

General Terms and Conditions of Sale, Delivery and Payment

of Rüther Gewürze GmbH (short "Rüther"),
Reifenbergring 17, 58708 Menden, AG Arnsberg HRB 15886

1. Scope of Application

- 1.1. The Terms and Conditions of Sale, Delivery and Payment apply to all offers, transactions and other services provided by Rüther in the course of its business operations. These general Terms and Conditions of Sale, Delivery and Payment shall also apply to all future transactions between Rüther and the contractual partner, even if no express reference is made to them. The contractual partner of Rüther shall hereinafter be referred to as the „Customer“.
- 1.2. Any agreements deviating from these Terms and Conditions of Sale, Delivery and Payment shall only be valid if confirmed in writing by Rüther. In the event of any inconsistencies or conflicts between the contractual documents, the following order of precedence shall apply.
 - any special agreements, provided that they have been confirmed in writing by Rüther
 - the General Terms and Conditions of Sale, Delivery and Payment of Rüther
 - the non-mandatory provisions of applicable civil and commercial law
- 1.3. Any general terms and conditions of the Customer are hereby expressly rejected. They shall not be binding upon Rüther even if Rüther does not expressly object to them again at the contract is concluded. Any actions performed by Rüther in fulfilment of the contract shall not be deemed acceptance of any deviating terms or conditions.

2. Conclusion of the Contract

- 2.1. Orders placed by the customer shall constitute a binding offer Rüther may accept within two weeks either by issuing an order confirmation or by dispatching the goods.
- 2.2. Any oral or telephone promises or agreements made by employees who are not authorized to represent Rüther, including members of the sales force, shall only be legally binding if confirmed in writing by Rüther (by mail, fax or email).
- 2.3. Silence on the part of Rüther shall not be deemed acceptance under any circumstances.
- 2.4. Unless otherwise agreed in writing, all offers made by Rüther are non-binding and subject to change. The contract shall only be deemed concluded upon dispatch of a written order confirmation or upon shipment of the goods by Rüther. Rüther reserves the right of prior sale.
- 2.5. Samples and specimens are provided for illustrative purposes only and represent approximate examples with regard to quality, dimensions, colour, packaging and presentation. These characteristics are not guaranteed.

3. Place of Performance

The place of performance for all obligations, payments and deliveries arising from the contractual relationship, in particular delivery and transfer of risk, shall be the place determined by the delivery terms specified in the order confirmation.

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4. Prices and Terms of Payment

- 4.1. Unless otherwise agreed in the order confirmation, all prices shall be quoted “free domicile”, are non-binding, include customary commercial packaging and are exclusive of statutory value added tax (VAT). Unless expressly stated otherwise, all prices are quoted in Euro (EUR) and include the cost of transport.

The value of each product unit under this agreement shall generally apply in accordance with the delivery terms agreed by the parties in the order confirmation.

Customers from another EU Member State must provide their VAT identification number (VAT ID) when placing the order in order to qualify for a VAT-exempt intra-Community supply.

Rüther reserves the right to invoice transportation costs and other ancillary expenses separately, with the exception of standard commercial packaging.

- 4.2. The Customer shall be obliged to pay the agreed purchase price in full upon conclusion of the contract, without any deductions and free of charges. Notwithstanding any statement to the contrary, payments shall first be applied to costs, then to interest, and finally to the principal amount, beginning with the claim that has been outstanding for the longest period.
- 4.3. Any objections to an invoice must be raised in writing without undue delay. In any event, the invoice shall be deemed accepted no later than 30 days after the invoice date (notice pursuant to Section 286 (3) of the German Civil Code – BGB). The agreed payment term shall commence on the invoice date.
- 4.4. Payments shall only be deemed valid and shall only discharge the Customer’s payment obligations if made to Rüther or to a bank account designated by Rüther.
- 4.5. Any credit notes shall be issued only after deduction of any discounts granted on the invoice amount.
- 4.6. Rüther shall not be obliged to accept bills of exchange or checks. Any acceptance of such instruments shall be deemed acceptance for the purpose of payment only.
- 4.7. If the Customer is in default with a due payment (Section 286 of the German Civil Code – BGB) or if there are justified doubts regarding the Customer’s ability to perform, Rüther shall be entitled to withhold its own performance until full payment has been made or adequate security has been provided (Sections 273, 320 BGB), to demand advance payment or the provision of security for outstanding deliveries, or to withdraw from the contract with respect to the part not yet performed (Section 323 BGB).
No prior grace period shall be required if the statutory conditions for waiving such grace period are fulfilled (Section 323 (2) BGB). During this period, the Customer shall not be entitled to assert any claims for delay against Rüther. All further statutory and contractual rights of Rüther shall remain unaffected.
- 4.8. In the event of late payment, default interest at least in the amount of the statutory default interest rate pursuant to Section 288 of the German Civil Code (BGB) shall apply, unless Rüther proves higher damages. For each reminder, the statutory flat-rate fee pursuant to Section 288 BGB may be charged. The Customer shall furthermore be liable for all additional costs arising from the delayed payment, including reasonable legal enforcement costs.
- 4.9. Grid boxes, containers or similar transport packaging provided on loan shall remain the property of Rüther. The Customer shall return such transport packaging to Rüther within a reasonable period of time and in proper condition, at the Customer’s own expense and risk. The Customer shall be liable for any damage to or loss of such packaging during transport. If the packaging is not returned, Rüther shall be entitled to invoice the Customer accordingly.

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5. Packaging

The prices include only standard commercial packaging of the goods. If the Customer requests special packaging and Rüther agrees to such request, the additional packaging shall be charged to the Customer at cost.

6. Delivery Dates

Unless expressly agreed otherwise in writing, any indication of delivery dates or delivery periods shall be non-binding. Exceeding such delivery dates or delivery periods shall entitle the Customer to withdraw from the contract only if a fixed delivery transaction has been expressly agreed.

Any claims for damages by the Customer, of whatever kind, shall be excluded, except in cases of gross negligence on the part of Rüther.

7. Delivery

7.1. Delivery, the place of delivery and the transfer of risk shall be governed exclusively by the delivery terms specified in the respective order confirmation.

7.2. Any unforeseen circumstance and any event of **force majeure** affecting Rüther or Rüther's suppliers which prevents, delays or renders impossible the manufacture and/or delivery of Rüther's products – such as governmental measures, war, riots, lockouts or strikes, lack of necessary materials, operational disruptions, transport disruptions, refusal of delivery by upstream suppliers, shortages of raw materials or their delayed allocation, etc. – as well as any other circumstances or events beyond Rüther's control, shall entitle Rüther to withdraw from the contract, to reduce the agreed delivery quantity, to reduce the quantity and/or quality allocation quota, or to postpone the delivery date accordingly, but at least for the duration of the impediment.

The Customer shall not be entitled to any claims for damages arising therefrom, except in cases of gross negligence on the part of Rüther.

7.3. If, after conclusion of the contract, Rüther becomes aware of circumstances relating to the Customer which give rise to justified doubts regarding the Customer's solvency or willingness to pay, and if the Customer fails to comply within a reasonable period with Rüther's request for advance payment or adequate security, Rüther shall be entitled, at its own discretion, to withhold all deliveries or to withdraw from the contract in whole or in part without assuming any liability for consequential costs and to claim damages for non-performance.

Any expressly agreed fixed delivery dates or delivery periods shall lose their binding effect upon Rüther becoming aware of the Customer's lack of creditworthiness.

8. Annahmeverzug

The Customer shall be obliged to accept the goods delivered in accordance with the contract or made available for collection without undue delay. In the event of default of acceptance or if delivery becomes impossible due to circumstances attributable to the Customer, Rüther shall be entitled to store the goods itself at the Customer's cost and risk or to arrange for storage with a forwarding agent.

9. Warranty

9.1. Unless otherwise stipulated herein or expressly agreed otherwise in writing, the statutory warranty provisions pursuant to Sections 433 et seq. of the German Civil Code (BGB) shall apply.

9.2. The products supplied by Rüther comply with the applicable EU regulatory requirements, provided that they remain unopened, are stored appropriately – or as specified in individual cases – and that the processing instructions stated on the labels are complied with.

Characteristics within the meaning of Section 434 (1) et seq. of the German Civil Code (BGB) shall only be deemed guaranteed if expressly stated by Rüther. Product recommendations made by Rüther or its agents, as well as product descriptions provided by Rüther or the manufacturer, shall not constitute expressly guaranteed characteristics.

9.3. Defects which are discovered, or which could have been discovered, in the ordinary course of business upon inspection after delivery must be notified to Rüther by the Customer in writing within ten calendar days (receipt by Rüther), specifying the defect in detail (in particular the order number, the expiry date and the reason for the complaint, the invoice number, invoice date, delivery note number and the marking indicated on the packaging) and accompanied by all documents, data and samples available to the Customer that are necessary for the assessment of the defect and its cause (packing lists, etc.).

The period shall commence upon delivery of the goods to the Customer or, in the event of default of acceptance, upon notification by Rüther that the goods are ready for delivery. Complaints shall only be considered if the goods are still in the condition in which they were delivered. Normal commercial shrinkage shall not constitute a defect.

For defects which could not be identified during the inspection required upon delivery pursuant to Section 377 of the German Commercial Code (HGB) (“hidden defects”), the warranty period shall be six months from delivery. Attempts at rectification shall neither extend nor suspend the warranty period. These provisions shall also apply to partial deliveries.

Hidden defects must be reported by the Customer in writing without undue delay after discovery, but no later than ten calendar days thereafter. If notification is not made in due time, the delivered goods shall be deemed approved; warranty claims, claims for damages and any other claims of the Customer based on the respective defect shall be excluded.

Such defects shall not entitle the Customer to withhold payment of the invoice amount or any part thereof. The Customer must attach a meaningful sample or specimen of the disputed batch to the notice of defect.

9.4. Returns shall only be accepted by Rüther with prior consultation and Rüther’s express approval.

9.5. Samples and specimens serve solely for illustrative purposes with regard to quality, dimensions, color, packaging and execution. They shall not constitute a guarantee of quality or a binding assurance of specific characteristics.

Rüther shall endeavour to avoid deviations between the delivered goods and samples or previous deliveries as far as possible. However, liability for such deviations shall be excluded unless a specific quality has been expressly agreed in writing.

Minor deviations shall not entitle the Customer to claims for defects or damages. In the event of deviations that are not minor, the Customer shall only be entitled to subsequent performance. However, Rüther shall be entitled, at its own discretion, to withdraw from the contract instead of providing subsequent performance.

Any further claims by the Customer shall be excluded, subject to Section 9.8.

- 9.6. In the event of a timely and justified notice of defects, Rüther shall be entitled, at its own discretion, to exercise the statutory rights of subsequent performance pursuant to Section 439 of the German Civil Code (BGB), in particular by delivering defect-free goods (replacement) or by remedying the defect. Rüther shall also be entitled to refuse subsequent performance and to withdraw from the contract if the statutory requirements for doing so are met. For the purpose of replacement or remedy of the defect, the Customer shall grant Rüther the necessary time and opportunity to a reasonable extent, but for a period of at least two weeks. If the Customer refuses or unreasonably shortens this period, Rüther's obligation to provide subsequent performance shall cease.
- 9.7. Any further claims for damages by the Customer, of whatever kind, shall be excluded, except in cases of gross negligence on the part of Rüther.
- 9.8. The Customer shall at all times bear the burden of proof that the goods were defective at the time of transfer of risk. The statutory presumption pursuant to Section 477 of the German Civil Code (BGB) shall not apply in commercial transactions between businesses.
Any rights of recourse pursuant to Sections 445a and 445b BGB shall be excluded.

10. Damages and Product Liability

- 10.1. To the extent legally permissible, Rüther shall be liable for damages caused to the Customer in the course of the business relationship only in cases of gross negligence on the part of Rüther or its agents and shall be limited to the maximum amount of the respective order value. This limitation shall not apply to personal injury, for which Rüther shall also be liable in cases of slight negligence. Liability for consequential damages, pure financial losses, loss of profit and damages resulting from claims by third parties shall be excluded. The injured party shall bear the burden of proof for the existence of gross negligence.
Claims for damages shall become time-barred within 12 months from the date on which the injured party becomes aware of the damage and the party responsible for the damage.
This shall not apply to claims arising from intent, gross negligence, injury to life, body or health, or to claims under the German Product Liability Act; in such cases, the statutory limitation periods shall apply.
- 10.2. Rüther shall not assume any duty of care of any kind toward the actual user of the goods supplied by Rüther. The contract concluded with the Customer shall not give rise to any contractual obligations with protective effect in favour of third parties.
- 10.3. Should the Customer itself be held liable under the German Product Liability Act, the Customer expressly waives any right of recourse against Rüther.
If the Customer places the goods supplied by Rüther on the market outside the European Economic Area (EEA), the Customer undertakes to exclude liability under the Product Liability Act towards its own purchasers, insofar as this is permissible under the applicable laws of the country of the purchaser.
If the Customer fails to exclude such liability where legally possible, the Customer shall indemnify and hold Rüther harmless against all claims of third parties of any kind arising from product liability.

11. Retention of Title

- 11.1. The goods shall remain the sole property of Rüther until all claims arising from the order against the Customer, in particular all payment obligations, have been fully satisfied (**retention of title goods**), even if individual items have already been paid for.
The Customer shall not be entitled to pledge the goods or transfer them by way of security.

- 11.2. Promotional materials provided by Rüther shall remain the property of Rüther unless fully paid for by the Customer. The Customer shall be entitled to distribute such promotional materials in the ordinary course of business, subject to Rüther's right to revoke such permission at any time without stating reasons.
Any promotional materials owned by Rüther shall be returned immediately upon request.
- 11.3. If the Customer resells the delivered goods, the Customer hereby assigns to Rüther in advance its claims against its purchasers up to the amount of Rüther's claim against the Customer. Rüther hereby accepts such assignment.
The Customer shall be obliged to notify Rüther without undue delay of the names and addresses of its purchasers as well as the existence and amount of the claims arising from the resale, and to inform the respective purchaser of the assignment of the claim.
Furthermore, the Customer shall be obliged to record the assignment of such claims to Rüther appropriately in its business records. Rüther shall be entitled at any time to notify the Customer's purchaser of the assignment.
Any costs or fees arising from the assignment shall be borne by the Customer.
- 11.4. If the Customer processes the goods subject to retention of title into a new movable item, such processing shall be carried out on behalf of Rüther without creating any obligation for Rüther. The new item shall become the property of Rüther.
If the goods subject to retention of title are processed together with goods not belonging to Rüther, Rüther shall acquire co-ownership of the new item in proportion to the value of the goods subject to retention of title in relation to the other goods at the time of processing.
- 11.5. If the Customer defaults in whole or in part on its payment obligations, if over-indebtedness or suspension of payments occurs, or if insolvency proceedings are applied for, Rüther shall be entitled to immediately repossess all goods still subject to retention of title.
Rüther shall also be entitled to assert any further rights arising from the retention of title without delay. The same shall apply in the event of any other significant deterioration in the Customer's financial situation.
- 11.6. In the event of seizure or any other intervention by third parties, the Customer shall notify Rüther without undue delay.
- 11.7. An Kostenvoranschlägen, Zeichnungen, Abbildungen und ähnlichen Unterlagen behält sich Rüther sämtliche Rechte, insbesondere das Eigentums- und Urheberrecht, ausdrücklich vor; diese dürfen Dritten nur nach vorheriger ausdrücklicher Zustimmung von Rüther zugänglich gemacht werden. Über Verlangen von Rüther sind sämtliche Unterlagen auf Kosten des Kunden unverzüglich zurückzustellen.

12. Export

Rüther expressly reserves all rights, in particular ownership and copyright, in respect of cost estimates, drawings, illustrations and similar documents. Such documents may only be disclosed to third parties with Rüther's prior express consent.

Upon request by Rüther, all such documents shall be returned immediately at the Customer's expense.

13. Set-Off

The Customer shall not be entitled to exercise any right of retention or other right to refuse performance, nor to set off any counterclaims (except monetary claims), unless such claims have been expressly acknowledged by Rüther in writing or have been finally determined by a court of competent jurisdiction.

14. Assignment

The assignment of any claims of the Customer against Rüther shall not be permitted unless such claims are monetary claims.

15. Subcontractors

Rüther shall be entitled to engage subcontractors at any time.

16. Confidentiality

The Customer shall be obliged to maintain strict confidentiality with respect to all business and trade secrets of Rüther that become known to the Customer in any manner whatsoever.

The Customer shall ensure that this confidentiality obligation is expressly imposed on all of its employees and shall take appropriate measures to ensure compliance with this obligation.

17. Governing Law

All legal transactions, in particular those governed by these Terms and Conditions of Sale, Delivery and Payment, shall be governed exclusively by the substantive law of Germany, excluding its conflict-of-law provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

18. Jurisdiction

The exclusive place of jurisdiction for all disputes arising out of or in connection with the contractual relationship – including proceedings relating to bills of exchange or checks – shall be the court having subject-matter and territorial jurisdiction at the registered seat of Rüther.

However, Rüther shall also be entitled, at its own discretion, to bring legal action against the Customer before any other court having jurisdiction under national or international law.

19. Miscellaneous

If any provision of these Terms and Conditions of Sale, Delivery and Payment is or becomes wholly or partially invalid or unenforceable, the validity of the remaining provisions shall not be affected. The invalid or unenforceable provision shall be replaced by a valid provision that most closely reflects the economic purpose of the invalid provision.

January 2026