

SUPPLY AGREEMENT

No. [●] dated [●]

This supply agreement (the "**Agreement**") is concluded by and between:

1. **JBS S.A.**, a company functioning and organized under the laws of Brazil, having its registered seat at [●], Sao Paulo, registered under the [●] under no. [●], having sole registration code [●], duly represented by [●], in the capacity as [●] ("**JBS**" and/or the "**Supplier**"),

and

2. [●] a company functioning and organized under the laws of Romania, having its registered seat at 8 Inginerilor Tei Street, Sector 2, registered under the Trade Registry under no. J40/28161/1993, having sole registration code 5052558, reprezentată legal de dl. Dan Minulescu, în calitate de Director General ([●]) and/or the "**Buyer**",

The Supplier and the Buyer shall be collectively referred to as the "**Parties**" and each of them separately as "**Party**".

RECITALS

Whereas the Supplier is a company engaged in meat processing activities worldwide, producing factory processed beef, chicken and pork, and also selling by products from the processing of these meats. JBS's famous brands include, among others, Seara, Friboi, Swift, Doriană, Massa Leve.

Whereas the Buyer is one of the most important players from Romanian food industry, operating on controlled temperature food products sector. [●] owns a portfolio of famous brands such as Edenia, La Strada and Corso.

Whereas the Supplier envisages to enter into more countries from the European market whose need for meat products is in high increase, while the Buyer intends to magnify its meat imports, Brazil being the most important importer non-UE of meat products¹,

Whereas both the Buyer and the Supplier intend to expand their business by entering into a mutual commercial relationship entailing acquisition of meat and meat products by [●] from JBS, produced under Seara Profesional brand² (hereinafter referred to as the "**Products**"),

Whereas the Buyer possesses the necessary expertise and marketing organization to promote and sell the Products and wishes to undertake the distribution of the Products in the markets of Romania, Bulgaria, Poland, Czech Republic and Baltic countries (the "**Territory**"),

Whereas the Supplier wishes to appoint the Buyer as its exclusive distributor of the Products in the Territory according to the terms and conditions contained herein, in light of the massive

¹ <https://circabc.europa.eu/sd/a/cdd4ea97-73c6-4dce-9b01-ec4fdf4027f9/24.08.2017-Poultry.pptfinal.pdf>

² <http://www.searaprofessional.com/products>

investments performed by the Buyer in order to promote the Products and in order to develop a continuous relation with loyal clients of the Products.

NOW THEREFORE, by this present, the Parties have agreed the following:

Article 1 DEFINITIONS AND INTERPRETATION

1.1. Unless otherwise provided for in this Agreement, the terms below shall have the following meanings:

Active sales	actively approaching individual customers by, for instance, direct mail, including the sending of unsolicited e-mails or visits; or actively approaching a group or customers in a specific territory through advertisement in media, on the internet or other promotions specifically targeted at that customer group or targeted at customers in that territory. Advertisement or promotion that is only attractive if it (also) reaches a specific group of customers or customers in a specific territory, is considered active selling to that customer group or customers in that territory.
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Business Day	any day (other than a Saturday and a Sunday) the bank are open for business in Romania.
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Confidential Information	all information (including all oral and visual information, and all information recorded in writing or electronically, or in any other medium or by any other method) disclosed to, or obtained by one Party from the other Party or a third Party acting on that other Party's behalf, which are marked as "confidential" and without prejudice to the generality of the foregoing definition shall include but not be limited to (i) any information ascertainable by the inspection or analysis of samples, (ii) the information detailed in the Appendices, and (iii) any information relating to a Party's operations, processes, plans, intentions, product information, know-how, design, trade secrets, software, market opportunities, customers and business affairs.
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Delivery	time when the Buyer's representative signs the original invoice or any other documents confirming the receipt of the Products;
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EUR	euro, the European official currency;
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Force Majeure Event	war or terrorist activity, civil commotion, nuclear accident or act of God (including flood or lightning), nation-wide strikes affecting the either Party in a material manner,
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	action taken by government, fire or serious explosion, mechanical breakdown or comparable disturbance, shortages of labour, power, fuel, means of transport or general lack of other necessities affecting the Supplier or the Buyer
Notice	any notice, application, request, and any other communications necessary or approved in accordance with this Agreement, addressed to either Party by the other Party;
Order	the orders placed by the Supplier via e-mail, specifying the number of units required for each Product
Passive sales	responding to unsolicited requests from individual customers including delivery of goods or services to such customers. General advertising or promotion that reaches customers in other distributors' (exclusive) territories or customer groups, but which is a reasonable way to reach customers outside those territories or customer groups, for instance to reach customers in one's own territory, are passive sales. General advertising or promotion is considered a reasonable way to reach such customers if it would be attractive for the buyer to undertake these investments also if they would not reach customers in other distributors' (exclusive) territories or customer groups.
Price / (s)	Prices agreed for the Products, stated in Appendix no. 2 to this Agreement
Products	meat products of the Supplier, produced under Seara Profesional brand;
Territory	markets of Romania, Bulgaria, Poland, Czech Republic and Baltic countries;
VAT	value added tax, namely 9% for meat products according to article [●] from Romania Fiscal Code;
Working Hours	period of time from Monday till Thursday inclusive between 09:00 and 17:00, and Friday between 09:00 and 14:00;
1.2.	In this Agreement, the headings are inserted for convenience only, and shall not affect the interpretation of Agreement in any way whatsoever.
1.3.	The terms written with capital letters throughout this Agreement shall have the meanings defined above. Any reference to singular number shall also include a reference to plural

number and vice versa; any reference to masculine gender shall also include a reference to the feminine and/or neuter gender(s) and vice versa.

- 1.4. Any reference to an article, paragraph or appendix shall be deemed a reference to the respective article, paragraph or appendix in this Agreement, unless specifically provided for otherwise.

Article 2 SUBJECT MATTER OF THE AGREEMENT

- 2.1. This Agreement comprises the terms under which the Supplier shall sell the Products to the Buyer, and also the terms under which the Buyer shall purchase and exclusively distribute the Products within the designated Territory, terms that have been mutually agreed upon by the Parties.
- 2.2. The Parties agree hereunder that the list and/or volume of Products stated in the Order may not be unilaterally modified within minimum 3 (three) months before the delivery. However, when placing the Order, the Supplier may notify the Buyer of the impossibility to get certain volumes of supplies of the Products, but no latter than 3 (three) months before the delivery.
- 2.3. The Supplier may modify the list and/or volume of Products stated in the Appendix no. [●] with a 6 (six) months prior notice where such exclusion has been caused by health risks or unforeseen export or import restrictions or bans. Any such exclusion shall be communicated to the Buyer as soon as possible.
- 2.4. The title to the Products and related risks shall pass from the Supplier to the Buyer upon delivery.

Article 3 APPOINTMENT OF THE EXCLUSIVE DISTRIBUTOR

- 3.1. The Supplier hereby grants to the Buyer, subject to the terms and conditions set out herein, and the Distributor hereby accepts the exclusive right to market, distribute and sell the Products in the Territory.
- 3.2. The Buyer shall buy the Products from the Supplier as an independent contractor and shall market and sell the Products in its own company name, for its own account and at its own risk. The Buyer and employees of the Buyer shall identify themselves as such and shall make clear the limitations of their authority to any potential or actual customers of the Products. The Buyer may not, in any manner, accept any obligation, incur any liability, promise any performance or pledge any credit on behalf of, or for the account of, the Supplier except those expressly permitted under this Agreement.
- 3.3. The Buyer acknowledges that other parties may have exclusive rights to distribute the Products in territories other than the Territory (list of territories in which exclusive distribution rights operate is to be provided to the Buyer by the Supplier) and that it will not actively promote the Products or actively seek customers for the Products in these other territories where such exclusive rights apply, as communicated by the Supplier. In any case, the Buyer may engage in active sales in all territories where exclusive distribution rights do not apply. Also, the Buyer may accept any unsolicited requests from any customers (Passive sales) in all territories.

Article 4 ORDER PROCESS – DELIVERY

- 4.1. On receipt of the Order, the Supplier shall notify the Distributor in writing (by e-mail or fax) whether it accepts the Order, specifying also the expected Delivery date.
- 4.2. The Products shall be delivered according to the Incoterms agreed by the Parties upon acceptance of the Order by the Supplier.
- 4.3. The Buyer shall, within 72 hours from the Delivery, to report any obvious transport damages or any alterations of the Products.
- 4.4. Details on the delivery terms are stated in **Appendix no. 1** to this Agreement – Delivery terms.

Article 5 PRICES – PAYMENT [TO BE CONFIRMED / AMENDED ACCORDINGLY]

- 5.1. The Prices agreed for the Products are stated in **Appendix no. 2** to this Agreement. Except as expressly agreed in writing to the contrary, the Prices shall be exclusive of any VAT or similar sales tax, any import tax or other tax payable in the country of the Buyer. The Prices will be valid for the next 12 consecutive months and will be readjusted following negotiations between the Parties at least 8 weeks before the end of the validity period. In case the Parties do not agree on the new Prices, this Agreement shall be terminated without any liability following written notice of any of the Parties with immediate effect.
- 5.2. Payments shall take place within 90 calendar days from the delivery of the Products, by means of bank transfer in the currency designated in the invoices. The details of the bank account to which the deposits shall be made shall be communicated by the Supplier to the Buyer via e-mail or fax.
- 5.3. The Buyer shall freely and independently set its' reselling price for the Products to its customers and shall be solely responsible for all transactions with its customers.

Article 6 OBLIGATIONS OF THE BUYER

- 6.1. Without prejudice to any other obligations provided by the present, the Buyer hereby undertakes to:
 - i) pay the Prices within agreed terms and in the agreed amounts, as per invoices issued by the Supplier;
 - ii) use its best efforts to further the promotion, marketing, sale and other distribution of Products in the Territory;
 - iii) maintain an adequate and balance inventory of Products;
 - iv) cooperate with the Supplier and promptly respond any inquiry the Supplier may have regarding the market conditions in the Territory;
 - v) comply with all applicable regulations of the Territory, as well as obtain all relevant regulatory permits necessary for conducting its business.
- 6.2. The Distributor is responsible for all processing of sales orders on behalf of its customers and for the fulfilment of the customer obligations, services and support, including, but not limited to freight to customer location, preparing product delivery systems at customer's location.

Article 7 OBLIGATIONS OF THE SUPPLIER

- 7.1. Without prejudice to any other obligations provided by the present, the Supplier hereby undertakes to:
- i) sell the Products to the Buyer, in accordance with the terms and conditions hereof;
 - ii) ensure the quality of the delivered Products, in accordance with the Romanian laws, the European laws and the international agreements regarding the packaging, labelling, compliance, consumers' rights, and hand over all the documents regarding the Product quality upon delivery;
 - iii) make available to the Buyer all the technical specifications and all the commercial information, licenses for the use of registered trademarks and any other relevant data, including without limitation the information about the expiration dates, keeping conditions, etc., and also the delivery notices, quality certificates and any other related documents;
 - iv) inform in writing the Buyer if one or several Products have an expiration date of less than 3 (three) months, in which case the Buyer shall submit a written acceptance, adjust the ordered quantity or refuse the delivery of these Products.
 - v) grants to the Buyer and exclusive distribution within the designated Territory, abiding itself from selling (either Active sales or Passive Sales) the same Products within Territory, however, not forbidding the passive sales from the Territory of other JBS's exclusive distributors;

Article 8 REPRESENTATIONS AND WARRANTIES

- 8.1. The Buyer hereby represents, warrants and undertakes in favour of the Supplier that it shall use its best efforts for the promotion of the sales of the Products in the Territory and shall protect the interests of the Supplier in the best possible way acting on the basis of good faith and good business ethics.
- 8.2. The Buyer shall under no circumstances be liable for indirect, consequential, special, incidental, or punitive damages, including loss of income or opportunity.
- 8.2. The Parties shall indemnify and hold the other Party and its directors, employees, successors and assigns harmless against all losses, damages or expenses of whatever form or nature, including attorney's fees and other costs of legal defence, whether direct or indirect that they, or any of them, may sustain or incur as a result of any acts or omissions of the Party in breach or any of its directors, officers, employees, or agents, including but not limited to (a) breach of any of the provision of the Agreement; (b) negligence or other tortious conduct; (c) representations or statements or Product alterations not specifically authorized and (d) violations of any applicable laws and/or regulations.
- 8.3. The Supplier guarantees for its Products, for the quality and freshness, for the proper Delivery and for the fulfilment of the appropriate transportation conditions.
- 8.4. The Parties declare and guarantee that the person signing the Agreement has the right and full legal authority to conclude this Agreement in the name and on behalf of the entity it represents and to legally engage the entity without restrictions in this respect and have all necessary measures have been taken to authorize the signing of the Agreement.
- 8.5. The Parties declare and guarantee that at the date of signing the Agreement they have all the approvals and authorizations necessary to fulfil the obligations under the Contract and that the later will remain valid for at least the duration of the Contract.
- 8.6. The Parties declare and guarantee that by signing the Agreement, each Party, through its legal representative, has fully discussed and understood and, in accordance with the

provisions of Art. 1203 of the Romania Civil Code, expressly and unambiguously accepts articles 2, 3, 4, 5, 6, 7, 9, 12, 13 of the Agreement.

- 8.7. The relationship between the Parties established by the Contract shall be solely that of supplier and buyer and the Distributor is acting for its own account. Nothing contained in the Contract shall be construed to make the Buyer the agent of the Supplier for any purpose, and neither Party hereto shall have any right whatsoever to incur any liabilities or obligations on behalf or binding upon the other Party. The Buyer specifically agrees that it shall have no power or authority to represent the Supplier in any manner and that it will solicit orders for the Products as an independent contractor in accordance with the terms of this Agreement;

Article 9 OBSERVANCE OF COMPETITION RULES

- 9.1. The Parties expressly undertake not to initiate or participate in any type of anti-competitive conduct, as defined by Competition Law no. 21/1996, republished, or by Law no. 11/19991 on combating unfair competition, by means including, but not limited to, mentioning, inserting, requesting, addressing, imposing, accepting, setting, approving or agreeing in any type of communication between the Supplier and the Buyer of resale prices, minimum prices selling, conditioning or influencing commercial policy, limiting or disadvantaging competing undertakings or exchanging sensitive information from competition perspective, prohibited by the competition rules.
- 9.2. However, to the extent that the Buyer will be investigated and sanctioned by the competent competition authorities as a result of Supplier's failure to observe the obligations set forth in this chapter, the Buyer shall have the right of recourse against the Supplier in respect to the sanctioning fine and all expenses derived from the investigation.
- 9.3. If it is proved that the Supplier has participated in a restriction of competition prohibited by the competition law (national or community) in connection with the execution of this Contract and if the Buyer has also suffered as a result of that restriction (being part of an investigation of the competition authorities) without its intention, the latter is entitled to claim compensation for the period of time during which the Supplier has been found to have participated in the infringement. The amount of compensation for proven anti-competitive agreements will be EUR 100,000. The Supplier has the right to prove lower damages. The Buyer has the right to benefit from other rights to compensation, in accordance with the relevant legislation. The compensation obligation persists, even though the duration of this Agreement expired at the time the rights were exercised or even if the Agreement had been terminated. Participation in an anticompetitive agreement is considered to be proved by the decision of the relevant competition authority. The compensation obligation provided for in this article shall become enforceable within 30 days of the date on which the participation in the anti-competitive agreement has been proved.
- 9.4. The Supplier expressly undertakes to exclusively sale to the Buyer within the market defined by the Territory and to appoint the Buyer as sole distributor within the Territory in order to promote and to resale the Products within such Territory, without any injunction in the resale prices, commercial conditions or other business matters that should be unilaterally decided by the Buyer itself. For the non-observance of this obligation, the amount of the compensation owned to the Buyer will be EUR 200,000. The compensation obligation provided for in this article shall become enforceable within

30 days of the date on which the Buyer identifies the Supplier and/or other distributors having on-going agreements entailing supply or distribution of the Products within the Territory. In case the Buyer identifies that other (non-exclusive or exclusive) distributors from other territories passively sells (*Passive sales*) the Products within the Territory, the above-mentioned compensation is not applicable. However, if the Supplier itself performs Passive sales into the Territory, the compensation obligation of EUR 200,000 is therefore applicable.

- 9.5. In case the Supplier and/or certain (exclusive or non-exclusive) distributors from other territories are directly or indirectly approached from clients within the Territory, they are under the obligation to inform the Buyer of such approach within 48 hours term. The failure to notify should amount to a compensation of EUR 1,000 for each unnotified request. As per the above, Passive sales of the other distributors are permitted within the Territory, however the lack of the notification obligation should be sanctionable under this clause.

Article 10 TERMINATION

- 10.1 This Agreement may be terminated in any of the following cases:
- 10.1.1. with the Parties' consent;
 - 10.1.2. by unilateral termination by either Party against 90-day notice;
 - 10.1.3. by termination for cause if either Party defaults the following obligations hereunder, and fails to remedy such case of default within 10 (ten) days from receiving the other Party's written notice in that regard (commissory pact), provided that the respective case of default can be remedied: (i) Buyer's obligation to pay at due date any invoice raised by the Supplier; (ii) Supplier's obligations under article 9;
- 10.2 In the cases laid down in article 10.1.3, the Agreement shall be automatically terminated, no other formality and court proceedings being required.
- 10.3. Upon the termination of this Agreement for any reason, the Parties agree to set off their outstanding financial obligations at the Agreement actual termination date.
- 10.4. The termination of this Agreement, regardless of cause, shall not affect the obligations already performed and outstanding between the Parties.

Article 11 FORCE MAJEURE

- 11.1 If the performance or provision of any obligations of each Party is prevented by reason of any, or any combination, of the Force Majeure Events, the affected Party shall be entitled to relief from performing the obligations if the affected Party:
- a) immediately notifies the other Party by telephone of the occurrence of the Force Majeure Event; and,
 - b) give the other Party written notice of the Force Majeure Event within twenty four (24) hours of the occurrence describing in reasonable detail the nature of the Force Majeure Event.
- 11.2 The affected Party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event and shall use all reasonable endeavours to perform its obligations under this Agreement.
- 11.3. If the Force Majeure Event is remedied, the Parties' performance of this Agreement and the Orders shall resume and continue or fulfilment of the Order whichever is later, unless

the Force Majeure Event continues for a period of more than thirty (30) days whereby the non-affected Party shall have the right to either terminate the Order and/or Agreement upon three (3) business days' written notice to the affected Party.

Article 12 CONFIDENTIALITY

- 12.1 This Agreement is confidential and neither Party will disclose any information relative to or derived under the Agreement or Order without the written consent of the other, except as may be required to ensure performance of its obligations under this Agreement.
- 12.2. Neither Party shall disclose or use for its benefit any Confidential Information of the other which is disclosed to or obtained by it pursuant to or as a result of this Agreement or any Order and will allow access to the same to its own staff only on a "need to know" basis.
- 12.3. Exceptions to Clause 12.2 are as follows: the receiving Party will not be obligated to maintain in confidence or precluded from using information which:
- (a) is, or subsequently may become available, to the public through no fault of the receiving Party;
 - (b) the receiving Party can show was previously known to it at the time of disclosure;
 - (c) may subsequently be obtained lawfully from a third party who has obtained the information through no fault of receiving Party;
 - (d) is independently developed by the receiving Party as evidenced by the written records of the receiving Party;
 - (e) is disclosed to a third party by the disclosing party and/or its affiliated companies without a corresponding obligation of confidence; or
 - (f) is required to be disclosed pursuant to the requirement, order or directive of a government agency or by operation of law subject to prior consultation with disclosing Party's legal counsel.
- 12.3 Notwithstanding the provisions of clause 12.2. above, the Parties may disclose the contents of the Agreement and the Orders to any of their subsidiaries and affiliates.
- 12.4 The Parties will not advertise or publish the fact that they have contracted with each other or otherwise established a relationship, unless otherwise authorized by each of the Parties, such authorization not to be unreasonably withheld.
- 12.5 The obligations under this Article 12 will remain in effect for a period of one (1) year from termination of the Agreement.

Article 13 APPLICABLE LAW- JURISDICTION

- 13.1. The validity, interpretation and performance hereof, and all the disputes between the Parties arising out of or in connection with this Agreement or referring to any matters not provided for hereunder but occurring following the performance of the Agreement, shall be governed by the Romanian law. The Vienna Convention dated 11 April 1980 **is / is not** applicable.
- 13.2. All the disputes arising out of or in connection with this Agreement which cannot be amicably resolved by the Parties shall be referred for resolution to the courts of jurisdiction in Bucharest, Romania.

Article 14 MISCELLANEOUS

- 14.1. All notices and correspondence relating to this Agreement shall be sent by either party to the other to the following addresses, or any other appropriate address provided prior written notice is given to the other party:

If to the Supplier:

Address:
For the attention of:
Fax:
Email:

If to the Buyer:

Address:
For the attention of:
Fax:
Email:

- 14.2 Any such Notice shall be deemed received as follows:
- (i) upon delivery by courier provided that it is delivered during the Working Hours of the recipient office, and if delivered outside the Working Hours shall be deemed received at the beginning of the following Business Day;
 - (ii) upon receipt in case of a Notice sent by telex, fax or mail, provided that it is sent during the Working Hours of the recipient office, and if received outside the Working Hours shall be deemed received at the beginning of the following Business Day;
 - (iii) upon receipt in case of a Notice sent by registered letter or registered letter with return receipt, and in the day following the mailing date if sent by mail.
- 14.3. Each provision hereof shall be deemed independent and distinct. In the event that any provision of this Agreement is found invalid or unenforceable, the remaining provisions hereof shall remain effective and in full force and effect as if the respective provision has not been part of it.
- 14.5 No waiver by either Party of any breach of any provision of this Agreement will constitute a waiver of any other breach of that or any other provision of this Agreement.
- 14.6. This Agreement constitutes the entire agreement and undertaking between the Parties, and supersedes all prior agreements and undertakings, both written and oral, between the Parties with respect to its subject matter.
- 14.7. No time limit or provision of this Agreement may be amended or modified by any previous or subsequent statement, conduct or action of either Party. The Parties may vary this Agreement only by written document signed by or on behalf of the contracting Parties. The same rules shall also apply with reference to the amendment of the Appendices hereto, which are an integral part hereof.
- 14.8. The Parties agree that upon the occurrence of any specific legislative change this Agreement shall be accordingly amended in accordance with the Parties' agreement at that time. This article institutes an obligation of negotiation in charge of the Parties in respect of any relevant legislative change.

Article 15 APPENDICES

- 15.1. The Appendices hereto are an integral part of this Agreement.

15.2. This Agreement has the following Appendices:

Appendix no. 1 Delivery terms
Appendix no. 2 List of Prices

IN WITNESS whereof the Parties have executed this Agreement, today [●], in 2 (two) counterparts in English language, each Party holding one counterpart.

FOR THE SUPPLIER
JBS S.A.

FOR THE BUYER

[REDACTED]

By:

Authorized Signature

By:

Authorized Signature

Name:

Name:

Title:

Title:

APPENDIX NO. 1

Delivery terms



DRAFT

APPENDIX NO. 2
List of Prices



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