

**General Purchasing Terms and Conditions for Deliveries and Services to  
Winterhalter Gastronom GmbH and Winterhalter Deutschland GmbH in D-88074 Meckenbeuren and  
to Winterhalter Schweiz GmbH , Meckenbeuren (DE), Zweigniederlassung Rüthi (as of: 06th February 2015)**

**§1 Decisive Conditions - Written Form**

1) These general purchasing terms and conditions of the ordering party (GBTC), in the version currently in effect, will exclusively apply to the legal relations between Company Winterhalter (ordering party) and the supplier or, as the case may be, the provider of services (supplier). Separately negotiated contracts that rule out an application of general business terms and conditions on both sides, such as, for example, Kanban agreements, outline agreements etc. are not covered by the scope of validity of these GBTCs, however.

2) General business terms and conditions of the supplier that conflict with the GBTCs of the ordering party will not apply even if there has not been an explicit objection to them in an individual case.

3) If the parties have concluded several transactions taking the GBTCs of the ordering party into consideration, they will also apply, in the version currently in effect, to subsequent transactions, even if they were not explicitly used as the basis for a new transaction.

4) All of the agreements that have been made between the ordering party and the supplier for the purpose of carrying out this contract have been set down in writing on the order form of the ordering party. Ancillary verbal agreements do not exist. Changes, supplements and ancillary agreements with regard to a purchase order or with regard to a contract that has been concluded will require the written confirmation of the ordering party. Computer faxes, EDI communication, orders prepared via electronic data processing or e-mails on the part of the ordering party will satisfy the requirement of a written form, even if they do not bear a signature.

**§2 Offer Offer Documents Conclusion of the Contract - Warranty**

1) The supplier is obligated to accept the purchase order (individual or blanket purchase order) within a time limit of 1 week. The ordering party will no longer be bound to the offer after this time limit expires. The ordering party is entitled in that case to reject the products that have already arrived within one week of the delivery.

2) The acceptance has to be provided in writing. Arrival during the business hours of the ordering party (7:30 a.m. 4:00 p.m. CET) is required for adherence to the time limit. The contract will come into existence when the acceptance letter arrives within the stipulated period of time.

3) If reference is made in the offer of the supplier or of the ordering party to DIN, ISO, technical specifications and product descriptions, or to special characteristics of the contractual item, the supplier warrants that the contractual item will be in accordance with these requirements. If that is not the case, the ordering party is entitled to the rights in accordance with § 7 of these GBTCs, regardless of the culpability of the supplier.

**§3 Terms of Delivery Prices - Partial Deliveries**

1) The supplier has to deliver the goods that were ordered, packed, to the location (named place) specified by the ordering party in the purchase order (DAP in accordance with INCOTERMS 2020).

2) Invoicing has to be done in the currency of the purchase order. The value-added tax in the amount applicable on the day of invoicing in each case is to be added to the prices.

3) Partial deliveries are not permitted.

**§4 Delivery Time - Delayed Delivery**

1) The delivery deadline specified in the purchase order is binding. The supplier has to make the goods that were ordered available to the ordering party at the location specified in the purchase order to adhere to the time limit.

2) The supplier is obligated to notify the ordering party in writing without delay when circumstances arise, or become evident to it, indicating that adherence cannot be kept with the agreed-upon delivery time. The rights of the ordering party will remain unaffected by that.

3) The ordering party is entitled to the statutory claims in the event of delayed delivery. In particular, it is entitled to demand compensation instead of performance and a withdrawal after a reasonable time limit expires in vain. A time limit of 5 working days (Monday - Friday) will be regarded as reasonable. If a supply relationship exists between the parties to the contract to the effect that the ordering party can call up partial deliveries over a certain period of time or until a specified quantity is reached, the ordering party is entitled to terminate the supply relationship with no advance notice and with immediate effect by means of a registered letter when there are repeated delays on the part of the supplier with a (partial) delivery. A repeated delay exists when the supplier has gotten behind on at least two partial deliveries that do not necessarily have to be consecutive.

4) If the supplier falls into arrears, the ordering party is entitled, without further evidence, to demand compensation for delayed performance in the amount of 10% of the net order value of the delivery or service that is late. The supplier is at liberty to prove that there is no loss or a slight loss; the ordering party is at liberty to prove that there is a greater loss. An assertion of further claims of the ordering party based on a delay or compensation will not be impacted by that.

**§5 Payment Terms - Rights of Retention**

1) Invoices have to be in accordance with the statutory regulations in effect in each case and, in addition, include the order number, order date and part number of the ordering party. The supplier is obligated, among other things, to show its tax number and its corporate tax office, as well as the S.W.I.F.T. code, the IBAN number and bank details on the invoice.

2) Payment will be made within 14 days with a 3% cash discount or within 30 days without a deduction, after the agreed-upon delivery deadline in each case after early deliveries of goods and invoices.

3) We are entitled to offset rights and rights of retention in the statutory scope.

4) If a contract for work and materials or a contract for work and services is involved, the ordering party is entitled to retain a security deposit in the amount of 5% of the order amount. The supplier can avert the retention of a security deposit by providing an open-ended, irrevocable and directly enforceable guarantee of a bank registered in Germany. The security deposit that is retained is to be paid out to the supplier after the expiration of the warranty period of § 7, No. 10.

**§6 Shipment - Transfer of Risk - Documents**

1) The delivery has to be made in accordance with § 3, paragraph 1 of these GBTCs, carriage paid, among other things. The risk of an accidental destruction of the delivery is consequently transferred, in accordance with § 446 BGB [German Civil Code], with the transfer of the goods to the ordering party at the agreed-upon delivery location.

2) The supplier is obligated to precisely specify the order number, order date and part number of the ordering party on all of the shipping documents and delivery notes; if it does not do so, the ordering party will not be responsible for delays in processing.

**§7 Inspection Duties - Rights of the Ordering Party when a Defect Exists**

1) Acceptance will take place under the proviso of a professional, random-sample inspection for quantity and quality deviations. The ordering party is obligated to make a complaint in writing to the supplier within a period of 12 working days, calculated from the date the goods are received, with regard to the quality and quantity deviations that are discovered in connection with that. If a quality assurance agreement exists between the parties to the contract, it is to be exclusively applied with regard to the inspection and complaint duties. If the ordering party discovers a defect in a part, the supplier will subject the entire lot to a quality review. The costs of this inspection, especially the installation and removal of parts that have already been installed, will be paid by the supplier. The supplier has to provide for a delivery of replacements until the quality inspection is completed so that production disturbances or a standstill in production, for which the supplier will be accountable, will not come about for the ordering party.

2) Quantity and quality deviations that cannot be discovered based on the random-sample inspection and that only come to light at a later point in time (defects that are not apparent) are to be reported to the supplier within 10 working days (Monday - Friday) after discovery. The receipt of a defect notification of the purchaser from the ordering party is equivalent to discovery by the ordering party.

3) The mailing date of the complaint will be relevant for adherence to the time limit; the postmark or a comparable mailing confirmation provided with the sending date will serve as verification. The supplier waives the objection of a late defect notification.

4) A defect as defined by these general purchasing terms and conditions exists, among other occasions, if

- The delivery deviates in a negative way from the samples that were provided or
- The delivery is not in accordance with the agreed-upon characteristics; the reference to DIN, ISO, technical specifications and product descriptions in an offer of the supplier or of the ordering party will also apply as agreed-upon characteristics in this sense; or
- The delivery is not suitable for the use required by the parties.

5) The statutory regulations on material defects and legal deficiencies will apply if there are no contrary provisions below. The ordering party is entitled to demand the delivery of a new item from the supplier. The supplier accepts its basic obligation to remedy the defect complained of. The delivery of a new item will only be ruled out under the prerequisites of § 439, paragraph 3 BGB (German Civil Code). The supplier has to take back lots that contain defective items at its expense. The right to compensation, especially the right to compensation instead of performance, remains explicitly reserved.

6) The ordering party is entitled to withdraw from the contract when the remedy of a defect fails, when there is a refusal of the supplier to remedy the defect or to deliver a new item, when delivery of a defect-free item is impossible or when the remedy of the defect or delivery of a new item is unreasonable to demand. The remedy of the defect has failed in the sense of this section when the contractual item is still defective after two attempts. If the supplier does not deliver a new item or remedy the defect within a reasonable time period set by the ordering party, that will be equivalent to a refusal of the supplier. An unreasonable demand exists, in particular, if the prospects of success of a remedy of the defect are doubtful or if the supplier culpably delays the remedy of a defect or the provision of a subsequent delivery.

7) The ordering party is entitled to remedy the defect on its own at the expense of the supplier if danger is looming or if there is a special need for urgent action.

8) If the supplier has provided a warranty such as the warranty in accordance with § 2, paragraph 3, among others, it cannot invoke a defense of a lack of culpability.

Legal domicile of the company: Winterhalter Gastronom GmbH: Meckenbeuren, commercial register Abt. B Nr. 630314, Registered Amtsgericht Ulm/Germany

Legal domicile of the company: Winterhalter Deutschland GmbH: Meckenbeuren, commercial register Abt. B Nr.728364 Registered Amtsgericht Ulm/Germany

Legal domicile of the company: Winterhalter Schweiz GmbH, Meckenbeuren (DE), Zweigniederlassung Rüthi, commercial register SG, UID CHE-301.232.655 MWST

(Hereinafter referred to as "Company Winterhalter" or "ordering party" in this purchasing condition.

9) If a claim is made against the ordering party by a third party due to a defect in the product that is delivered, the ordering party is entitled to take recourse against the supplier without it being necessary for a time limit to be set. Furthermore, the ordering party can demand compensation for all of the expenses that arose for it due to the claim being made by the third party based on a defect in the product that was delivered. In particular, the costs of determining that there is a defect, the costs of a recall campaign, reasonable attorney costs and a defense against the claim in court, if the ordering party deems it necessary, are a part of this. The supplier is to be notified of the claim that is made.

10) The limitation period for a claim is 36 months, calculated from the date of the transfer of risk, unless the product that was delivered was used in its customary fashion for a building and caused a defect in it. In the case of § 7, No. 9 of the GBTCs, the limitation on claims will arise at the earliest 2 months after the point in time at which the ordering party has fulfilled claims that were asserted by a third party, but 5 years after the delivery by the supplier at the latest.

**§8 Product Liability Indemnification Liability Insurance Protection**

1) If the supplier is responsible for damage from the point of view of product liability, it is obligated to indemnify the ordering party with regard to compensation claims of third parties upon the first request.

2) The supplier is obligated within the framework of its liability for cases of damage in the sense of paragraph 1) to reimburse the ordering party for all expenses, in particular for the costs of a recall campaign conducted by the ordering party. The ordering party will notify the supplier of the content and scope of the recall actions to be carried out if this is possible and within reasonable bounds and will give it an opportunity to provide an opinion. Other legal claims will not be affected by that.

3) The supplier commits itself to maintain a product liability insurance policy with overall coverage for personal injury and property damage that is reasonable for the product risk. The overall coverage that is customary in the industrial sector will be regarded as reasonable in the sense of this section.

**§9 Agreements on Manufacturing Resources - Mixing and Processing - Transfer of Ownership -**

**Procedural Obligations of the Supplier - Claims for a Return of Property**

1) Manufacturing resources provided by the ordering party will continue to be owned by it as a general principle. The processing and reshaping by the supplier will be done for the ordering party. If manufacturing resources are processed with other items not belonging to the ordering party, the ordering party will acquire co-ownership in the new item in the proportion of the value (purchase price plus VAT) of the manufacturing resources to the other processed items at the time of processing. If manufacturing resources are inseparably mixed with other items not belonging to the ordering party, the ordering party will acquire co-ownership in the new item in the proportion of the value of the manufacturing resources to the other mixed items at the time of mixing. If the mixing is done in such a way that the product of the supplier is to be viewed as the main item, it is agreed that the supplier will transfer proportional ownership to the ordering party; the supplier will keep the solely owned property or co-owned property in safe custody for the ordering party.

2) If manufacturing resources are produced for the ordering party, ownership will be transferred to it in the proportion of the payment made by the ordering party. A constructive possession of a chattel in the form of a loan for use will be tacitly established with the first payment (also down payment).

Paragraph 2 above applies accordingly to the property and to expectant rights to the acquisition of property if manufacturing resources are purchased by the supplier from third parties for the ordering party. The supplier is already assigning its claim to a surrender of the manufacturing resources at this point to the ordering party, which accepts it, for the case that a third party is in possession of the manufacturing resources.

If security interests of third parties exist in the manufacturing resources, the supplier is assigning any claims it has to a transfer, its corresponding expectant rights, and all of the claims that otherwise result from the underlying agreement to the ordering party. The ordering party accepts the assignment. The ordering party is entitled to pay the remuneration calculated for the supplier over to the third party with a credit to the ordering party's debt vis-à-vis the supplier. The transfer will be replaced by the lending of the manufacturing resources by the ordering party to the supplier that is hereby agreed upon.

5) The ordering party can demand for good cause a surrender of manufacturing resources that is provisional at first until the existing reason for the surrender is remedied in each case, if it requires them to maintain its production, especially in the case of a deterioration of asset-related circumstances, a looming insolvency, the filing of a petition to open bankruptcy proceedings with regard to the assets of the supplier or delayed deliveries of the supplier, as well as changes in the shareholder structure of the supplier, force majeure or labor disputes. The costs associated with that will be charged to the supplier.

6) The supplier is obligated to insure the manufacturing resources at replacement value against elementary losses and losses due to theft at its own expense. The supplier is already assigning all of the compensation claims from this insurance policy at this point; the ordering party accepts the assignment. The supplier is obligated to promptly carry out any servicing and inspection work that may be necessary on the manufacturing resources, as well as all maintenance and repair work, at its own expense. It has to immediately report any unusual incidents; if it culpably neglects that, compensation claims will remain intact.

7) The manufacturing resources that are owned or co-owned by the ordering party and the manufacturing resources that the ordering party has paid for in whole or in part are only permitted to be used for deliveries to third parties with the ordering party's prior written consent.

8) The supplier has to notify the ordering party in advance of changes to the agreed-upon location of manufacturing resources.

9) Tools, models and samples together with the accompanying accessories, software programs and the corresponding data storage media in each case, among other things, are manufacturing resources as defined by this section.

**§10 Confidentiality - Copyrights**

1) Samples, estimates, illustrations, drawings, sketches, data storage media together with the stored data and other documents and information that are turned over to the supplier will remain the property of the ordering party. The corresponding copyrights are to be noted by the supplier, and they will remain with the ordering party. Documents, data storage media together with the stored data and other information designated as confidential by the ordering party are not permitted to be made available to third parties.

2) The confidentiality obligation will also apply after this contract has been settled; it will end if and to the extent that manufacturing knowledge contained in the illustrations, drawings, calculations and other documents that were turned over becomes known to the general public.

3) If knowledge arises from the collaboration between the supplier and the ordering party that is worthy of protection or that is to be regarded as a trade secret, the ordering party is exclusively entitled to use it.

**§11 Infringement of the Protective Rights of Third Parties Indemnification Notification Duties -**

**Limitation of Claims**

1) The supplier warrants that the items that are delivered and the services that are provided are free of the rights of third parties. It is particularly liable for claims that follow from the infringement of protective rights including applications for protective rights when the contractual items or services are used as per the agreement. The supplier will indemnify the ordering party and its purchasers with regard to any claims arising from the use of protective rights of that type at the first request. It will pay the expenses of the ordering party that arose for the ordering party in connection with the infringement of the right of a third party. That will not apply if the supplier has manufactured the contractual items according to drawings, models or other equivalent descriptions that were turned over by the ordering party, or according to statements made by the ordering party, and does not know, or does not have to know in connection with the products developed by it, that protective rights are being infringed upon because of that.

2) The parties to the contract commit themselves to mutually notify one another without delay of infringement risks and infringement cases that were asserted. They will accordingly oppose the claims in amicable collaboration. The supplier will notify the ordering party, without being requested to do so, of the use of published and unpublished protective rights and applications for protective rights in the contractual item that are owned or used under a license.

3) The limitation period for the claims governed by § 11 is ten years, and it will start with the conclusion of the supply agreement.

**§12 Data Protection**

The data provided in connection with the business contact will be stored, conveyed and used in observance of the Bundesdatenschutzgesetz [German Federal Data Protection Act].

**§13 Jurisdiction**

The exclusive jurisdiction will be the relevant courts for Meckenbeuren/Württemberg if the ordering party is a businessperson/business entity. The ordering party can also file suit at the headquarters of the supplier.

**§14 Choice of Law**

Substantive German law will exclusively apply to the contractual relationships between the ordering party and the supplier. UN sales law is ruled out.

**§15 Separability Clause**

The effectiveness of the contract, or more precisely of these terms and conditions, will not be impacted by any instance of ineffectiveness of one or more provisions of these terms and conditions and other provisions that form the basis for the contractual relationship.