

NATIONAL VENDOR TRADING TERMS – AUSTRALIAN FOOD – PART B – GENERAL TERMS

In these Terms “we,” “us” or “our” means the Purchaser, and “you” and “your” means the Supplier. All capitalised terms not otherwise defined have the meaning given to them in the “Definitions” section of these Terms.

1. SUPPLY AND PURCHASE OF GOODS

- (a) You must supply and Deliver the Goods in accordance with the time, location, volume and other requirements set out in these Terms.
- (b) We are under no obligation to issue a Purchase Order or any number of Purchase Orders to you over a particular period. You are under no obligation to accept a Purchase Order issued to you by us.
- (c) If we issue a Purchase Order to you, you will be deemed to have accepted, and you must fulfil, that Purchase Order unless you notify us that you do not accept that Purchase Order within:
 - (i) the time period notified to you for the relevant Purchase Order; or
 - (ii) if no time period is notified, 24 hours after receipt of the relevant Purchase Order.
- (d) Goods delivered in respect of separate Purchase Orders must be delivered in separate cartons.
- (e) You must not make substitutions in respect of the colours, sizes, fabrics, trims or other details of the Goods specified in the Purchase Order without our prior written approval.
- (f) Unless agreed in writing between the parties, we will not pay a separate charge, fee or levy of any kind for freight or delivery of the Goods to us (in addition to the price for the Goods stated in the Purchase Order). You must keep records in relation to any Purchase Orders and the delivery of the Goods for at least 12 months from the date of Delivery of the Goods.
- (g) Upon request, you must provide us with independent test reports of all Goods that are subject to any statutory standard including (without limitation) electrical safety standards and children’s toys safety standards, or may be subject to a statutory product ban. We may ask you to supply reasonable evidence of the compliance of relevant Goods with applicable statutory standards at any time during and for a period of 2 years after the date of Delivery of the Goods.
- (h) Subject to clause 1(i) of these Terms and clause 20(3) of the Code (and without derogating from clauses 11.1 or 11.2 of these Terms), we may cancel or vary any Purchase Order within 3 Business Days of issuing the Purchase Order.
- (i) If at the time that you receive our notice of cancellation or variation of a Purchase Order under clause 1(h), you have already fulfilled or commenced the process of fulfilling that Purchase Order, you must notify us accordingly in writing and, unless the parties agree otherwise in writing, the purported cancellation or variation of that Purchase Order will be of no effect.

2. PURCHASE PRICE**2.1 Price**

The price of the Goods is as set out in the Purchase Order. You acknowledge that the allowances and rebates agreed with you and set out in the Commercial Terms (collectively, **Rebates**) will be:

- (a) deducted off the invoice price of the Goods by you; or
 - (b) deducted by us from the payment for the Goods by remittance,
- in each case as agreed with you and set out in the Commercial Terms.

2.2 No deductions for Shrinkage

- (a) Notwithstanding anything else contained in these Terms, we will not deduct or withhold or seek to deduct or withhold from any payments due to you by us, or require you to pay to us, any amount as compensation for Shrinkage.
- (b) The parties acknowledge that clause 2.2(a) does not prevent us from raising, discussing or agreeing with you proposals and procedures to mitigate the risk and occurrence of Shrinkage.

2.3 Deductions for Wastage

- (a) We will not deduct or withhold or seek to deduct or withhold from any payments due to you by us, or Require you to pay to us, any amount in respect Wastage incurred at our premises, except as agreed with you in writing in Additional Terms.

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- (b) The parties may, from time to time, negotiate and agree an amount in respect of Wastage which is not incurred at our premises that you will pay to us, or that we may set-off from any payments due to you by us. This may include Wastage which arises prior to Delivery but which is not apparent to us until after Delivery.

2.4 Invoicing

An invoice setting out all details regarding pricing, the Purchase Order number and the supplier number must accompany the relevant Goods when they are Delivered in accordance with clause 1, unless the parties have agreed otherwise in writing.

2.5 Payment and Settlement Discount

- (a) Subject to clause 2.6 we will make a consolidated payment for all correctly rendered invoices on the settlement terms and with the Settlement Discount set out in the Commercial Terms.
- (b) If you have applied for and satisfied the eligibility requirements of an Australian small supplier in accordance with the Woolworths Small Supplier Policy our payment terms will not exceed the later of 30 days from:
- (i) receipt of a correctly rendered invoice; and
 - (ii) the date the goods are received.

2.6 Disputed invoices

- (a) If at any time we either:
- (i) dispute the amount of an invoice; or
 - (ii) advise you that the Goods to which a disputed amount relates do not meet the standards and or other requirements prescribed by these Terms (in this clause 2.6, the **disputed amount**),
- we do not have to pay the disputed amount until the dispute is resolved, but we will pay any undisputed amounts. If the disputed amount has already been paid by us, we may withhold such disputed amount from any future amounts due to you by us.
- (b) You may not, wholly or partially, suspend, cancel or withdraw the provision of the Goods pursuant to a Purchase Order accepted by you merely on the basis that an invoice is being disputed.

3. PARTNER HUB

- (a) You acknowledge that we use a PartnerHub as the primary means of communication with you regarding matters relevant to these Terms, and that all relevant documents on the PartnerHub form part of this Agreement and on that basis, both us and you are required to comply with the requirements set out in those documents.
- (b) You acknowledge that the PartnerHub contains Policies and Procedures, and that you will comply with the Policies and Procedures to the extent that they are applicable to your activities at particular Stores or sites.
- (c) Subject to clause 18.3, we may update or change Policies and Procedures on the PartnerHub from time to time and all changes will be communicated either through the PartnerHub or via written notice. If changes are made to documents on the PartnerHub, we will state the time period between when the notification of the change was provided, and when the change is effective. You acknowledge that in certain circumstances, including (without limitation relating to safety) the situation may necessitate that limited notice is provided.
- (d) You agree to regularly monitor the PartnerHub for written notification of announcements relevant to your supply of Goods.
- (e) You will ensure that all of your Representatives who perform any work under these Terms are aware of and comply with all applicable Policies and Procedures.

4. QUALITY

- 4.1 If Supplier Excellence Program certification is required and you are not certified at the time of entry into these Terms, you must, at your own expense, obtain Supplier Excellence Program certification within three months of the commencement of supply under these Terms (unless the parties have in writing agreed on a different period within which such certification must be obtained), and thereafter maintain such certification for as long as Goods are supplied to us under these Terms. The criteria for determining whether Supplier Excellence Program certification is required for particular Goods and the process for obtaining Supplier Excellence Program certification is set out in the PartnerHub as specified in Schedule 1.
- 4.2 If the Goods are electrical goods, you must provide us with a valid acquisition guarantee pursuant to section 17 of the Electricity (Consumer Safety) Act 2004 (NSW).
- 4.3 If reasonably requested, you agree to provide a report to us detailing how complaints about Goods were resolved, whether the relevant Goods failed to meet the standards or other requirements set out in these Terms, and/or were replaced, and if so for what reason.

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5. REJECTED GOODS – GOODS OTHER THAN FRESH PRODUCE

- (a) This clause 5 applies only to Goods which are not fresh produce.
- (b) If, within a reasonable period after Delivery of particular Goods to us (including to our nominated distribution centre), and in any event by no later than 30 days after Delivery of particular Goods, and notwithstanding payment for the Goods or our Acceptance of the Goods, we find that:
 - (i) the Goods do not meet the standards or other requirements set out in these Terms; or
 - (ii) the Goods have "use by" dates which we consider in our reasonable discretion to be insufficient for distribution and resale by us in the normal course of business,
 we may notify you that we have rejected the Goods (in this clause 5, **Rejected Goods**) and will be entitled, at our option, to do the following:
 - (iii) return the Rejected Goods to you at your own cost or require you to collect the Rejected Goods from us at your own cost; and
 - (iv) require you to pay to us our reasonable costs incurred in examining and storing the Rejected Goods pending return of the Rejected Goods to you or collection of the Rejected Goods by you; and
 - (v) if we have exercised our rights under clause 5(b)(iii), either:
 - (A) require you to replace or repair the Rejected Goods as soon as reasonably practicable at your own cost; or
 - (B) not pay for the Rejected Goods and require you to refund any payments we have made to you for the Rejected Goods.

6. REJECTED GOODS – FRESH PRODUCE

- (a) This clause 6 applies only to Goods which are fresh produce.
- (b) If the Goods fail to meet the applicable Fresh Produce Specifications, we may do the following:
 - (i) notify you, within 24 hours of Delivery of the Goods to us, and prior to Acceptance of the Goods, that we have rejected the Goods (in this clause 6, **"Rejected Goods"**) and:
 - (A) if in our reasonable opinion the Goods pose a risk to public health or property, destroy the Rejected Goods and recover our reasonable costs of doing so from you; or
 - (B) in all cases where clause 6(b)(i)(A) does not apply, return the Rejected Goods to you at your own cost or require you to collect the Rejected Goods from us at your own cost; and
 - (ii) require you to pay us our reasonable costs incurred in examining and storing the Rejected Goods pending return of the Rejected Goods to you or collection of the Rejected Goods by you; and
 - (iii) if we have exercised our rights under clause 6(b)(i), either:
 - (A) require you to replace the Rejected Goods as soon as reasonably practicable at your own cost; or
 - (B) not pay for the Rejected Goods and require you to refund any payments we have made to you for the Rejected Goods.
- (c) If we have rejected Goods in accordance with clause 6(b)(i), we must provide written reasons for the rejection to you within 48 hours of rejecting the Goods.
- (d) We must accept all Goods meeting and delivered in accordance with the applicable Fresh Produce Specifications.

7. PAYMENTS BY YOU

7.1 Payments to list a New Grocery Product

- (a) The parties may agree from time to time that you will pay us an agreed amount (**Stocking Fee**) as a condition of us stocking or listing certain Goods to be supplied by you (**New Products**).
- (b) We will not Require you to pay a Stocking Fee unless:
 - (i) we have agreed the Stocking Fee with you;
 - (ii) the New Products have not been stocked, displayed or listed by us in at least 25% of our Stores during the 365 days prior to the date on which the Stocking Fee is paid; and

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- (iii) the amount of the Stocking Fee is reasonable having regard to the costs and risks to us in stocking, displaying or listing the New Products.

7.2 Payments for better positioning of Goods

- (a) The parties may negotiate and agree from time to time that you will pay us an agreed amount (**Shelf Fee**) as consideration for us:
 - (i) changing the shelf positioning in our Stores of certain of the Goods supplied by you to us; and/or
 - (ii) increasing the shelf space allocated in our Stores to certain of the Goods supplied by you to us, in each case in the manner agreed with you.
- (b) We will not Require you to pay a Shelf Fee unless:
 - (i) we have agreed the Shelf Fee with you; and
 - (ii) the payment is reasonable having regard to either or both of the following:
 - (A) the additional benefits (if any) to you; and
 - (B) the costs and risks to us of allocating additional or different shelf space in our Stores to the Goods supplied by you.

7.3 Payments for our activities

- (a) The parties may negotiate and agree from time to time that you will make a payment towards the costs of one or more of the following activities conducted by us (**Retail Costs Contribution**):
 - (i) a Buyer or Senior Buyer’s visit to you;
 - (ii) artwork or packaging design for the Goods;
 - (iii) consumer or market research relevant to the Goods;
 - (iv) the opening or refurbishing of a Store; or
 - (v) hospitality for our staff.
- (b) The amount of a Retail Costs Contribution, or the basis for calculating the amount of a Retail Costs Contribution, will be agreed with you or, in the case of the Retail Costs Contribution referred to in clause 7.3(a)(ii), will be determined in accordance with the rate card we provide to you at or prior to the time you agree to make the relevant Retail Costs Contribution.
- (c) We will not Require you to pay a Retail Costs Contribution in respect of any particular activity listed in clause 7.3(a) unless the amount of the Retail Costs Contribution is reasonable in the circumstances. In determining whether the Retail Costs Contribution is reasonable in the circumstances, regard will be had (without limitation) to the following:
 - (i) the likely benefits to you from the particular activity listed in clause 7.3(a) in respect of which the Retail Costs Contribution is made (**Funded Activity**);
 - (ii) the likely benefits to us from the Funded Activity; and
 - (iii) the costs borne, or contributions made, by us in respect of the Funded Activity.

7.4 Funding of Promotions

- (a) The parties may negotiate and agree from time to time that you will fund all or part of the cost of a Promotion (**Promotional Funding Contribution**).
- (b) We will not Require you to make a Promotional Funding Contribution unless the funding is reasonable in the circumstances. In determining whether the funding is reasonable in the circumstances, regard will be had (without limitation) to the following:
 - (i) the likely benefits to you from the Promotion;
 - (ii) the likely benefits to us from the Promotion; and
 - (iii) the costs borne or contributions made by us to the Promotion.
- (c) If you have agreed to make a Promotional Funding Contribution, we will give you reasonable written notice prior to holding the relevant Promotion unless:
 - (i) the dates for the Promotion have been agreed with you in writing and the Promotion is held on those dates; or

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- (ii) the parties have agreed in writing that the Promotion will take place within a range of dates and the Promotion is held within that date range.

7.5 National Distribution Centre Freight Cost Recovery

- (a) If, at the time that the parties agreed the Commercial Terms, particular Goods were designated as a fast moving line requiring distribution through one of our regional distribution centres (**Fast Moving Line**) and that Fast Moving Line is subsequently re-designated by us, in our reasonable discretion, as a slow moving line requiring distribution through one of our national distribution centres (**Slow Moving Line**), then we may charge you an amount calculated having regard to the increase in our transport and administration costs as a result of the re-designation (**Freight Cost Recovery Rebate**).
- (b) The Freight Cost Recovery Rebate will be deemed to be a Rebate for purposes of clauses 2.1 and 10(d).

8. WARRANTIES AND INDEMNITY

8.1 General warranties

Each party warrants to the other that:

- (a) it has the power and authority to enter into these Terms;
- (b) if it enters into these Terms as an agent for another party, it is authorised to act for its principal in the manner contemplated by these Terms and its authority has not been withdrawn or revoked;
- (c) in entering into and performing its obligations under these Terms it is not, and will not be, in breach of any Relevant Law or any obligation owed to another person; and
- (d) there is no current, pending or threatened litigation, arbitration, investigation, inquiry or proceeding in which it is involved that will or may reasonably be supposed to have an adverse effect on:
- (i) its business affairs;
- (ii) the other party's reputation; or
- (iii) the performance of any of its obligations under these Terms.

8.2 Warranties in respect of Goods

On each occasion that you fulfil or purport to fulfil a Purchase Order, you warrant to us that:

- (a) the Goods are manufactured, grown, extracted, produced, packaged, labelled, presented, supplied and described in compliance with these Terms and all Relevant Laws;
- (b) the Goods are of the particular standard, quality, value, grade, composition, style, specification or model that you have previously represented by sample or conduct and that we have previously accepted (**Approved Sample**);
- (c) the Goods are of Acceptable Quality, fit for any usual or customary purpose and fit for sale by us to the public;
- (d) the Goods are of good material and workmanship, and free from any defect or fault of any kind whatsoever, including in the case of software and Goods containing software, malware, viruses, worms and other destructive codes;
- (e) the Goods are safe, and are properly and safely packed and labelled so that they can be delivered to our stores, distribution centres or warehouses in good and merchantable condition;
- (f) we are purchasing the Goods from you at the price set out in the Purchase Order;
- (g) the Goods, the artwork, get up or design of the Goods and the supply of the Goods to us does not and will not infringe any third party's or our Intellectual Property Rights;
- (h) the Goods may be sold under the name or description they bear without contravening any Relevant Law;
- (i) all representations that you make in relation to the Goods, whether to us or to any other person and including representations in advertising, promotions, on packaging, on the PartnerHub and otherwise, are accurate and can be substantiated, are not misleading or deceptive or likely to mislead or deceive (including as under the Australian Consumer Law), and you will provide any substantiating documentation, information or other materials as required by us, including from independent sources, on our reasonable request;
- (j) you have all the permits, licences, certificates and accreditation necessary to deliver and supply the Goods in accordance with these Terms and you will comply with all Relevant Laws, the Terms and the Policies and Procedures in doing so;
- (k) you have the title and the right to sell the Goods to us, free of all encumbrances, and we will enjoy quiet possession to the Goods; and

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- (l) you will ensure at all times that facilities for the repair of the applicable Goods and the supply of parts for the applicable Goods are available for a reasonable period after Delivery.

8.3 Indemnity

- (a) You indemnify us upon demand against all loss, damage, costs (including legal costs on a solicitor and own client basis) or liability whatsoever suffered or incurred by us, arising out of or in connection with:
 - (i) any breach by you of these Terms;
 - (ii) a classification of the Goods as either taxable or GST free by the ATO which is different from your classification of the Goods under clause 10(e); or
 - (iii) any death or injury to a person, and any loss or damage to our real or personal property or that of a third party, caused by your act or omission.
- (b) If a Goods withdrawal or recall occurs (whether the Goods are withdrawn from show or recalled voluntarily or as a result of any governmental direction), we will not be liable to you in respect of the withdrawal or recall, and you indemnify us on demand for all loss, damage, costs or liability incurred by us as a result of the Goods withdrawal or recall, including:
 - (i) the cost to us of acquiring and holding the Goods (including storage and freight, if applicable);
 - (ii) reasonable administration fees, as published on wowlink or Partner Hub from time to time;
 - (iii) any other costs and losses of the product recall or withdrawal from sale (including loss of profits) and of the return of the Goods to you or the destruction of the Goods; and
 - (iv) legal costs on a solicitor and own client basis.
- (c) Each amount payable by you to us under the indemnity in clause 8.3(b) is a debt due and payable to us on our demand. You agree to pay or credit the amount to us, at our option, immediately after issue of the demand by us.
- (d) Any amount claimed by us pursuant to the indemnity under clauses 8.3(a) or 8.3(b) will be proportionately reduced to the extent that any loss suffered by us can be established to have been caused by our own negligence.

9. INSURANCE

You must have and maintain a public liability policy and product liability policy for personal injury or property damage caused by the Goods in Australia. Each such policy should provide cover of no less than AU \$10,000,000 for any one claim for those who qualify as Australian small suppliers in accordance with the Woolworths Small Supplier Policy, and AU \$20,000,000 for any one claim for all other suppliers (unless we advise you in writing of a lower amount). The policy must be held with a reputable Australian insurer and you must show evidence of the policy (e.g. a certificate of currency) upon our request.

10. GST

- (a) Unless otherwise stated in this clause, terms used in this clause have the meaning given to them in the GST Law.
- (b) Each price stated in the Purchase Order and/or a Tax Invoice will be inclusive of any GST.
- (c) You will provide us with a Tax Invoice by the end of the calendar month in which the Goods are supplied or, in the case of an adjustment note, in a timely manner.
- (d) In addition to the Rebates, you will pay to us any GST for which we become liable in respect of the Rebates.
- (e) You will inform us whether or not the Goods are to be treated as GST free. You are aware that we will rely on your information regarding classification of the Goods as taxable or GST free.
- (f) If these Terms require one party to pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense.

11. WITHHOLDING TAXES

- (a) If a Law requires us to deduct an amount in respect of Taxes from a payment under these Terms, then we will:
 - (i) deduct the amount for the Taxes; and
 - (ii) pay an amount equal to the amount deducted to the relevant authority in accordance with the applicable Law.

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- (b) You acknowledge that we are not required to pay an additional amount to you so that, after the deduction is made, you would receive a net sum equal to the sum that you would have received if the deduction had not been made.

12. TERMINATION

12.1 Mutual termination rights

A party (**Innocent Party**) may terminate these Terms or any Purchase Order for the Goods with immediate effect on written notice to the other party (**Defaulting Party**) if:

- (a) the Defaulting Party has breached, or the Innocent Party reasonably believes that the Defaulting Party has breached or will breach, any of the provisions of these Terms; or
- (b) an Insolvency Event occurs in relation to the Defaulting Party.

12.2 Our rights to terminate with cause

We may terminate these Terms or any Purchase Order for the Goods with immediate effect on giving you notice in writing if:

- (a) we have received, as determined in our reasonable discretion, an unacceptable number of complaints about the Goods;
- (b) the supply of the Goods by you is, in our reasonable opinion, irregular or is unavailable for a period of not less than 5 weeks;
- (c) you sell or agree to sell your business; or
- (d) you are a body corporate and a Change of Control occurs in relation to you, or occurs in relation to a party who Controls you.

12.3 Our right to terminate without cause

- (a) Subject to clauses 12.3(b) and 13, we may terminate these Terms without cause on 1 month's written notice to you.
- (b) If, at the time you receive our written notice of termination of these Terms under clause 12.3(a), you have commenced the process of fulfilling a Purchase Order accepted by you under these Terms, you must notify us accordingly and these Terms will be deemed to continue in respect of that Purchase Order until the Purchase Order has been fully fulfilled.

12.4 Your right to terminate without cause

- (a) Subject to clause 12.4(b), you may terminate these Terms without cause on 1 month's written notice to us.
- (b) If at the time of expiry of the notice of termination under clause 12.4(a) you have not yet fully fulfilled any Purchase Order accepted by you under these Terms, these Terms will be deemed to continue in respect of that Purchase Order until the Purchase Order has been fully fulfilled.

12.5 Consequences of termination

- (a) For the purposes of clause 12.5(b), **Relevant Goods** means:
 - (i) where these Terms are terminated, the Goods the subject of a Purchase Order which has not been fully fulfilled at the time of termination of these Terms; or
 - (ii) where a Purchase Order is terminated, the Goods the subject of that Purchase Order.
- (b) After these Terms or any Purchase Order for the Goods is terminated by us under clause 12.1 or clause 12.2, we may, without affecting any other rights we may have under these Terms or at law:
 - (i) refuse to accept delivery of the Relevant Goods or return the Relevant Goods to you (at your cost); and
 - (ii) if we have exercised our rights under clause 12.5(b)(i), not pay for (or require a refund of any payment made for) the Relevant Goods.

13. DELISTING OF GOODS

13.1 Process for Delisting goods

- (a) Notwithstanding any other provision of these Terms, we may only Delist particular Groceries supplied by you for genuine commercial reasons, which could include, without limitation:
 - (i) if we terminate these Terms under clause 12.3;
 - (ii) your failure to meet agreed quality (including safety) or quantity requirements with respect to the Groceries;

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- (iii) your failure to meet our commercial sales or profitability targets as notified to you from time to time; or
 - (iv) your persistent failure to meet our delivery requirements as notified to you from time to time in accordance with these Terms.
- (b) Subject to clause 13.3, prior to Delisting particular Groceries supplied by you, we will give you reasonable written notice of our decision to Delist those Groceries, including the essential reasons for the Delisting of those Groceries.
- (c) We will not Delist particular Groceries where you have failed to meet our commercial sales and profitability targets unless we have given you prior written notice of:
- (i) those commercial sales or profitability targets; and
 - (ii) the period over which you will be assessed against those commercial sales or profitability targets.

13.2 Review of Delisting decision

- (a) Subject to clause 13.3, you are entitled to request us to have a Senior Buyer review our decision to Delist particular Groceries supplied by you (as notified to you under clause 13.1(b)) by giving us notice in accordance with this section 12.2 (**Delisting Review Notice**).
- (b) A Delisting Review Notice must be in writing and provided to our Head of Trade Relations within a reasonable period after receiving a notice from us under clause 13.1(b).
- (c) After receiving a Delisting Review Notice, we will ensure that a Senior Buyer reviews our decision promptly and provides you with written notice of the outcome of the review, including the basis for our decision.

13.3 Delisting without notice

Clauses 13.1(b) and 13.2 will not apply when Delisting particular Groceries supplied by you if:

- (a) time is of the essence (including for product recalls, withdrawals or safety issues);
- (b) we have a right to terminate these Terms under clause 12.1 or clause 12.2; or
- (c) there have been persistent issues with your supply of the Groceries to us that have resulted in us being out of stock of the Groceries or stocked at significantly reduced levels.

14. COMPLAINT PROCESS

We may refer any complaint received regarding the Goods directly to you. You must action the complaint with a response to the Customer or complainant within 2 Business Days (except if, in our reasonable opinion, a response is required within 24 hours, in which case we will advise you in writing of such shorter response time) and, on request, provide us with copies of relevant correspondence. You must forward to us any report made pursuant to an investigation into the complaint by any government body or any researcher or research organisation with respect to the Goods as soon as reasonably practicable after you become aware of any such report. You must comply with any reasonable directions that we give to you in relation to the complaint.

15. ASSIGNMENT

You must not:

- (a) partially or wholly assign, novate, encumber or otherwise deal with your rights under these Terms; or
- (b) make any representations or warranties to any prospective assignee, successor or buyer of your business to the effect that these Terms will continue or that we will continue to purchase Goods from you if you sell or agree to sell your business.

16. SUB-CONTRACTING

16.1 Consent

You must not sub-contract or otherwise arrange for the Goods to be supplied, in whole or in part, or for the supply of the Goods to be managed, by any other person (**Subcontractor**) without our prior written consent.

16.2 Supplier’s obligations

Before engaging or entering into an agreement with a Subcontractor, in addition to obtaining our consent under clause 16.1, you must ensure that:

- (a) in carrying out the functions subcontracted to it, the Subcontractor will be able to comply with your obligations under these Terms as though the Subcontractor were a party to these Terms; and

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(b) to the extent applicable, the material provisions of these Terms and applicable Policies and Procedures are incorporated into a binding agreement between you and the Subcontractor (**Subcontract**).

16.3 No discharge

Our consent to you subcontracting any of your obligations under these Terms or your entry into the Subcontract does not discharge or release you from any obligation or liability that you have to us under or arising from these Terms.

17. SERVICE LEVEL CREDIT REGIME

The parties may agree in writing that a Service Level Credit Regime will apply to the Goods.

18. VARIATION OF THESE TERMS

18.1 Variation by agreement

The parties may vary these Terms at any time by agreement in writing.

18.2 Our rights to vary these Terms

(a) Subject to clause 18.3, we may vary these Terms by giving you reasonable notice in writing (**Variation Notice**) provided that:

- (i) the variation is reasonable in the circumstances having regard to, without limitation, the benefits, costs and risks (if any) for the parties; and
- (ii) the variation:
 - (A) is necessary in order for either party to comply with any Relevant Law; or
 - (B) arises from, or in connection with, the changed circumstances described in the Variation Schedule which has been agreed between the parties in writing.

(b) A Variation Notice must set out:

- (i) the terms of the variation;
- (ii) our reasons for making the variation; and
- (iii) the date that the variation will take effect.

18.3 Retrospective variations

We must not make any variation to these Terms under clause 18.2 which has retrospective effect unless the variation arises from, or in connection with, changed circumstances which are beyond our control.

18.4 All Variations

You agree that where the Terms are varied in accordance with the Terms, you are bound by the Terms as varied.

19. CONFIDENTIALITY AND REPRESENTATIONS

(a) The contents of these Terms and all details in relation to our business relationship and any other information we provide to you is our confidential information. Any information which you provide to us in connection with the supply of the Goods, including in relation to product development, proposed promotions and pricing, is your confidential information.

(b) Each party (recipient) must treat as confidential and must not:

- (i) directly or indirectly disclose or make available or accessible the confidential information of the other party (disclosing party) to any person other than to those employees or agents of the recipient who need to have that information in connection with the purpose for which it was disclosed by the disclosing party; or
- (ii) use the disclosing party's confidential information for any purpose other than for the purpose for which it was disclosed by the disclosing party.

(c) Upon request of the disclosing party, the recipient must destroy or alter so as not to contain any confidential information, all documents and other material in the possession of the recipient which contains any confidential information of the disclosing party.

(d) Clauses 18(b) and 18(c) do not apply to information which:

- (i) the recipient is required to disclose under any lawful court direction, Law or the rules of any stock exchange;
- (ii) the disclosing party specifies in writing is not confidential;

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- (iii) is or becomes part of the public domain (other than through breach either of these Terms or of an obligation of confidence owed to the disclosing party);
 - (iv) was already known to or independently developed by the recipient; or
 - (v) the recipient acquired from a source who does not owe a duty of confidentiality to the disclosing party in respect of that information.
- (e) You acknowledge that you have not relied on any statements, representations, forecasts, projections or predictions we have made to you or to any third party regarding:
- (i) any particular volume of Goods that we will purchase from you under these Terms; or
 - (ii) any other matter the subject of these Terms,
- except as expressly set out in these Terms or as otherwise agreed between the parties in writing and signed by an authorised representative of each party.

20. INTELLECTUAL PROPERTY RIGHTS

- (a) Neither of us transfers any right, title or interest in any Intellectual Property Rights of the respective party to the other.
- (b) You must not use any of our Intellectual Property Rights (including our trade marks) unless authorised by us in writing, including in marketing you or your Goods.
- (c) In developing and producing products, each party must not infringe the Intellectual Property Rights held by the other in relation to Goods, including Intellectual Property Rights in branding, packaging design and advertising.
- (d) We may refer to ourselves in any promotional literature, advertising or signage as an "Authorised Retailer" for the branded Goods we purchase from you, and we may use those brands, trade marks and logos in relation to the sale and promotion of those branded Goods.
- (e) Neither party will cause or permit (to the extent within its control) anything that may amount to misuse, interference with, damage or endangerment to the Intellectual Property Rights of the other party or its suppliers, or assist others to do so.
- (f) Each party undertakes to notify the other party as soon as reasonably practicable after it becomes aware of any unauthorised use or attempted unauthorised use by any person of the other party's Intellectual Property Rights.
- (g) This clause 20 will survive the termination of these Terms.

21. YOUR RELATIONSHIP WITH US

You are an independent contractor to us for the supply of Goods. You are not our employee or agent. You must not make any representations on our behalf, or enter into, or represent to any person that you are authorised to enter into, any commitments, agreement, contract, arrangement or understanding on our behalf.

22. OUTSTANDING BALANCES

- (a) If we advise you in writing that you have an outstanding balance (which advice must be accompanied by all relevant evidence of the outstanding balance), you will within 14 days provide written notice to us (**Supplier Response**) advising whether or not you believe the outstanding balance to be correct.
- (b) If you believe the outstanding balance is not correct, both parties must use reasonable endeavours to agree on the outstanding balance within 14 days of the Supplier Response and in doing so, provide all relevant evidence of its claim to the other party.
- (c) You have 50 days (**Intervening Period**) from the date the parties agree on the outstanding balance to pay the outstanding balance in full.
- (d) If during the Intervening Period an amount becomes due and payable by us to you for Goods pursuant to a Purchase Order, we may set off the outstanding balance payable by you to us under clause 22(c) against the amount payable by us to you under the Purchase Order.

23. CODE COMPLAINTS AND DISPUTES

23.1 Code Complaints

If you have any complaint relating to, or a dispute arises between the parties in relation to, a matter covered by the Code (**Code Complaint**), the complaint or dispute must be dealt with in accordance with the Code Complaints Handling Procedure.

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23.2 Disputes

- (a) In the event of a dispute between the parties that is not a Code Complaint (**Dispute**), either party may give written notice of the Dispute to the other.
- (b) Following the giving of notice under clause 23.2(a), the parties must use their reasonable endeavours to resolve the Dispute in accordance with the Dispute Resolution Scheme.

23.3 Other dispute resolution methods

- (a) The parties agree that, except for applications for urgent interlocutory relief, neither party will commence proceedings in respect of either a Code Complaint or a Dispute in any court or civil tribunal or commence any alternate dispute resolution procedure (including mediation proceedings before the Victorian Small Business Commissioner, NSW Small Business Commissioner or equivalent statutory officers in other states or territories) unless:
 - (i) in the case of a Code Complaint, you have attempted in good faith to resolve the Code Complaint in accordance with the Code Complaints Handling Procedure; or
 - (ii) in the case of a Dispute, you have exhausted the procedures set out in Stage 1 and Stage 2 of the Dispute Resolution Scheme.
- (b) For the avoidance of doubt, clause 23.3(a)(i) does not:
 - (i) affect your rights under clause 38 of the Code;
 - (ii) limit your right to seek immediate elevation of a Code Complaint through senior levels of management, as contemplated in clause 34 of the Code; or
 - (iii) require you to seek mediation or arbitration in accordance with the Grocery Code as a precondition to commencing any proceedings contemplated in clause 23.3(a).

24. NOTICES

- (a) Any notice to be given under these Terms will be in writing signed by the party giving the notice and delivered to the address set out in the Commercial Terms, or to such other address as that party may elect by giving at least 5 Business Days' prior written notice to the other.
- (b) Any notice or document will be deemed to be duly given or made:
 - (i) if delivered by hand, when so delivered;
 - (ii) if sent by facsimile, on receipt by the sender of a successful transmission report;
 - (iii) if sent by email, when the sender receives an automated message confirming delivery; and
 - (iv) if sent by post within Australia, on the second Business Day following posting, or if sent by airmail post to or from an overseas destination, on the 10th Business Day following posting.

24. GENERAL

- (a) You must at all times deal with us lawfully and in good faith within the meaning of the unwritten law as in force from time to time.
- (b) We will not deduct any money you owe to us from any money which we are liable to pay to you under these Terms except:
 - (i) as expressly permitted under these Terms; or
 - (ii) with your prior written consent.
- (c) Title and risk in the Goods passes to us on our Acceptance of the Goods, other than in the case of Consignment Goods, in which case title and risk in those Goods remains with you until the Goods are sold to, and title in the Goods passes to a Customer.
- (d) You may not claim or register any interest (including any security interest) in the Goods.
- (e) Notwithstanding any other provision in these Terms, if there are any inconsistencies between any or all of the General Terms, the Commercial Terms, a Purchase Order and any written agreement between and signed on behalf of both parties (**Additional Terms**), then those documents must be interpreted in the following order of precedence to resolve the inconsistency:
 - (i) Purchase Order;
 - (ii) Commercial Terms;

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- (iii) General Terms;
 - (iv) Additional Terms, except if the Additional Terms expressly provide that they will prevail over any part of these Terms to the extent of any inconsistency, in which case the Additional Terms will prevail over the relevant other parts of these Terms as so provided.
- (f) A single or partial exercise or waiver by a party of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right and a party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (g) Each party acknowledges that it has entered into these Terms in reliance on the warranties the other party has made in these Terms.
- (h) Subject to clause 18.2 and except as otherwise provided in these Terms, any variation or modification which either party proposes to make to these Terms or any Purchase Order will have no force or effect unless the other party's prior written consent to such amendment is first obtained. Without derogating from the rest of this clause 25(i), the parties agree that any purported amendments to these Terms in manuscript or otherwise will be of no force or effect unless the change has been initialled by an authorised representative of each party.
- (i) These Terms constitute the entire agreement between the parties in relation to its subject matter. Your invoice terms and all previous negotiations, explanations, understandings, representations, warranties, memoranda, commitments or information provided in relation to, or in any way affecting, the subject matter of this document are merged in and superseded by this document and will be of no force or effect and no party will be liable to any other party in respect of those matters.
- (j) We have no liability (in negligence or otherwise) with respect to projections or other information we may give you concerning our requirements for the Goods, unless expressly otherwise agreed in writing and signed by an authorised representative of each party.
- (k) You acknowledge and agree that you have not relied on or been influenced in entering into these Terms by any statements, representations or undertakings other than the statements, representations and undertakings expressly set out in these Terms.
- (l) These Terms are governed by the laws of New South Wales.

25. DEFINITIONS

In these Terms, the words set out below have the following meanings:

Acceptable Quality has the meaning given to the term "acceptable quality" in Schedule 2 of the Competition and Consumer Act 2010.

Acceptance means:

- (a) in the case of Goods which are fresh produce, the earlier of:
 - (i) 24 hours after Delivery of the Goods; and
 - (ii) receipt by you of written notice from us that we accept the Goods; and
- (b) in the case of Goods which are not fresh produce, on receipt by you of written notice from us that we accept the Goods.

Additional Terms has the meaning given in clause 25(e).

ATO means the Australian Taxation Office or any relevant Court or Tribunal (as the case may be).

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales.

Buyers means those of our employees who have directly been involved in buying Goods from you.

Change of Control means a change in the identity of the person or persons who as at the date of these Terms is or are able to Control an entity (including a Corporation).

Code means the Competition and Consumer (Industry Codes – Food and Grocery) Regulation 2015.

Code Complaint has the meaning given in clause 23.2.

Code Complaints Handling Procedure means the complaints handling procedure for Code Complaints set out in the Vendor Guide.

Commercial Terms means the commercial terms set out in Part A of these Terms.

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Consignment Goods means Goods which are not paid for by the Purchaser until the Goods are sold and which are returned to the Supplier if not sold.

Control, in respect of an entity, has the meaning given to “Control” in section 50AA of the Corporations Act and in the case of a Corporation includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors of that Corporation, the voting rights of the majority of the voting shares of the Corporation or the management of the affairs of the Corporation.

Corporation has the meaning given in section 57A of the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth) and the Corporations Regulations made under it, in each case as amended from time to time.

Customer means a person who acquires or seeks to acquire Goods from or through us.

Delist has the meaning given in the Code.

DDP means Delivered Duty Paid (Incoterms 2010).

Delivery means, in respect of particular Goods, once a Goods Receiving Note (or other written acknowledgement of receipt) has been signed and provided to you by our authorised officer at the point of receipt into our premises of the relevant Goods being delivered by you.

Dispute has the meaning given in clause 23.1(a).

Dispute Resolution Scheme means the dispute resolution scheme set out in the Vendor Guide.

EXW means ex works (from your warehouse(s)/store(s)) (Incoterms 2010).

FOB means free on board (Incoterms 2010).

Fresh Produce Specifications means the Fresh Produce Specifications referred to in Schedule 1.

General Terms means the terms set out in this Part B of these Terms.

Goods means any item sold by you to us under these Terms and pursuant to a Purchase Order, including Groceries.

Goods Receiving Note means a note, in a form to be decided by us (electronic or otherwise), confirming to you that Delivery has taken place.

Groceries has the meaning given in the Code.

GST means goods and services tax imposed under the GST Law.

GST Law means A New Tax System (Goods and Services Tax) Act 1999 (as amended) and related Law.

Insolvency Event means, in respect of a person, any of the following:

- (a) the person is unable to pay all the person's debts, as and when they become due and payable;
- (b) an application for winding up of the person is made and not stayed within 14 days, or a resolution for winding up of the person is passed;
- (c) a winding up order is made in respect of the person;
- (d) a controller, administrator, receiver and/or manager, statutory manager, provisional liquidator or liquidator is appointed to the person;
- (e) a mortgagee enters the possession of any of the person's property;
- (f) notice is given of a meeting of creditors of the person for the purposes of a deed or scheme of arrangement; or
- (g) any actions of a similar effect to those set out above are taken.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Law includes the common law, principles of equity, and laws made by parliament (which include State, Territory and Commonwealth laws) and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them.

Own Brand Products has the meaning given in the Code.

PartnerHub means the supplier website at <https://partnerhub.woolworthsgroup.com.au> and any replacement or accompanying site or platform for in the future.

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Policies and Procedures means the policies, procedures and requirements (including in respect of, for example, pallet labelling and barcoding) published from time to time on wowlink or PartnerHub (and including the policies and procedures contained in the Vendor Guide), to the extent that they are applicable to you, the Goods or your dealings with us or our stores, distribution centres, warehouses or other sites, or any specific processes which relate to the design, layout or equipment at specific stores or other sites.

Promotion has the meaning given in the Code.

Purchase Order means a written order submitted by us to you requesting that you supply a specified number of Goods in accordance with these Terms.

Purchaser means the entity or entities so identified on page 1 of the Commercial Terms.

Rebates is defined in clause 2.1.

Relevant Law means any statute, ordinance, code or other law including Federal, State, territorial or local government legislation, regulations under them and any code of practice, membership rules or standards issued by relevant regulators or industry bodies, whether or not having the force of law, applicable to or which affect the Goods, the Terms or any obligations performed under these Terms including without limitation, the Competition and Consumer Act 2010 (including the Australian Consumer Law).

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, contractor or sub-contractor of that party.

Require has the same meaning as the term “require” in clauses 14(1), 15(1), 16(1), 17(1) and 18(1) of the Code.

Senior Buyer has the meaning given in the Code.

Service Level Credit Regime means a regime, the terms of which must be agreed between the parties in writing in order to apply, under which you must make a payment to us if prescribed performance criteria are not met.

Settlement Discount is the dollar value or percentage of payables to be deducted off an invoice from you if Woolworths makes a remittance in respect of such invoice within the agreed payment term.

Shrinkage has the meaning given in the Code.

Small Supplier Policy means the Small Supplier Policy published on [insert website].

Stores means the supermarkets and small format grocery stores at which we conduct a supermarket business (as defined in the Code).

Supplier means the entity so identified on page 1 of the Commercial Terms.

Supplier Excellence Program means our quality assurance and accreditation requirements as set out on the PartnerHub.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties, but excluding GST) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, our net income.

Tax Invoice has the meaning given in the GST Law and includes an invoice or adjustment note in the form required by the GST Law identifying the amount and calculation of the GST payable in respect of the relevant consideration.

Terms means Part A – Commercial Terms, Part B – General Terms, the relevant Purchase Order and the Additional Terms (if any).

Variation Schedule means the document agreed between the parties (as amended by agreement from time to time) which:

- (a) describes the changed circumstances which allow us to make a variation to these Terms; and
- (b) where a variation involves a quantitative adjustment to these Terms, sets out the basis or methodology for calculating the adjustment.

Vendor Guide means the vendor guide referred to in Schedule 1.

Wastage has the meaning given in the Code.

wowlink means the website at <https://www.wowlink.com.au> and any replacement site for wowlink in the future.

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SCHEDULE 1 - ADDITIONAL DOCUMENTS RELATING TO THESE TERMS

Document	Available at	Description of document
Vendor Guide	https://partnerhub.woolworthsgroup.com.au www.wowlink.com.au	<p>The Vendor Guide sets out information to assist our suppliers – both new and existing – with their day-to-day dealings with us.</p> <p>The Vendor Guide also contains important:</p> <ul style="list-style-type: none"> • policies (for example the Woolworths Responsible Sourcing Sourcing Policy and Standards); • procedures (for example in relation to hazard and incident/injury reporting); and • requirements (for example with respect to pallet labelling and barcoding) with which our suppliers are required to comply.
Supplier Excellence Program	https://partnerhub.woolworthsgroup.com.au www.wowlink.com.au	<p>If the Supplier Excellence Program requires particular Goods to be certified under the Supplier Excellence Program, then such certification is a requirement of ongoing supply to Woolworths.</p>
Fresh Produce Specifications (only relevant to the extent the Goods are fresh produce)	https://partnerhub.woolworthsgroup.com.au www.wowlink.com.au	<p>These documents sets out the standards and quality specifications which your fresh produce must meet.</p>

Version Date: 23 September 2019

<p>Supplier's Signature:</p>		<p>Purchaser's Signature:</p>	
<p>Print Name:</p>	<p>Date:</p>	<p>Print Name: IAN DUNN</p>	<p>Date:</p>