

# RUPP

## TERMS AND CONDITIONS OF SALES AND SUPPLY

### 1. Definitions

**RUPP:** Seller, RUPP AG (FN 263494 t), RUPP Cheese Innovation GmbH (FN 76905 x), RUPP Käseexport Gesellschaft m.b.H. (FN 69120 y), SCHREIBER & RUPP Gesellschaft m.b.H. (FN 342258x)

**Buyer:** Company approaching RUPP through enquiry

**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. Failure to oppose them shall not imply agreement by RUPP in any manner whatsoever. Should any conditions be contradictory, then the RUPP Terms and Conditions of Purchase and Supply shall expressly be deemed valid as having been agreed. Any purchasing 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 Purchase and Supply.

2.3 Offers made by RUPP are subject to **change without notice** and limited to 90 days.

2.4 Any orders made by the Buyer shall be confirmed in writing (**order confirmation**) by RUPP for their effectiveness and acceptance.

### 3. Prices

3.1 Prices are valid ex supplier plus local or foreign value-added tax at the respective statutory amount.

3.2 The information given in the order confirmation shall be definitive as to prices and terms of payment, as well as details concerning the recipient's account.

3.3 Payment shall be made free of bank charges without any deduction for discount, exclusively by means of bank transfer, within 30 days from date of invoice and received in the bank account of RUPP. 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), however at a minimum of 9% p.a. In addition, the Buyer shall be responsible for paying any dunning fees and collection costs incurred.

3.5 Should no value added tax should be invoiced to a buyer in a member state of the European Union, 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 order 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 pecuniary circumstances of the Buyer should considerably deteriorate or if it should become apparent subsequent to concluding the contract that a compromised pecuniary circumstance had already been in existence prior to conclusion of the contract, RUPP shall be entitled to pronounce all open receivables immediately due and payable and refuse its services to the Buyer until such time as the consideration has been paid or secured. If payment agreements are not fulfilled, in the event of payment default as well as where the agreed payment targets have been exceeded, or if the Buyer is unable to pay or is over-indebted RUPP shall additionally be entitled to withdraw from any contract without setting a grace period.

3.7 Offsetting of the Buyer's counter claims against RUPP's claims from goods supplied is excluded, unless the counter claim is recognized by RUPP or legally determined by court decision.

3.8 All taxes, customs duties and other levies which the Buyer is liable for on account of accepting the object of contract shall be borne by the Buyer, unless the Seller has expressly obligated itself 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 customers with evidence for such price changes. Customers are entitled to object to price changes by written notice within three working days, resulting to an end of RUPP's further supply obligations the moment the written objection notice is received by RUPP."

3.10 Should a conversion of the invoice currency or open balances deriving from it occur as a result of currency policy changes, the rule shall apply by mutual agreement that when settling a calculated € amount the debt is owed in € or in another currency at the particular rate of exchange on the day of the remittance.

### 4. Reservation of title

4.1 RUPP shall retain 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 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. 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.

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 shall grant 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.

#### 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 and the procurement of all the required local or foreign official certifications. 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. Delivery dates and times shall be extended by the period for which the Buyer is in default regarding the Buyer's obligations to RUPP arising from this transaction.

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, lock-outs and other circumstances which considerably impede or make impossible the delivery by RUPP shall entitle RUPP to cancel any open delivery promises or to delay the delivery by the period of the duration of the impediment. In the latter case, the Buyer can request from RUPP a declaration as to whether RUPP will withdraw from the order or deliver within an appropriate timeframe. If RUPP does not make such a declaration within an appropriate period the Buyer can withdraw from the contract by setting a grace period of a minimum of 4 weeks. Any claims of the Buyer over and above this are excluded.

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 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.

#### 6. Shipping and transfer of risk:

6.1 The type of shipping and bearing of costs are determined by the order confirmation (e.g. Incoterms 2000).

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 – e.g. also in FOB and CIF transactions. For the rest, the Incoterms 2000 in the respective valid version shall be decisive for the interpretation of the various sales clauses, unless agreed to otherwise in another provision.

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

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

7.1 Any defects in the goods, including a lack of warranted characteristics shall be treated in accordance with the below mentioned provisions.

7.2 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. The adaptation or processing of the goods in the absence of a relevant analysis result shall cause defect and liability entitlements to be eliminated.

7.3 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. If any defect was already in existence at the time of handover, the Buyer shall always carry the burden of proof therefor.

7.4 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) by the Buyer are excluded.

7.5 If the Buyer does not immediately give RUPP the opportunity of satisfying itself of the defect, if the Buyer does not immediately make available the faulty products and samples or if the Buyer does not grant a specialist nominated by RUPP an opportunity to remedy the defect, all defect and liability entitlements shall then be cancelled. Any claims to defects and liability shall lapse within one month after written repudiation of the notice of defect by RUPP at the latest.

7.6 The liability to RUPP exclusively concerns the agreements made in the above mentioned sections. All claims not expressly permitted therein, including claims to damages arising from slight negligence, replacement of subsequent damages from defects (in particular but not limited to production losses), replacement of profits forgone, replacement of pure financial losses – on any legal basis whatsoever – are excluded.

7.7 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.

## **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 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.

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

8.4 Any departures from these Terms and Conditions of Purchase and Supply 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).

8.5 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.

8.6 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 receive 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.

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

8.8 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 The place of performance for the supply and service is the legal seat of RUPP. The place of performance for payment shall be A-6912 Hörbranz, Austria.

9.2 The contractual parties expressly agree in the sense of Section 104 JN (Austrian Code on Court Organization) and Section 23 EUGVVO (European Ordinance on Jurisdiction of the Courts and Recognition and Enforcement of Civil and Commercial Decisions) and Section 17 LGVÜ (The Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters) that for all litigation arising from this legal relationship the Regional Civil Court of Feldkirch, A-6800 Feldkirch, Austria shall be the competent court of jurisdiction.

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.