

Please print this agreement, sign it and return it to:

Accounts Department
Maurice Lay Distributors Limited
Fourth Way
Avonmouth
Bristol
BS11 8DW

Please ensure that you have completed the following

- At the top of page 1 Please ensure that the full date is entered (including the month and year e.g. 14th December 2010.)
- Page 1 section 2 - Enter your full trading name and address and include your Maurice Lay account number.
- Page 2 paragraph 7.1 Please insert the date
- Page 5 section 16 Please have an authorised person sign the agreement on behalf of your business and print their name in the space provided.
- Page 6 part 2 If you wish to market Miele products via an internet website, please enter the address of the website in this section.

Maurice Lay Distributors Selective Distribution Agreement for Supply of Miele Products

The following agreement is made on 20



BETWEEN

(1) **Maurice Lay Distributors Limited**, incorporated and registered in England and Wales with company number 2070141 whose registered office is at Fourth Way, Avonmouth, Bristol BS11 8DW (**Maurice Lay**); and

(2)



.....

..... (**Customer**)

Maurice Lay account no.

Background

- (A) Miele is a manufacturer of consumer products and has invested significant sums in ensuring that its products are of the highest quality. This includes the provision of first class pre-sales and after-sales service. It is keen to ensure that distributors and resellers of its products support this reputation for excellence.
- (B) Maurice Lay has been a UK distributor of Miele products since 1991 offering national coverage to a wide group of customers. Maurice Lay is also keen to ensure that trade customers to whom it supplies Miele products respect the standards of quality associated with these products.
- (C) The purpose of this agreement is to set out the standards and other terms which will apply to trade customers who purchase Miele products from Maurice Lay.

IT IS AGREED as follows.

1) Definitions

In this agreement, unless the context requires otherwise, the following words and phrases shall have the following meanings:

"Customer" – the designated customer whose details appear at the head of this agreement.

"Products" – Miele products as shown from time to time in the Maurice Lay published price guides.

"Miele" – Miele Company Limited registered number 00769014 whose registered office is at Fairacres, Marcham Road, Abingdon, Oxfordshire OX14 1TW.

2) Appointment

- 2.1 The Customer hereby warrants that as at the date of this agreement it complies with the selective distribution criteria set out in Schedule 1 below (the **Maurice Lay Selective Criteria**)
- 2.2 The Customer may purchase the Products in accordance with the terms of this agreement. The Customer shall then display, market and sell the Products purchased from Maurice Lay in accordance with the Maurice Lay Selective Criteria.
- 2.3 Maurice Lay may review the Customer's compliance with the Maurice Lay Selective Criteria during the term of this agreement. The Customer shall cooperate with Maurice Lay and respond promptly to any request for information made by Maurice Lay.
- 2.4 If Maurice Lay considers that the Customer has failed to comply with any of the Maurice Lay Selective Criteria, Maurice Lay may require the Customer to rectify such violation within 30 days of serving notice in writing on the Customer. If the Customer fails to rectify such violation within such period, or repeats a previously rectified violation, Maurice Lay may give notice in writing to the Customer terminating this agreement immediately.
- 2.5 Maurice Lay may vary the Maurice Lay Selective Criteria from time to time by giving the Customer three months' notice in writing of any changes.

- 2.6 The Customer shall not without Maurice Lay's prior written consent make any promises or guarantees about the Products beyond those contained in the promotional material supplied by Maurice Lay from time to time, or otherwise incur any liability on behalf of Maurice Lay.

3) Customer's obligations

- 3.1 The Customer may only sell the Products to end users and shall take all necessary steps to ensure that it does not sell the Products other than in accordance with this clause.
- 3.3 The Customer may promote and sell the Products by mail order and/or the Internet provided that the Customer complies with the criteria set out in **Schedule 1 Part 2**.
- 3.4 The Customer agrees that it shall not alter or make any changes to any Product, and in particular it shall not remove or alter the model or serial number on any Product or its packaging.

4) Maurice Lay's obligations

- 4.1 Maurice Lay shall only sell the Products to authorised Maurice Lay Customers who meet and continue to meet the Maurice Lay Selective Criteria.
- 4.2 Maurice Lay shall not, by publication or otherwise, recommend or suggest the prices to be charged by the Customer for the Products.

5) Standard Conditions for the Sale of Products

- 5.1 Maurice Lay's Standard Conditions for the Sale of Goods shall apply to all sales of the Products by Maurice Lay to the Customer under this agreement. Any reference to 'the buyer' in those conditions shall be treated as a reference to the Customer. If there is any conflict between the Standard Terms and Conditions for the Sale of Goods and this agreement, then this agreement shall prevail to the extent of such conflict.
- 5.2 Maurice Lay may vary the Standard Conditions for the Sale of Goods at any time by giving to the Customer at least three months notice in writing of any changes.

6) Markings and promotional material

Purchasing Miele products from Maurice Lay Distributors does not grant permission for the use of any Miele Marketing property without the express written permission of Maurice Lay and Miele Company Ltd.

Marketing property includes but is not limited to:

Miele Logo

Miele trademarks

Miele photographs

Miele promotional material

7) Term of contract and notice of termination



- 7.1 This agreement begins on [insert date] and shall continue indefinitely until terminated by either party in accordance with the terms of this agreement.
- 7.2 Either party may terminate this agreement at any time by giving not less than three months' prior written notice expiring on the last day of a calendar month, without giving a reason.
- 7.3 Maurice Lay may terminate this agreement in accordance with the provisions of clause 2.4.
- 7.4 Without affecting any other rights that it may be entitled to, either party may give notice in writing to the other terminating this agreement immediately if:

- 7.4.1 the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days of being notified to do so; or
- 7.4.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- 7.4.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- 7.4.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- 7.4.5 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- 7.4.6 a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- 7.4.7 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- 7.4.8 the other party, being an individual, is the subject of a bankruptcy petition or order; or
- 7.4.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- 7.4.10 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 7.4.11 the other party, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8) Effects of termination

- 8.1 Termination of this agreement for any reason shall not affect any rights or liabilities accrued at the date of termination.
- 8.2 The termination of this agreement shall not of itself make Maurice Lay liable to pay any compensation to the Customer, including but not limited to loss of profit or goodwill.
- 8.3 All rights and licences of the Customer under this agreement shall terminate on the termination date.
- 8.4 Maurice Lay may, without incurring any liability to the Customer, cancel any order placed by the Customer after either party has given notice to terminate this agreement, irrespective of whether Maurice Lay has previously accepted such order.

9) Completeness

- 9.1 This agreement and the documents referred to in it constitute the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 9.2 Each party acknowledges that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.
- 9.3 Nothing in this clause shall limit or exclude any liability for fraud.

10) Variation

- 10.1 Subject to clauses **2.5** and **5.2**, no amendment or variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11) Assignment and other dealings

- 11.1 The Customer may not assign, sub-contract or otherwise transfer or delegate in whole or in part any of its rights or obligations under this agreement or any rights arising from any individual contract for the purchase of the Products from Maurice Lay without Maurice Lay's prior written consent. Maurice Lay shall be entitled to assign, sub-contract, transfer or delegate either in whole or in part any of its rights or obligations under this agreement or arising from any individual contract for the sale of the Products to the Customer without reference to the Customer. This agreement shall be legally binding upon the parties and their successors and/or assigns.

12) Waiver

- 12.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

13) Severance

- 13.1 If any provision of this agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this agreement, and the validity and enforceability of the other provisions of this agreement shall not be affected.
- 13.2 If a provision of this agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14) Notices

- 14.1 Any notice required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to the party required to receive the notice at its address as set out above, or as otherwise notified by the relevant party to the other party.
- 14.2 Any notice shall be deemed to have been duly received:
- 14.2.1 if delivered personally, when left at the address referred to in this clause; or
 - 14.2.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second working day after posting; or
 - 14.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 14.3 The provisions of this clause 14 shall not apply to the service of any proceedings or other documents in any legal action.

15) Third party rights

- 15.1 A person who is not a party to this agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 15.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to this agreement.

16) Governing law and place of jurisdiction

- 16.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with English law.
- 16.2 The parties agree that the English courts shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation.

.....

Signature Maurice Lay

PRINT NAME

Signature Customer

PRINT NAME

Schedule 1

Maurice Lay Selective Criteria

Part 1 General criteria

Customer outlets: The Customer operates from suitable retail premises or sells Miele products by adding face to face added value.

Marketing: In the event that the Customer displays Miele product, the product is to be displayed within approved kitchen furniture as agreed by the Maurice Lay Business Development Manager.

Ordering: The Customer commits to place orders with Maurice Lay on Customer headed paper. The Maurice Lay Customer Call Centre support will be given when required.

Support Service: The Customer offers satisfactory storage and handling of Miele appliances, suitable delivery to the consumer's home, installation and commissioning of appliances, and detailed instruction for users on appliance features.

Internet marketing: If the Products are to be marketed on the Internet or by mail-order, the Customer shall comply with the quality criteria set out in **Part 2** of this Schedule. The Customer shall not present the Products or allow the Products to be offered for sale on third party Internet platforms.

General legal and contractual agreements: The Customer shall comply fully with all relevant consumer protection laws in force from time to time in the United Kingdom, including in particular but without limitation all applicable laws relating to distance selling and electronic business transactions. Maurice Lay shall have no liability to the Customer or to any third party where the Customer has failed to comply with any such laws except where such exclusion of liability is not permitted by law.

Part 2 Additional e-commerce criteria

In the event that the Customer intends to market the Products via an Internet website it shall do so at the following website address: (www. _____ – please complete address). The domain name of the website from which the Products are marketed or sold by the Customer shall always incorporate in some recognisable form the trading name of the Customer's retail fascia. In addition the following criteria apply:

Website: The website must be professionally designed and technically always up-to-date.

Purchasing Miele products from Maurice Lay does not grant any rights for the use of any Miele Marketing property without the express written permission of both Maurice Lay and Miele Company Ltd.

Product presentation: Any images of the Products must be unambiguous and meet the high standards of the Miele brand. Products and features must be described in appropriate detail.

Prices: Prices for the Products and any additional services on the Customer's website must be constantly up-dated and therefore correct and clearly defined.

Pre-sales advisory services: The Customer shall offer pre-sales advice as a telephone service. This service must also be available to customers after the purchase of an appliance. Telephone advice services must be available during business hours and their availability must be clearly visible within the website. In addition the Customer's trading address shall be clearly visible within the website.