buyer" means the person, firm or company offering to purchase goods from the Seller.
- b) These Terms and Conditions shall apply to each sale and no variation or purported variation (including in particular any terms and conditions on the Buyer's contract or order form) whether before or after the making of the contract, shall have effect unless expressly agreed to in writing by the Seller and signed by an authorised representative.
- c) The Buyer may place an order with the Seller for the purchase of the Goods and such order will be deemed for all purposes to be an offer to purchase the Goods. The Seller shall be entitled at its sole discretion at any time to accept or reject all or part only of such offer for any reason whatever and it shall not be bound to give to the Buyer any reason for so doing.
- d) The contractual rights which the Buyer enjoys by virtue of Sections 12, 13, 14 and 15 of the Sale of Goods Act 1893 (as amended) are in no way prejudiced by anything contained in these terms and conditions, save (if the Buyer is not dealing as consumer or in the case of any international sale of goods) to extent permitted by law.
- e) Words and expressions defined in the Sale of Goods Acts 1893 and 1980, shall when used in these Terms and Conditions, save where the context otherwise requires, bear the same meaning as therein.
- f) Save as hereinafter expressly provided, the expression "Goods" shall mean all or any of the products listed in a current price list of the Seller but shall not include pallets.
- g) An "account payment date" shall be not later than the thirtieth day following the date of the most recent statement and an 'account period' shall be a period of four consecutive weeks save that every third consecutive account period shall be a period of five consecutive weeks.

2. TRANSFER OF OWNERSHIP

- a) The property in goods shall remain in the Seller until the Seller has received payment in full for all sums due and owing on any account by the Buyer.
- b) If the Buyer shall sell or otherwise dispose of the goods before payment in full as aforesaid has been made to the Seller, the Buyer shall hold all monies received by it from such sale or disposal in trust for the Seller and shall on request furnish the Seller with the names and addresses of the persons to whom such disposals have been made together with all necessary particulars to enable the Seller to recover any outstanding sums due from such persons.

2. TRANSFER OF OWNERSHIP (continued)

- c) So long as the property in the goods shall remain in the Seller, the Buyer shall hold the goods as bailee for the Seller and store the goods so as to clearly show them to be the property of the Seller, and the Seller shall have the right, without prejudice to the obligations of the Buyer to purchase the goods, to retake possession of the goods (and for that purpose to go upon any premises occupied by the Buyer).
- d) In certain circumstances, the Seller may, if it thinks fit, agree in writing with the Buyer that it shall take back some or all of the Goods delivered to the Buyer. In such circumstances, the Seller may at its absolute discretion credit the Buyer with an allowance for the Goods returned subject to their having been stored correctly as regards rotation of stock and in dry, clean and odour free conditions.
- e) Nothing in this clause shall confer any right upon the Buyer to return the goods. The Seller may maintain an action for the price notwithstanding that property in the goods shall not have vested in the Buyer.
- f) In certain instances, the Seller may sell goods to the Buyer on pallets. Such items shall remain the property of the Seller and a sum may be charged by the Seller in respect of such items, such sum to be paid on the return of the items by the Seller to the Buyer.

3. DELIVERY

- a) Any times quoted for delivery are estimates only and the Seller shall not be liable for failure to deliver within the time quoted.
- b) The Seller shall be entitled at its sole discretion for whatsoever reason to make partial deliveries or deliveries by instalments and the terms and conditions herein contained shall apply to each partial delivery.
- c) Deviations in quantity of the goods (representing not more than 10 per cent by value) from that stated in the contract shall not give the Buyer any right to reject the goods or to claim damages and the Buyer shall be obliged to accept and pay at the contract rate for the quantity of the goods delivered.
- d) The Seller shall deliver the goods to the Buyer at the entrance to his premises or warehouse and shall not distribute them within the premises or warehouse. The Seller shall not be bound to deliver the goods to different points in respect of any one Buyer.
- e) Any shortfall in or change to the Goods delivered shall be noted on the Sellers delivery docket and countersigned by a representative of the Buyer. No credit shall be given to the Buyer for the Goods not referred to on the delivery docket.
- f) The Seller further reserves the right to charge the full delivery costs in instances where a Buyer refuses delivery of a bona fide order.

4. RISK OF LOSS OR DAMAGE

- a) Notwithstanding that the property in the goods may not have passed to the Buyer, the Buyer shall carry all risk of and damage to the goods from the time when the goods are delivered to a carrier for transmission to the stipulated place of delivery, either of which events shall constitute delivery to the Buyer, and Section 32(2) and (3) of the Sale of Goods Act, 1893 shall not apply.
- b) From when the risk of loss of and damage to the goods commences to be carried by the Buyer until the Seller is paid in full as aforesaid for the goods, the Buyer shall (a) indemnify and keep indemnified the Seller against all loss of and damage to the goods and against any reduction in the re-sale value thereof below the price to be paid therefor by the Buyer; (b) insure and keep insured the goods in an amount at least equal to the price to be paid therefor by the Buyer; and (c) hold upon trust for the Seller absolutely all proceeds of such insurance.
- c) For the purpose of this Section the word "goods" shall include pallets.

5. PRICES

- a) The Seller after delivery of the Goods shall deliver to the Buyer as soon as possible an invoice stating the type and quantity of the Goods delivered. The Seller shall also deliver to the Buyer at least once every month a statement showing the total amount then due by the Buyer to the Seller.
- b) Unless otherwise agreed in writing, all prices shall be as specified in the Seller's price list as published from time to time and shall be exclusive of VAT and any other applicable taxes or duties and the cost of any import or other licences or clearances.
- c) The Seller reserves the right at any time prior to delivery of the goods to adjust the price to take account of any increase in the costs to it of materials labour, and services or of any currency fluctuations which increase the costs to it of goods imported into the Republic of Ireland.
- d) The price includes cost of delivery at the location agreed between the Seller and the Buyer and insurance in transit thereto.

6. TERMS OF PAYMENTS

- a) In the event of the Buyer being given credit by the Seller, the Seller shall issue the Buyer with a statement for each account period setting out the sum then due by the Buyer to the Seller in respect of the goods therein. Subject to prior agreement with the Buyer, payment of the sum due by the Buyer shall be made by the Buyer to the Seller either;(i) within 30 days of the date of the statement or within 30 days of an agreed four weekly trading period or (ii) payment of the sum of the invoices in respect of deliveries in a particular calendar month received by the Buyer by the fourth working date of the following calendar month shall be made by the end of the said following calendar month.

6. TERMS OF PAYMENTS (continued)

- b) The Seller may charge interest on overdue payments calculated on the day to day balance at a rate of interest equal to that from time to time payable by the Seller on overdraft borrowings. The buyer shall pay to the Seller such interest on demand. The interest may be charged and added to the balance of overdue payment and thereby compounded from time to time as the Seller may determine. A statement from the Seller as to the rate of interest applicable under this paragraph shall, in the absence of manifest error, be conclusive.
- c) Nothing in this clause shall be taken as limiting Seller's rights under Clause 8.
- d) Errors and overcharges on invoices when found to exist will be rectified and allowed for in the next statement but shall form no grounds for delay in payment. If accounts are not settled in time, the Seller reserves the right to withhold further deliveries without notice.

7. REMEDIES FOR ANY DEFECTS ETC

- a) If by reason of any defect in the goods there shall be a breach of any implied condition or warranty applicable thereto, the Seller shall at its option either replace the goods or issue credit to the Buyer, provided that:
 - (i) The Seller is notified in writing within 3 days of the discovery of any such defect by the Buyer and in any event not later than 7 days after delivery; and
 - (ii) The relevant goods are returned to the Seller at the cost to and risk of the Buyer; and
 - (iii) Examination of such goods by the Seller shall disclose to its satisfaction (that the defect or failure to conform to specifications existed at the time of delivery or) that a breach of the implied condition or warranty shall have occurred as aforesaid, and in particular that the goods shall not have been affected by misuse, neglect, accident, improper storage, installation or handling or by repair or alteration not effected by the Seller; and
 - (iv) the Buyer shall pay to the Seller the cost (as stated by the Seller) of any examination of the goods if as a result of such examination the Seller does not admit liability.
- b) The Seller's liability for any claim, whether in contract, tort (including negligence) or otherwise for any loss or damage arising out of or in connection with or resulting from the manufacture, sale, delivery, resale, replacement or use of any of the goods shall in no case exceed the price paid by the Buyer to the Seller for the goods which give rise to the claim, plus expenses of customs, taxes, freight and insurance. In no event shall the Seller be liable for any loss of profits, or special or consequential damages suffered by the Buyer, including interest charges. Nothing contained in this paragraph shall by implication create any liability or obligation on the part of the Seller, or effect or diminish any disclaimer or liability elsewhere contained herein.

7. REMEDIES FOR ANY DEFECTS ETC (continued)

- c) Except as expressly stated above all other warranties, conditions and representations, express or implied, statutory or otherwise, in relation to the quality of fitness for any particular purpose of the goods are hereby excluded and the Seller shall not be liable in contract, tort or otherwise, in relation to the quality or fitness for any particular purpose of the goods are hereby excluded and the Seller shall not be liable in contract, tort or otherwise, arising out of or in connection with the goods sold or any defect in them or from any other cause, whether or not any such matter amounts to a fundamental breach of a fundamental term of the contract.
- d) The Seller's liability under this provision shall be limited to a period of one year from the date of receipt of the goods by the Buyer.
- e) The Buyer shall not reject any goods or cancel or purport to cancel the contract or any part of it because of an alleged default unless and until the Seller shall have failed to correct such alleged default within thirty days of written notice specifying the fault.
- f) For the purpose of this clause, "goods" include any pallets on or in which the subject matter of the contract may be supplied to the Buyer by the Seller

8. DEFAULT BY BUYER

- a) If the buyer
 - (i) Fails or has failed to comply with any terms of this or any previous contract (including stipulations as to payment);
 - (ii) Commits an act of bankruptcy, makes an arrangement or composition with creditors or suffers any distress or execution; or
- b) Resolves or is ordered to be wound up or has a receiver appointed, then in any such event, the Seller shall have the right (without prejudice to any other remedies) to cancel any uncompleted order and withhold or suspend delivery of further goods, and to demand payment forthwith of all sums due by the Buyer to the Seller
- c) In the event that the Seller exercises any rights it may have to stop goods in transit because of the Buyer's financial condition, the Seller may at its option recall such goods at public or private sale without notice to the Buyer and without affecting the Seller's rights to hold the Buyer liable for any loss of damage caused by breach of contract by the Buyer
- d) The Seller shall be entitled to charge the Buyer with an amount equal to all costs and expenses (whether incurred pursuant to the issue of legal proceedings or not) incurred by the Seller in any way connected with the collection of monies due to the Seller from the Buyer which have not been paid within the time submitted to the Buyer by a statement and thereupon such costs and expenses shall immediately become due to the Seller.

9. INFRINGEMENT

The Buyer shall indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done or the supply of goods in accordance with the Buyer's specifications which involves the infringement of any letters patent, registered design, copyright, trademark or trade name or other rights of confidentiality of information or industrial, commercial or intellectual property.

10. SUPPLEMENTARY TERMS

The Seller (at its sole discretion) may have terms supplementary to these Terms and Conditions, which may make provision for discounts or rebates of different amounts on the price of goods sold or may make provision for allowances to be made available by the Seller to wholesalers or retailers on the basis, inter alia, of;

- a) The different functions in relation to the sale and distribution of the goods performed by the Buyers of the goods;
- b) Product of group product purchases for 'in-store' promotions or other promotional activities;
- c) Purchases in excess of agreed amounts or values

11. ADVERTISING

The Seller does not and shall not make and shall not be deemed to have made any payment, allowance, reduction of or discount on the price of any of its goods which may be defined as grocery goods for the purposed of Restrictive Practice legislation or give any other benefit to a wholesaler or retailer of such grocery goods in consideration of the wholesaler or retailer carrying our advertising of such grocery goods.

12. FORCE MAJEURE

The Seller shall not be under any liability of whatever kind for non-performance in whole or in part of its obligations under the contract due to causes beyond the control of the Seller or beyond the control of the Seller's suppliers, including but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, acts of the Buyer or a third party, failure or delay in transportation, acts of any Government or any agency or subdivision thereof, Government regulations, judicial actions, labour disputes, strikes, embargoes, illness, accident, fire, explosion, flood, tempest or other acts of God, delay in delivery to the Seller's suppliers or shortage of labour, fuels, raw materials or machinery or technical failure. In any such event, the Seller may, without liability, cancel, or vary the terms of contract including, but not limited to, extending the time for performing the contract for a period at least equal to the time lost by reason of such cases

13. ASSIGNMENT

The Buyer shall not assign or transfer or purport to assign or transfer to any other person the contract or the benefit thereof or the benefit of any condition, warranty or guarantee or other term or condition (expressed or implied) forming part thereof or relation to the goods.

14. HEADINGS

The headings of these Terms and Conditions are for convenience only and shall have no effect on the interpretation thereof.

15. GOVERNING LAW

This contract shall be governed and construed in all respects in accordance with the laws of the Republic of Ireland and the Buyer submits to the exclusive jurisdiction of the Courts of Ireland.

16. WAIVERS

A waiver by the Seller of any of the foregoing conditions shall not constitute a general waiver of such condition.

17. LABELLING

The goods comply to the best of the Seller's knowledge with the provisions of the European Communities Council Directives No. 112 of 1989 and the European Communities (Labelling, presentation and Advertising of Foodstuffs) Regulations, 1982.