

General Terms and Conditions of Business for products and services of Winterhalter Gastronom GmbH, 88074 Meckenbeuren (Dated: 01.08.2006)

Provision 1 Authoritative terms and conditions/definitions

1. All legal relations between the company Winterhalter Gastronom GmbH, Meckenbeuren, (company Winterhalter) and the customer shall be governed exclusively by these present General Terms and Conditions of Business (GT&Cs).
2. These shall become part of the contract, even if they conflict with the customer's GT&Cs and the customer's GT&Cs have not been objected to in the individual case.
3. The respective current version of the company Winterhalter's GT&Cs shall apply at all times. Additionally, the company Winterhalter's GT&Cs are viewable at the Internet address www.winterhalter.biz.
4. A consumer is defined as any individual who enters into a legal transaction for a purpose which cannot be ascribed to either his trade or his self-employed profession. An entrepreneur is defined as any natural or legal person or partnership having legal capacity which, upon entering into a legal transaction, is acting in pursuance of his/its trade or self-employed profession. Customers may be consumers or entrepreneurs.

Provision 2 Offer, conclusion of agreement

1. Agreements shall only come into force upon the company Winterhalter's written acknowledgement. Offers made by the company Winterhalter are always subject to change without notice.
2. Amendments, additions and collateral agreements in respect of agreements must be in writing. This also applies to agreements on deviation from the written form. Fax letters, email communication and electronically created order acknowledgements meet the written form requirement, even if they have not been signed by the sender.
3. All information which the company Winterhalter provides in print, on the Internet or in other publications is approximate information, except where the company Winterhalter has expressly referred to the information as binding. The company Winterhalter shall assume no liability for false or incorrect information caused by mistakes and/or misprints.

Provision 3 Delivery terms, prices, delivery by instalments

1. In the absence of any agreement to the contrary, delivery and pricing shall, in so far as the destination is in Germany, be effected on the basis of carriage-paid to the destination designated by the customer (CPT, INCOTERMS 2000), excluding costs for unloading, installation, assembly, connection and commissioning. This provision does not apply to deliveries of chemical products or replacement parts where a flat-rate fee for packaging and freight charges is additionally charged in accordance with the rates of the company Winterhalter applicable at the time of dispatch. Deliveries abroad shall be effected ex works Meckenbeuren or Endingen (EXW, INCOTERMS 2000), excluding costs for transportation, installation, assembly, connection and commissioning, except where other country-specific terms and conditions have been agreed upon. All customer support services of the company Winterhalter shall be governed by the prices in the respective price list which prevails at the time of implementation of the agreement.
2. Separate transportation insurance may be taken out at the request and expense of the customer. The provisions on passage of risk relating to the delivery shall remain unaffected by this.
3. All prices are net prices in euros. Statutory value-added tax at the respective applicable statutory rate shall be added to the prices.
4. If delivery is effected on a call-off basis, the prices in the price list valid on the day of dispatch shall apply in the absence of a specific agreement.
5. Delivery by instalments is permissible, in so far as this is reasonable for the customer.

Provision 4 Period for delivery, default in delivery

1. Contractually agreed periods for delivery shall begin at the end of the day on which the company Winterhalter has sent an order acknowledgement to the customer. If delivery is dependent upon an act of co-operation on the part of the customer, the period for delivery shall only begin to run when the said act has been rendered.
2. The same shall apply if agreed advance payments have not been made or goods to be called off by the customer have not been called off. The period for delivery shall be deemed complied with when the goods to be dispatched have left the company Winterhalter's works, or the company Winterhalter has notified the customer of readiness for delivery, prior to expiration of the period for delivery.
3. If acceptance by the customer is required, the timeliness of delivery shall be based on the fixed date for acceptance or, as the case may be, on notification of readiness for acceptance, unless notification of readiness for acceptance is effected at an improper time.
4. In the event of force majeure, the period for delivery shall be extended as long as the circumstance which has led to the case of force majeure persists. The same shall apply in the event of delays in delivery which are caused by suppliers of the company Winterhalter. A case of force majeure shall exist, if the company Winterhalter has no influence whatsoever on the circumstance which has led to the case of force majeure, such as, for example, strikes, natural disasters, delays on the part of suppliers or armed conflicts etc..
5. Provided that there has been no intent or gross negligence on the part of the company Winterhalter in the event of default in delivery, the level of compensatory damages for default in delivery shall be limited to 5 % of the net delivery amount in respect of the late delivery.

Provision 5 Payment terms, default in payment

1. Invoices shall be due immediately upon receipt. In the event of payment within 10 days of the invoice date, a 2 % cash discount may be deducted. The provision as to the cash discount does not apply to deliveries of replacement parts, installation, assembly, commissioning, servicing work, repairs or other customer support services. The customer shall enter into default, without a reminder, 30 days after the due date and receipt of an invoice. Additionally, section 286 paragraph 3 last sentence of the German Civil Code [BGB] applies in legal transactions with entrepreneurs. The rate of default interest shall always be determined in accordance with section 288 of the German Civil Code [BGB].
2. Acceptance of bills of exchange or cheques shall be effected on account of payment. However, payment by bill of exchange shall only be possible with the prior written consent of the company Winterhalter. Discounting and collection charges shall be borne by the customer. Liability on the part of the company Winterhalter for timely presentation or lodging of a protest is excluded, except in cases of intent or gross negligence.
3. Where payment by bill of exchange is agreed upon or a delay in the payment of a receivable is otherwise granted, all the company Winterhalter's receivables against the customer shall become due immediately, if a protest against a bill of exchange or cheque arises in relation to the customer, if execution is issued against the customer's assets or if insolvency proceedings concerning the customer's assets are applied for.
4. In so far as payment by instalments has been agreed upon for the performance to be rendered by the company Winterhalter, the invoiced amount still outstanding shall be due immediately and in one instalment if the customer defaults on payment of two consecutive instalments. The same shall apply if insolvency proceedings concerning the customer's assets have commenced or a petition for the commencement of insolvency proceedings has been filed and not withdrawn within 14 days.
5. Employees or members of the company Winterhalter's distribution organisation shall not be entitled to take receipt of payments, unless they have been authorised to do so by the company Winterhalter.
6. The customer may only set off on the basis of receivables which are undisputed or have been declared valid by a final and non-appealable court judgement. The same shall also apply to the assertion of retention rights.

Provision 6 Dispatch, passage of risk

1. In the absence of specific instructions, dispatch shall be effected according to the company Winterhalter's best knowledge and at the customer's risk; in the case of delivery EXW (cf. provision 3), also for the customer's account to the dispatch address communicated by the customer. Delivery shall be effected directly to the customer's domicile unless a different delivery address is specified.
2. The risk shall pass to the customer upon hand-over of the products to the respective carrier, even if delivery is effected by instalments. If acceptance is required, acceptance shall be authoritative for the passage of risk. The customer shall undertake the acceptance inspection without undue delay by the fixed date for acceptance or, alternatively, upon receipt from the company Winterhalter of notification of readiness for acceptance. The customer may not refuse acceptance on the grounds of existence of an immaterial defect.
3. If dispatch is delayed due to circumstances for which the customer is responsible, the risk shall pass to the customer from the date of notification of readiness for dispatch. The company Winterhalter shall be obliged to effect, at the customer's request and expense, the insurance demanded by the customer.
4. Delivered items shall be taken delivery of by the customer even in the event of defective delivery. The customer's rights under these GT&Cs and under the applicable statutory provisions which are supplementary hereto shall remain unaffected by this.

Provision 7 Installation, commissioning and instructions; connection to supply and disposal lines

1. Installation, commissioning and instructions may only be effected by customer service technicians trained and authorised by the company Winterhalter and only at the instigation and expense of the customer. The company Winterhalter's distribution organisation or, depending on the distribution channel, the company Winterhalter's customer service partners shall be available, on the terms and conditions of the respective current price list, for handing over the machines connected and ready for operation, for commissioning the said machines and for instructing the customer's personnel. Further information is obtainable by post or at the Internet address www.winterhalter.biz.
2. For reasons relating to the law on crafts, connection to the supply and disposal lines must be arranged by the customer in its own name and for its own account through a licensed specialised craftsman's business.

Provision 8 Refusal to take delivery; delay in or default of taking delivery

1. If dispatch or shipment is delayed for reasons for which the customer is responsible, if the customer does not take delivery of the goods or if the customer is absent upon delivery, the customer shall be in default of taking delivery. Any state of default already existing up until then shall remain unaffected by this. The customer shall bear all extra costs caused by default of taking delivery. This shall also apply, if the date for delivery is postponed by mutual agreement at the customer's request.
2. If the customer defaults on taking delivery and fails to comply with a further reasonable period set by the company Winterhalter, the company Winterhalter may demand, for the warehousing of the goods under default, 1.5 % of the net order total for every commenced month of warehousing or may cause the goods under default to be warehoused at a place to be designated by the customer, against reimbursement of all costs in connection therewith (e.g. storage, handling and transportation costs), or may otherwise dispose of the item to be delivered and supply the customer anew within a reasonable extended period or may cancel the contract. If the goods under default are warehoused by the company Winterhalter, the customer shall be permitted to prove that the costs in connection with storage have not arisen at all or are lower.

Provision 9 Defects

1. Defects shall be notified to the company Winterhalter without undue delay. Defective parts shall be sent to the company Winterhalter without undue delay, in so far as this is technically possible. This is expressly inapplicable to permanently built-in parts.
2. In the event of defective performance, the company Winterhalter shall have the right to rectify the defects. If supplementary performance definitively fails after two attempts to rectify defects, the customer shall be entitled to cancel the contract and demand reduction of the invoiced price.
3. In particular, the company Winterhalter shall not assume any warranty for defects, in so far as the purchase item has been dispatched to the customer abroad on account of the customer's own contract with a distribution partner of the company Winterhalter.

Additionally, in such cases, the distribution partner shall indemnify the company Winterhalter against all contractual and statutory claims based on defectiveness of the item sold.

4. Except where otherwise stipulated above, the company Winterhalter's liability shall be limited to gross negligence and intentional misconduct. This shall also apply, if the company Winterhalter uses the assistance of third parties for the performance of its contractual obligations and the third parties for their part act with gross negligence and/or wrongful intent.
5. The limitation period for claims based on defects in respect of newly manufactured goods is two years. Where used items are delivered, the limitation period is one year, in so far as the customer is a consumer. For entrepreneurs, claims based on defects in respect of used items shall become time-barred when the purchase item is taken receipt of.

Provision 10 Treatment of defects and exclusion of liability for defects in respect of used machines

With regard to used machines, claims against the company Winterhalter on account of a defect in quality are generally excluded in transactions with entrepreneurs. This shall not apply to corresponding claims to compensatory damages based on injury to life, body or health, where the company Winterhalter is responsible for a breach of duty, or based on an intentional or grossly negligent breach of duty on the part of the company Winterhalter.

Provision 11 Exclusion of liability for claims to compensatory damages over and above the foregoing

1. Liability over and above the liability provided for in provision 9 and provision 10 is excluded, regardless of the legal nature of the claim asserted. This particularly applies to claims to compensatory damages for culpa in contrahendo, for other breaches of duty and for tort claims for compensation for property damage as per section 823 of the German Civil Code [BGB].
2. In so far as the company Winterhalter's liability for compensatory damages is excluded or limited, this shall also apply to personal liability for compensatory damages on the part of its employees, its statutory representatives and its assistants with employee or independent contractor status for the purposes of vicarious liability in contract. The same shall apply in relation to persons on the customer's side who are included in the scope of protection of the agreement concluded.

Provision 12 Cancellation by the customer

In cases where performance is divisible and there is no commercially justified interest in refusing to accept performance as a whole merely on the basis of defects in individual parts of the performance, any cancellation permissible under the general rules shall be limited to the defective parts of the performance as a whole. Therefore, if the customer declares cancellation in this respect, the part of the contractual relationship which is free from defects shall be continued by mutual agreement. The customer's rights in respect of the defective part shall remain unaffected by this.

Provision 13 Cancellation by the company Winterhalter

1. If, after receipt of acknowledgement of the order, the customer's ability to pay deteriorates or insolvency proceedings concerning the customer's assets are subsequently commenced, the company Winterhalter shall – regardless of the payment terms agreed upon in the individual case – be entitled to demand from the customer advance payments according to manufacturing progress, or security equal to the consideration to be paid by the customer, or cancel the contract. Any security to be provided may only be provided by way of an absolute, irrevocable, unlimited and unconditional suretyship from a banking institution licensed as a guarantor for customs duty debts and tax debts. Provision 14 clause 1 sentence 2 of these terms and conditions shall apply accordingly. Until the customer makes advance payment or provides security within a reasonable period set for the customer, the company Winterhalter shall be under no obligation to render performance. After expiration of the set period, the company Winterhalter shall be entitled to cancel the contract or demand compensatory damages in lieu of performance. Moreover, a petition for the commencement of insolvency proceedings concerning the customer's assets shall entitle the company Winterhalter to cancel the contract and demand immediate return of the delivery item.
2. If force majeure within the meaning of provision 4 clause 4 of these GT&Cs occurs, the company Winterhalter shall have the right to cancel the contract, even if an extension of the delivery period has been agreed upon with the customer. Claims of the customer to compensatory damages are excluded in such cases.

Provision 14 Retention of title

1. The company Winterhalter shall retain title to the delivery item until full payment of all liabilities of the customer arising from the supply agreement and full payment of all other liabilities of the customer already existing at the time of conclusion of the agreement. In the event of payment by bill of exchange or cheque, payment shall be deemed effected only upon unconditional crediting of the equivalent sum. The company Winterhalter undertakes to release security interests at the customer's request, in so far as these are no longer required to secure the company Winterhalter's claims, particularly if they exceed by more than 20 % the value of the receivables which are to be secured and have not yet been satisfied.
2. The company Winterhalter shall be entitled to insure the delivery item at the customer's expense against theft, breakage, fire, water and other damages at its reasonable discretion, except where the customer has probably taken out insurance.
3. It is not permissible to pledge delivery items which are under retention of title or to transfer title thereto as security. The customer shall without undue delay give the company Winterhalter notification of execution measures taken by third parties and notification of other events affecting the company Winterhalter's interests. The customer shall bear the company Winterhalter's necessary costs for defending the retained title.
4. Whilst the retention of title is in effect, it shall not be permissible, except with the written consent of the company Winterhalter, to sell/transfer, rent out, otherwise make available or dispose of delivery items under retention of title or transfer such items to a place other than the dispatch address. However, resellers shall be revocably permitted to resell/retransfer under their own retention of title in the ordinary course of business. Upon conclusion of the contract, the customer already fully assigns to the company Winterhalter any receivable which has arisen from any resale/retransfer. If the receivable is included in an open credit account relationship with its customer, the customer assigns to the company Winterhalter its outstanding balance on the open credit account. These assignments are accepted by the customer.
5. The customer shall be revocably entitled to rework the delivery item, or combine the delivery item with other items, in the ordinary course of business. Processing or combining shall be effected for and on behalf of the company Winterhalter, who shall acquire title to the item arising from processing or combining. If the delivery item is processed or combined with other items not belonging to the company Winterhalter, the company Winterhalter shall acquire joint title to the new item in the ratio of the value of the delivery item to the other items. Sale/transfer of such an item solely or jointly owned by the company Winterhalter shall be governed by the above clause 4 accordingly. In the case of joint title, however, the portion of the receivable equivalent to joint title shall be assigned.
6. The customer shall be entitled and obliged to collect receivables assigned to the company Winterhalter as long as the company Winterhalter does not expressly revoke this authorisation.
7. The company Winterhalter shall only revoke the above authorisation to sell/transfer, combine, process and collect, if the customer fails to perform its contractual duties.
8. If the customer acts in breach of this contract, particularly by defaulting on payment, the company Winterhalter shall be entitled to take possession of the delivery item as security, without waiving its contractual claims, until its contractual claims are satisfied. The customer shall be obliged to surrender possession. The company Winterhalter shall be entitled to enter the premises where the goods under retention of title are situated.
9. However, the company Winterhalter may only reclaim possession of the delivery item on the basis of retention of title, if the company Winterhalter has cancelled the contract beforehand.

Provision 15 Transferability of the agreement

The company Winterhalter and the customer may only assign their rights arising from the agreement by mutual agreement.

Provision 16 Property rights, confidentiality

Samples, cost estimates, illustrations, drawings, sketches, data carriers – including the data stored – and other documents and information which are made available to the customer shall remain the property of the company Winterhalter. Corresponding copyrights shall be observed by the customer and shall remain with the company Winterhalter. Documents, computer files and other information referred to as confidential by the company Winterhalter may not be made accessible to third parties.

Provision 17 Data protection

The customer agrees that the company Winterhalter may store, process and use for business purposes customer data within the framework of an existing business relationship.

Provision 18 Place of performance and jurisdiction

1. The place of performance for the customer's payments is the place within whose jurisdiction the company Winterhalter's registered office is situated. The place of performance for the company Winterhalter's services, in so far as this relates to the production of dishwashers, is the place where the dishwasher was produced.
2. In so far as this is legally permissible, the agreed place of jurisdiction is deemed to be the court within whose jurisdiction the company Winterhalter's registered office is situated.

Provision 19 Applicable law

All legal relations between the company Winterhalter and the customer shall be governed exclusively by German law. Application of the UN Sales Law Convention is excluded.

Provision 20 Other provisions

1. Customers of chemical products of the company Winterhalter agree that changes to the safety data sheets may be transmitted to them by email in accordance with the EU Directives 93/112 EC and 2001/58/EC and agree to communicate to the company Winterhalter a corresponding email address and any corresponding subsequent change of the email address communicated.
2. The customer itself shall be liable for damages arising due to failure to communicate within the company's business changes imparted by the company Winterhalter in respect of safety data sheets. This particularly applies to damages resulting to third parties who do not belong to the customer's business and to damages arising due to failure on the part of the customer to communicate to the company Winterhalter a change of the email address originally made known.
3. The distribution partners of the company Winterhalter (specialised distributors and carriers) shall be obliged to comply with the ADR (accord governing the international transport of dangerous goods on the road) regulations. These shall be provided to the distribution partners and are additionally downloadable at any time at www.winterhalter.biz. In so far as the distribution partners contract third parties to transport our chemical products, they for their part shall ensure that these persons are made aware of the ADR regulations.
4. The company Winterhalter shall not be liable for damages arising due to failure to make third parties aware of the ADR regulations. The distribution partners shall indemnify the company Winterhalter against third-party claims based on failure to make third parties aware of the ADR regulations. The respective current version of the ADR regulations shall apply.

Provision 21 Severability clause

In so far as any of the above provisions is or becomes ineffective, or is void, the remainder of the agreement shall remain unaffected by this. Any ineffective or void provision shall be automatically replaced with the statutory provision which most closely reflects the legal and commercial interests of the parties.