



# RPC GENERAL TERMS AND CONDITIONS OF USE



## RPC TERMS AND CONDITIONS OF USE

### 1. DEFINITIONS.

- a. "Agreement" means these Terms, the RPC Use Agreement which references these Terms, and any and all documents referenced therein.
- b. "Approved Users" means, for purposes of an Open Loop Customer, those entities approved by Tosca to which RPCs may be shipped by Customer. A list of Approved Users can be found at <https://www.toscaltd.com/shipping-returns/>, as amended by Tosca from time to time.
- c. "Closed Loop" refers to a customer who does not Transfer RPCs to an Approved User.
- d. "Customer" means the entity executing the RPC Use Agreement.
- e. "Customer Location(s)" means those locations authorized to receive RPCs for or on behalf of Customer, as agreed by Tosca and Customer.
- f. "Issue" means the provision of an RPC to the Customer.
- g. "Long Hold Fee" is the same amount as the RPC Use Fee identified in the RPC Use Agreement.
- h. "Lost RPC" means (i) an RPC which has been destroyed, lost, stolen, or conveyed, (ii) any RPC which is issued to the Customer and is not transferred to an Approved User (in the case of an Open Loop Customer) or returned to, or collected by, Tosca within 180 days, or (iii) in the case of an Open Loop Customer, an RPC which is a Rejected RPC and is not collected by, or returned to, Tosca within 72 hours or whose disposition is not reported to Tosca within 72 hours.
- i. "Open Loop" refers to a customer who Transfers RPCs to Approved Users.
- j. "Order(s)" means Customer's purchase-related documentation, regardless of the manner in which such Orders are made or documented.
- k. "Rejected RPC" means an RPC which a user does not accept at the time of delivery by Customer.
- l. "RPC(s)" means any reusable plastic containers, Issued to Customer by Tosca for the purpose of packing, storing, handling, and transporting product.
- m. "Suggested Repackers" means those entities engaged in repacking goods and which are listed on the Tosca HUB, as may be amended by Tosca from time to time.
- n. "Terms" means these RPC Terms and Conditions of Use.
- o. "Tosca" means Tosca Services, LLC.
- p. "Tosca HUB" means <https://customerportal.toscaltd.com/>
- q. "Transfer" means the passing of responsibility for the RPCs from Customer to an Approved User as permitted by this Agreement.

**2. SCOPE.** Upon execution of the RPC Use Agreement and at the time of issuance of each Order, Customer agrees to these Terms. Each Order shall be subject to acceptance by Tosca. The Agreement shall apply to all shipments of RPCs delivered by Tosca to the Customer. Unless otherwise agreed by Tosca in writing, any additional or conflicting terms contained in, attached to, or referenced in any Order are expressly rejected by Tosca. If any Order of Customer contains a similar exclusion, the exclusion of the Customer is excluded in favour of the application of these Terms. All Orders are conditioned on acceptance of these Terms. The current version of the Terms, upon posting to the Tosca HUB, supersedes all prior versions. Tosca reserves the right to change the Terms at any time, in Tosca's sole discretion, without notice, provided that the Terms applicable to an Order shall be those posted on the Tosca HUB as of the date the Order is submitted to Tosca.

**3. DELIVERY.** Tosca agrees to use commercially reasonable efforts to Issue and deliver RPCs to Customer Locations within the time specified in an Order, provided that such Order has been accepted by Tosca. Tosca shall not be liable for any delays, loss, or damages in transit. Notwithstanding anything to the contrary in these Terms, Tosca may refuse to load/unload, transfer or handle any RPCs under any conditions that it deems, in its sole discretion, unsafe, including (without limitation) conditions caused by drivers, personnel, equipment, procedures or weather conditions.

**4. LIMITED WARRANTY AND ACCEPTANCE.** Tosca warrants that RPCs will be of reasonable quality, except as to defects which a reasonable visual examination would reveal, and will conform to Tosca's then current specifications at the time of Issue. Customer's exclusive remedy for any claim arising out of this Agreement with respect to nonconforming RPCs shall be limited, at Tosca's option, to: (a) replacement of the nonconforming RPCs, or (b) refund of the portion of the fees paid by Customer to Tosca attributable to such nonconforming RPCs. Upon receipt of delivery, Customer shall inspect the RPCs, at its sole cost and expense, for compliance with Tosca's specifications and for in transit loss or damage. If the RPCs are found to be deficient, defective, or damaged, Customer shall notify Tosca in writing within 72 hours of delivery and Tosca will credit Customer for the Use Fees and any freight costs incurred by Customer in returning such RPCs to Tosca. If Tosca is not notified within such time, then the RPCs shall be conclusively deemed to be delivered to and accepted

by Customer. EXCEPT AS PROVIDED IN THIS SECTION, THE RPCS ARE PROVIDED 'AS IS' AND TOSCA DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. ANY USE OF RPCs IN VIOLATION OF THE TERMS OF THIS AGREEMENT SHALL INVALIDATE ANY WARRANTY PROVIDED BY TOSCA WHETHER IN THIS AGREEMENT OR IN ANY OTHER DOCUMENT OR CERTIFICATE.

**5. ORDER RETURNS.** Customer may elect, at any time, to return full pallets of unopened, undamaged, clean, and unused RPCs to a location designated by Tosca. Customer shall pay for all freight and delivery costs associated with returning such RPCs to Tosca. If RPCs can be rerouted to another customer, Tosca may refund Customer the Use Fees invoiced for such returned RPCs less a Restocking Fee set forth in the Agreement. Returned RPCs shall conform to the return requirements posted on the Tosca HUB.

**6. TRANSFER.** A Closed Loop customer's responsibility for the RPCs shall end upon the return to or collection of the RPCs by Tosca. An Open Loop customer's responsibility for the RPCs shall end upon Transfer of the RPCs to an Approved User. A Transfer will be accepted by Tosca when the RPCs have been transported to, and the Customer's goods have been accepted by, an Approved User, as evidenced by a Bill of Lading signed by the Approved User. Tosca may refuse to accept a Transfer if it is to an entity other than an Approved User.

**7. REJECTION OF CUSTOMER'S GOODS.** If any third party rejects a shipment of Customer's goods which includes Tosca RPCs, then Customer shall notify Tosca of such disposition within 72 hours of rejection and, at Customer's discretion and expense, shall either deliver any Rejected RPCs to a Suggested Repacker or arrange for emptied RPCs to be returned to, or collected by, Tosca. Any Rejected RPCs not collected by or returned to Tosca within 72 hours, or whose disposition is not reported to Tosca within 72 hours, will incur a Loss Fee. The Suggested Repackers list is provided by Tosca as a convenience only, and Tosca is not endorsing any Suggested Repackers, nor shall Tosca be responsible for their performance. Customer shall bear all risk related to its use of Suggested Repackers. This Section 7 shall not apply to Closed Loop customers.

**8. RISK OF LOSS AND DAMAGE.** The Risk of loss and damage shall pass from Tosca to Customer upon delivery of RPCs to the Customer Location. Thereafter, Customer bears the risk of loss, theft, damage, or destruction from any cause whatsoever until Transfer to an Approved User (in the case of an Open Loop customer), or return to, or collection by, Tosca. If at any time, any RPCs are declared to be "Lost RPCs" by Tosca, a Loss Fee may be charged by Tosca. However, if any such Lost RPCs are located and returned to Tosca within sixty (60) days of being declared as Lost RPCs, then Tosca will credit Customer's account in the amount of the Loss Fee paid by Customer.

**9. INVENTORY AND AUDIT.** Each week, Customer shall provide a detail of all RPCs transferred during the previous calendar week to third parties including Approved Users. Notifications shall include the destination of each RPC, the quantity, the name and address of the receiving party, the BOL number / PO number, and the date of Transfer. All Transfers shall be subject to acceptance by Tosca as provided herein. Additional fees will be charged for unreported transfers. Tosca shall have the right to conduct physical audits of Customer's inventory of RPCs at each Customer Location at a mutually agreeable time and date, but in any case, at least once per calendar quarter and within 90 days following the time of expiration or termination of this Agreement. Any Issued RPCs which are not accounted for by the audit will be declared Lost RPCs and will incur a Loss Fee. Customer must notify Tosca within thirty (30) days regarding end of season inventory for return. Additionally, Customer agrees that any RPCs held by Customer greater than sixty (60) days shall be subject to a Long Hold Fee for each subsequent day thereafter until such RPC is transferred to an Approved User, or returned to, or collected by Tosca.

**10. BILLING AND PAYMENT TERMS.** Tosca will invoice Customer, and Customer agrees to pay, the fees and charges set forth in the Agreement. Unless otherwise provided in writing, payment terms are net thirty (30) calendar days from the date of an undisputed invoice in U.S. currency. All prices are exclusive of applicable federal, state, local and foreign sales, use, excise, value added and other taxes, and any current or future tax or other governmental charges applicable to this Agreement that Tosca is required to pay or permitted to collect shall be for Customer's account. Tosca shall be notified in writing in the event of any invoice dispute (along with supporting documentation) within fifteen (15) days of the date of an invoice, and the parties shall seek to resolve all such disputes expeditiously and in good faith. Invoices will be deemed accepted if Tosca does not receive timely notification of dispute. Any amounts which remain unpaid after the due date shall be subject to a late charge of 1.5% compounded monthly, or the maximum rate allowed by law, whichever is less. Customer's obligation to pay amounts due shall be absolute and unconditional, and shall not

be subject to any delay, reduction, set-off, counterclaim or recoupment for any reason whatsoever.

**11. OWNERSHIP; NO REUSE OF RPCs.** Each RPC shall remain at all times the sole and exclusive property of Tosca and is provided to Customer solely for its temporary and single use as permitted in this Agreement. Customer shall have the right to use each RPC one time until the time of Transfer or return to Tosca. Customer covenants and agrees that it will not use RPCs multiple times or for purposes other than as expressly permitted by this Agreement. Each multiple use, to the extent permitted in writing by Tosca, is subject to an additional Use Fee. Further, Customer shall not dispose, transfer, assign, sell, sublease, encumber or otherwise convey any RPC without Tosca's prior written consent. Payment of a Loss Fee, or any other event, does not constitute a transfer of any property right or other interest in the RPCs. In addition, Tosca is and shall remain the exclusive owner of its trademarks and trade names appearing on the RPCs, with all rights, title and interest therein being reserved by Tosca. Customer shall not remove, cover, alter or deface any trademarks or trade names affixed to the RPCs by Tosca without Tosca's consent. Customer shall not mark the RPCs nor attach any item(s) to the RPCs in any manner and shall reimburse Tosca for the costs of removing such marks or items.

**12. LIMITATION OF LIABILITY.** IN NO EVENT SHALL TOSCA BE LIABLE TO CUSTOMER FOR ANY INDIRECT, CONSEQUENTIAL, LOST PROFITS, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, INFRINGEMENT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TOSCA'S TOTAL LIABILITY TO CUSTOMER ARISING OUT OF, OR RELATED TO THIS AGREEMENT, SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO TOSCA FOR THE SPECIFIC RPCS GIVING RISE TO THE CLAIM.

**13. INDEMNIFICATION.** Customer shall indemnify, defend and hold harmless Tosca and its affiliates, subsidiaries and their respective officers, directors, members, and employees (collectively, the "Indemnitees") from and against, any and all claims, demands, suits, damages, losses, liabilities, obligations, costs and expenses (including court costs and attorneys' fees) ("Claims") arising out of or relating to: (a) Customer's breach of any provision of the Agreement; or (b) Customer's handling, use, reuse, alteration, distribution, transfer or marketing of RPCs. This indemnification applies notwithstanding the fact that third parties or any of the Indemnitees may be partially responsible for the Claim; provided, that the Customer shall not be obligated to indemnify Indemnitees to the extent such Claims arise solely out of the Indemnitees' negligence or willful misconduct.

**14. CUSTOMER'S DEFAULT.** If (a) Customer fails to make any payment when due; (b) Tosca determines, in its sole discretion, that the credit of Customer or of any person or entity providing credit support for Customer's obligations hereunder is or becomes impaired, or there is any reason to doubt the enforceability or sufficiency of any document supporting Customer's obligations to Tosca; or (c) Customer breaches any other material term hereof, then Tosca may, immediately upon notice and in its sole discretion: (i) declare immediately due and payable any amounts owed by Customer, (ii) cancel any Orders then pending, (iii) suspend further shipment and delivery to Customer of any Order, and/or (iv) terminate the Agreement. Customer shall pay Tosca's reasonable costs of collection, including attorneys' fees and court costs. The foregoing rights shall be cumulative, alternative and in addition to any other rights or remedies to which Tosca may be entitled at law or in equity.

**15. INSURANCE.** Each party shall procure and maintain, at its own cost and expense, with a reputable insurance company, insurance coverages against all risks, including, but not limited to, workers' compensation, general liability, commercial auto coverage, and employers liability insurance, which shall remain in full force and effect for the duration of the Agreement. Any failure by a party to secure the proper insurance coverages as required in these Terms will be a material breach of the Agreement.

**16. PUBLICITY.** Subject to Section 22 hereof, Tosca shall have the right to issue press releases or otherwise make public statements in connection with the transactions contemplated under the Agreement. Customer agrees that Tosca may use or refer to Customer's name and/or visual corporate identity, including its logo, in any written or oral public communications, advertising, website, or corporate documents.

**17. FORCE MAJEURE.** Any delay or failure of performance by Tosca shall not be a breach of these Terms if and to the extent such performance is prevented or delayed due to events beyond Tosca's reasonable control, including (without limitation) compliance with law or government authority, military action, terrorism, riots, civil disorders, pandemic, fires, severe weather conditions, accidents, labor strikes, lockouts and shortages, computer system failures, loss of electronic data, unavailability of materials, facility shutdowns, or delays in transportation. Tosca's obligations shall be suspended, without liability, for so long as such event continues. Tosca may allocate and distribute RPCs among its customers in such proportion as Tosca determines in its sole discretion.

**18. ASSIGNMENT.** The Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the parties; provided, however, that Customer shall not assign its rights or delegate the performance of its obligations under the Agreement without Tosca's prior written consent, which shall not be unreasonably withheld. Tosca may assign the Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of Customer.

**19. COMPLIANCE WITH EXPORT LAWS.** Except as permitted by applicable laws, Customer will not export or re-export RPCs outside the U.S., directly or indirectly, to any party or destination declared an embargoed/restricted party or destination by the U.S. government. Further, if RPCs are transferred by Customer outside the U.S.: (a) Customer shall be responsible for determining U.S. export control classification and licensing requirements and obtaining any required licenses, (b) Customer shall ensure that the RPCs comply with the laws of the country of destination, including any applicable health, safety, registration, environmental or other requirements, and (c) upon Tosca's request, Customer shall provide documentation sufficient to verify the final destination of RPCs delivered to Customer hereunder.

**20. ANTI-BRIBERY AND CORRUPTION.** None of the Customer, any of its subsidiaries, or any of their respective owners, directors, officers, employees, agents, or other persons acting for or on behalf of the foregoing (each, a "Customer Representative") shall, in connection with the Agreement, make, offer, promise, authorize, solicit, or receive any bribe, kickback, or other unlawful payment, or otherwise take any action in violation of any applicable anti-corruption or anti-bribery laws or regulations.

**21. SANCTIONS.** None of the Customer or any of its subsidiaries, nor any Customer Representative (a) is or has been, or is or has been owned or controlled by, a Sanctioned Person or (b) will, in connection with the Agreement, engage in any transactions or business dealings with any Sanctioned Person or in or with any Sanctioned Territory. "Sanctioned Person" means any person who appears on any list of restricted or prohibited persons maintained by the European Union Consolidated Financial Sanctions List or the United States Department of the Treasury's Office of Foreign Assets Control (including, but not limited to, the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, and the Sectoral Sanctions Identifications List), which are respectively available at <https://webgate.ec.europa.eu/fsd/fsf/public/files/pdfFullSanctionsList/> and <https://sanctionssearch.ofac.treas.gov/>. "Sanctioned Territory" means, as of the date of the Agreement, any of Cuba, Belarus, Libya, Iran, North Korea, Syria, Russia, or the Crimea region of Ukraine; or any other country with active trade sanctions imposed by the European Union (Sanction's List available at <https://www.sanctionsmap.eu/#/main>) or the U.S. Department of Treasury (available at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>) that may affect the object of the Agreement.

**22. CONFIDENTIALITY.** "Confidential Information" includes (without limitation) the pricing, terms, specifications, force majeure allocations and other technical, business and sales information provided pursuant to, or in connection with, this Agreement or the use of RPCs hereunder. Except as permitted by the disclosing party in writing, each party shall: (a) limit its use of the other party's Confidential Information only for the purpose of performing its obligations hereunder, (b) limit disclosure of Confidential Information only to those of its employees who need to know such information and are under obligations of confidence to the receiving party not less than those contained herein, and (c) not disclose to any third party, directly or indirectly, any Confidential Information received from the other party during the Term of this Agreement and for a period of three (3) years thereafter. Upon request, each party shall promptly return all Confidential Information previously supplied by the other party, destroy any and all copies and provide written confirmation certifying such destruction.

**23. RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**24. GOVERNING LAW/JURISDICTION.** The Agreement shall be governed by the laws of the State of Georgia, USA, without regard to its conflict of laws principles, and the courts of Fulton County, Georgia shall have exclusive jurisdiction. The parties consent to the jurisdiction of such courts and waive any objections to venue in such courts.

**25. WAIVER OF JURY TRIAL.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF, OR RELATED TO, THIS AGREEMENT.

**26. MISCELLANEOUS.** No waiver of any provisions hereof by either party will be valid unless the same is in writing and signed by such party. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. No course of dealing, course of performance or usage of trade shall be considered in the interpretation or enforcement of the Agreement. The following Sections of these Terms shall survive the expiration or termination of the Agreement for any reason: 10, 11, 12, 13, 19, 20, 23, 24, 21, 22, 23 and 24.

[End of RPC Terms and Conditions of Use]



# EGG RPC TERMS AND CONDITIONS OF USE



## EGG RPC TERMS AND CONDITIONS OF USE

### 1. DEFINITIONS.

- (a) "Agreement" means these Terms, the Egg RPC Use Agreement which references these Terms and any and all documents referenced therein.
- (b) "Approved Users" means those entities approved by Tosca to which RPCs may be shipped by Customer pursuant to these Terms. A list of Approved Users can be found at <https://www.toscaltd.com/shipping-returns/>, as amended by Tosca from time to time.
- (c) "Customer" means the entity executing the Egg RPC Use Agreement.
- (d) "Customer Location(s)" means those locations authorized to receive RPCs for or on behalf of Customer, as agreed by Tosca and Customer.
- (e) "Issue" means the provision of an RPC to the Customer.
- (f) "Long Hold Fee" is the same amount as the RPC Use Fee identified in the Egg RPC Use Agreement.
- (g) "Lost RPC" means an RPC which has been destroyed, lost, stolen, conveyed, or otherwise transferred to any person or entity other than an Approved User.
- (h) "Order(s)" means Customer's purchase-related documentation, regardless of the manner in which such Orders are made or documented.
- (i) "Rejected RPC" means an RPC which an Approved User does not accept at the time of delivery by Customer.
- (j) "RPC(s)" means those sizes of reusable plastic containers identified in the RPC Use Agreement and provided to Customer by Tosca for the purpose of packing, storing, handling, and transporting eggs.
- (k) "Terms" means these Egg RPC Terms and Conditions of Use.
- (l) "Tosca" means Tosca Services, LLC.
- (m) "Tosca HUB" means <https://customerportal.toscaltd.com/>
- (n) "Transfer" means the passing of responsibility for the RPCs from Customer to an Approved User as permitted by this Agreement.

2. **SCOPE.** Upon execution of the Egg RPC Use Agreement and at the time of issuance of each Order, Customer agrees to these Terms. Each Order shall be subject to acceptance by Tosca. The Agreement shall apply to all shipments of RPCs delivered by Tosca to the Customer. Unless otherwise agreed by Tosca in writing, any additional or conflicting terms contained in, attached to, or referenced in any Order are expressly rejected by Tosca. If any Order of Customer contains a similar exclusion, the exclusion of the Customer is excluded in favour of the application of these Terms. All Orders are conditioned on acceptance of these Terms. The current version of the Terms, upon posting to Tosca HUB, supersedes all prior versions. Tosca reserves the right to change the Terms at any time, in Tosca's sole discretion, without notice, provided that the Terms applicable to an Order shall be those posted on the Tosca HUB as of the date the Order is submitted to Tosca.

3. **DELIVERY.** Tosca agrees to use commercially reasonable efforts to Issue and deliver RPCs to Customer Locations within the time specified in an Order, provided that such Order has been accepted by Tosca. Notwithstanding anything to the contrary in these Terms, Tosca may refuse to load/unload, transfer or handle any RPCs under any conditions that it deems, in its sole discretion, unsafe, including (without limitation) conditions caused by drivers, personnel, equipment, procedures or weather conditions.

4. **LIMITED WARRANTY AND ACCEPTANCE.** Tosca warrants that RPCs will be of reasonable quality except as to defects which a reasonable visual examination would reveal and will conform to Tosca's then current specifications at the time of Issue. Customer's exclusive remedy for any cause of action arising out of this Agreement with respect to nonconforming RPCs shall be limited, at Tosca's option, to: (a) replacement of the nonconforming RPCs, or (b) refund of the portion of the fees paid by Customer to Tosca attributable to such nonconforming RPCs. Upon receipt of delivery, Customer shall inspect the RPCs, at its sole cost and expense, for compliance with Tosca's specifications and for in transit loss or damage. If the RPCs are found to be deficient, defective, or damaged, Customer shall notify Tosca in writing within 72 hours of delivery and Tosca will credit Customer for the Use Fees and any freight costs incurred by Customer in returning such RPCs to Tosca. If Tosca is not notified within such time, then the RPCs shall be conclusively deemed to be delivered to and accepted by Customer. EXCEPT AS PROVIDED IN THIS SECTION, THE RPCs ARE PROVIDED 'AS IS' AND TOSCA DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. ANY USE OF RPCs IN VIOLATION OF THE TERMS OF THIS AGREEMENT SHALL INVALIDATE ANY WARRANTY PROVIDED BY TOSCA WHETHER IN THIS AGREEMENT OR IN ANY OTHER DOCUMENT OR CERTIFICATE.

5. **FOOD SAFETY PROGRAMS.** Throughout the Term, Tosca shall maintain FSMS ISO 22000 certifications and biosecurity cross-contamination programs for all of its facilities used to wash and clean Egg RPCs.

6. **ORDER RETURNS.** Customer may elect, at any time, to return full pallets of undamaged and unused Egg RPCs to a location designated by Tosca. Customer shall pay for all freight and delivery costs associated with returning such RPCs to Tosca. Tosca shall refund Customer the Use Fees invoiced for such returned RPCs less a Restocking Fee set forth in the Agreement. Returned RPCs shall conform to the return requirements posted on the Tosca HUB.

7. **TRANSFER.** A Transfer will be accepted by Tosca when the RPCs have been transported to, and the Customer's goods have been accepted by, an Approved User, as evidenced by a Bill of Lading signed by the Approved User. Tosca may refuse to accept a Transfer if it is to an entity other than an Approved User.

8. **REJECTION OF CUSTOMER'S GOODS.** If the Approved User rejects a shipment of Customer's goods which includes Tosca RPCs, then Customer shall notify Tosca of such disposition within 72 hours of rejection and, at Customer's discretion and expense, shall either deliver any Rejected RPCs to a Suggested Repacker or arrange for emptied RPCs to be returned to or collected by Tosca. Any Rejected RPCs not collected by or returned to Tosca within 72 hours, or whose disposition is not reported to Tosca within 72 hours, will incur a Loss Fee. The Suggested Packers list is provided by Tosca as a convenience only, and Tosca is not endorsing any Suggested Packers, nor shall Tosca be responsible for their performance. Customer shall bear all risk related to its use of Suggested Packers.

9. **RISK OF LOSS AND DAMAGE.** The risk of loss and damage shall pass from Tosca to Customer upon delivery of RPCs to the Customer Location. Thereafter, Customer bears the risk of loss, theft, damage, or destruction from any cause whatsoever until Transfer to an Approved User or return to or collection by Tosca. If at any time, any RPCs are destroyed, lost, stolen, rented, retained by the Customer for more than 72 hours after the expiration or termination of the Agreement, or transferred to other than an Approved User, then such RPCs shall be declared as "Lost RPCs" and will incur a Loss Fee. However, if any such Lost RPCs are located and returned to Tosca within sixty (60) days of being declared as Lost RPCs, then Tosca will credit Customer's account in the amount of the Loss Fee paid by Customer.

10. **INVENTORY AND AUDIT.** Each week, Customer shall provide a detail of all RPCs transferred during the previous calendar week to third parties including Approved Users. Notifications shall include the date and destination of each RPC, the quantity, the name, and address of the receiving party, the BOL number / PO number, and the date of Transfer. All Transfers shall be subject to acceptance by Tosca as provided herein. Additional fees will be charged for unreported transfers. Tosca shall have the right to conduct physical audits of Customer's inventory of RPCs at each Customer Location at a mutually agreeable time and date, but in any case, at least once per calendar quarter and within 90 days following the time of expiration or termination of this Agreement. Any Issued RPCs which are not accounted for by the audit will be declared Lost RPCs and will incur a Loss Fee. Customer must notify Tosca within thirty (30) days regarding end of season inventory for return. Additionally, Customer agrees that any RPCs held by Customer greater than sixty (60) days shall be subject to a Long Hold Fee for each subsequent day thereafter until such RPC is transferred to an Approved User, or returned to, or collected by Tosca.

11. **BILLING AND PAYMENT TERMS.** Tosca will invoice Customer, and Customer agrees to pay, the fees and charges set forth in the Agreement. Unless otherwise provided in writing, payment terms are net thirty (30) calendar days from the date of an undisputed invoice in U.S. currency. All prices are exclusive of applicable federal, state, local and foreign sales, use, excise, value added and other taxes, and any current or future tax or other governmental charges applicable to this Agreement that Tosca is required to pay or permitted to collect shall be for Customer's account. Tosca shall be notified in writing in the event of any invoice dispute (along with supporting documentation) within fifteen (15) days of the date of an invoice, and the parties shall seek to resolve all such disputes expeditiously and in good faith. Invoices will be deemed accepted if Tosca does not receive timely notification of dispute. Any amounts which remain unpaid after the due date shall be subject to a late charge of 1.5% compounded monthly, or the maximum rate allowed by law, whichever is less. Customer's obligation to pay amounts due shall be absolute and unconditional, and shall not be subject to any delay, reduction, set-off, counterclaim or recoupment for any reason whatsoever.

12. **OWNERSHIP; NO REUSE OF RPCs.** Each RPC shall remain at all times the sole and exclusive property of Tosca and is provided to Customer solely for its temporary and single use as permitted in this Agreement. Customer shall have the right to use the RPCs one time until the time of Transfer or return to Tosca, and shall not use RPCs multiple times or for purposes other than as expressly permitted by this Agreement. Further, Customer shall not dispose, transfer, assign, sell, sublease, encumber or otherwise convey any RPC without Tosca's prior written consent. Payment of a Loss Fee, or any other event, does not constitute a transfer of any property right or other interest in the RPCs. In



addition, Tosca is and shall remain the exclusive owner of its trademarks and trade names appearing on the RPCs, with all rights, title and interest therein being reserved by Tosca. Customer shall not remove, cover, alter or deface any trademarks or trade names affixed to the RPCs by Tosca without Tosca's consent. Customer shall not mark the RPCs nor attach any item(s) to the RPCs in any manner and shall reimburse Tosca for the costs of removing such marks or items.

**13. LIMITATION OF LIABILITY.** IN NO EVENT SHALL TOSCA BE LIABLE TO CUSTOMER FOR ANY INDIRECT, CONSEQUENTIAL, LOST PROFITS, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, INFRINGEMENT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TOSCA'S TOTAL LIABILITY TO CUSTOMER ARISING OUT OF, OR RELATED TO THIS AGREEMENT, SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO TOSCA FOR THE SPECIFIC RPCS GIVING RISE TO THE CLAIM.

**14. INDEMNIFICATION.** Customer shall indemnify, defend and hold harmless Tosca, its affiliates, subsidiaries and their respective officers, directors, members, and employees (collectively, the "Indemnitees") from and against, any and all claims, suits, damages, losses, costs and expenses (including court costs and attorneys' fees) ("Claims") arising out of or relating to: (a) Customer's breach of any material provision of the Agreement; or (b) Customer's handling, use, alteration, distribution, transfer or marketing of RPCs. This indemnification applies notwithstanding the fact that third parties or any of the Indemnitees may be partially responsible for the Claim; provided, that the Customer shall not be obligated to indemnify Indemnitees to the extent such Claim arises out of the Indemnitees' sole negligence or willful misconduct.

**15. CUSTOMER'S DEFAULT.** If (a) Customer fails to make any payment when due; (b) Tosca determines, in its sole discretion, that the credit of Customer or of any person or entity providing credit support for Customer's obligations hereunder is or becomes impaired, or there is any reason to doubt the enforceability or sufficiency of any document supporting Customer's obligations to Tosca; or (c) Customer breaches any other material term hereof, then Tosca may, immediately upon notice and in its sole discretion: (i) declare immediately due and payable any amounts owed by Customer, (ii) cancel any Orders then pending, (iii) suspend further shipment and delivery to Customer of any Order, and/or (iv) terminate the Agreement. Customer shall pay Tosca's reasonable costs of collection, including attorneys' fees and court costs. The foregoing rights shall be cumulative, alternative and in addition to any other rights or remedies to which Tosca may be entitled at law or in equity.

**16. INSURANCE.** Each party shall procure and maintain, at its own cost and expense, with a reputable insurance company, insurance coverages against all risks, including, but not limited to, workers' compensation, general liability, commercial auto coverage, and employers liability insurance, which shall remain in full force and effect for the duration of the Agreement. Any failure by a party to secure the proper insurance coverages as required in these Terms will be a material breach of the Agreement.

**17. PUBLICITY.** Subject to Section 24 hereof, Tosca shall have the right to issue press releases or otherwise make public statements in connection with the transactions contemplated under the Agreement. Customer agrees that Tosca may use or refer to Customer's name and/or visual corporate identity, including its logo, in any written or oral public communications, advertising, website, or corporate documents.

**18. FORCE MAJEURE.** Any delay or failure of performance by Tosca shall not be a breach of these Terms if and to the extent such performance is prevented or delayed due to events beyond Tosca's reasonable control, including (without limitation) compliance with law or government authority, military action, terrorism, riots, civil disorders, pandemics, fires, severe weather conditions, accidents, labor strikes, lockouts and shortages, computer system failures, loss of electronic data, unavailability of materials, facility shutdowns, or delays in transportation. Tosca's obligations shall be suspended, without liability, for so long as such event continues. Tosca may allocate and distribute RPCs among its customers in such proportion as Tosca determines in its sole discretion.

**19. ASSIGNMENT.** The Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the parties; provided, however, that Customer shall not assign its rights or delegate the performance of its obligations under the Agreement without Tosca's prior written consent, which shall not be unreasonably withheld. Tosca may assign the Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of Customer.

**20. COMPLIANCE WITH EXPORT LAWS.** Except as permitted by applicable laws, customer will not export or re-export RPCs outside the U.S., directly or indirectly, to any party or destination declared an embargoed/restricted party or destination by the U.S. government. further, if RPCs are transferred by

customer outside the U.S.: (a) customer shall be responsible for determining U.S. export control classification and licensing requirements and obtaining any required licenses, (b) customer shall ensure that the RPCs comply with the laws of the country of destination, including any applicable health, safety, registration, environmental or other requirements, and (c) upon tosca's request, customer shall provide documentation sufficient to verify the final destination of RPCs delivered to customer hereunder.

**21. ANTI-BRIBERY AND CORRUPTION.** None of the Customer, any of its subsidiaries, or any of their respective owners, directors, officers, employees, agents, or other persons acting for or on behalf of the foregoing (each, a "Customer Representative") shall, in connection with the Agreement, make, offer, promise, authorize, solicit, or receive any bribe, kickback, or other unlawful payment, or otherwise take any action in violation of any applicable anti-corruption or anti-bribery laws or regulations.

**22. SANCTIONS.** None of the Customer or any of its subsidiaries, nor any Customer Representative (a) is or has been, or is or has been owned or controlled by, a Sanctioned Person or (b) will, in connection with the Agreement, engage in any transactions or business dealings with any Sanctioned Person or in or with any Sanctioned Territory. "Sanctioned Person" means any person who appears on any list of restricted or prohibited persons maintained by the European Union Consolidated Financial Sanctions List or the United States Department of the Treasury's Office of Foreign Assets Control (including, but not limited to, the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, and the Sectoral Sanctions Identifications List), which are respectively available at <https://webgate.ec.europa.eu/fsd/fsf/public/files/pdfFullSanctionsList/> <https://sanctionssearch.ofac.treas.gov/>. "Sanctioned Territory" means, as of the date of the Agreement, any of Cuba, Belarus, Libya, Iran, North Korea, Syria, Russia, or the Crimea region of Ukraine; or any other country with active trade sanctions imposed by the European Union (Sanction's List available at <https://www.sanctionsmap.eu/#/main>) or the U.S. Department of Treasury (available at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>) that may affect the object of the Agreement.

**23. CONFIDENTIALITY.** "Confidential Information" includes (without limitation) the pricing, terms, specifications, force majeure allocations and other technical, business and sales information provided pursuant to these Terms. Except as permitted by the disclosing party in writing, each party shall: (a) limit its use of the other party's Confidential Information only for the purpose of performing its obligations hereunder, (b) limit disclosure of Confidential Information only to those of its employees who need to know such information and are under obligations of confidence to the receiving party not less than those contained herein, and (c) not disclose to any third party, directly or indirectly, any Confidential Information received from the other party during the preceding three (3) years. Upon request, each party promptly shall return all Confidential Information previously supplied by the other party, destroy any and all copies and provide written confirmation certifying such destruction.

**24. RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**25. GOVERNING LAW/JURISDICTION.** The Agreement shall be governed by the laws of the state of Georgia, USA, without regard to its conflict of laws principles, and the courts of Fulton County shall have exclusive jurisdiction. The parties consent to jurisdiction of such courts and waive any objections to venue in such courts.

**26. WAIVER OF JURY TRIAL.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF, OR RELATED TO, THIS AGREEMENT.

**27. MISCELLANEOUS.** No waiver of any provisions hereof by either party will be valid unless the same is in writing and signed by such party. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of its other provisions. No course of dealing, course of performance or usage of trade shall be considered in the interpretation or enforcement of the Agreement. The following sections shall survive the expiration or termination of the Agreement for any reason: 9, 11, 12, 13, 14, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26.

[End of Egg RPC Terms and Conditions of Use]



# 640 CHEESE CONTAINER TERMS AND CONDITIONS OF USE





## 640 CHEESE CONTAINER TERMS AND CONDITIONS OF USE

**1. SCOPE.** Upon execution of a 640 Cheese Container Rental Agreement (the "Rental Agreement") by the Customer, and at the time of issuance of each order or other documentation requesting rental of Containers to Customer (each, an "Order"), Customer agrees to these 640 Cheese Container Terms and Conditions of Use (the "Terms"). Each Order shall be subject to acceptance by Tosca Services, LLC ("Tosca"), and is conditioned on acceptance of these Terms. The Rental Agreement shall apply to all shipments of 640 Cheese Containers ("Containers") delivered by Tosca to the Customer. Unless otherwise agreed by Tosca in writing, any additional or conflicting terms contained in, attached to, or referenced in any Order are expressly rejected by Tosca. If any Order of Customer contains a similar exclusion, the exclusion of the Customer is excluded in favour of the application of these Terms. The current version of the Terms, upon posting to the Tosca HUB (<https://customerportal.toscaltd.com/>), supersedes all prior versions. Tosca reserves the right to change the Terms at any time, in Tosca's sole discretion, without notice, provided that the Terms applicable to an Order shall be those posted on the Tosca HUB as of the date the Order is submitted to Tosca. For purposes of these Terms, "Customer" shall mean the entity executing the Rental Agreement.

**2. CHEESE PRODUCTION ESTIMATES.** Customer agrees to provide to Tosca on a quarterly basis the following: forecasted Container volume by Plant for the upcoming 90 day period, varieties of cheese produced and expected age profile of each cheese variety.

**3. RISK OF LOSS; INSURANCE.** The risk of loss and damage shall pass from Tosca to Customer upon Customer or its freight provider's pickup of Containers from Tosca. Thereafter, Customer bears the risk of loss, theft, damage, or destruction from any cause whatsoever until transfer to an approved cheese cutting plant, or return to, or collection by, Tosca. Customer shall insure the Containers against loss while the Containers are being rented by Customer.

**4. PAYMENT OF CHARGES.** All Rental Charges shall be billable by Tosca upon shipment of the Containers. Payment shall be made in U.S. currency within thirty (30) days of receipt of the billing. Tosca shall be notified in writing in the event of any invoice dispute (along with supporting documentation) within fifteen (15) days of the date of an invoice, and the parties shall seek to resolve all such disputes expeditiously and in good faith. Invoices will be deemed accepted if Tosca does not receive timely notification of dispute. Undisputed invoices unpaid after thirty five (35) days shall be subject to a late charge of 1.5% compounded monthly, or the maximum rate allowed by law, whichever is less. All prices are exclusive of applicable federal, state, local and foreign sales, use, excise, value added and other taxes, and any current or future tax or other governmental charges applicable to this Rental Agreement that Tosca is required to pay or permitted to collect shall be for Customer's account.

**5. AVAILABILITY OF CONTAINERS.** Tosca agrees to use its commercially reasonable efforts to make available for Customer pickup Containers as promptly as possible following rental requests. If a system wide shortage exists, Tosca will make available for Customer pickup Containers as promptly as possible. Tosca shall not be liable for any delays, loss or damages in transit. Notwithstanding anything to the contrary in this Rental Agreement, Tosca may refuse to load/unload, transfer or handle any Containers under any conditions that it deems, in its sole discretion, unsafe, including (without limitation) conditions caused by drivers, personnel, equipment, procedures or weather conditions.

**6. NOTIFICATION OF SHIPMENTS.** In order to enable Tosca to track the location of its Containers, Customer agrees to provide to Tosca the shipment volume and destination of rented Containers in a form as reasonably requested by Tosca, typically via an electronic file or an internet web portal. Tosca shall keep these shipments confidential.

**7. LIMITED WARRANTY AND ACCEPTANCE.** Tosca warrants that Containers will be of reasonable quality, except as to defects which a reasonable visual examination would reveal, and will conform to Section 9 hereof. Customer's exclusive remedy for any cause of action arising out of this Rental Agreement with respect to nonconforming Containers shall be limited, at Tosca's option, to: (a) replacement of the nonconforming Containers, or (b) refund of the portion of the Rental Charges paid by Customer to Tosca attributable to such nonconforming Containers. Upon pickup of the Containers by Customer, Customer shall inspect the Containers, at its sole cost and expense, for compliance with Tosca's specifications. If the Containers are found to be deficient, defective, or damaged, Customer shall notify Tosca in writing within 72 hours of delivery and Tosca will credit Customer for the Rental Charges and any freight costs incurred by Customer in returning such Containers to Tosca. If Tosca is not notified within such time, then the Containers shall be conclusively deemed to be delivered to and accepted by

Customer. EXCEPT AS PROVIDED IN THIS SECTION 7, THE CONTAINERS ARE PROVIDED 'AS IS' AND TOSCA DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

**8. CUSTOMER'S DEFAULT.** If (a) Customer fails to make any payment when due; (b) Tosca determines, in its sole discretion, that the credit of Customer or of any person or entity providing credit support for Customer's obligations hereunder is or becomes impaired, or there is any reason to doubt the enforceability or sufficiency of any document supporting Customer's obligations to Tosca; or (c) Customer breaches any other material term hereof, then Tosca may, immediately upon notice and in its sole discretion: (i) declare immediately due and payable any amounts owed by Customer, (ii) cancel any Orders then pending, (iii) suspend further shipment to Customer of any Order, and/or (iv) terminate the Rental Agreement and Equipment Lease Agreement. Customer shall pay Tosca's reasonable costs of collection, including attorneys' fees and court costs. The foregoing rights shall be cumulative, alternative and in addition to any other rights or remedies to which Tosca may be entitled at law or in equity.

**9. CONDITION OF RENTED CONTAINERS.** Tosca agrees that the steel and wood components of the Containers rented by Customer shall meet National Cheese Institute standards and shall be clean and ready for immediate use on delivery. Each Container will consist of seven wood panels, two steel frames, and up to six coil springs unless a different quantity is mutually agreed upon between Customer and Tosca.

**10. RESPONSIBILITY FOR EXCESSIVE WEAR.** Cost of normal wear and tear to the Containers when being rented is included in the Rental Charge. Customer will be responsible for any excessive or non-normal wear and tear. In the event that Tosca experiences non-normal wear and tear to Containers, Tosca may bill an additional charge to reflect any additional cost to Tosca.

**11. LOSS/DAMAGE OF CONTAINERS.** The cost to Tosca of replacing any Containers which are lost or damaged beyond repair shall be paid by Customer. Any Container which has been shipped to Customer and has not been returned to Tosca after 365 days is considered lost. The cost of a replacement Container is \$180, or such other amount as determined by Tosca from time to time ("Loss Fee").

**12. RIGHT TO INSPECT CONTAINERS ON CUSTOMER PREMISES.** Customer agrees that Tosca and its employees shall, at reasonable intervals, have the right to inspect the Containers and Equipment which are located in or at their premises. Customer agrees to allow Tosca's employees on its premises for this inspection. Tosca agrees that any observation made by its employees while inspecting Containers at the Plants will remain confidential.

**13. OWNERSHIP.** Each Container shall remain at all times the sole and exclusive property of Tosca and is provided to Customer solely for its temporary and single use as permitted in this Rental Agreement. Customer shall have the right to use each Container one time until the time of transfer to an approved cheese cutting plant or return to Tosca, and shall not use Containers multiple times or for purposes other than as expressly permitted by this Rental Agreement. Each multiple use is subject to an additional Rental Charge. Further, Customer shall not dispose, transfer, assign, sell, sublease, encumber or otherwise convey any Container without Tosca's prior written consent. Payment of a Loss Fee, or any other event, does not constitute a transfer of any property right or other interest in the Containers. In addition, Tosca is and shall remain the exclusive owner of its trademarks and trade names appearing on the Containers, with all rights, title and interest therein being reserved by Tosca. Customer shall not remove, cover, alter or deface any trademarks or trade names affixed to any Container by Tosca without Tosca's consent. Customer shall not mark any Container nor attach any item(s) to any Container in any manner and shall reimburse Tosca for the costs of removing such marks or items.

**14. CONFIDENTIAL INFORMATION.** All information and material that may be disclosed by one party to the other in the course of the performance of this Rental Agreement is considered confidential and proprietary and will not be used by the receiving party other than as necessary in the performance of this Rental Agreement. The receiving party will protect such information from disclosure to third parties and hold it as confidential using the same degree of care as the receiving party uses to protect its own confidential or proprietary material of like importance, but in no event less than a reasonable degree of care. Each party agrees that it shall be responsible for providing that each person who accesses the disclosing party's confidential information on the receiving party's behalf complies with the confidentiality obligations contained herein. These obligations will continue for a period of two (2) years

following any termination of this Rental Agreement for any reason; provided, however, that with respect to any confidential information that constitutes a trade secret, these obligations shall continue for so long as that information remains a trade secret. The obligations under this Section 14 will not cover any information that is disclosed to a third party by the disclosing party without restrictions on disclosure, any information that has been or is developed independently by the receiving party without violations of obligations of confidentiality, any information that falls into the public domain without fault of the receiving party from a third party without restriction, or any information that is rightly in the possession of the receiving party at the time of disclosure by the disclosing party. Notwithstanding the foregoing restrictions, the receiving party may disclose any information to the extent required by an order of any court or governmental authority, but only after the disclosing party has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure. Neither party may disclose any information relating to this Rental Agreement without the other party's written permission.

**15. LIMITATION OF LIABILITY.** IN NO EVENT SHALL TOSCA BE LIABLE TO CUSTOMER FOR ANY INDIRECT, CONSEQUENTIAL, LOST PROFITS, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, INFRINGEMENT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TOSCA'S TOTAL LIABILITY TO CUSTOMER ARISING OUT OF, OR RELATED TO THIS RENTAL AGREEMENT, SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO TOSCA FOR THE SPECIFIC CONTAINERS GIVING RISE TO THE CLAIM.

**16. INDEMNIFICATION.** Customer shall indemnify, defend and hold harmless Tosca and its affiliates, subsidiaries and their respective officers, directors, members, representatives, agents, and employees (collectively, the "Indemnitees") from and against, any and all claims, demands, suits, damages, losses, liabilities, obligations, costs and expenses (including court costs and attorneys' fees) ("Claims") arising out of or relating to: (a) Customer's breach of any provision of this Rental Agreement; or (b) Customer's handling, use, alteration, distribution, transfer or marketing of the Containers. This indemnification applies notwithstanding the fact that third parties or any of the Indemnitees may be partially responsible for the Claim; provided, that the Customer shall not be obligated to indemnify Indemnitees to the extent such Claims arise solely out of the Indemnitees' negligence or willful misconduct.

**17. ANTI-BRIBERY AND CORRUPTION.** None of the Customer, any of its subsidiaries, or any of their respective owners, directors, officers, employees, agents, or other persons acting for or on behalf of the foregoing (each, a "Customer Representative") shall, in connection with the Agreement, make, offer, promise, authorize, solicit, or receive any bribe, kickback, or other unlawful payment, or otherwise take any action in violation of any applicable anti-corruption or anti-bribery laws or regulations.

**18. SANCTIONS.** None of the Customer or any of its subsidiaries, nor any Customer Representative (a) is or has been, or is or has been owned or controlled by, a Sanctioned Person or (b) will, in connection with the Agreement, engage in any transactions or business dealings with any Sanctioned Person or in or with any Sanctioned Territory. "Sanctioned Person" means any person who appears on any list of restricted or prohibited persons maintained by the European Union Consolidated Financial Sanctions List or the United States Department of the Treasury's Office of Foreign Assets Control (including, but not limited to, the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, and the Sectoral Sanctions Identifications List), which are respectively available at <https://webgate.ec.europa.eu/fsd/fsf/public/files/pdfFullSanctionsList/> <https://sanctionssearch.ofac.treas.gov/>. "Sanctioned Territory" means, as of the date of the Agreement, any of Cuba, Belarus, Libya, Iran, North Korea, Syria, Russia, or the Crimea region of Ukraine; or any other country with active trade sanctions imposed by the European Union (Sanction's List available at <https://www.sanctionsmap.eu/#/main>) or the U.S. Department of Treasury (available at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>) that may affect the object of the Agreement.

**19. GOVERNING LAW/JURISDICTION.** This Rental Agreement shall be governed by the laws of the State of Georgia, USA, without regard to its conflict of laws principles, and the courts of Fulton County, Georgia shall have exclusive jurisdiction. The parties consent to jurisdiction of such courts and waive any objections to venue in such courts.

**20. WAIVER OF JURY TRIAL.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF, OR RELATED TO, THIS RENTAL AGREEMENT.

**21. PUBLICITY.** Subject to Section 14 hereof, Tosca shall have the right to issue press releases or otherwise make public statements in connection with the transactions contemplated under the Rental Agreement. Customer agrees that Tosca may use or refer to Customer's name and/or visual corporate identity, including its logo, in any written or oral public communications, advertising, website, or corporate documents.

**22. FORCE MAJEURE.** Any delay or failure of performance by Tosca shall not be a breach of these Terms if and to the extent such performance is prevented or delayed due to events beyond Tosca's reasonable control, including (without limitation) compliance with law or government authority, military action, terrorism, riots, civil disorders, pandemic, fires, severe weather conditions, accidents, labor strikes, lockouts and shortages, computer system failures, loss of electronic data, unavailability of materials, facility shutdowns, or delays in transportation. Tosca's obligations shall be suspended, without liability, for so long as such event continues. Tosca may allocate and distribute Containers among its customers in such proportion as Tosca determines in its sole discretion.

**23. MISCELLANEOUS.** No waiver of any provisions hereof by either party will be valid unless the same is in writing and signed by such party. The invalidity or unenforceability of any provision of the Rental Agreement shall not affect the validity or enforceability of its other provisions. No course of dealing, course of performance or usage of trade shall be considered in the interpretation or enforcement of the Rental Agreement. All notices and other communications hereunder shall be in writing and addressed to the parties at the addresses set forth on the face of this Rental Agreement or to such other address that may be designated by the receiving party in writing. All such notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid), and shall be effective upon receipt of the receiving party. This Rental Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the parties; provided, however, that Customer shall not assign its rights or delegate the performance of its obligations under this Rental Agreement without Tosca's prior written consent, which shall not be unreasonably withheld. Tosca may assign the Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of Customer. The relationship between the parties is that of independent contractors. Nothing contained in this Rental Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. This Rental Agreement sets forth the entire agreement between Tosca and Customer and supersedes all prior agreements with respect to the subject matter set forth herein. The following sections of these Terms shall survive the expiration or termination of this Rental Agreement for any reason: 3, 4, 7, 8, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22 and 23.

**[End of 640 Cheese Container Terms and Conditions of Use]**



# PLASTIC PALLETS TERMS AND CONDITIONS OF USE



## PLASTIC PALLETS TERMS AND CONDITIONS OF USE

### 1. DEFINITIONS.

- a. "Agreement" means these Terms, the Plastic Pallet (PP) Use Agreement which references these Terms and all documents referenced therein.
- b. "Approved Users" means, for purposes of an Open Loop Customer, those entities approved by Tosca to which PPs may be shipped by Customer. A list of Approved Users can be found at <https://www.toscaald.com/shipping-returns/>, as amended from time to time.
- c. "Closed Loop" refers to a customer who does not Transfer PPs to an Approved User.
- d. "Customer" means the entity executing the PP Use Agreement.
- e. "Customer Location(s)" means those locations authorized to receive PPs for or on behalf of Customer, as agreed by Tosca and Customer.
- f. "Issue" means the provision of a PP to the Customer.
- g. "Long Hold Fee" is the same amount as the PP Use Fee identified in the PP Use Agreement.
- h. "Lost PP" means (i) a PP which has been destroyed, lost, stolen, or conveyed, (ii) any PP which is issued to the Customer and is not transferred to an Approved User (in the case of an Open Loop Customer) or returned to, or collected by, Tosca within 180 days, or (iii) in the case of an Open Loop Customer, a PP which is a Rejected PP and is not collected by, or returned to, Tosca within 72 hours or whose disposition is not reported to Tosca within 72 hours.
- i. "Open Loop" refers to a customer who Transfers PPs to Approved Users.
- j. "Order(s)" means Customer's purchase-related documentation, regardless of the manner in which such Orders are made or documented.
- k. "Rejected PP" means a PP which a user does not accept at the time of delivery by Customer.
- l. "PP(s)" means those sizes of any reusable plastic pallets, Issued to Customer by Tosca for the purpose of transporting product.
- m. "Terms" means these PP Terms and Conditions of Use.
- n. "Tosca" means Tosca Services, LLC.
- o. "Tosca HUB" means <https://customerportal.toscaald.com/>
- p. "Transfer" means the passing of responsibility for the PPs from Customer to an Approved User as permitted by this Agreement.

**2. SCOPE.** Upon execution of the PP Use Agreement and at the time of issuance of each Order, Customer agrees to these Terms. Each Order shall be subject to acceptance by Tosca. The Agreement shall apply to all shipments of PPs delivered by Tosca to the Customer. Unless otherwise agreed by Tosca in writing, any additional or conflicting terms contained in, attached to or referenced in any Order are expressly rejected by Tosca. If any Order of Customer contains a similar exclusion, the exclusion of the Customer is excluded in favour of the application of these Terms. All Orders are conditioned on acceptance of these Terms. The current version of the Terms, upon posting to the Tosca HUB, supersedes all prior versions. Tosca reserves the right to change the Terms at any time, in Tosca's sole discretion, without notice, provided that the Terms applicable to an Order shall be those posted on the Tosca HUB as of the date the Order is submitted to Tosca.

**3. DELIVERY.** Tosca agrees to use commercially reasonable efforts to Issue and deliver PPs to Customer Locations within the time specified in an Order, provided that such Order has been accepted by Tosca. Tosca shall not be liable for any delays, loss or damages in transit. Notwithstanding anything to the contrary in these Terms, Tosca may refuse to load/unload, transfer or handle any PPs under any conditions that it deems, in its sole discretion, unsafe, including (without limitation) conditions caused by drivers, personnel, equipment, procedures or weather conditions.

**4. LIMITED WARRANTY AND ACCEPTANCE.** Tosca warrants that PPs will be of reasonable quality, except as to defects which a reasonable visual examination would reveal, and will conform to Tosca's then current specifications at the time of Issue. Customer's exclusive remedy for any claim arising out of this Agreement with respect to nonconforming PPs shall be limited, at Tosca's option, to: (a) replacement of the nonconforming PPs, or (b) refund of the portion of the fees paid by Customer to Tosca attributable to such nonconforming PPs. Upon receipt of delivery, Customer shall inspect the PPs, at its sole cost and expense, for compliance with Tosca's specifications and for in transit loss or damage. If the PPs are found to be deficient, defective or damaged, Customer shall notify Tosca in writing within 72 hours of delivery and Tosca will credit Customer for the Use Fees and any freight costs incurred by Customer in returning such PPs to Tosca. If Tosca is not notified within such time, then the PPs shall be conclusively deemed to be delivered to and accepted by Customer. EXCEPT AS PROVIDED IN THIS SECTION, THE PPS ARE PROVIDED "AS-IS" AND TOSCA DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. ANY

USE OF PPs IN VIOLATION OF THE TERMS OF THIS AGREEMENT SHALL INVALIDATE ANY WARRANTY PROVIDED BY TOSCA WHETHER IN THIS AGREEMENT OR IN ANY OTHER DOCUMENT OR CERTIFICATE.

**5. ORDER RETURNS.** Customer may elect, at any time, to return full pallets of unopened, undamaged, clean and unused PPs to a location designated by Tosca. Customer shall pay for all freight and delivery costs associated with returning such PPs to Tosca. If PPs can be rerouted to another customer, Tosca may refund Customer the Use Fees invoiced for such returned PPs less a Restocking Fee set forth in the Agreement. Returned PPs shall conform to the return requirements posted on the Tosca HUB.

**6. TRANSFER.** A Closed Loop customer's responsibility for the PPs shall end upon the return to or collection of the PPs by Tosca. An Open Loop customer's responsibility for the PPs shall end upon Transfer of the PPs to an Approved User. A Transfer will be accepted by Tosca when the PPs have been transported to, and the Customer's goods have been accepted by, an Approved User, as evidenced by a Bill of Lading signed by the Approved User. Tosca may refuse to accept a Transfer if it is to an entity other than an Approved User.

**7. REJECTION OF CUSTOMER'S GOODS.** If any third party rejects a shipment of Customer's goods which includes Tosca's PP, then Customer shall notify Tosca of such disposition within 72 hours of rejection and, at Customer's expense, shall arrange for emptied PPs to be returned to, or collected by, Tosca. Any Rejected PPs not collected by or returned to Tosca within 72 hours, or whose disposition is not reported to Tosca within 72 hours, will incur a Loss Fee. This Section 7 shall not apply to Closed Loop customers.

**8. RISK OF LOSS AND DAMAGE.** The risk of loss and damage shall pass from Tosca to Customer upon delivery of PPs to the Customer Location. Thereafter, Customer bears the risk of loss, theft, damage, or destruction from any cause whatsoever until Transfer to an Approved User (in the case of an Open Loop customer), or return to, or collection by, Tosca. If at any time, any PPs are declared to be "Lost PPs" by Tosca, a Loss Fee may be charged by Tosca. However, if any such Lost PPs are located and returned to Tosca within sixty (60) days of being declared as Lost PPs, then Tosca will credit Customer's account in the amount of the Loss Fee paid by Customer.

**9. INVENTORY AND AUDIT.** Each week, Customer shall provide a detail of all PPs transferred during the previous calendar week to third parties including Approved Users. Notifications shall include the destination of each PP, the quantity, the name and address of the receiving party, the BOL number / PO number, and the date of Transfer. All Transfers shall be subject to acceptance by Tosca as provided herein. Additional fees will be charged for unreported transfers. Tosca shall have the right to conduct physical audits of Customer's inventory of PPs at each Customer Location at a mutually agreeable time and date, but in any case, at least once per calendar quarter and within 90 days following the time of expiration or termination of this Agreement. Any Issued PPs which are not accounted for by the audit will be declared Lost PPs and will incur a Loss Fee. Customer must notify Tosca within thirty (30) days regarding end of season inventory for return. Additionally, Customer agrees that any PPs held by Customer greater than sixty (60) days shall be subject to a Long Hold Fee for each subsequent day thereafter until such PP is transferred to an Approved User, or returned to, or collected by Tosca.

**10. BILLING AND PAYMENT TERMS.** Tosca will invoice Customer, and Customer agrees to pay, the fees and charges set forth in this Agreement. Unless otherwise provided in writing, payment terms are net thirty (30) calendar days from the date of an undisputed invoice in U.S. currency. All prices are exclusive of applicable federal, state, local and foreign sales, use, excise, value added and other taxes, and any current or future tax or other governmental charges applicable to this Agreement that Tosca is required to pay or permitted to collect shall be for Customer's account. Tosca shall be notified in writing in the event of any invoice dispute (along with supporting documentation) within fifteen (15) days of the date of an invoice, and the parties shall seek to resolve all such disputes expeditiously and in good faith. Invoices will be deemed accepted if Tosca does not receive timely notification of dispute. Any amounts which remain unpaid after the due date shall be subject to a late charge of 1.5% compounded monthly, or the maximum rate allowed by law, whichever is less. Customer's obligation to pay amounts due shall be absolute and unconditional, and shall not be subject to any delay, reduction, set-off, counterclaim or recoupment for any reason whatsoever.

**11. OWNERSHIP; NO REUSE OF PPS.** Each PP shall remain at all times the sole and exclusive property of Tosca and is provided to Customer solely for its temporary and single use as permitted in this Agreement. Customer shall have the right to use each PP one time until the time of Transfer or return to Tosca. Customer covenants and agrees that it will not use PPs multiple times or for purposes other than as expressly permitted by this Agreement. Each multiple use, to the extent permitted in writing by Tosca, is subject to an additional Use Fee. Further, Customer shall not dispose, transfer, assign, sell, sublease, encumber or otherwise convey any PP without Tosca's prior written consent.



Payment of a Loss Fee, or any other event, does not constitute a transfer of any property right or other interest in the PPs. In addition, Tosca is and shall remain the exclusive owner of its trademarks and trade names appearing on the PPs, with all rights, title and interest therein being reserved by Tosca. Customer shall not remove, cover, alter or deface any trademarks or trade names affixed to the PPs by Tosca without Tosca's consent. Customer shall not mark the PPs nor attach any item(s) to the PPs in any manner and shall reimburse Tosca for the costs of removing such marks or items.

**12. LIMITATION OF LIABILITY.** IN NO EVENT SHALL TOSCA BE LIABLE TO CUSTOMER FOR ANY INDIRECT, CONSEQUENTIAL, LOST PROFITS, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, INFRINGEMENT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TOSCA'S TOTAL LIABILITY TO CUSTOMER ARISING OUT OF, OR RELATED TO THIS AGREEMENT, SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO TOSCA FOR THE SPECIFIC PPS GIVING RISE TO THE CLAIM.

**13. INDEMNIFICATION.** Customer shall indemnify, defend and hold harmless Tosca and its affiliates, subsidiaries and their respective officers, directors, members, and employees (collectively, the "Indemnitees") from and against, any and all claims, demands, suits, damages, losses, liabilities, obligations, costs and expenses (including court costs and attorneys' fees) ("Claims") arising out of or relating to: (a) Customer's breach of any provision of the Agreement; or (b) Customer's handling, use, reuse, alteration, distribution, transfer or marketing of PPs. This indemnification applies notwithstanding the fact that third parties or any of the Indemnitees may be partially responsible for the Claim; provided, that the Customer shall not be obligated to indemnify Indemnitees to the extent such Claims arise solely out of the Indemnitees' negligence or willful misconduct.

**14. CUSTOMER'S DEFAULT.** If (a) Customer fails to make any payment when due; (b) Tosca determines, in its sole discretion, that the credit of Customer or of any person or entity providing credit support for Customer's obligations hereunder is or becomes impaired, or there is any reason to doubt the enforceability or sufficiency of any document supporting Customer's obligations to Tosca; or (c) Customer breaches any other material term hereof, then Tosca may, immediately upon notice and in its sole discretion: (i) declare immediately due and payable any amounts owed by Customer, (ii) cancel any Orders then pending, (iii) suspend further shipment and delivery to Customer of any Order, and/or (iv) terminate the Agreement. Customer shall pay Tosca's reasonable costs of collection, including attorneys' fees and court costs. The foregoing rights shall be cumulative, alternative and in addition to any other rights or remedies to which Tosca may be entitled at law or in equity.

**15. INSURANCE.** Each party shall procure and maintain, at its own cost and expense, with a reputable insurance company, insurance coverages against all risks, including, but not limited to, workers' compensation, general liability, commercial auto coverage, and employers liability insurance, which shall remain in full force and effect for the duration of the Agreement. Any failure by a party to secure the proper insurance coverages as required in these Terms will be a material breach of the Agreement.

**16. PUBLICITY.** Subject to Section 22 hereof, Tosca shall have the right to issue press releases or otherwise make public statements in connection with the transactions contemplated under the Agreement. Customer agrees that Tosca may use or refer to Customer's name and/or visual corporate identity, including its logo, in any written or oral public communications, advertising, website, or corporate documents.

**17. FORCE MAJEURE.** Any delay or failure of performance by Tosca shall not be a breach of these Terms if and to the extent such performance is prevented or delayed due to events beyond Tosca's reasonable control, including (without limitation) compliance with law or government authority, military action, terrorism, riots, civil disorders, pandemic, fires, severe weather conditions, accidents, labor strikes, lockouts and shortages, computer system failures, loss of electronic data, unavailability of materials, facility shutdowns, or delays in transportation. Tosca's obligations shall be suspended, without liability, for so long as such event continues. Tosca may allocate and distribute PPs among its customers in such proportion as Tosca determines in its sole discretion.

**18. ASSIGNMENT.** The Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the parties; provided, however, that Customer shall not assign its rights or delegate the performance of its obligations under the Agreement without Tosca's prior written consent, which shall not be unreasonably withheld. Tosca may assign the Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of Customer.

**19. COMPLIANCE WITH EXPORT LAWS.** Except as permitted by applicable laws, Customer will not export or re-export PPs outside the U.S., directly or indirectly, to any party or destination declared an embargoed/restricted party or destination by the U.S. government. Further, if PPs are transferred by

Customer outside the U.S.: (a) Customer shall be responsible for determining U.S. export control classification and licensing requirements and obtaining any required licenses, (b) Customer shall ensure that the PPs comply with the laws of the country of destination, including any applicable health, safety, registration, environmental or other requirements, and (c) upon Tosca's request, Customer shall provide documentation sufficient to verify the final destination of PPs delivered to Customer hereunder.

**20. ANTI-BRIBERY AND CORRUPTION.** None of the Customer, any of its subsidiaries, or any of their respective owners, directors, officers, employees, agents, or other persons acting for or on behalf of the foregoing (each, a "Customer Representative") shall, in connection with the Agreement, make, offer, promise, authorize, solicit, or receive any bribe, kickback, or other unlawful payment, or otherwise take any action in violation of any applicable anti-corruption or anti-bribery laws or regulations.

**21. SANCTIONS.** None of the Customer or any of its subsidiaries, nor any Customer Representative (a) is or has been, or is or has been owned or controlled by, a Sanctioned Person or (b) will, in connection with the Agreement, engage in any transactions or business dealings with any Sanctioned Person or in or with any Sanctioned Territory. "Sanctioned Person" means any person who appears on any list of restricted or prohibited persons maintained by the European Union Consolidated Financial Sanctions List or the United States Department of the Treasury's Office of Foreign Assets Control (including, but not limited to, the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, and the Sectoral Sanctions Identifications List), which are respectively available at <https://webgate.ec.europa.eu/fsd/fsf/public/files/pdfFullSanctionsList/> <https://sanctionssearch.ofac.treas.gov/>. "Sanctioned Territory" means, as of the date of the Agreement, any of Cuba, Belarus, Libya, Iran, North Korea, Syria, Russia, or the Crimea region of Ukraine; or any other country with active trade sanctions imposed by the European Union (Sanction's List available at <https://www.sanctionsmap.eu/#/main>) or the U.S. Department of Treasury (available at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>) that may affect the object of the Agreement.

**22. CONFIDENTIALITY.** "Confidential Information" includes (without limitation) the pricing, terms, specifications, force majeure allocations and other technical, business and sales information provided pursuant to, or in connection with, this Agreement or the use of PPs hereunder. Except as permitted by the disclosing party in writing, each party shall: (a) limit its use of the other party's Confidential Information only for the purpose of performing its obligations hereunder, (b) limit disclosure of Confidential Information only to those of its employees who need to know such information and are under obligations of confidence to the receiving party not less than those contained herein, and (c) not disclose to any third party, directly or indirectly, any Confidential Information received from the other party during the Term of this Agreement and for a period of three (3) years thereafter. Upon request, each party promptly shall return all Confidential Information previously supplied by the other party, destroy any and all copies and provide written confirmation certifying such destruction.

**23. RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**24. GOVERNING LAW/JURISDICTION.** The Agreement shall be governed by the laws of the State of Georgia, USA, without regard to its conflict of laws principles, and the courts of Fulton County, Georgia shall have exclusive jurisdiction. The parties consent to jurisdiction of such courts, and waive any objections to venue in such courts.

**25. WAIVER OF JURY TRIAL.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF, OR RELATED TO, THIS AGREEMENT.

**26. MISCELLANEOUS.** No waiver of any provisions hereof by either party will be valid unless the same is in writing and signed by such party. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. No course of dealing, course of performance or usage of trade shall be considered in the interpretation or enforcement of the Agreement. The following Sections of these Terms shall survive the expiration or termination of the Agreement for any reason: 10, 11, 12, 13, 17, 18, 19, 20, 21, 22, 23, and 24.

[End of Plastic Pallets Terms and Conditions of Use]



# DIRECT SALE TERMS AND CONDITIONS FOR SUPPLY





## RPC TERMS AND CONDITIONS FOR SUPPLY (DIRECT SALE)

### 1. DEFINITIONS.

- (a) "Agreement" means these Terms, any applicable RPC Supply Agreement which references these Terms, and any and all documents referenced therein.
- (b) "Customer" means the entity purchasing Tosca's RPCs.
- (c) "Customer Location(s)" means those locations authorized to receive RPCs for or on behalf of Customer, as agreed by Tosca and Customer.
- (d) "Issue" means the provision of an RPC to the Customer.
- (e) "Order(s)" means Tosca's purchase related documentation, regardless of the manner in which such Orders are made or documented.
- (f) "Rejected RPC" means an RPC which a user does not accept at the time of delivery by Customer.
- (g) "RPC(s)" means those sizes of any reusable plastic containers, sold to Customer by Tosca for the purpose of packing, storing, handling, and transporting product.
- (h) "Terms" means these RPC Terms and Conditions for supply.
- (i) "Tosca" means Tosca Services, LLC. and/or its parent company and/or any controlling company or subsidiary of Tosca.

**2. SCOPE.** At the time of issuance of an Order, Customer agrees to these Terms. The Terms shall apply to all shipments of RPCs delivered by Tosca to the Customer. Unless otherwise agreed by Tosca in writing, any additional or conflicting terms contained in, attached to, or referenced in any Customer's documents are expressly rejected by Tosca. If any Order of Customer contains a similar exclusion, the exclusion of the Customer is excluded in favour of the application of these Terms. All Orders are conditioned on acceptance of these Terms. This version of the Terms supersedes all other or prior versions. Tosca reserves the right to change the Terms at any time, in Tosca's sole discretion, without notice.

**3. DELIVERY.** Tosca agrees to use commercially reasonable efforts to issue and deliver RPCs to Customers Location within the time specified in an Order, provided that such Order has been accepted by Tosca. Tosca shall not be liable for any delays, loss, or damages in transit. Notwithstanding anything to the contrary in these Terms, Tosca may refuse to load/unload, transfer or handle any RPCs under any conditions that it deems, in its sole discretion, unsafe, including (without limitation) conditions caused by drivers, personnel, equipment, procedures or weather conditions.

**4. LIMITED WARRANTY AND ACCEPTANCE.** Tosca warrants that RPCs will be of reasonable quality, except as to defects which a reasonable visual examination would reveal and will conform to Tosca's then current specifications at the time of Issue. Customer's exclusive remedy for any claim arising out of an Order shall be limited, at Tosca's option, to: (a) replacement of the nonconforming RPCs, or (b) refund of the portion of the fees paid by Customer to Tosca attributable to such nonconforming RPCs. Upon receipt of delivery, Customer shall inspect the RPCs, at its sole cost and expense, for compliance with Tosca's specifications and for in transit loss or damage. If the RPCs are found to be deficient, defective, or damaged, Customer shall notify Tosca in writing within 72 hours of delivery and Tosca will credit Customer for the fee and charges per RPC and any freight costs incurred by Customer in returning such RPCs to Tosca. If Tosca is not notified within such time, then the RPCs shall be conclusively deemed to be delivered to and accepted by Customer. EXCEPT AS PROVIDED IN THIS SECTION, THE RPCS ARE PROVIDED 'AS IS' AND TOSCA DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

**5. RISK OF LOSS AND DAMAGE.** The risk of loss and damage shall pass from Tosca to Customer upon delivery of RPCs to the Customer Location. Thereafter, Customer bears all risks involving the RPCs, including the risk of loss, theft, damage, or destruction from any cause whatsoever.

**6. BILLING AND PAYMENT TERMS.** Tosca will invoice Customer, and Customer agrees to pay, the fees and charges set forth in the applicable Order. Unless otherwise provided in writing, payment terms are net thirty (30) calendar days from the date of an undisputed invoice in U.S. currency. All prices are exclusive of applicable federal, state, local and foreign sales, use, excise, value added and other taxes, and any current or future tax or other governmental charges applicable to the Order that Tosca is required to pay or permitted to collect shall be for Customer's account. Tosca shall be notified in writing in the event of any invoice dispute (along with supporting documentation) within fifteen (15) days of the date of an invoice, and the parties shall seek to resolve all such disputes expeditiously and in good faith. Invoices will be deemed accepted if Tosca does not receive timely notification of dispute. Any amounts which remain unpaid after the due date shall be subject to a late charge of 1.5% compounded monthly, or the maximum rate allowed by law, whichever

is less. Customer's obligation to pay amounts due shall be absolute and unconditional, and shall not be subject to any delay, reduction, set-off, counterclaim or recoupment for any reason whatsoever.

**7. TRANSFER OF OWNERSHIP.** Each RPC shall remain the sole and exclusive property of Tosca until and subject to the full payment of the Order by the Customer.

**8. INTELLECTUAL PROPERTY.** Tosca is and shall remain the exclusive owner of its trademarks and trade names appearing on the RPCs, with all right, title and interest therein being reserved by Tosca. All Intellectual Property Rights (as defined below) in the RPC's and any pre-existing background Intellectual Property Rights of Tosca shall at all times remain with Tosca ("Tosca's IPR"). Customer will not make any use of any trademark or other identifying logos belonging to Tosca without Tosca's express prior written consent. Customer shall notify Tosca in writing as soon as reasonably practicable of any allegations of infringement by any third party made against Tosca's IPR of which it has notice and will not make any admissions without Tosca's prior written consent. The terms and conditions of this clause shall survive any termination, cancellation, or expiration of any agreement between Customer and Tosca. For the purpose of this section "Intellectual Property Rights" shall mean any right, title or interest in patents, trademarks, service marks, trade names, goodwill, logos, domain names, database rights, know how, registered designs, design rights, semiconductor topography rights, database rights, copyrights and other forms of intellectual and industrial property in each case in any part of the world, whether or not registered or registrable for their full period of registration with all extensions, renewals and revivals and including all applications for registration or otherwise; confidential information (including know-how and secret processes) and rights in computer software; and any similar or equivalent rights and assets which may now or in the future subsist anywhere in the world;

**9. LIMITATION OF LIABILITY.** IN NO EVENT SHALL TOSCA BE LIABLE TO CUSTOMER FOR ANY INDIRECT, CONSEQUENTIAL, LOST PROFITS, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, INFRINGEMENT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TOSCA'S TOTAL LIABILITY TO CUSTOMER ARISING OUT OF, OR RELATED TO THIS ORDER, SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO TOSCA FOR THE SPECIFIC RPCS GIVING RISE TO THE CLAIM.

**10. INDEMNIFICATION.** Customer shall indemnify, defend and hold harmless Tosca and its affiliates, subsidiaries and their respective officers, directors, members, and employees (collectively, the "Indemnitees") from and against, any and all claims, demands, suits, damages, losses, liabilities, obligations, costs and expenses (including court costs and attorneys' fees) ("Claims") arising out of or relating to: (a) Customer's breach of any provision of these Terms; or (b) Customer's handling, use, reuse, alteration, distribution, transfer or marketing of RPCs. This indemnification applies notwithstanding the fact that third parties or any of the Indemnitees may be partially responsible for the Claim; provided, that the Customer shall not be obligated to indemnify Indemnitees to the extent such Claims arise solely out of the Indemnitees' negligence or willful misconduct.

**11. CUSTOMER'S DEFAULT.** If (a) Customer fails to make any payment when due; (b) Tosca determines, in its sole discretion, that the credit of Customer or of any person or entity providing credit support for Customer's obligations hereunder is or becomes impaired, or there is any reason to doubt the enforceability or sufficiency of any document supporting Customer's obligations to Tosca; or (c) Customer breaches any other material term hereof, then Tosca may, immediately upon notice and in its sole discretion: (i) declare immediately due and payable any amounts owed by Customer, (ii) cancel any Orders then pending, (iii) suspend further shipment and delivery to Customer of any Order, and/or (iv) cancel this Order. Customer shall pay Tosca's reasonable costs of exercising its rights as mentioned above, including attorneys' fees and court costs. The foregoing rights shall be cumulative, alternative and in addition to any other rights or remedies to which Tosca may be entitled at law or in equity.

**12. FORCE MAJEURE.** Any delay or failure of performance by Tosca shall not be a breach of these Terms if and to the extent such performance is prevented or delayed due to events beyond Tosca's reasonable control, including (without limitation) compliance with law or government authority, pandemic, military action, terrorism, riots, civil disorders, fires, severe weather conditions, accidents, labor strikes, lockouts and shortages, computer system failures, loss of electronic data, unavailability of materials, facility shutdowns, or delays in transportation. Tosca's obligations shall be suspended, without liability, for so long as such event continues. Tosca may allocate and distribute RPCs among its customers in such proportion as Tosca determines in its sole

discretion.

13. **INSURANCE.** Each party shall procure and maintain, at its own cost and expense, with a reputable insurance company, insurance coverages against all risks, including, but not limited to, workers' compensation, general liability, commercial auto coverage, and employers liability insurance, which shall remain in full force and effect for the duration of the Agreement. Any failure by a party to secure the proper insurance coverages as required in these Terms will be a material breach of the Agreement.
14. **PUBLICITY.** Subject to Section 18 hereof, Tosca shall have the right to issue press releases or otherwise make public statements in connection with the transactions contemplated under the Agreement. Customer agrees that Tosca may use or refer to Customer's name and/or visual corporate identity, including its logo, in any written or oral public communications, advertising, website, or corporate documents.
15. **COMPLIANCE WITH EXPORT LAWS.** Except as permitted by applicable laws, Customer will not export or re-export RPCs outside the U.S., directly or indirectly, to any party or destination declared an embargoed/restricted party or destination by the U.S. government. Further, if RPCs are transferred by Customer outside the U.S.: (a) Customer shall be responsible for determining U.S. export control classification and licensing requirements and obtaining any required licenses, (b) Customer shall ensure that the RPCs comply with the laws of the country of destination, including any applicable health, safety, registration, environmental or other requirements, and (c) upon Tosca's request, Customer shall provide documentation sufficient to verify the final destination of RPCs delivered to Customer hereunder.
16. **ANTI-BRIBERY AND CORRUPTION.** None of the Customer, any of its subsidiaries, or any of their respective owners, directors, officers, employees, agents, or other persons acting for or on behalf of the foregoing (each, a "Customer Representative") shall, in connection with the Agreement, make, offer, promise, authorize, solicit, or receive any bribe, kickback, or other unlawful payment, or otherwise take any action in violation of any applicable anti-corruption or anti-bribery laws or regulations.
17. **SANCTIONS.** None of the Customer or any of its subsidiaries, nor any Customer Representative (a) is or has been, or is or has been owned or controlled by, a Sanctioned Person or (b) will, in connection with the Agreement, engage in any transactions or business dealings with any Sanctioned Person or in or with any Sanctioned Territory. "Sanctioned Person" means any person who appears on any list of restricted or prohibited persons maintained by the European Union Consolidated Financial Sanctions List or the United States Department of the Treasury's Office of Foreign Assets Control (including, but not limited to, the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, and the Sectoral Sanctions Identifications List), which are respectively available at <https://webgate.ec.europa.eu/fsd/fsf/public/files/pdfFullSanctionsList/> and <https://sanctionssearch.ofac.treas.gov/>. "Sanctioned Territory" means, as of the date of the Agreement, any of Cuba, Belarus, Libya, Iran, North Korea, Syria, Russia, or the Crimea region of Ukraine; or any other country with active trade sanctions imposed by the European Union (Sanction's List available at <https://www.sanctionsmap.eu/#/main>) or the U.S. Department of Treasury (available at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>) that may affect the object of the Agreement.
18. **CONFIDENTIALITY.** "Confidential Information" includes (without limitation) the pricing, terms, specifications, force majeure allocations and other technical, business and sales information provided pursuant to, or in connection with, these Terms or the use of RPCs hereunder. Except as permitted by the disclosing party in writing, each party shall: (a) limit its use of the other party's Confidential Information only for the purpose of performing its obligations hereunder, (b) limit disclosure of Confidential Information only to those of its employees who need to know such information and are under obligations of confidence to the receiving party not less than those contained herein, and (c) not disclose to any third party, directly or indirectly, any Confidential Information received from the other party during the Term of these Terms and for a period of three (3) years thereafter. Upon request, each party promptly shall return all Confidential Information previously supplied by the other party, destroy any and all copies and provide written confirmation certifying such destruction.
19. **RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained in the Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
20. **GOVERNING LAW/JURISDICTION.** The Terms shall be governed by the laws of the State of Georgia, USA, without regard to its conflict of laws principles, and the courts of Fulton County, Georgia shall have exclusive jurisdiction. The Parties consent to jurisdiction of such courts, and waive any objections to venue in such courts.

21. **WAIVER OF JURY TRIAL.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF, OR RELATED TO, THESE TERMS.

22. **MISCELLANEOUS.** No waiver of any provisions hereof by either party will be valid unless the same is in writing and signed by such party. If any term or provision of these Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. No course of dealing, course of performance or usage of trade shall be considered in the interpretation or enforcement of the Terms. The following Sections of these Terms shall survive the expiration or termination of the Terms for any reason: 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, and 20.

[End of RPC Terms and Conditions for Supply]