

TERMS AND CONDITIONS OF SALES AND SUPPLY

1. Definitions

**RUPP:** Seller, Schreiber & Rupp MEA DMCC

**Buyer:** Company approaching RUPP through enquiry, under-  
signed company

**Goods:** Processed cheese products, food preparations, natural  
cheese, cream cheese and similar.

2. Conclusion of contract

2.1 The purchasing terms and conditions of the Buyer shall only be  
binding on RUPP if RUPP expressly acknowledges such purchasing  
terms and conditions in writing. Failure to oppose them shall not  
imply agreement by RUPP in any manner whatsoever. Any pur-  
chasing terms and conditions and other terms and conditions of  
the Buyer are herewith expressly opposed by RUPP.

2.2 All, including future supplies made and services rendered by  
RUPP shall be based exclusively on these Terms and Conditions  
of Sales and Supply (hereinafter: „**Terms**“).

2.3 Quotes made by RUPP are non-binding and subject to **change  
without notice**.

2.4 Contracts are formed upon RUPP's written confirmation of an or-  
der placed by the Buyer (**order confirmation**).

3. Prices

3.1 Prices are valid ex supplier plus local or foreign value- added tax  
at the respective statutory amount (if applicable). Charges im-  
posed by public authorities (taxes, fees, customs duties) incurred  
as a result of shipping the goods (including from Austria), as well  
as packing, loading, transportation, insurance, or any other costs  
(e.g., for certificates of origin, export, transit, import, and other  
permits) are payable by Buyer.

3.2 The information given in the order confirmation shall be defini-  
tive as to prices and terms of payment, as well as details concern-  
ing the recipient's account, subject to Clause 3.9.

3.3 Payment shall be made free of bank charges without any deduc-  
tion for discount, exclusively by means of bank transfer, within 30  
days from date of invoice and received in the bank account of  
RUPP. RUPP reserves the right to set a shorter payment period,  
or demand securities for payment and/or (partly) advance pay-  
ments. Any charges levied for payment, of whatever kind, shall  
be borne by the Buyer.

3.4 In the event of payment default, RUPP shall levy interest to the  
amount of 5% p.a. over and above the prime interest rate of the  
Österreichischen Nationalbank (National Bank of Austria), how-  
ever at a minimum of 9% p.a. In addition, the Buyer shall be re-  
sponsible for paying any dunning fees and collection costs in-  
curred.

3.5 If applicable: Should no value added tax be invoiced to a buyer,  
the Buyer shall immediately and without special request provide  
RUPP any and all attestation regarding the legal provisions this  
may be based on, in particular concerning value added tax, in or-  
der to prove the tax exemption of the supplies to the revenue  
authorities. This shall in particular apply, but not be limited to,  
the proof of delivery of the goods to another member state of the  
European Union, the value added tax registration number or a  
personal exemption of the Buyer.

3.6 If the agreed payment terms are not adhered to, if the financial  
situation of the Buyer considerably deteriorates or if it becomes  
apparent subsequent to concluding the contract that a compro-  
mised financial situation had already been in existence prior to  
conclusion of the contract, or if Buyer culpably fails to meet his  
obligations arising from the retention of title, RUPP shall be enti-  
tled to pronounce all open receivables immediately due and pay-  
able and refuse its services to the Buyer until such time as the  
consideration has been paid or secured to RUPP's satisfaction.  
Any power of disposal on the part of the Buyer under Clause 4  
shall become void. If payment agreements are not fulfilled, in the  
event of payment default, or if the Buyer is unable to pay or is  
over-indebted, RUPP shall additionally be entitled to withdraw  
from any contract without notice period and to demand or collect  
the retained goods from the Buyer's premises. All costs shall be  
borne by the Buyer.

3.7 Offsetting of the Buyer's counter claims against RUPP's claims  
from goods supplied is excluded, unless the counter claim is rec-  
ognized by RUPP or has been confirmed by non-appealable court  
decision.

3.8 All taxes, customs duties and other levies which the Buyer is liable  
for on account of accepting the goods shall be borne by the Buyer,  
unless the Seller has expressly agreed to payment of such in writing.

3.9 RUPP reserves its right to change prices accordingly if costs increase after three months after closing of the contract, in particular due to changes of commodity prices. RUPP will provide Buyer with evidence for such price changes. Buyer is entitled to object to price changes by written notice within three working days, upon receipt of which RUPP shall have no further supply obligations. RUPP is also entitled to additional payment in cases where the Buyer requests changes to certain specifications or timeframes or where new standards or regulations must be complied with.

3.10 Should a conversion of the invoice currency or open balances deriving from it occur as a result of currency policy changes, the calculated EURO amount in debt is owed in EURO or in the respective other currency at the particular rate of exchange on the day of the remittance.

#### **4. Reservation of title**

4.1 RUPP retains ownership of the supplied goods until the purchase price has been paid in full together with all ancillary fees including default interest and costs. In the case of adaptation, processing and combination of the supplied goods with other items RUPP shall be entitled to a co-ownership share in the item produced as a result of the adaptation and processing in the ratio of the purchase price of the supplied goods to the value of the remaining processed items at the time of processing or combination.

4.2 The Buyer shall carry out all the measures required for preserving the reservation of title. The Buyer shall ensure sufficient insurance coverage of the goods at the request of RUPP, with the stipulation that the rights arising from the insurance shall accrue to RUPP. Specifically, the Buyer is not permitted to pledge the goods to third parties or to pledge the goods as security or to make the goods available for the benefit of any third party in any manner other than through sale in the context of the ordinary course of business. Buyer shall not be entitled to resell retained goods, except (i) RUPP explicitly allows him in writing, and (ii) without affecting the generality of the provisions under Clause 4.4, only against written deed of assignment of the receivables from the resale; and (iii) against proof that the debtor has been duly notified of such assignment.

4.3 In the event of third party claims, the Buyer shall point out the right of ownership which RUPP has in the goods and shall immediately inform RUPP of such to enable RUPP to enforce its ownership rights. If the third party is not in a position, or is not obligated, to recompense RUPP for the costs of the enforcement of ownership then the Buyer shall be liable for the loss incurred by RUPP. This shall equally apply if the enforcement became necessary due to any action of the part of the Buyer.

4.4 If the goods are resold prior to full payment of the purchase price including all ancillary fees and costs, then in place of the reservation of title the purchase price receivable arising out of the resale

shall be considered to have been ceded to RUPP. This assignment of security shall be recorded in the accounting records of the Buyer (customer account as well as open items listing), giving the date of conclusion of the contract and the full official name for RUPP (cessionary). The Buyer shall as soon as possible, however at the latest upon concluding the contract with the third party, inform same of the existence of this assignment and notify RUPP of the sale. In addition, the Buyer hereby grants RUPP an irrevocable power of attorney to undertake the communication concerning the cession to the third party on the Buyer's behalf. Furthermore, the Buyer is under obligation to separately retain any sales revenues obtained and shall transfer such revenues to RUPP when the receivables become due.

4.5 If Buyer ships the goods to another country or territory having different rules concerning the validity of retention of title, the Buyer shall obtain the prior consent of RUPP and assist RUPP at his own costs in taking whatever action necessary that RUPP's ownership remains in force.

4.6 The Buyer shall be liable in full to RUPP for any failure to comply with its duty to provide information and/or any omissions concerning the registration, maintenance and/or enforcement of RUPP's retention of title under this clause 4.

#### **5. Delivery dates and times**

5.1 The stated delivery dates and times are subject to change without notice. Claims for damages of any kind whatsoever with reference to delivery dates and times are thus excluded, with the exception of willful or gross negligence, whereby the burden of proof shall be on the Buyer and the liability shall be limited to the amount of the value of the order of the respective delivery. RUPP shall however endeavour to adhere to the delivery dates and the delivery times.

5.2 Notwithstanding Clause 5.1, the delivery period shall commence on the date of order confirmation by RUPP, but not, however, before full clarification of all details, the procurement of all the required local or foreign official certifications, and payment of the in-advance payments or security (if applicable). Delivery times shall be deemed as adhered to with the notification of readiness for shipment, even if the product cannot be dispatched in timely fashion, in cases where RUPP is not at fault. RUPP's compliance with agreed delivery period shall be contingent on the Buyer's performance of all contractual and non-contractual obligations owed to RUPP. Delivery dates and times shall be reasonably extended where RUPP does not receive the information it requires from Buyer to perform contract in due time and/or the Buyer subsequently changes information; or Buyer or third party is behind schedule with the work or obligation to be performed; or any obstacles arise, which RUPP is unable to avoid despite due care and reasonable efforts (including the events under Clause 5.3). Should any required (e.g., export or import) permit not be granted, RUPP is entitled to rescind the contract. Neither delay nor rescission under this clause shall entitle Buyer to any compensation.

**Buyer's Initials** \_\_\_\_\_

5.3 Any events of *force majeure* and other events which RUPP has no control over, in particular but not limited to, delays in delivery by an upstream supplier of RUPP as well as strikes, lockouts and other circumstances which considerably impede or make impossible the delivery by RUPP shall entitle RUPP to cancel any open delivery or to delay the delivery by the period of the duration of the impediment.

5.4 If the Buyer does not accept the goods at the agreed location or within the agreed acceptance period, RUPP shall then be entitled to choose to either withdraw from the contract or to request immediate payment for the goods. In the latter case, the goods shall be warehoused at the cost and risk of the Buyer. The same rights shall accrue to RUPP if goods are not called off in the intended manner and time, where goods are sold on a call-off order basis. The entitlement of RUPP to restitution of any other damages caused remains unaffected thereby.

5.5 RUPP is entitled to render partial deliveries. All contractual conditions are applicable thereto.

5.6 Minor under- or over-deliveries of +/- 10 % are permitted. Deviations in size, weight and other quality characteristics are permitted in the context of the relevant standards or existing practice.

5.7 Should shipment of goods be delayed for reasons for which RUPP is not responsible, the Buyer shall reimburse the costs incurred for storage as of 5 business days of the delay [or the price for the goods if their shelf-life has expired and they need to be destroyed].

## 6. Shipping and transfer of risk:

6.1 To the extent not otherwise agreed in writing in the order confirmation, goods shall be delivered EX WORKS KRÜZASTRASSE 8, 6912 HÖRBRANZ, AUSTRIA from RUPP factory or, at RUPP's sole discretion, from any factory or warehouse of the RUPP Group. All commercial trade terms (for shipping and cost responsibility) shall be per INCOTERMS 2010. RUPP will charge Buyer for the costs of shipping and packaging. RUPP-owned packing apparatus such as containers and pallets shall remain the property of RUPP. The BUYER shall handle such items with care and return them at its own expense.

6.2 Upon handover of goods to the shipper or forwarder, for EXW deliveries with provision of the goods at the factory, however, at the latest upon leaving the factory or warehouse, the risk shall pass to the Buyer in any event, regardless of the INCOTERM agreed.. For the rest, the Incoterms 2010 in the respective valid version shall be decisive for the interpretation of the various sales clauses, unless agreed otherwise.

6.3 In the event of losses during shipment, the Buyer shall immediately have the matter reported by appropriate persons and promptly provide the relevant evidence to RUPP on request.

## 7. Liability for defects and compensation for damages:

7.1 RUPP warrants that at the time of transfer of risk, the goods will be free from any defects in material and workmanship and in accordance with the Product Specifications valid at the time of the order confirmation.

For the avoidance of doubt, RUPP is not responsible for compliance of products with any foreign (other than EU) regulatory provisions, except where RUPP explicitly agreed hereto in writing, and Buyer shall hold RUPP harmless from any third party claims in this regard.

7.2 Any defects in the goods, including a lack of warranted characteristics shall be subject to the provisions in this Clause.

7.3 Visual inspection, weight control, sampling / sample analysis shall be carried out immediately after receipt of the goods. The analysis of the goods shall occur in accordance with the guidelines in the specification. Liability of defects shall be excluded in case of:

- modification or processing of the goods in the absence of a relevant analysis result;
- where the deviation from the agreed quality or quantity is only minor;
- in case of damage occurring after transfer of risk (e.g. following incorrect, improper or negligent handling, unsuitable storing, transporting conditions, etc.);
- not following RUPP's instructions as to handling, storage etc.;
- force majeure;
- after expiry of notified shelf life.

7.4 Any notices of defect by the Buyer must be received by RUPP in writing immediately, at the latest however, within five working days after receipt of the goods at the destination. Defects which cannot be discovered within this period, even with the most careful checking, shall be notified in writing immediately on discovery, with prompt cessation of any adaptation or processing, but within 14 days after receipt of the goods at the latest. On expiry of the 14-day period the liability for defects, for any reason whatsoever, is excluded. The Buyer shall always carry the burden of proof for that the defect was already in existence at the time of delivery.

Should a complaint by the Buyer prove not to be a case involving liability for defects in quality, the Buyer must take back any returned goods without undue delay and pay the cost of shipping to and from the Buyer as well as all incidental costs including those incurred investigating the complaint.

**Buyer's Initials** \_\_\_\_\_

7.5 For notices of defects which are justified and made in a timely manner, RUPP shall accept the return of the defective goods and shall deliver goods free of defect in their place. Any claims on RUPP pursuant to Section 933b ABGB (Austrian Civil Code) tareby the Buyer are excluded.

7.6 If the Buyer does not immediately give RUPP the opportunity of verifying the defect, or if the Buyer does not immediately make available the faulty products and samples, or if the Buyer does not grant RUPP (acting itself or through an appointed specialist) an opportunity to remedy the defect, all defect and liability entitlements shall be forfeited. Any claims to defects and liability shall lapse within one month after written repudiation of the notice of defect by RUPP at the latest.

7.7 All claims not expressly permitted under this clause, including claims to damages arising from slight negligence, subsequent damages from defects (in particular but not limited to production losses), compensation for loss of profit or other financial losses – on any legal basis whatsoever – are hereby excluded.

7.8 Over and above this, any liability by RUPP is limited overall to compensation from its liability insurance, and when violations of contractual obligations have occurred in any case to the value of the order of that delivery which was responsible for the damage. The above mentioned limitations of liability shall not apply to personal injury as a result of death, injury to the body or the health of a person. The liability exclusion equally does not include the compulsory entitlements in accordance with product liability law.

7.9 Should RUPP be subject to third-party claims exceeding the aforementioned limitations of liability, RUPP shall have a claim to recourse against the Buyer. If any acts or omissions by the Buyer or its agents cause any person to suffer harm (specifically injury or death) or loss or damage to the property of third parties and if claims are asserted against RUPP for this reason, RUPP shall have a right of recourse against the Buyer and/or any person causing such harm

## 8. Other

8.1 RUPP is entitled to correct obvious errors (clerical and computational errors) on quotations, cost estimates, order confirmations, delivery notes, etc. at any time.

8.2 The transfer of the Buyer's contractual rights and obligations to third parties requires the prior written consent of RUPP. RUPP shall at all times be entitled to transfer or assign to any affiliated company any rights or obligations against the Buyer, without the Buyer's consent. To the extent such consent is required by law, Buyer hereby grants his consent in advance. Buyer hereby explicitly agrees and authorizes RUPP to engage any other company of the RUPP Group to perform any part of the contract, including

without limitation manufacturing, packaging and/or delivering the goods.

8.3 If provisions of the contract are, or become invalid or infeasible, this shall not affect the remainder of the contract. These provisions shall be replaced by valid and feasible provisions which are closest to the intended economic intent.

8.4 Any written declarations shall be deemed as received if they were sent to the last address given by the contractual party.

8.5 Any deviations from these Terms as well as the standard formal requirements are subject to express written agreement. The Buyer acknowledges that the employees engaged by RUPP or third parties are not entitled to make any promises which deviate from the contractually agreed obligations (such as payment terms, quality assurances, delivery conditions).

8.6 The Buyer gives his approval for the electronic archiving by RUPP of all personal data for the performance of this contract and included in the contract documents.

8.7 Formulations and similar

(i) Formulations, procedural methods, technical documentation, samples, prospectuses, images and similar are the intellectual property of RUPP, and the Buyer shall not have any rights of any kind to use of the work or exploitation thereof.

(ii) It is established that this provision concerning the protection of intellectual property is already binding in the phase of contract initiation, irrespective of the later conclusion of a contract, and will be effective for an unlimited period.

8.8 The Buyer is not permitted to utilize the trademarks of RUPP.

8.9 Packaging material which was acquired by RUPP at the instance of the Buyer shall be reimbursed by the Buyer to RUPP irrespective of the circumstances of the goods purchase.

## 9. Applicable law, place of performance and jurisdiction

9.1 Unless otherwise expressly agreed, the place of performance for both parties is the legal seat of RUPP (i.e Dubai, UAE).

**Buyer's Initials** \_\_\_\_\_

9.2 Any dispute arising out of the formation, performance, interpretation, nullification, termination or invalidation of these Terms or any contract between the Parties or arising therefrom or related thereto in any manner whatsoever, shall be settled by arbitration in accordance with the provisions set forth under the DIAC Arbitration Rules (“**the Rules**”), by one or more arbitrators appointed in compliance with the Rules. The place of arbitrations shall be Dubai and the venue of arbitration shall be the Dubai International Arbitration Center and the place shall Dubai International Arbitration Centre[\*]. The language of arbitration shall be English.

In addition, RUPP expressly reserves the right to bring suit against the Buyer at any other court competent for the Buyer.

9.3 Austrian law shall apply, with the exception of its reference provisions and conflict rules (EVÜ [Convention on the Law Applicable to Contractual Obligations], IPRG [Austrian Federal Code on the Conflict of Laws]) and excluding the United Nations Convention on Contracts for the International Sale of Goods.

**ACKNOWLEDGED AND ACCEPTED:**

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Buyer's Name:	
Represented by:	
Date:	

**Buyer's Initials** \_\_\_\_\_