

Standard Terms and Conditions of Matithor - Internationale Lebensmittelspezialitäten GmbH

A. General information

1. Matithor-Internationale Lebensmittelspezialitäten GmbH is hereinafter referred to as “Matithor”, each contractual partner of Matithor as “Contractual Partner”, no matter whether Buyer or Supplier. These Terms and Conditions shall apply exclusively towards entrepreneurs.
2. With the conclusion of the contract the Contractual Partner recognises the following Standard Terms and Conditions. Agreements deviating from this require the written confirmation of Matithor. The Contractual Partner waives the application of own Business Terms and Conditions. Counter-confirmations of the Contractual Partner with deviating terms and conditions are hereby objected to.
3. The law of the Federal Republic of Germany shall apply exclusively to the business relationship between Matithor and the Contractual Partner, the validity of the UN Convention on the International Sale of Goods is excluded.
4. Prices stated by Matithor are net prices plus the value added tax which is if applicable to be charged.
5. Should one of the terms and conditions stated above or one of the following be or become invalid this shall have no effect on the validity of the other terms, conditions and agreements. However, the parties undertake to agree upon a term or condition which replaces the invalid term or condition which shall as far as possible correspond with the financial meaning of the invalid term or condition.
6. In case of cross-border goods traffic and for the event that contractual agreements are reached in the German language and foreign languages the German version of the contract shall always be decisive in case of disputes.
7. Cases of force majeure or industrial dispute measures, in particular strike and lock-out, shall inhibit agreed delivery deadlines; insofar as the afore-mentioned

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circumstances last longer than 4 weeks Matithor is entitled to cancel the contract without the Contractual Partner being able to derive rights from this cancellation.

B. Terms of purchase

1. Supplier requirements

Suppliers must have established an intact quality management system. The produced products must be established according to HACCP principles based on the Codex Alimentarius. This also includes production plants with state-of-the-art technology as well as sufficiently trained personnel with regard to specialist technology. The production may exclusively be carried out in the company-own locations named in the RF supplier questionnaire. Deviations from this require the written consent of Matithor.

The production must be carried out based on ethical and environmental political aspects. These in particular include no child labour, the compliance with minimum social standards of the respective country as well as an intact environmental management system. The Code of Conduct of the Business Social Compliance Initiative (BSCI) in its respective actual version applies as a minimum standard. The regulations can be view in the Internet under www.bsci-eu.com.

2. Product properties

- a) The Contractual Partner guarantees that the goods have the contractually agreed condition. The basis for the condition are the agreed raw material specifications. Changes hereto are only permitted with the prior written consent of Matithor.
- b) The Contractual Partner further guarantees that the goods are suitable for human consumption without any restrictions and comply with the decisive regulations under food law of the Federal Republic of Germany and the EU.
- c) Applies to fish: valid for fish and fish products, seafood and seafood products. See Annex 01-02 FB *Principles for sustainable fishing*.

3. Inspection obligation

Matithor undertakes to immediately inspect the delivered products, by no later however than within 14 days after delivery. Objections are to be reported to the Contractual Partner immediately. Complaints are to be subsequently carried out in writing within one week after the oral advance indication.

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4. Delivery dates

Agreed delivery dates are binding and it is essential that these are adhered to. Foreseeable delays are to be reported to Matithor by the contractual partner immediately. In case of non-adherence to fixed dates (fixed commercial transaction within the meaning of § 376 HGB [German Commercial Code]) by the Contractual Partner Matithor is entitled, without a further reminder, to cancel the contract or, if the Contractual Partner is in default, to request damages owing to non-fulfilment instead of fulfilment. Matithor can only claim fulfilment if the Contractual Partner is notified that it insists on fulfilment immediately after the expiry of the time or the certain deadline.

5. Place of performance

The place of performance for deliveries and services is the place of receipt described in the order.

6. Passing of risk/transport risk

- a) The risk shall pass, insofar as not otherwise agreed, irrespective of the agreed terms of delivery, in all cases with the acceptance of the goods to Reichold Feinkost. The transport risk shall be borne by the Contractual Partner, even if the goods are not delivered by its own or by vehicles selected by it.
- b) The Contractual Partner shall be liable for the fact that the involved means of transport guarantees the cooling temperature which may for example be necessary for the goods and also otherwise is suitable for the proper transport of the goods and features an impeccable hygiene standard as well as in particular satisfies the requirements under food law.

7. Invoice/payment

- a) Invoices are to be submitted separately and in a proper form with all associated documents and data after the executed delivery. The invoice must contain delivery address, order number, article designation, article number, day of delivery, delivery quantity, etc. and may not be enclosed with the shipment.
- b) The payments are due and payable 30 days after the executed proper delivery and receipt of the invoice. In case of payment by Matithor within 14 days from receipt of invoice/goods Matithor is entitled to deduct 3% cash discount.

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C. Terms of sale

1. General information

- a) Offers of Matithor are without obligation and non-binding.
- b) If orders of the Contractual Partner are offers within the meaning of § 145 BGB [German Civil Code] Matithor is entitled to accept these offers within two weeks after receipt. This is then carried out by a written, binding, order confirmation based on these Standard Terms and Conditions.
- c) Matithor reserves all property rights and copyrights to diagrams, drawings, calculations, etc. as well as to documents, which are explicitly described as "confidential". For the forwarding to third parties the Contractual Partner shall require the explicit written consent of Matithor.

2. Prices/terms of payment

- a) Insofar as not otherwise derived from the order confirmation the prices of Matithor shall be deemed "ex works" excluding packaging; this is invoice separately.
- b) The deduction of cash discount requires a separate written agreement.
- c) Insofar as not otherwise derived from the order confirmation the purchase price is due and payable net (without deduction) immediately. In case of default of payment Matithor is entitled to charge interest on default in the amount of at least 8 percentage points above the base lending rate. The right is reserved to an assertion of a higher claim for damages which can be substantiated by law.
- d) The Contractual Partner shall only be entitled to rights to offset if its counter-claims have been declared final and binding, are undisputed or have been recognised by Reichold Feinkost. In addition, it is authorized to exercise a right to retention to the extent that its counter-claim is based on the same contractual relationship.

3. Delivery time

- a) If Matithor states a delivery time the start shall presume the clarification of all technical questions.

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- b) The compliance with the delivery obligation further presumes the timely and proper satisfaction of the obligation of the Contractual Partner. The right is reserved to the plea of the non-fulfilled contract.
- c) If the Contractual Partner is in default of acceptance or if it culpably breaches other duties to provide assistance then Matithor is entitled to request that the insofar incurred damages, including possible additional expenses, are reimbursed. The right is reserved to further claims.
- d) Insofar as the pre-requisites of Par. 3 exist the risk of an accidental loss or an accidental deterioration of the goods shall pass to the Contractual Partner at the time at which it became in default of acceptance or as a debtor.
- e) Matithor shall be liable according to the statutory provisions insofar as the underlying purchase contract is a fixed business within the meaning of § 286 Par. 2 No. 4 BGB or of § 376 HGB [German Commercial Code]. Matithor shall also be liable according to the statutory provisions insofar as a result of a delay in delivery for which Matithor is responsible the customer is entitled to assert that an interest in the further fulfilment of the contract has lapsed.
- f) Matithor shall further be liable according to the statutory provisions insofar as the delay in delivery is due to a wilful or grossly negligent breach of contract for which Matithor is responsible, a fault of representatives or vicarious agents is to be attributed to Matithor. Insofar as the delay in delivery is not due to a wilful breach of contract for which Matithor is responsible, the liability for damages is limited to the foreseeable, typically occurring damages.
- g) Matithor shall also be liable according to the statutory provisions insofar as the delay in delivery for which Matithor is responsible is due to the culpable breach of an essential contractual duty, in this case however the claim for damages of the Contractual Partner is limited to the foreseeable, typically occurring damages.

4. Passing of risk packaging costs

- a) Insofar as not otherwise derived from the order confirmation the delivery is agreed "ex works".
- b) Packaging is only to be taken back by Matithor if a separate agreement is reached in this case.

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5. Liability for defects

- a) Claims for defects of the Contractual Partner presume that it has properly satisfied its obligations for inspection and report of a complaint owed according to § 377 HGB.
- b) Insofar as there is a defect to the object of purchase Matithor is at its choice entitled to the subsequent performance in the form of remedy of the defect or the delivery of a new, faultless object. In the event of the remedy of a defect Matithor undertakes to bear all expenses which are necessary for the purpose of remedying the defect, in particular transport, route, labour and material costs insofar as these are not increased by the fact that the object of purchase was taken to another location than the place of performance.
- c) If the subsequent performance fails the Contractual Partner is entitled at its choice to request cancellation or reduction.
- d) Matithor shall be liable according to the statutory provisions insofar as the Contractual Partner asserts claims for damages which are due to wilful intent or gross negligence including the wilful intent or gross negligence of the representatives or vicarious agents of Reichold Feinkost. Insofar as Matithor is not accused of any wilful breach of contract the liability for the damages is limited to the foreseeable, typically occurring damages.
- e) Matithor shall be liable according to the statutory provisions insofar as an essential contractual duty is culpably breached, in this case however the liability for damages is limited to the foreseeable typically occurring damages.
- f) The liability owing to culpable injury to life, the body or the health remains unaffected; this shall also apply to mandatory liability according to the Product Liability Act.
- g) Insofar as not otherwise regulated above the liability of Matithor is excluded.
- h) The statute-of-limitations for claims for defects is 12 months beginning from the passing of risk.

6. Joint liability

- a) A further liability from damages than envisaged in Subclause 5 is – irrespective of the legal nature of the asserted claim – is excluded. This shall in particular apply to claims for damages from the fault upon conclusion of the contract, owing to other

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breaches of duty or owing to claims in tort for reimbursement of property damages according to § 823 BGB.

- b) The limitation according to Par. 1 shall also apply insofar as the Contractual Partner requests the reimbursement of fruitless expenses instead of a claim for reimbursement of property damages.
- c) Insofar as the liability for damages against Matithor is excluded or limited this shall also apply with regard to the personal liability for damages for employees of Reichold Feinkost, workers, representatives and vicarious agents.

7. Securing of reservation of title

- a) Matithor reserves the property to the object of purchase until the receipt of all payments from the supply contract. In case of conduct of the customer in breach of the contract, in particular with default of payment Matithor is entitled to take the object of purchase back. The taking back of the object of purchase by Matithor represents a cancellation of the contract. Matithor is authorized to sell it after taking the object of purchase back, the sales proceeds are to be offset against the liabilities of the Contractual Partner – minus reasonable sales costs.
- b) In case of attachment or other interventions of third parties the Contractual Partner has to inform Matithor immediately in writing so that Matithor can file an intervention action. Insofar as the third party is not in the position to reimburse Matithor the in court or out-of-court costs of an action according to § 771 ZPO [Code of Civil Procedure] the Contractual Partner shall be liable for the loss suffered by Matithor.
- c) The Contractual Partner is entitled to resell the object of purchase in the proper course of business, it hereby now already assigns all receivables to Matithor in the volume of the final invoice amount (including possible value added tax) to which it is entitled from the resale against its buyers or third parties irrespective of whether the object of purchase has been resold without or after processing. The Contractual Partner shall also remain authorized to collect this receivable after the assignment. The authorization of Matithor, to collect the receivable itself remains unaffected hereby. Matithor undertakes however not to collect the receivable as long as the Contractual Partner satisfies its payment obligation from the collected proceeds and is not in default of payment and in particular no application has been filed for opening of insolvency proceedings or there is suspension of payments. However, if this is the

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case then Matithor can request that the Contractual Partner announces the receivables assigned to Matithor and their debtors, provides all information which is necessary for the collection, hands over the associated documents and informs the debtors (third parties) of the assignment.

- d) The processing or conversion of the object of purchase by the Contractual Partner is always carried out for Reichold Feinkost. If the object of purchase is processed with other objects not belonging to Matithor then Matithor shall acquire the co-ownership to the new object in the ratio of the value of the object of purchase (final invoice amount including possible value added tax) to the other processed objects at the time of the processing. The same shall incidentally apply to the object produced by the processing as to the object of purchase delivered under reservation.
- e) If the object of purchase is inseparably mixed with other objects not belonging to Matithor then Matithor acquires the co-ownership to the new object in the ratio of the value of the object of purchase (final invoice amount including possible value added tax) to the other mixed objects at the time of the mixing.

If the mixing is carried out to the extent that the object of the Contractual Partner is to be seen as the main object then it is deemed as agreed that the Contractual Partner assigns pro rata co-ownership to Matithor. The Contractual Partner shall store the thus produced sole ownership or co-ownership for Matithor.

- f) The Contractual Partner shall also assign the receivables to Matithor for securing the receivable of Matithor against it, which are accrued by the connection of the object of purchase with a property against a third party. Matithor accepts the assignment.
- g) Matithor undertakes to release the collateral insofar at the request of the Contractual Partner to the extent that the realised value of the collateral exceeds the receivables which are to be secured by more than 100 %; the selection of the collateral items which are to be released is the responsibility of Matithor.

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D. Damages flat rate

If and insofar as Matithor is entitled to request damages from the Contractual Partner owing to a breach of the contract or for other reasons Matithor can request a damages flat rate of 20% of the contractual net revenue.

The Contractual Partner is entitled to prove that damages were either not suffered or in a substantially less volume. The assertion of higher, statutory claims for damages remains unaffected hereby.

E. Final provisions

1. Oral collateral agreements require the written confirmation in order to be valid.
2. Insofar as principles, provisions or other regulations are stated in these terms and conditions, which have an influence on the quality and processing then in the event of the possible change thereof the new regulations which replace these shall be deemed as agreed.
3. The place of jurisdiction for all disputes from the contractual relationship is the County Court of Regional Court in Wiesbaden if the contractual partner is a merchant.