

International Conditions of Sale

I. Application of the International Conditions of Sale

1. These International Conditions of Sale apply to all customers of Rila Feinkost-Importe GmbH & Co. KG - hereinafter referred to as Rila Feinkost - whose relevant place of business is **not in Germany**. For customers whose place of business is in Germany, the General Terms and Conditions of Rila Feinkost apply, which will be forwarded on request. In each case, the relevant place of business is the one which concludes the contract in its own name.
2. These International Conditions of Sale apply to all contracts whose preponderant object is the **supply of goods** to customers. Additional obligations assumed by Rila Feinkost do not affect the application of these International Conditions of Sale.
3. Conflicting or differing **terms of business of the customer** do not bind Rila Feinkost, even if Rila Feinkost does not object to them or even if Rila Feinkost unconditionally renders performance or accepts the customer's performance. The provisions of this paragraph equally apply insofar as the terms of business of the customer, irrespective of the contents of these International Conditions of Sale, deviate from statutory provisions.
4. These International Conditions of Sale do not apply, if the customer buys the goods for **personal, family or household use** and if Rila Feinkost knew or should have known that at the conclusion of the contract.

II. Formation of the Contract

1. The customer is under an obligation to give **written notice to Rila Feinkost** prior to the formation of a contract if the goods to be delivered are to be fit not only for normal use or will be used in circumstances which are unusual or if there is a risk of atypical damages or unusual amounts of loss of which the customer is or ought to have been aware.
2. **Orders of the customer** are to be put in writing. If the customer's order deviates from the proposal or the tender submitted by Rila Feinkost, the customer will emphasize the differences as such.
3. All orders, in particular also those received by employees of Rila Feinkost, will **take effect exclusively if followed by a written acknowledgement** of the order by Rila Feinkost. The actual delivery of the goods ordered, any other conduct of Rila Feinkost or silence on the part of Rila Feinkost does not allow the customer to assume the formation of the contract. Rila Feinkost can dispatch such written acknowledgement of the order up to and including **fourteen (14) calendar days after** the customer's order has been received by Rila Feinkost. Until this time, the customer's order is irrevocable.
4. The written **acknowledgement of the order** by Rila Feinkost shall be **received in time**, if it is received by the customer within fourteen (14) calendar days after its date of issue. The customer will inform Rila Feinkost without delay, if the written acknowledgement of the order is received with some delay.
5. The written acknowledgement of the order by Rila Feinkost sets out all the **terms of the contract** and brings the contract into effect even if - except for the price for the goods and the quantity to be delivered - the written acknowledgement is not consistent with the declarations of the customer in every respect, especially with reference to the exclusive application of these International Conditions of Sale.

Particular wishes of the customer, namely warranties or guarantees with reference to the goods or the performance of the contract therefore require express written confirmation by Rila Feinkost in every case. The contract will only fail to come into existence if the **customer objects in writing** that the acknowledgement of the order by Rila Feinkost is not completely consistent with the declarations of the customer, the customer specifies the deviations in writing and if the objection is received by Rila Feinkost within a short time, at the latest seven (7) calendar days, after receipt of the written acknowledgement of the order by the customer.

6. Confirmations produced by the customer are of **no effect** without any objection by Rila Feinkost being necessary. In particular, neither the actual delivery of the goods, any other conduct of Rila Feinkost or silence on the part of Rila Feinkost shall give rise to any belief by the customer in the relevance of his confirmation.
7. Rila Feinkost's **employees**, commercial agents or other sales intermediaries are not authorized to dispense with the requirement of a written acknowledgement of the order by Rila Feinkost or to make promises which differ from its content or guarantees. If and to what extent such persons are authorized to make or receive declarations with effect for or against Rila Feinkost, is to be determined according to German law.
8. **Amendments** to the concluded contract always require written confirmation by Rila Feinkost.

III. Obligations of Rila Feinkost

1. Subject to an exemption according to section VII.-1. b) Rila Feinkost must **deliver the goods** specified in the written acknowledgement of the order and transfer the property in the goods. Rila Feinkost is **not obliged to perform obligations** not stated in the written acknowledgment of the order by Rila Feinkost or in these International Conditions of Sale.
2. Rila Feinkost's obligations under the contract made with the customer are owed only to the customer. Third parties not involved in the conclusion of the contract, in particular the **customer's clients**, are not entitled to request delivery to be made to them or to bring any other contractual claim against Rila Feinkost. The customer's responsibility to take delivery continues to exist even if he **assigns rights to third parties**. The customer gives Rila Feinkost an unlimited indemnity against all claims made by third parties against Rila Feinkost out of the contract made with the customer.
3. Rila Feinkost undertakes to deliver goods of average kind and quality taking account of the **tolerances customary in trade** concerning the kind, quantity and quality. Rila Feinkost is entitled to make **part deliveries** and to invoice them separately.
4. If further **specification** is required in relation to the goods to be delivered, Rila Feinkost will carry this out having regard to his own interests and to the identifiable and legitimate interests of the customer. A request to the customer to specify the goods, or to participate in the specification, is not required. Rila Feinkost does not undertake to inform the customer of the specification he has made or to give the customer the option of a differing specification.
5. Rila Feinkost undertakes to place the goods packaged according to Rila Feinkost's standard **at disposal for collection by the customer FCA (Incoterms 2010)** at the place of delivery indicated in the written acknowledgement of the order or by way of precaution at his premises in Stemwede-Levern/Germany at the agreed time of delivery. Previous separation or marking of the goods or notification to the customer of the goods being placed at disposal is not required. Under no circumstances, not even when other Incoterms are agreed Rila Feinkost is obliged to inform the

customer of the delivery, to arrange for the shipment of the goods or to insure the goods. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.

6. Agreed **delivery time periods** or **delivery dates** are subject to the customer's opening letters of credit and/or making down-payments as agreed and performing all other obligations incumbent upon him properly and in good time. Moreover, agreed delivery time-periods begin on the date of the written acknowledgement of the order by Rila Feinkost. Rila Feinkost is entitled to deliver earlier than at the agreed delivery time or to select the date of delivery within the period for delivery.
7. Without prejudice to his continuing legal rights, Rila Feinkost is entitled to fulfil his obligations **after the delivery time agreed upon**, if the customer is informed that Rila Feinkost will exceed the delivery time limit and of the time period for late performance. Subject to the aforesaid conditions, Rila Feinkost is entitled to make repeated attempts at late performance. The customer can object to late performance within reasonable time, if the late performance is unreasonable. An objection is only effective, if it is received by Rila Feinkost before commencing late performance. Rila Feinkost will reimburse necessary additional expenditure, proven and incurred by the customer as a result of exceeding the delivery time to the extent that Rila Feinkost is liable for this under the provisions laid down in section VII.
8. **Risks as to price and performance** even in relation to goods which are not clearly identifiable to the contract and without it being necessary for Rila Feinkost to give notice, pass to the customer at the latest as soon as the loading of the goods has begun or as soon as the customer does not take delivery in accordance with the contract or title to the goods has passed to the customer. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.
9. Rila Feinkost is **not obliged** to procure documents or certificates not expressly agreed, to obtain any licences, authorizations or other **documents** necessary for the export, transit or import, or to provide security, export, transit, import or customs **clearance**. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.
10. Rila Feinkost is in no case liable to perform duties associated with the putting of the goods into circulation **outside Germany**, to bear levies, duties and charges accruing outside Germany, to comply with weight and measuring systems, packaging, labelling or marking requirements or registration or certification obligations applicable outside Germany or to comply with any other legal provisions applicable to the goods outside Germany.
11. Without prejudice to his continuing legal rights, Rila Feinkost is entitled to **suspend the performance of his obligations** so long as, in the opinion of Rila Feinkost, there are grounds for concern that the customer will wholly or partly fail to fulfil his obligations in accordance with the contract.
12. Except as provided in section III.-7., Rila Feinkost is only obliged to inform the customer of **possible disruption in performance**, once the commencement of the disruption is definitely certain for Rila Feinkost.

IV. Obligations of the Customer

1. Irrespective of continuing obligations of the customer to guarantee or to enable payment, the customer undertakes to pay the **agreed price for the goods** in the currency specified in the written acknowledgement of the order transferring it without deduction and free of expenses and costs to one of the financial institutions designated by Rila Feinkost. To the extent that a price for the goods has not been agreed, the price which is at the agreed time of delivery Rila Feinkost's usual price for the goods will apply.
2. The payment to be made by the customer is in any event **due for payment** at the time specified in the written acknowledgement of the order, or otherwise on receipt of the invoice.
3. The customer warrants that all legal requirements and documentations for the fiscal treatment regarding **value added tax** of the delivery and/or any service will be fulfilled. To the extent that Rila Feinkost has to pay German and/or foreign value added tax, the customer will indemnify Rila Feinkost in all and every respect without prejudice to any continuing claim by Rila Feinkost. The indemnity is granted by the customer waiving any further requirements or other defences, in particular waiving the defence of limitation or prescription and also includes the reimbursement of the expenses incurred by Rila Feinkost.
4. Any statutory rights of the customer to **set-off** against claims of Rila Feinkost, to **withhold payment** or taking delivery of the goods, to **suspend** the performance of his obligations or to **raise defences or counterclaims** are excluded, except where the corresponding claim of the customer against Rila Feinkost is in the same currency, is founded in the customer's own right and is either due and undisputed or has been finally adjudicated or where despite written warning by the customer Rila Feinkost has committed a fundamental breach of his obligations due and arising out of the same contractual relationship, and has not offered any adequate assurance.
5. The customer undertakes **to take delivery** of the goods at the delivery time without taking any additional period of time and at the place of delivery resulting from section III.-5. and shall fulfil all the duties imposed by the contract, by these International Conditions of Sale, by the rules of the ICC for the use of Incoterms® 2010 and by statutory provisions. The customer is only entitled to refuse to take delivery of the goods if he avoids the contract in accordance with the rules in section VI.-1.

V. Delivery of non-conforming Goods or Goods with Defective Title

1. Without prejudice to any exclusion or reduction of liability of the seller provided by law, goods do **not conform with the contract** if the customer proves that, taking into account the terms in section III., at the time the risk passes the packaging, quantity, quality or the description of the goods is significantly different to the specifications laid down in the written acknowledgement of the order, or in the absence of agreed specifications, the goods are not fit for the purpose which is usual in Germany. Regardless of the stipulation established in sentence 1, the goods shall be deemed to conform with the contract to the extent that the legal regulations applicable at the place of business of the customer do not prevent the usual use of the goods.
2. To the extent that the written acknowledgement of the order by Rila Feinkost does not contain an explicit statement to the contrary, Rila Feinkost is in particular **not liable** for the goods being fit for a purpose which is not usual in Germany or for complying with further reaching expectations of the customer or for possessing the qualities of a sample or a model or for their compliance with the legal regulations existing outside of Germany, for instance in the customer's country. Rila Feinkost shall also not be liable for any non-conformity with the contract that did not exist at

the time the risk has passed. To the extent that the customer, either himself or through third parties, initiates the removal of non-conformities without the prior consent of Rila Feinkost in writing, Rila Feinkost will be released from his liability.

3. The customer is obliged vis-à-vis Rila Feinkost to **examine** every single delivery comprehensively for any discoverable or typical lack of conformity with the contract and moreover as required by law. A counter-check is required for official samples taken, which has to be officially sealed and sent to Rila Feinkost.
4. Without prejudice to any exclusion or reduction of liability of the seller provided by law, goods have a **deficiency in title** if the customer proves that the goods are not free from enforceable rights or claims of third parties at the time risk passes. Without prejudice to further legal requirements, third parties rights or claims founded on industrial or other intellectual property constitute a deficiency in title only to the extent that the rights are registered, made public and in legal force in Germany and prevent the usual use of the goods in Germany. Regardless of the stipulation established in sentence 1, title to the goods shall be deemed not to be defective to the extent that the legal regulations applicable at the place of business of the customer do not prevent the usual use of the goods.
5. Without prejudice to the statutory obligations of the customer to give notice within reasonable time, the customer is obliged vis-à-vis Rila Feinkost to give notice to Rila Feinkost of any lack of conformity with the contract or any deficiency in title at the latest within one (1) year after the goods have factually been handed over to him and additionally send samples of the goods disapproved to Rila Feinkost. Such **notice** has to be made in writing and directly to Rila Feinkost and to be formulated in such a precise manner as to enable Rila Feinkost to effect remedy measures without need for further inquiries at the customer and to secure claims against Rila Feinkost's suppliers and moreover as required by law.
6. Following **due notice** according to section V.-5., the customer can rely on the remedies provided by these International Conditions of Sale. The customer has no other rights or claims whatsoever and no claims of a non-contractual nature. In the event of **notice not having been properly given**, the customer may only rely on remedies if Rila Feinkost has fraudulently concealed the lack of conformity with the contract or the deficiency in title. Statements by Rila Feinkost as to the lack of conformity with the contract or as to the deficiency in title are for the purpose of explaining the factual position only, but do not entail any waiver by Rila Feinkost of the requirement of proper notice.
7. To the extent that the customer in accordance with the terms of these International Conditions of Sale is entitled to remedies because of delivery of non-conforming goods or goods with defective title, he is entitled to demand in accordance with the terms of the UN Sales Convention **delivery of substitute goods or repair or to reduce the price for the goods**. Irrespective of the customer's remedies, Rila Feinkost is always entitled in accordance with the provision in section III.-7. to repair goods which do not conform with the contract or to supply substitute goods or to avert the customer's remedies by giving him a credit note of an appropriate amount.

VI. Avoidance of the Contract

1. The **customer** is entitled to **declare the contract avoided**, if the respective applicable legal requirements are complied with, after he has threatened Rila Feinkost with avoidance of the contract in writing and an additional period of time of reasonable length for performance fixed in writing has expired to no avail.
2. Without prejudice to his continuing legal rights, **Rila Feinkost** is entitled to avoid the contract in whole or in part without compensation if the customer objects to the

application of these International Conditions of Sale, if on grounds for which Rila Feinkost is not responsible the written acknowledgement of the order by Rila Feinkost is received by the customer more than fourteen (14) calendar days after its date of issue, if insolvency proceedings relating to the assets of the customer are applied for, if the customer without providing a justifiable reason does not meet fundamental obligations due towards Rila Feinkost or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness, if the cover given by a credit insurer is reduced on grounds for which Rila Feinkost is not responsible, if Rila Feinkost through no fault of his own does not receive supplies properly or on time, or if for other reasons Rila Feinkost cannot be expected to fulfil his obligations by means which taking into consideration his own interests and that of the customer as far as ascertainable and legitimate at the time of formation of the contract, are unreasonable in particular in relation to the agreed counter-performance.

VII. Damages

1. Without waiving the legal requirements **Rila Feinkost** is only obliged to **pay damages** due to the violation of obligations resulting from the contract with the customer, the contractual negotiations carried on with the customer or the business relation with the customer in accordance with the following provisions:

a) The customer is required in the first instance to **rely on other remedies** and can only claim damages in the event of a continuing deficiency. The customer cannot claim damages as an alternative to other remedies.

b) **Rila Feinkost is not liable** for the conduct of suppliers or subcontractors or for damages to which the customer has contributed. Neither is Rila Feinkost liable for impediments which occur, as a consequence of natural or political events, acts of state, industrial disputes, sabotage, accidents, terrorism, biological, physical or chemical processes or other circumstances and which cannot be controlled by Rila Feinkost with reasonable means. Moreover, Rila Feinkost is only liable to the extent that the customer proves that the executive bodies or members of staff of Rila Feinkost have deliberately or negligently breached contractual obligations owed to the customer.

c) In the event of liability Rila Feinkost will compensate within the limits of lit. d) the **losses** of the customer to the extent that the customer proves that he has suffered an unavoidable loss caused by the breach of contractual obligations by Rila Feinkost and **foreseeable** to Rila Feinkost, at the time of the formation of the contract in respect of the occurrence of the loss and its amount. Moreover, the customer is required to **mitigate his loss** as soon as a breach of contract is or ought to be known.

d) Rila Feinkost is **not liable** for loss of profit or damage to reputation. Moreover, the **amount of damages** for late or non-existent delivery is limited to 0,4 per cent for each full week of delay, up to a maximum of 4 per cent, and for other breaches of obligations is limited to an amount of 200 per cent of the value of the non-conforming part of the contract. However, this subparagraph does not apply to injury of life, body or health, to fraudulent concealment of the non-conformity or deficiency in title of the goods and to other breaches of contractual obligations due to intentional harm or gross negligence.

e) For breach of contractual, pre-contractual and/or obligations resulting from the business relation owed to the customer, Rila Feinkost is obliged to pay damages exclusively in accordance with the provisions of these International Conditions of

Sale. Any recourse to **concurrent bases of claim**, in particular of a non-contractual nature, is excluded. Equally excluded is any recourse against Rila Feinkost's company organs, employees, servants, members of staff, representatives and/or those employed by Rila Feinkost in the performance of his obligations on grounds of breach of contractual obligations owed by Rila Feinkost.

f) Insofar as the limitation period may not already have barred the claim, claims for damages brought by the customer are excluded after **six (6) months** beginning with the rejection of the claim for damages by Rila Feinkost.

2. Irrespective of continuing legal or contractual claims the **customer** is obliged to pay **damages** to Rila Feinkost as follows:

a) In the event of **delay in payment** the customer will pay the costs of judicial and extra-judicial means and proceedings, usual and accruing within the country and abroad, as well as (without evidence being necessary) interest at the rate applicable in Stewede-Levern/Germany for unsecured short-term loans in the agreed currency, at least however interest at 8 per-cent points over the base rate of the German Federal Bank (Deutsche Bundesbank).

b) In the case of a failure to take delivery of the goods by the customer or of seriously **late taking delivery** of the goods by the customer, Rila Feinkost is entitled to claim damages without evidence being necessary up to 15 per cent of the value of the goods to be delivered.

3. Within the bounds of what is legally possible as well as within what is usual in the trade, the **customer** is in his commercial relationships with his clients obliged to **limit his liability** both in principle and in amount.

VIII. Other Provisions

1. **Title of the goods** that have been delivered **remains with Rila Feinkost** until settlement of all claims existing against the customer. The allocation of risk as to price and performance in section III.-8. is not affected by the reservation of title.

2. All communications, declarations, notices etc. are to be drawn up exclusively in **German or English**. Communications by means of fax or e-mail fulfil the requirement of being **in writing**.

IX. General Basis of Contracts

1. The **place of delivery** results from section III.-5. of these International Conditions of Sale. The **place of payment and performance** for all the rest of obligations arising from the legal relationship between Rila Feinkost and the customer is Stewede-Levern/Germany. These provisions also apply if Rila Feinkost assumes the costs of money remittance, renders performance for the customer somewhere else or payment is to be made in exchange of documents or goods or in the case of restitution of performances already rendered. The agreement of other clauses of the Incoterms or of other delivery clauses merely involves a variation of the provisions as to the transportation and the transportation costs; besides that, the foregoing provisions remain applicable.

2. The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (**UN Sales Convention / CISG**) in the English version governs the legal relationship with the customer. The UN Sales Convention applies, above and beyond its own area of application, and regardless of reservations adopted by other

states, to all contracts to which these International Conditions of Sale are to be applied according to the provisions of section I. Where standard terms of business are used, in case of doubt the Incoterms® 2010 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Conditions of Sale.

3. The **formation of contract**, including agreements as to the jurisdiction of courts and arbitrators, and the **rights and obligations of the parties**, also including the liability for death or personal injury caused by the goods to any person and pre-contractual and collateral obligations, as well as the interpretation are exclusively governed by the UN Sales Convention together with these International Conditions of Sale. Subject to differing provisions in these International Conditions of Sale, the rest of the legal relationship between the parties is governed by the non-uniform Swiss law, namely by the Swiss Obligationenrecht.
4. All contractual and extra-contractual disputes as well as disputes under insolvency law, arising out of or in connection with contracts to which these International Conditions of Sale apply, including their validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship with the customer shall be finally resolved, without recourse to the ordinary courts of law, by arbitration according to the Swiss Rules of International **Arbitration** (Swiss Rules) in force on the date when the Notice of Arbitration is received in accordance with these Rules. The tribunal shall consist of three arbitrators, one (1) of them shall be nominated by the claimant, one (1) of them by the respondent and the chairman of the tribunal shall be designated by the two arbitrators so nominated, or if the amount in dispute is inferior to € 50.000, there shall be one (1) arbitrator appointed according to the Swiss Rules of International Arbitration. The place of the arbitration shall be Zürich/Switzerland, the languages used in the arbitral proceedings shall be German and/or English. The competence of the Arbitral Tribunal excludes especially every statutory competence, which is provided by reason of a personal or substantive relation. If this arbitration clause is or will become void, the exclusive local and international jurisdiction of the courts which have jurisdiction for Stenwedde-Levern/Germany is agreed for all disputes instead. Instead of bringing an action before the arbitral tribunal or before the State Court which has jurisdiction for Stenwedde-Levern/Germany, Rila Feinkost is also entitled to bring an action before the national courts of the customer's place of business, or other national courts having jurisdiction according to domestic or foreign law.
5. If provisions of these International Conditions of Sale should be or become partly or wholly ineffective, the remaining arrangements will continue to apply. The parties are bound to replace the ineffective provision with a legally valid provision, as close as possible to the commercial meaning and purpose of the ineffective provision.