

## General Terms and Conditions for Catering Contracts of GMS GOURMET GmbH

### 1. General information, scope

- 1.1. These General Terms and Conditions apply without exception to all catering contracts, including any future contracts, concluded between GMS GOURMET GmbH (hereinafter referred to as "Caterer") and the customer, unless otherwise expressly agreed in writing.
- 1.2. Any provisions included in standard contractual forms of the customer, which contradict the provisions of these General Terms and Conditions, shall be ineffective in their entirety, irrespective of when and in which form they are brought to the caterer's attention. Deviating agreements on individual provisions of these General Terms and Conditions shall only be valid for the relevant provisions and require the express prior written approval of the Caterer to become effective. Silence with regard to the General Terms and Conditions of the customer shall not be deemed as acceptance.
- 1.3. Silence on the part of the Caterer "in general" has no explanatory value whatsoever.

### 2. Offer and conclusion of contract

- 2.1. The offer shall be non-binding and subject to change unless otherwise expressly stated by the Caterer in the offer. Any offers made orally or by telephone require the immediate written confirmation by the Caterer to become effective. The contract shall become effective with the written order confirmation of the Caterer. Changes to the contract require the consent of both parties unless otherwise specified in these General Terms and Conditions (see especially point 7 cancellation conditions).
- 2.2. The Caterer shall not accept any liability for the accuracy and completeness of the documents and information provided by the customer and used for the preparation of the offer, unless their faultiness is not recognized by the Caterer in a deliberate or grossly negligent manner.
- 2.3. All documents made available in connection with the preparation of the offer (e.g. plans, concepts, descriptions) shall remain the property of the Caterer and can be reclaimed by the Caterer at any time. In such case they shall be promptly returned to the Caterer at the customer's cost and risk. The documents shall be treated strictly confidentially and shall not be copied, published, transferred to or made available to third parties or used for any other than the agreed purpose without the express written approval of the Caterer.
- 2.4. The product range we offer is subject to seasonal changes. If individual items included in this offer cannot be procured in time, the Caterer reserves the right to provide goods of equivalent quality and price.

### 3. Delivery, transfer of risk

- 3.1. The risk for the goods delivered shall pass to the customer, as soon as the goods have been handed over to the customer by the Caterer or by a third party appointed by the Caterer.
- 3.2. All materials and objects - with the exception of food and beverages - delivered by the Caterer are provided to the Client on a loan or hire basis. Any damage or loss incurred shall be reimbursed to the Caterer by the customer.
- 3.3. Any outstanding partial deliveries or services or reported defects shall be completed or remedied by the Caterer as soon as possible. If the overall performance of the Caterer is not substantially impaired by such outstanding services or defects, the client shall not have the right to refuse acceptance.

### 4. Warranty, notice of defects

- 4.1. The statutory warranty periods shall apply.
- 4.2. Defects are - without legal consequences to the customer, who is a consumer within the meaning of the KSchG (consumer protection law), for defaulting - to be disclosed immediately upon delivery or detection.
- 4.3. If the customer is an entrepreneur within the meaning of KSchG (Consumer Protection Act), he is obliged to inspect the delivered goods or rendered services immediately upon receipt within the meaning of § 377 UGB (Austrian Commercial Code) for completeness, correctness and other faultlessness and send a written complaint about any possible defects immediately, at the latest, however, five working days after the receipt of goods or rendered services; failure to do so will result in forfeiture of all claims he is entitled to in the course of a proper examination for identifiable defects. If the customer is an entrepreneur within the meaning of KSchG (Consumer Protection Act), the customer shall also send a written complaint about any defects arising at a later date; failure to do so will result in forfeiture of all warranty claims.
- 4.4. Improper storage, handling or processing of the goods after delivery to the customers also results in forfeiture of all warranty claims.

## **5. Prices, payment conditions**

- 5.1. All prices and price indications are quoted exclusive of mandatory VAT.
- 5.2. Invoices shall be payable net within 14 days of receipt.
- 5.3. In the event of default of payment, statutory default interest shall be deemed to be agreed.
- 5.4. The customer undertakes to make a down payment of 75% of the amount of the final offer 6 weeks before the beginning of the event at the latest by transferring the amount to the account specified by the Caterer in writing. Otherwise the Caterer shall be entitled to terminate the contract with immediate effect and without prior notification of the customer. If the order is cancelled, the down payment shall be offset against the Caterer's claims in accordance with the provisions of article 7. If there is a balance, the Caterer shall transfer the corresponding amount within 14 days from the cancellation date to the account specified by the customer (if the cancellation fee is lower than the down payment) or invoiced by the Caterer to the customer (if the cancellation fee exceeds the down payment).

## **6. Set off and right of retention**

- 6.1. The customer - unless he is a consumer within the meaning of KSchG (Consumer Protection Act) - is not entitled to offset his claims against the Caterer's claims, unless the counterclaim has been expressly acknowledged by the Caterer or recognized by a court of law.
- 6.2. The customer shall have no right of retention with regard to the objects made available to him. Any right of retention which a customer, who is a consumer within the meaning of KSchG (Consumer Protection Act), may have according to the law is not excluded by this provision.

## **7. Cancellation conditions**

The customer is entitled to cancel the event and to postpone the event after the effective date of the contract (point 2.1.) only under the following conditions:

- 7.1. Cancellation of the event:  
After the confirmation of the order no cancellation fee is charged for cancellations up to 21 days before the beginning of the event.
- 7.2. Cancellations after the confirmation of the order from 20 up to 14 days before the beginning of the event are charged at 50% of the sum of the final offer.
- 7.3. Cancellations after the confirmation of the order from 13 up to 3 days before the beginning of the event are charged at 75% of the sum of the final offer.
- 7.4. Cancellations after the confirmation of the order less than 3 days before the beginning of the event are charged at 100% of the sum of the final offer.
- 7.5. A reduction of the number of participants after the confirmation of the order can only be taken into account 14 days before the beginning of the event at the latest. The cancellation fee in accordance with article 7.1.2. shall be applied on a pro rata basis in case of a reduction of the order.
- 7.6. Increase of the number of participants:  
An increase of the number of participants after the confirmation of the order can only be taken into account 14 days before the beginning of the event at the latest and requires the acceptance of the caterer by an increase of more than 10 participants.
- 7.7. Postponement of the event:  
Wishes the customer to postpone the event after the effective date of the contract he has to obtain the caterer's consent. Furthermore the caterer is entitled to charge the analogously applying cancellation fee pursuant to 7.1.2., 7.1.3. and 7.1.4.

## **8. Insurance and concessions**

- 8.1. Obtaining any necessary official or other approvals shall be the responsibility of the customer and is only included in the offer, if expressly agreed in writing.
- 8.2. Any insurance to be taken out with regard to the event shall be taken out and paid by the customer.

## **9. Miscellaneous costs**

- 9.1. Costs for delivery and collection of the equipment and costs for the delivery of the food and beverages are included in the price.
- 9.2. Any costs incurred for proper waste disposal shall be paid by the customer.

## **10. Liability**

As far as legally permissible, in particular in accordance with the provisions of KSchG - liability in relation to the customer is excluded in case of slight negligence, except for personal injury.

## **11. Force Majeure**

Default or disturbances caused by force majeure, labour disputes, business disruptions through no fault of either of the parties, unrest and other events beyond our control do not entitle the customer or the Caterer to assert any claims. The party concerned shall notify the other party without delay about the occurrence of such events.

**12. Miscellaneous provisions, place of performance and jurisdiction**

- 12.1. If individual provisions of these General Terms and Conditions for catering contracts should be or become invalid, the validity of the remaining provisions and the contracts concluded on the basis of these provisions shall remain unaffected.
- 12.2. Any amendments and/or additions to these General Terms and Conditions for Catering Contracts shall be confirmed in writing by the Caterer.
- 12.3. Place of performance for services rendered by the Caterer and for the obligations of the client shall be Vienna.
- 12.4. The legal venue for all disputes arising from or in connection with these General Terms and Conditions for Catering Contracts shall be the competent court having subject matter jurisdiction at the seat of the Caterer.
- 12.5. The legal venue for all actions concerning disputes arising from or in connection with these General Terms and Conditions for Catering Contracts and any contracts based on these Terms and Conditions, brought against a consumer within the meaning of KSchG (Consumer Protection Act) having his normal place of residence, domicile or place of employment within the country shall be one of the courts of the district where the consumer has his normal place of residence, domicile or place of employment. For consumers who do not have their domicile in Austria at the time of conclusion of the contract, statutory jurisdiction shall apply.
- 12.6. The legal relationship between the Caterer and the customer shall be governed by Austrian substantive law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods and conflict-of-laws rules.
- 12.7. These General Terms and Conditions for Catering Contracts shall not affect any statutory rights of a consumer in accordance with the applicable consumer protection legislation