

Terms of Trade for Intervention Butter Placed on Sale in accordance with the Chapter II of the Commission Regulation (EC) No 1898/2005

The Agricultural Paying Agency (hereinafter „APA“) is noticing the Terms of Trade for intervention butter placed on sale in accordance with the Chapter II of the Commission Regulation (EC) No 1898/2005 as well as in compliance with the § No 273 (1) of the Commercial Code. These terms of trade are valid for intervention butter put on sale held by Agricultural Paying Agency in conjunction with the particular tendering procedure for sale of butter from the intervention stocks. Invitation to tender on sale of butter is noticed by the APA in accordance with the particular Commission Regulation (EC) published in the Official Journal of the European Communities.

1 EU Legislation regarding the Intervention Butter Placed on Sale

- 1.1. Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organization of the market in milk and milk products
- 1.2. Commission Regulation (EC) No 1898/2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/1999 as regards measures for the disposal of cream, butter and concentrated butter on the Community market

2 Quantity and Place of Storage

- 2.1. Within the framework of the announcement of the particular tender, APA will notice both the quantity of butter intended for sale as well as the place of storage in the LIST of SALES published on the APA's website www.apa.sk, in conjunction with the specifications regarding the warehouse.
- 2.2. In respect to the opening tendering procedures it is necessary to provide updating of the specifications in the LIST of SALES. The updated LIST of SALES shall be published within the adequate lead time prior the expiry of the deadline of the partial tendering procedure for submission of offers. The agency will reserve the right of modifying the „List of Sales“ of butter placed in particular stocks without the previous notice.
- 2.3. The successful tenderers shall to contact with the warehouse (the contractor, the person responsible for the store) and shall agree upon the accurate schedule when the butter can be stored off.

3 Quality of Butter

- 3.1. Butter offered for sale shall meet at least the requirements laid down in Annex I of the Commission Regulation (EC) No 2771/1999, valid at the time of buy-in of intervention butter.
- 3.2. Before the submission of offer it is possible to check over the particular lots of butter by verifying the samples of butter intended for sale. The visual inspection

costs and those of taking samples including the costs of checking the quality shall be borne by tenderer.

- 3.3. The checks of intervention stocks of butter and taking samples of butter are available to third parties only on the basis of Statement issued by APA.
- 3.4. The interested parties who are interested in the visual inspection and relevant taking samples of butter are obliged to inform the warehouse about this arrangements prior the submission of offer to tender.

4 Tendering Procedure on Sale of Butter

- 4.1. The offer to tender on sale of butter may be submitted by both the legal and physical entities with their residence in the Member State of EU.
- 4.2. The offer to tender shall be submitted on the form published by APA on the following website: www.apa.sk, and is available at the Headquarter of APA: at the following address:
Agricultural Paying Agency
Trenčianska 55
824 80 Bratislava
Market Organisation Division with Animal Commodities –
Department of Dairy Products
Phone No: +421 2 582 43 308

Offer to tender shall contain all requested particulars.

- 4.3. The prices shall be expressed in euro rounded to two decimal places per 100 kilograms excluded WAT. It is necessary to involve any costs incurred within the transport of butter from the intervention stock in the tendering price.
- 4.4. Tenders not submitted in accordance with these Terms of Trade or containing terms other than those indicated in these ToT shall be refused and they shall not be taken into consideration.
- 4.5. Offers to tender shall be delivered in the double envelope, the internal one has to be sealed and marked by the scripture:

„Offer to tender for the Butter Placed on Sale from Intervention Stocks in accordance with the Commission Regulation (EC) No 1898/2005 – DO NOT OPEN“ to the following address:

Agricultural Paying Agency
Market Organization Section
Dobrovičova 12
815 26 Bratislava

It is possible to send offers to tender by post, personally delivered to the Registry Office (groundfloor, Room No 33) or by courier at form produced by Agency and published at the website www.apa.sk. The period, during which tenders may be

submitted in response to the first partial invitations to the tender shall be specified by provisions for the partial tenders.

4.6. The offers to tender can be delivered by fax, too, to the following fax No: +421 20582 43 348 on condition, that the origin documents will be sent to Agricultural Paying Agency within the period of 5 working days after the expiry of the deadline of the partial tender, at latest. The determining time for adoption by fax is the time of acception by the Agency.

4.7. Tenders shall be refused if they are uncompleted, unmarked and they don't meet the requirements laid down in Articles 4.5 and 4.6.

4.8. Once the offer to tender is sent it is binding for tenderer. Once submitted a tender may not be withdrawn.

5 Securities

Contacts: **Department of Licences and Guarantees Administration :**
Tel. No: 00421 2 58 243 245

5.1. If the tenderer has not been lodged securities it is necessary to register at the Trade Mechanisms Division form published on the following address: www.apa.sk -trade mechanisms –exporter/importer registration.

5.2. Security has to be lodged in connection with the sale of butter:

In accordance with the Commission Regulation (EC) No 1417/2006, amending Regulation (EC) No 1898/2005, laying down detailed rules for implementing Council Regulation (EC) No 1255/1999 as regards measures for the disposal of cream, butter and concentrated butter on the Community market is valid pursuant to the Article 3(b) if the tenderer has lodged the tendering security at the amount 50 EUR per tone.

5.3. Security can be lodged by form:

- a) bank transfer to the special account (single or block for more trade transactions)
- b) providing a guarantor (by special guarantee; single or block)

The security can be lodged providing by banking transfer of payment to the special APA's account managed in Treasury:

Special APA's account No: **7000071150/8180**

5.4. The security is assigned to be lodged if the payment in cash to the APA's account and its verification pursuant to the statement of account and its acceptance by APA on the date of crucial issue or its delivering to APA: „Application on using of the block security lodged providing by bank transfer“. The form of „Application on using of the block security lodged providing by bank transfer“ is at disposal at the website: www.apa.sk. The security lodged providing by bank guarantee shall be recognized by APA if the origin of the guarantee letter is delivered by applicant to the APA - Trade Mechanisms Division.

5.5. The security shall be accepted in SKK, calculated on the basis of the reference rate to be laid down by the ECB (is published on the website of ECB: <http://www.ecb.int/stats/eurofxref>).

APA recommends to lodge the higher disposable value of security in compare with the sum that the applicant shall calculate by multiplying of the sum in question with the value of security and reference rate EUR/SKK, in respect to their frequent rate changes and in respect of the fact that the delay may be occurred between the lodging of the security in cash to the APA's account and its verification pursuant to the statement of account from the Treasury and its acceptance on the date of crucial issue. The security is considered to be lodged on the date when the amount of money equivalent to the security is entered in the abovementioned APA's special account. That's why APA recommends to lodge security to the above mentioned APA's account in advance (at least 3 working days) prior the conclusion of the partial tender during which offer to tender has to be submitted by tenderer.

5.6. In term of tenderer identification we request to identify the payments by variable code and by specific code.

Variable Code:

- in case of legal entity to specify the company registration number (IČO)
- in case of physical entity specify the company registration number or the personal identification number without slash)

Specific code:

- in case of tendering security to specify No 613
- in case of processing security to specify No 614

5.7. However, in the context of these terms of trade, the tendering security shall be released only in an amount corresponding to the tender amount not awarded or was paid within the time limit of 45 days after the deadline for the submission of offers to tender (prior the taking over of butter from intervention stock) and the lodging of processing security as referred to in Article 27(5)(b) of the Commission Regulation (EC) No 1898/2005 has been carried out.

5.8. However, in accordance with Article 31(3) of Commission Regulation (EC) No 1898/2005 the tendering security shall be forfeited in proportions to the quantities have not been paid within the time limit of 45 days after the deadline for the submission of offers to tender concerned.

5.9. The tenderers shall be informed in writing on the amount of the security referred to in Articles 5.7 and 5.8.

6 Contracting under the Terms of Trade

6.1. By fulfilling the form "Offer to tender for the Butter Placed on Sale from Intervention Stocks, Intended for Use in the Manufacture of Pastry Products , Ice – Cream and other Foodstuffs Defined as „Final Products“ in accordance with Chapter II of the Commission Regulation (EC) No 1898/2005 and its delivering to the APA's address proposal for conclusion the contract between the tenderer and the agency shall come into being in case of awarding by EC. The acceptance of offers to tender from the successful tenderers considers as a proposal for conclusion a contract between the

tenderer and Agricultural Paying Agency. The provisions and terms noticed under these terms of trade and under the partial tendering procedure concerned shall be the component of the contract in case of tender awarded.

- 6.2. If the offer to tender is recorded in the „List of offers“ sent to EC, both the administration controls of offers to tenders and verifying of the tendering security lodged in sufficient amount have to be carried out by APA.
- 6.3. All tenderers shall be informed immediately by the Agricultural Paying Agency of the outcomes of their participation in the tendering procedure by phone or by fax. If the minimum selling price has been fixed by European Commission the tenders with the best price will be awarded. Tenders shall be rejected if the price offered for the intervention butter is lower than the minimum price fixed by European Commission or if the amount of aid proposed exceeds the maximum amount of aid fixed, due regard being had to the intended use the fat content of the butter or concentrated butter in question and the incorporation procedure.
- 6.4. A decision may be taken by European Commission no award shall be made in respect of an invitation to tender.
- 6.5. Butter is sold to the interested parties on the basis of the date on which it entered storage, starting with the oldest butter among the total available quantity in the store or stores designated by the purchaser.
- 6.6. If the quantity available in the store in question is not exhausted, contracts for the remaining quantity shall be awarded to the other tenderers according to the prices offered, starting with the highest price. Where the remaining quantity is one tonne less, that quantity shall be offered to the successful tenderers on the same terms as quantities already awarded to them.
- 6.7. Where acceptance of a tender would lead to a contract being awarded for more butter than is available at the cold store in question, a contract shall be awarded to the tenderer concerned only for the quantity awarded. The APA may designate other cold stores from which the quantity specified in tender is to be made up. However, the tenderer may refuse such designation if the tender indicates a cold store in accordance with Article 22(2) (f) of the Commission Regulation No 1898/2005.
- 6.8. Where in respect of a single cold store, acceptance of two or more tenders offering the same prices for the same intended uses for the butter and the same method of incorporation would lead to contracts being awarded in excess of the quantity available in proportion to the quantities tendered for. However, should such a division lead to the award of quantities of less than five tonnes award shall be made by drawing lots.
- 6.9. APA shall issue and send a Statement on award of the quantities of butter“ on the third working day at latest within the week following the week during which the outcomes of the tendering procedure have been published by the European Commission. This Statement shall be described as an offer acceptance – a proposal for the conclusion of contract on sale of butter. The day of delivering of the „Statement“ by registered post to tenderer shall be the day of conclusion of the contract on sale of butter pursuant to the Commission Regulation (EC) No 1898/2005

between the tenderer and the Agricultural Paying Agency in accordance with these terms of trade and in compliance with the partial tender concerned.

7 Selling Price and Forms of Payment

- 7.1. In the „Statement of awarding of butter” APA shall notify the tenderer inter alia the amount of the selling price in EUR and the final day of the time limit for the payment.
- 7.2. The tender price in EUR shall be paid by tenderer in SKK after re-calculation in accordance with the actual reference exchange rate established by the European Central Bank, pursuant to the crucial moment; it is the date of the “Payment order” sending by tenderer.
- 7.3. The tenderer has to pay the tendering price at the special APA’s account, Specific code of the payment: is the number of the „Statement of award of butter”, variable code: Company Register Number (IČO).
This payment shall be made to the APA’s account not later than the **45th** day following the date of the deadline for the submission of offers to tender.
- 7.4. The security can be lodged either by:
- c) bank transfer to the special APA’s account or
 - d) providing a guarantor (by special bank guarantee);
- The tenderer has to pay the security to the Agency’s account:

APA’s account No: 7000071150/8180

Specific Code: purpose of the security : e.g. Number for processing security: **614**

Variable Code: Company Register Number

- 7.5. The 19% of actual VAT shall be added to the tender price if the tenderer is a legal or physical entity with his permanent address in the Slovak Republic. Physical or legal entity that has his permanent address in other Member State than in the Slovak Republic, the VAT shall not be invoiced in the case, if the statement on export of goods (butter) from the Slovak Republic has been submitted to the Agency.
- 7.6. At the same time with the payment it is necessary to submit an application in writing and addressed to the APA – the Division of Market Organisation with Animal Commodities in writing by fax on issuing the „Removal Order”, with specifying the payment (date, variable code, the amount), the quantity of goods in lots and the expected date of removal from storage in the application.

8 Taking -over a Delivery by Tenderer

- 8.1. The warehouse after receiving the „Statement of awarding of butter”, together with the tenderer shall participate on the preparation of the „Binding plan of removal from the storage” for butter quantities concerned. The “Binding plan of removal from the storage” shall be delivered by warehouse or by tenderer to the APA – to the the Division of Market Organisation with Animal Commodities, Department of milk products immediately. The butter shall be removed from storage in accordance with the „Binding plan of removal from the storage”.

- 8.2. The deliveries of butter sold shall be removed from the storage not later than during the time limit of 45 days following the deadline for submission of offers to tender by This time limit shall be respected in the „Binding plan of removal from the storage“. After the expiry of the time limit the intervention storage of butter shall be ended and the quantity of butter shall be considered to be removed from the storage. In case of not taking over the delivery of butter within the time limit all risks and costs regarding the further warehousing of these quantities are covered by the tenderer (buyer).
- 8.3. The warehouser is eligible and obliged to remove from storage the quantities of goods only under the condition of receiving the “Statement of taking over of the goods” to be issued by the APA. APA shall assign (issue) the “Statement of taking over of the goods” only on condition, that the payment to the APA’s account has been designed corresponding to the amount of the tender price (it is possible to verify the payment at the APA’s account copy) and the proof on processing security lodging has been submitted.
- 8.4. The purchaser (buyer) shall insure the means of transport for delivery of butter concerned.
- 8.5. Removal of butter from the storage shall be made on pallets in exchange for the empty europallets, delivered by purchaser (buyer). Butter shall be removed from stocks only on condition if the purchaser delivers the adequate number of pallets in exchange for the butter on pallets removed from stock.

9 Discrepancies in Quantities Awarded

- 9.1. Agricultural Paying Agency is eligible to deliver and purchaser is obliged to take over the quantities referred to in the “Statement of award of certain lots of butter” not less than 0,1 %.

10 Transfer of Ownership

- 10.1. If the amount referred to in contract has been paid and the butter has been taken over by purchaser within the time limit of 45 days after the deadline for submission of offers to particular tender the physical delivery of the butter concerned to the purchaser e.g. the loading of butter onto the means of transport is the time of transfer of all rights of ownership of goods (butter) and risks related to the deterioration of quality and devaluation of butter onto the purchaser (buyer). Any risks incurred during the transport shall be borne by the purchaser.
- 10.2. If the amount of butter referred to in contract has been paid and the butter has not been taken over by purchaser within the time limit of 45 days after the deadline for submission of offers to particular tender any costs incurred during this time limit – after the expiry of the deadline for taking over the butter shall be borne by purchaser. In this case APA is eligible to store the butter in question separately from the remainder intervention lots of butter or store in other cold stock, in both cases any costs incurred within the storage shall be borne by purchaser. After expiry the deadline for taking over of the butter by purchaser all rights of ownership of goods

(butter) and risks related to the deterioration of quality and devaluation of butter are transferred onto the purchaser (buyer). Any risks incurred during the transport shall be borne by the purchaser.

- 10.3. If the payment for the particular lots of butter or the all lots of butter in question has not been designed up to the last day of the time limit for the payment (it is not possible to verify the payment at the APA's account copy) the contracts shall be modified in respect to the quantities paid in case of non-payment of the total amount, the contract shall be repealed completely.

11 Registry of Records

- 11.1. It is necessary to register the business documents at least 10 years following the year they have been issued pursuant to the requirements of the Agency.
The records, evidence, document and supporting documents and the records and dates from the bookkeeping and the correspondence of the tenderer represent the business documents. The records have to be available during the working time, under agreement out of order to the control bodies and to the authorised representatives of the APA, of the European Commission, of the Supreme Control Authority and of the European Court of Auditors to verify or audit of particular transactions.

12 The Right of Control and the Liability to Provide Information

- 12.1. Buyer is liable to enable control and to provide information regarding to the intervention sales of butter to the bodies and to the authorised representatives of the Agency, of the European Commission, of the Supreme Control Authority and of the European Court of Auditors.

13 Rates of interests

- 13.1. Incorrect receipt of payment shall be return by buyer to Agricultural Paying Agency.
In case of finding that the tenderer - buyer has not notified such payment and has not repaid it within the time limit of three working days he is obliged to reimbursed it to the APA within the time limit laid down in a call for tender in writing and to pay the contract penalty in an amount 0,1% daily from the unreasonably accepted fulfilment *a die* of its depreciation from the agency's account *ad diem of its* entry to the agency's account.
- 13.2. The interests of late payment in an amount 0,1 % daily shall be applied by Agency *a die* of beginning of delay *ad diem* paying the liability to the Agency's account, e.g. its entry to the Agency's account.

14 Assigning the Liability to Third Parties

- 14.1. It is not available to assign the liability to third parties.

15 Reimbursements of Delay Costs

- 15.1. The Agricultural Paying Agency is not responsible and shall not accept the requests of buyers on the reimbursements of delay costs or those raised from the contract.

16 Final Provisions

- 16.1. If some particular provisions laid down by these terms of trade are established as not valid or not applicable thus such non validity nor applicability of these terms of trade could not be the cause of the unvalidity and not applying of whole Terms of trade in question. In this case all terms of trade shall be considered as they don't contain any particular unvalid and or non applicable provisions and in this sence of view the rights and obligations of the APA laid down by provisions of the terms of trade shall be taken into consideration and applied.
- 16.2. Having regard the Terms of Trade in question the tenderer shall ensure that the particular provisions of some concret rules are in compliance with the legislation in force as well as in compliance with the additional provisions of the rules adopted and amended them in future.
- 16.3. The validity, fulfilment, commentary and efficiency of terms of trade have to be in compliance with the legislation of the Slovak Republic, especially in compliance with the Commercial Code and with other binding regulations of EC.
- 16.4. Irregularities raised from these Terms of Trade shall be solved by the competent court at the Agency's residence.
- 16.5. The tenderer by fulfilling the form "Offer to tender for the Butter Placed on Sale from Intervention Stocks, Intended for Use in the Manufacture of Pastry Products , Ice – Cream and other Foodstuffs Defined as „Final Products“ in accordance with Chapter II of the Commission Regulation (EC) No 1898/2005, and by its delivering to the APA's address the tenderer shall confirm his understanding and agreement by the terms of trade which shall be the component of the contract in case of tender acceptance.
- 16.6. If these Terms of Trade don't lay down other provisions, the provisions of Commision Regulation (EC) No 1898/2005 shall remain valid under this Regulation.

END

