

SUMMARY OF GROCERY SUPPLY CODE RETAILER OBLIGATIONS TO GROCERY SUPPLIERS

8 November 2023

- **Regulated Grocery Retailer (RGR)** = Foodstuffs North Island, Foodstuffs South Island, Woolworths New Zealand, including subsidiaries, successors, franchisees, transacting shareholders
- **Grocery Supply Agreement (GSA)** = An agreement between a RGR and a supplier (likely multiple docs eg all emails with terms etc)
- **Groceries** = Fresh produce, meat, seafood, meat substitutes, dairy products, bakery products, chilled or frozen food, pantry goods, dry goods, manufacturer-packaged food, non-alcoholic drinks, personal care products, household consumables, pet care products
- **Exceptions:** The RGR must give a clear & full written explanation when it relies on an exception (except for set-offs & funding promotions, where the supplier would have to request this first).

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EXCEPTIONS

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| 5 | Existing GSA inconsistent with the Code: For existing GSAs that are inconsistent with the Code, the RGR must offer in writing variations that would make the agreement consistent with the Code by 28 March 2024 . | |
| 6 | Good faith: RGR must deal with suppliers in good faith . Relevant factors could include honesty, purposes of the GSA, responsiveness , the need for certainty, not acting arbitrarily, unreasonably , with ulterior motives, or in retaliation, whether the <i>supplier</i> has acted in good faith (see clause 6 for more). | |
| 7, 8 | GSA must... <ul style="list-style-type: none"> • Be in writing & in plain language. • A copy must be provided to the supplier. • Contain the matters listed in clause 8. | |
| 9 | Retrospective variations: RGR must not vary the GSA with retrospective effect. | |
| 10 | Unilateral variations: RGR must not vary the GSA without supplier consent. | Exception: (1) The GSA expressly provides for the RGR to make the variation & sets out clearly when the variation can be made & how to calculate the adjustment (if applicable) (2) the variation is reasonable AND (3) reasonable notice in writing is given. |
| 11 | Transport or logistics services: <ul style="list-style-type: none"> • RGR must not require use of a particular transport or logistics service. • RGR must not impose unreasonable service standards. | |
| 12 | Payments to suppliers: RGR must pay on time (per GSA) for all grocery products delivered and accepted, and within a reasonable time after receiving the supplier's invoice. | |
| 12 | Set-offs: RGR must not set-off without consent (and must not require that consent). | Exception: (1) The GSA provides for the set-off AND (2) the set-off is reasonable . Supplier right to ask for a clear & full written explanation on why the set-off is legitimate. |
| 13 | Shrinkage: RGR must not require payments as compensation for shrinkage (loss of grocery products that occurs after RGR has taken possession and arises from theft, other loss, or accounting error). | |
| 14 | Wastage (groceries unfit for sale): RGR must not require payments to cover wastage incurred while groceries are under the RGR's effective control (including agents of the RGR). | Exception: (1) The GSA expressly sets out wastage payments can occur in these circumstances & the basis of the payment (2) the wastage is mainly the supplier's fault (3) the payment is reasonable having regard to RGR's costs incurred by the wastage (4) the RGR takes reasonable steps to mitigate the wastage costs AND (5) the claim for payment is made within 6 months . |
| 14 | Wastage negotiations: When negotiating wastage payments, RGR must not seek to negotiate other variations unrelated to those wastage payments. | |
| 15 | Payments as condition of being supplier: RGR must not require payments as a condition of stocking or listing products. | Exception A: The payment is made in relation to a promotion. Exception B: The payment is (1) required in the GSA (2) made in respect of products not stocked, displayed, or listed by that RGR group in preceding year in 25%+ of stores AND (3) reasonable having regard to related costs & risks. |

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| 16 Payments for RGR's business activities: RGR must not require payments towards the costs of any activity that is undertaken by the RGR in the ordinary course of carrying on a business as a retailer. | Exception: (1) GSA provides for the payment AND (2) the payment is reasonable . |
| 17 Funding promotions: RGR must not require a supplier to fund part or all of the costs of a promotion. | Exception: (1) GSA provides for the funding AND (2) the funding is reasonable . <u>Supplier right to</u> ask for a clear & full written explanation. |
| 20 Funded promotions (supplier agreed to make a payment in support of the promotion of a product): <ul style="list-style-type: none"> RGR must give reasonable written notice before holding the promotion. How the quantity ordered is calculated must be transparent. RGR must agree with supplier in writing on what happens to stock supplied at a promotional price but remains unsold at the end of the promotional period. RGR must not cancel the order or reduce the volume by more than 10%. | Exception A: Reasonable written notice . Exception B: Compensation for net resulting costs, losses, or expenses as a direct result of failure to give reasonable notice . |
| 21 Fresh produce: See clause 21 for specific requirements for fresh produce. | |
| 22 Supply to competitors: RGR must not engage in any conduct that has the purpose, effect, or likely effect of unduly hindering or obstructing a supplier from supplying groceries to others. | |
| 23 Business disruption: RGR must not threaten a supplier with business disruption or termination of a GSA without reasonable grounds. | |
| 24 Intellectual property in relation to grocery products (IP): <ul style="list-style-type: none"> RGR must respect supplier's IP. In developing or producing private label products, RGR must not infringe supplier's IP rights. RGR must not require supplier to transfer or exclusively license IP rights as a condition or term of supply of an equivalent private label product. | |
| 25 Confidential information: If a supplier discloses confidential information to a RGR, the RGR may only use that information for the purpose for which it was disclosed, and may only disclose it to its employees or agents as needed for that purpose. | |
| 18 Delisting: <ul style="list-style-type: none"> RGR may only delist in accordance with GSA and for genuine commercial reasons. Delisting as a punishment for a complaint, concern or dispute is not a genuine commercial reason. <u>Supplier right to</u> request statement of RGR's reasons for delisting, or additional information relating to the delisting. <u>Supplier right to</u> request review of delisting decisions. RGR must then promptly review & provide written notice of that review's outcome, including the basis for the decision. <u>Before delisting</u>, RGR must provide reasonable written notice. | Exception A: Time is of the essence. Exception B: Persistent issues with supply. |
| 26 Product ranging: <ul style="list-style-type: none"> RGR must provide product ranging principles & shelf space allocation principles and keep them up to date. RGR must follow those principles and apply them without discrimination. <u>Before range reviews</u>, RGR must provide reasonable written notice of the purpose of the range review and key criteria governing ranging decisions. <u>Following range reviews</u>, RGR must provide affected suppliers a reasonable period of time to discuss the outcomes of the review, including the basis for the final decisions. | |
| 28 Price increases: <ul style="list-style-type: none"> RGR must notify in writing within 30 days whether it accepts or rejects a price increase. (30-days does not start if the RGR needs further information from the supplier.) <u>Supplier right to</u> request negotiations if the price increase is rejected, or accepted but the amount rejected. RGR must take all reasonable steps to conclude its position on the negotiations without delay. RGR must not require the supplier to disclose commercially sensitive information in relation to the price increase or price increase negotiations. | |
| 29 Freedom of association: RGR must not provide an inducement to prevent suppliers from forming an association of suppliers or associating with other suppliers for a lawful purpose, or discriminate against suppliers for that reason. | |