

Winterhalter Online Services Terms and Conditions of Use

A. Preamble

Winterhalter Ltd, Winterhalter House, Roebuck Way, Knowlhill, Milton Keynes MK5 8WH (“**Winterhalter**”) specializes in commercial glass and dishwashing and has many years’ experience with machines, water treatment, chemicals, and racks for warewashing. As an addition to the products it offers, Winterhalter operates a website on which you, as a user (“**User**”, Winterhalter and the User together the “**Parties**”) can access information on Winterhalter products and services as well as software (plus documentation in some cases), add your own content, and use additional web-supported functions of certain Winterhalter products if you acquire them (“**Winterhalter Website**”) as well as apps through which you can also use certain web-supported functions of our products on your mobile terminal devices (“**Winterhalter App**” and jointly “**Winterhalter Online Services**”).

Use of the Winterhalter Online Services is permissible only on the basis of the following terms and conditions (“**Terms and Conditions of Use**”):

B. General Provisions

§ 1 Scope of application

1. The Winterhalter Online Services are solely intended for use by entrepreneurs. Should you not be an entrepreneur and wish to use certain services or functions included in the Winterhalter Online Services, please contact Winterhalter directly. An “**Entrepreneur**” is a natural person or legal entity or legal partnership acting in the course of their business.
2. The Winterhalter Online Services offered are intended only for users in the country stated on the respective Winterhalter Website or in the Winterhalter App. Should the User access the Winterhalter Online Services from outside these countries, then the User is responsible for the legality of such access to the Winterhalter Online Services and of accessing the respective services. The User is prohibited from accessing the Winterhalter Online Services from countries in which this access is unlawful. Should a User from such country wish to enter into commercial relations with Winterhalter, the User must contact Winterhalter’s representatives in the respective country directly.

3. Use of the Winterhalter Online Services is governed solely by these Terms and Conditions of Use. The contractual relations on whose basis the User has acquired Winterhalter products or on whose basis the User was permitted to use the Winterhalter products or on whose basis the User draws on Winterhalter services remain unaffected by these Terms and Conditions of Use.
4. Use of the Winterhalter Online Services by the User can be made dependent on the conclusion of further agreements (such as a licence agreement when certain software is downloaded, or acceptance of further terms and conditions of use, e.g. for the use of the Winterhalter Connected Wash function). In cases of conflict, these “**Special Agreements**” take precedence over the Terms and Conditions of Use.

§ 2 **Conclusion of the contract**

By ticking these Terms and Conditions of Use when registering for the respective Winterhalter Online Services, the User accepts that these Terms and Conditions of Use apply.

§ 3 **Winterhalter services**

1. Under these Terms and Conditions of Use, Winterhalter offers the following services:
 - On the Winterhalter Website, Winterhalter makes certain information on Winterhalter products and services, as well as software (plus documentation in some cases), available for access and/or download (including the Winterhalter App, the “**Winterhalter Information**”).
 - Winterhalter may provide the User with the opportunity to add the User’s own content to the Winterhalter Website and exchange it with other users.
 - When the User acquires certain Winterhalter products, the User receives the opportunity to use additional Web-supported functions of the Winterhalter products with the assistance of the Winterhalter Website and/or the Winterhalter App (e.g. Winterhalter Connected Wash).
2. Winterhalter is entitled to wholly or partially cease operation of the Winterhalter Online Services at any time. The User has no claim to particular Winterhalter Online Services being provided. The two preceding sentences do not apply if and to the extent that particular terms are expressly provided for in these Terms and Conditions of Use or Special Agreements for maintenance of Winterhalter Online Services.
3. The information in the Winterhalter Online Services may include specifications or general descriptions of Winterhalter products’ technical features which do not always exist

in the individual case (owing to changes to products, for example). For this reason, the product's performance specifications must be agreed upon individually when the product is purchased.

4. Use of the Winterhalter Online Services does not replace on-the-spot service provided by Winterhalter or reading the instructions for use issued by Winterhalter or other product information (together "**Product Information**"). Where doubt exists, the User should always seek direct contact with Winterhalter's employee responsible for the respective product.
5. Winterhalter assumes no liability for uninterrupted availability of the Winterhalter Online Services or for their being free of viruses or similar matters. Before downloading Winterhalter Information, the User shall ensure appropriate security and virus scanners for User's own protection and to prevent viruses or similar matters infecting the Winterhalter Online Services.

§ 4 **Registration and passwords**

1. Certain parts and subpages of the Winterhalter Website as well as the Winterhalter App are password-protected. Access to these pages and subpages is only possible for Users registered for these parts and subpages. Unless otherwise expressly provided for in these Terms and Conditions of Use, there is no obligation on Winterhalter to allow registration. In particular, Winterhalter reserves the right to subject areas and subpages of the Winterhalter Website that were previously freely accessible to a requirement of registration.
2. The User is obliged to provide truthful information on himself and his undertaking when registering and to inform Winterhalter of any later changes without undue delay (where provided for online). The User shall ensure that she/he receives the e-mails sent to the e-mail address she/he stated.
3. Once registration is successful, the User will receive a user name and password ("**Log-in Details**"). The first time the User logs in she/he will change the password sent to her/him by Winterhalter to a password that only she/he knows. Protected subpages and areas of the Winterhalter Website can only be accessed by entering the Login Details. For individual areas and subpages of the Winterhalter Website it may be necessary to enter further passwords.
4. The Login Details may only be used by the person stated in the registration. Should a User require access for several employees, then this needs to be agreed upon with Winterhalter directly in the individual case.

5. Login Details shall be treated by the User as strictly confidential and may not be passed on to other users of the Winterhalter Online Services or to other third parties. The password-protected areas and subpages of the Winterhalter Online Services are to be logged out of after each use.
6. After five unsuccessful attempts to enter the password, the Login Details will be blocked. In this case, the User shall contact Winterhalter through the “Forgotten your password?” link. Reactivation will only be possible once Winterhalter has been able to adequately check the User’s identity.
7. If the User suspects that a third party knows and/or is using the User’s Login Details, the User shall inform Winterhalter of this promptly in writing and immediately by e-mail. The User is liable for all activity undertaken in the Winterhalter Online Services using her/his Login Details. This does not apply where the User does not bear responsibility for disclosure of her/his Login Details to the respective third party in breach of these Terms and Conditions of Use.
8. Once it has received notification pursuant to section 7 above, Winterhalter will block the Login Details affected. In this case, the User will only be able to access the protected areas of the Winterhalter Online Services when Winterhalter has issued new Login Details.
9. Winterhalter is entitled at any time to revoke the entitlement to access by blocking the Login Details if the User:
 - gave false information when registering,
 - infringes these Terms and Conditions of Use and does not cease the infringement forthwith once warned by Winterhalter, unless the User does not bear responsibility for the breach,
 - breaches his duties of care when handling the Login Details, unless the User does not bear responsibility for the breach,
 - violates applicable law when logging into or using the Winterhalter Online Services, unless the User does not bear responsibility for the breach,
 - has not used the Winterhalter Online Services for a consecutive period of more than twelve months.
10. The User may demand the deletion of his registration at any time as long as the deletion does not prevent or hinder the way of the performance of ongoing contractual relationships.

11. In the case set out in sections 9 and 10, as well as in other cases in which the User's entitlement to access the Winterhalter Online Services ends, Winterhalter will delete the Login Details and all other stored personal data of the User at the User's written request to the extent that Winterhalter no longer requires it to assert legal rights against the User and/or is legally obliged to continue to store this data.
12. Should the User breach a duty imposed upon him under these Terms and Conditions of Use, in particular the duty to keep his Login Details secret, he will indemnify Winterhalter in full and on demand against any expense, loss or liability suffered or incurred in connection with such breach.

§ 5 Rights of use to the Winterhalter content

1. Unless otherwise regulated in the Special Agreements, Winterhalter grants the User a non-exclusive right to use the Winterhalter content for the User's internal purposes as specified in the Winterhalter Online Services. In the case of Software (including the Winterhalter App), use is any permanent or temporary reproduction of the Software in the object code by means of storing, loading, executing or displaying for the purpose of running the Software. Any other reproduction of the Winterhalter content - in the case of Software (including the Winterhalter App) with the exception of saving a back-up copy which may only be used for security purposes - is excluded. Such exclusion includes in particular reproduction of the Winterhalter content for the purpose of passing it on to third parties either at charge or free of charge.
2. In the case of Software (including the Winterhalter App), the User is only permitted to alter or process the Winterhalter content to the extent that this is required for the internal use specified in the Winterhalter Online Services or to correct errors. In all other respects, the User is only permitted to alter the Winterhalter content if and to the extent that Winterhalter has expressly permitted the User to do this in writing.
3. With regard to the rights to the Winterhalter content granted to the User, the User is not permitted to grant any rights to third parties. Nor may the user sublicense the rights to the Winterhalter content which are granted to him to third parties. Section 8 remains unaffected.
4. The User does not have any right to updates, upgrades or new versions of the Winterhalter content being made available to him.
5. Software (including the Winterhalter App) is provided to the User solely in object code as a download. The User does not have a claim to being provided with the source code or parts of the source code. The User is also not granted any rights to use or otherwise exploit the source code.

6. The User must not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of software offered via the Winterhalter Website (including the Winterhalter App) nor attempt to do any such things, except to the extent that (by virtue of sections 50B and 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are necessary to de-compile software offered via the Winterhalter Website (including the Winterhalter App) to obtain the information necessary to create an independent program that can be operated with software offered via the Winterhalter Website (including the Winterhalter App) or with another program (“Permitted Objective”), and provided that the information obtained by you during such activities:
 - (i) is used only for the Permitted Objective;
 - (ii) is not disclosed or communicated without Winterhalter’s prior written consent to any third party to whom it is not necessary to disclose or communicate it in order to achieve the Permitted Objective; and
 - (iii) is not used to create any software that is substantially similar in its expression to Winterhalter’s App.
7. If the Software provided via the Winterhalter Website (including the Winterhalter App) comprises open source software, the open source license conditions applicable for this software will have priority. If these open source license conditions grant a claim for provision of the source code, Winterhalter will provide the source code – unless this is prevented by mandatory provisions in the open source license conditions – but only against reimbursement of the costs Winterhalter incurs thereby.
8. The User is entitled to provide a third party with the original downloaded Software (including the Winterhalter App) together with a copy of these Terms and Conditions of Use and any Special Agreements if this third party has expressly consented in writing to the application of these Terms and Conditions of Use. By passing on the Software in compliance with the conditions pursuant to sentence 1, authorization to use the Software passes to the third party. The former User’s authorization to use the Software simultaneously expires. If the Software is passed on, the former User must delete all copies and partial copies of the Software without delay and completely or destroy them in another manner. This also applies to the backup copy.
9. The User is solely liable for any passing on of Winterhalter information to third parties and any claims arising therefrom. This applies in particular to claims due to infringements of intellectual property rights (including any moral rights), as well as infringements. The User shall indemnify on demand Winterhalter, Winterhalter’s statutory representatives, employees and vicarious agents and hold them harmless against any and

all claims, liabilities, damage, losses and costs connected with the User passing Winterhalter content on to third parties.

§ 6 User Content and other duties of the User

1. Winterhalter may permit the User to upload his own content to the Winterhalter Website and publish it (“**User Content**”).
2. If the User uploads User Content to the Winterhalter Website and publishes it, the User thereby grants Winterhalter a worldwide, unlimited license free of any costs or license fees, to use, reproduce and process the User Content, as well as to display and execute the User Content, in each case to the extent this is necessary for the operation of the Winterhalter Online Services. The results of a permissible processing may be used in the same manner as the original versions. The license may be granted to third parties by way of a sublicense insofar as such a sublicensing serves the purpose of enabling the third party to render services for Winterhalter in connection with offering or using the Winterhalter Online Services. The license is also transferable, but only to a third party who acquires the Winterhalter Online Services or material parts of the Winterhalter Online Services.
3. When using the Winterhalter Online Services, the User may not:
 - behave in a manner that is in violation of existing laws and/or accepted principles of morality;
 - infringe intellectual property, the right to privacy or other rights of third parties
 - transmit User Content with viruses, “Trojan horses” or other programmes which could damage the Winterhalter Online Services;
 - input, save or send hyperlinks and/or User Content which the User is not authorized to use in this form, in particular if the use of these hyperlinks or User Content breaches duties of confidentiality or is otherwise unlawful;
 - distribute advertising or unsolicited e-mails in violation of applicable law (spamming) and/or inaccurate warnings of viruses or malfunctions; and/or
 - call upon people to participate in competitions, snowball systems, chain letters, pyramid games and comparable actions.
4. Winterhalter will not assume ownership of the User Content. The User Content will not represent any opinions of Winterhalter. The license granted to Winterhalter under section 2 remains unaffected.

5. Winterhalter reserves the right to remove content that is not in compliance with the Terms and Conditions of Use from the Winterhalter Online Services at any time.
6. Notwithstanding the above provisions, the following will apply: If the User has reason to believe that publications in the Winterhalter Online Services are infringing his rights or those of a third party, he can write an e-mail to the following address: legal@winterhalter.de with the following information: (i) a description of the protected right; (ii) a description of the location of the infringing User Content in the Winterhalter Online Services; (iii) address, telephone number and e-mail address of the User; as well as (iv) a statement by the User that he holds the rights to the disputed content or is authorized to act in the name and on behalf of the holder of the rights, and that the User (or holder of the rights) did not permit the use of the disputed content in the Winterhalter Online Services and that all of the above information is accurate.
7. Where the User passes feedback, remarks, comments or suggestions for improvement of the Winterhalter products and services or of the Winterhalter Online Services on to Winterhalter ("**Feedback**"), unless otherwise explicitly agreed in writing, Winterhalter may use this Feedback free of charge, unlimited in time and territory, to improve the Winterhalter products and services, as well as the Winterhalter Online Services and/or provide it to third parties so that they can improve the Winterhalter products and services and/or the Winterhalter Online Services for Winterhalter. Where the Feedback is protected by intellectual property rights and the use of the Feedback for improvements therefore requires a licence, the User hereby grants Winterhalter a worldwide license free of charge – to the extent this is legally possible for the User – for the use of this Feedback to improve the Winterhalter products and services, as well as the Winterhalter Online Services, including the right to grant sublicenses and transfer, in accordance with the provision in section 2.
8. Should the User determine that third parties are breaching the rights of Winterhalter, he will inform Winterhalter thereof without delay.
9. Winterhalter does not assume any legal responsibility vis-à-vis the User for claims which could arise from the use of the user content of other users.
10. The User shall defend and indemnify Winterhalter, Winterhalter's statutory representatives, employees and vicarious agents and hold them harmless against any and all claims, liabilities, damage, losses and costs that derive from the fact that User Content uploaded by the User to the Winterhalter Online Services and/or published User Content have infringed the rights of third parties.

§ 7 IP Rights

1. All rights to the Winterhalter Online Services, the Winterhalter Information, as well as the designs, trademarks and other protected signs used in the Winterhalter Online Services will remain exclusively with Winterhalter, or the licensors of Winterhalter, as the case may be, and the User may not make them subject to attachment. This does not affect any rights of use that were explicitly granted to the User under these Terms and Conditions of Use and/or the Special Agreements.
2. The User must keep alphanumeric codes, trademark and copyright notices and other reservations of rights unchanged, and in the case of Software (including the Winterhalter App), put them in any backup copies in unchanged form.

§ 8 Liability

1. Save for death or personal injury or damage to property caused by its negligence, Winterhalter's liability (whether arising in negligence or otherwise) is excluded including (without limitation) liability for loss of or damage to data, damage due to your hardware or software, disruption of operations, stoppage in production, loss of profit and any indirect or consequential loss.
2. Where Winterhalter's liability is restricted or excluded according to the provisions above, this shall also apply to the personal liability of Winterhalter's statutory representatives, employees and vicarious agents.
3. The Winterhalter Online Services may contain hyperlinks to websites of third parties. Winterhalter does not assume any liability for the content of these websites, nor does it take ownership of these websites and their content, since it does not control the linked information and is not responsible for the content and information provided therein. The User uses them at his own risk.

§ 9 Compliance with provisions of foreign trade law

1. When using the Winterhalter Website, purchasing Winterhalter content and passing Winterhalter content on to third parties, the User must comply with the respective regulations of national and international foreign trade law, (re)export control law and embargo law that are applicable, in particular with the laws of the United Kingdom and the European Union. In particular, the User shall ensure that he will use the Winterhalter content exclusively for peaceful and civil purposes.
2. The User shall indemnify Winterhalter in full and on demand against any claims asserted by public authorities or other third parties against Winterhalter for failure to comply

with the aforementioned obligations under export control law and undertakes to compensate Winterhalter for any damage, loss, liability and expenditures it incurs in this connection.

3. Winterhalter shall not be liable for any failure to perform or delay in performing due to national or international provisions of foreign trade law and (re)export control law or any embargos and/or other sanctions or circumstances beyond its control. Delays due to export audits or permitting procedures shall invalidate deadlines and delivery times.
4. Winterhalter shall be entitled to terminate the contractual relationship with the User immediately if the fulfilment of this contractual relationship conflicts with provisions or prohibitions of the respective applicable national or international foreign trade law, (re)export control law and embargo law initially or subsequently, or the permits needed to fulfil the contract have not been granted.
5. [In the case of a termination pursuant to section [6], the assertion of a damages claim or other rights by the User due to the termination shall be excluded.]

§ 10 Confidentiality

1. The Parties undertake to maintain secrecy with regard to all confidential information which becomes accessible to them in connection with the provision and use of the Winterhalter Online Services. Confidential information may only be made accessible to those employees and third parties who absolutely require it for the fulfilment of the contract, or in the User's case, the contractual use of the products and services provided by Winterhalter (need to know principle).
2. Confidential information is information that is either protected or marked as confidential by the Parties or otherwise designated in writing, or information whose confidentiality is reasonably evident to the Parties according to the circumstances of its disclosure. Confidential information includes in particular the Login Details.
3. The obligation to maintain secrecy above does not apply if and to the extent the respective information demonstrably (i) is generally known or becomes generally known without culpability on the part of the Parties and without breach of this obligation to maintain secrecy, (ii) is already known to the Party at the time of communication, which must be shown by documents proving such knowledge, (iii) is lawfully communicated or made available to the receiving Party by a third party, (iv) must be disclosed owing to statutory regulations or enforceable official orders or court decisions. The burden of proof for the existence of any exceptional situation shall be borne by the Party which is the recipient of the information in the given case.

§ 11 Miscellaneous

1. The User may only assign his claims against Winterhalter under these Terms and Conditions of Use with Winterhalter's express permission.
2. There are no oral ancillary agreements to these Terms and Conditions of Use, which constitutes the entire agreement between the parties concerning its subject matter and supersedes and extinguishes all previous discussions, correspondence, promises, assurances, warranties, representations and understandings whether written or oral, relating to its subject matter. Each party acknowledges that in entering into these Terms and Conditions of Use it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions of Use. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms and Conditions of Use. Nothing in this clause shall limit or exclude any liability for fraud. Any additions or changes to these Terms and Conditions of Use must be in written form (including e-mail) to be valid. This also applies to a change to or waiver of the written form requirement.
3. No failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions of Use or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy under these Terms and Conditions of Use or by law is only effective if it is in writing.
4. Should individual provisions of these Terms and Conditions of Use be or become invalid or infeasible, this shall not affect the validity of the remaining provisions.
5. The laws of England apply, to the exclusion of the rules of private international law and the UN Convention on Contracts for the International Sale of Goods (CISG).
6. For all disputes under these Terms and Conditions of Use, the English courts shall have exclusive jurisdiction if the User is a trader, legal entity under public law or special fund under public law.
7. Winterhalter reserves the right to change or add to the Terms and Conditions of Use. Winterhalter will inform the User prior to any change or addition. Changes and additions shall be deemed accepted by the User unless he objects to them in writing within four weeks of having been informed. When Winterhalter notifies the User of the change

or addition to the Terms and Conditions of Use, it will draw his attention to the consequences of not responding.
