# **Food and Grocery Prescribed Industry Code of Conduct**

# Part 1 Preliminary

## 1 Name of Code

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This Code is the Food and Grocery Prescribed Industry Code of Conduct.

## Commencement

This Code commences on the date on which regulations have been made under section 51AE of the Competition and Consumer Act 2010 to declare this Code as a voluntary industry code (**Commencement Date**).

## 3 Purposes of Code

The purpose of this Code is:

- (a) to help to regulate standards of business conduct in the food and Grocery supply chain and to build and sustain trust and co-operation throughout that chain;
- to ensure transparency and certainty in commercial transactions in the Grocery supply chain and to minimise disputes arising from a lack of certainty in respect of the commercial terms agreed between the parties;
- (c) to provide an effective, fair and equitable dispute resolution process for raising and investigating complaints and resolving disputes arising from the commercial dealings between the parties or otherwise under this Code; and
- (d) to enable industry participants to monitor the operation and efficacy of the Code in an industry-wide roundtable.
- 3.2 This Code is not intended to exclude any person or the ACCC from enforcing any rights, or seeking any remedies available in respect of the conduct of any Retailer bound by the Code or the provisions of any agreement entered into by a Retailer bound by the Code including, but without limitation, those arising under the *Competition and Consumer Act 2010* or other legislation. In particular, but again without limitation, nothing in Part 4 (Dispute Resolution) of this Code is intended or will operate to preclude any Supplier from raising any complaint or dispute directly with the ACCC without first utilising any procedure provided under this Code.

## 4 Application and definitions

- 4.1 This Code applies to Retailers who, on or after the Commencement Date, have agreed in writing to be bound by the Code.
- 4.2 The date that a Retailer agrees in writing to be bound by the Code is the Code Date for the particular Retailer. A Retailer may cease to be bound by this Code by giving notice in writing to the ACCC. For the avoidance of doubt, any complaint or dispute that arises in relation to the period during which the Retailer was bound by the Code and any dispute resolution procedures in relation to the period during which the Retailer was bound by the Code, will not be affected by the Retailer giving such notice of cessation to the ACCC.

- 4.3 The effect of a Retailer agreeing in writing to be bound by the Code is that from the Code Date it will deal with all Suppliers with whom it has a trading relationship in accordance with the Code.
- 4.4 If a Supplier wishes to rely upon the provisions of the Code, including but not limited to the dispute resolution provisions in Part 4 of the Code, in making a complaint referring a dispute or taking other action under Part 4, the Supplier must meet the criteria set out in clause 13.

## Transitional provisions in relation to Existing Agreements

- 4.5 If, on the relevant Code Date the Retailer is party to an Existing Agreement covering the supply of Groceries which was entered into before that date:
  - (a) the provisions of Part 4 of the Code will apply to all disputes under the Existing Agreement subject to the application of clause 4.4, in addition to any remedies available under the existing agreement or otherwise;
  - (b) the Code will not apply to the supply of Groceries covered by an Existing Agreement prior to the Code Date, subject to clause 4.5(a);
  - (c) the Code will apply to the supply of Groceries under that Existing Agreement on and from the relevant Code Date in accordance with the following processes:
    - (i) the Retailer will negotiate with the Supplier to seek to vary the terms of the Existing Agreement so as to bring the terms into compliance with the Code on or before the later of 12 months after the Commencement Date and 6 months after the relevant Code Date; and
    - (ii) from the date that is the later of 12 months after the Commencement Date and 6 months after the relevant Code Date, all provisions of the Code will apply to the supply of Groceries under the Existing Agreement; and
- (d) For the avoidance of doubt, if a Retailer becomes bound by the Code and subsequently commences trading with a Supplier with whom it does not have an Existing Agreement (for reasons including but not limited to the expiry or termination of a previous agreement, or because the Retailer and Supplier have not dealt with one another before), the agreement between the Retailer and Supplier is to be a Grocery Supply Agreement, as provided in this Code.

#### 4.6 In this Code:

**ACCC** means the Australian Competition and Consumer Commission.

**Account Manager** means, in relation to any individual Supplier, the personnel within the Supplier's sales team who are responsible from time to time for the day-to-day trading relationship with a Retailer.

**Accounts Management Team** means those employees of a Supplier from time to time whose role includes at least one of the following: (a) direct involvement in supplying Groceries; (b) immediate management responsibility for any of all of those employees described in (a).

**Buying Team** means those employees of a Retailer or a Supplier from time to time whose role includes at least one of the following: (a) direct involvement in buying Groceries; (b) immediate management responsibility for any or all of those employees described in (a).

Code means this code.



**Code Committee** means the committee established by the Retailer and Supplier Roundtable pursuant to clause 18.

**Code Compliance Manager** means the person required to be appointed by a Retailer pursuant to clause 14.1.

Code Date has the meaning given to that term in clause 4.2.

**Commencement Date** has the meaning given to that term in clause 2.1.

**De-list** means to remove one or more Grocery lines from a Retailer's range of Grocery products.

**Document** means any record of communication, however so recorded, including without limitation: faxes; emails; letters; standard terms and conditions of supply; trading terms; key performance indicators; growth agreements; waste or waste and markdown agreements; product and packaging specifications; supply chain requirements; forms for submitting a claim, price increase, or promotion; purchase orders; policies.

**Existing Agreement** is to be interpreted broadly and may include (but is not limited to) the following: trading terms, terms and conditions, as well as any Documents pursuant to those trading terms or terms and conditions entered into by a Retailer with a Supplier prior to the relevant Code Date or during the period commencing on the relevant Code Date and ending on the later of 12 months after the Commencement Date and 6 months after the relevant Code Date.

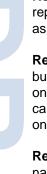
**Groceries** means food including fresh produce, meat, and dairy items (other than that sold for consumption in the store), pet food, non-alcoholic drinks (other than that sold for consumption in the store), cleaning products, toiletries and household goods, clothing, DIY products, pharmaceuticals, newspapers, magazines, greeting cards, CDs, DVDs, videos and audio tapes, toys, plants, flowers, perfumes, cosmetics, electrical appliances, kitchen hardware, gardening equipment, books, tobacco and tobacco products, and **Grocery** shall be construed accordingly.

**Grocery Supply Agreement** is to be interpreted broadly and means any agreement between a Supplier and a Retailer for the supply of Groceries which is comprised of one or more Documents from time to time and may include (but is not limited to) the following: trading terms, terms and conditions, as well as any Document pursuant to those trading terms or terms and conditions.

**Primary Buyer** means, in relation to any individual Supplier, the personnel within a Retailer's Buying Team who are responsible from time to time for the day-to-day trading relationship of the Retailer in respect of that individual Supplier.

**Promotion** means any offer for sale at an introductory or reduced price, or involving non-standard sales activity as agreed between a Retailer and a Supplier, whether or not accompanied by some other benefit to consumers that is in either case intended to subsist only for a specified period.

A Retailer will "Require" particular actions on the part of a Supplier if the relevant Supplier does not agree, whether or not in response to a request or suggestion from the Retailer, to undertake an action in response to ordinary commercial pressures. Where those ordinary commercial pressures are partly or wholly attributable to the Retailer, they will only be deemed to be ordinary commercial pressures where they do not constitute or involve duress (including economic duress), are objectively justifiable and transparent and result in similar cases being treated alike. The burden of proof is on the Retailer to demonstrate that, on the balance of probabilities, an action was not Required by the Retailer.



**Retailer and Supplier Roundtable** means the industry roundtable that has been established by representatives of Retailers and Suppliers to, inter alia, provide a forum to discuss certain aspects of the operation and development of the Grocery industry.

**Retailer** means any person carrying on a Supermarket Business in Australia or carrying on a business of purchasing Groceries from a Supplier for the purpose of resale to a person carrying on a Supermarket Business in Australia for the retail supply of Groceries. Where a person carrying on a Supermarket Business in Australia also carries on other businesses, this Code only applies to the Supermarket Business carried on by that person.

**Retailer Own Brand Products** means and includes all those Grocery products which carry names or trademarks which the Retailer owns or are licensed to it or Grocery products which it produces, processes or manufactures or has produced, processed or made for it by any contractor, including without limitation a Supplier.

**Senior Buyer** means, in relation to any individual Supplier, an employee or employees within a Retailer's Buying Team who manages the Primary Buyer or Primary Buyers for that Supplier (or is otherwise at a higher level than the Primary Buyer(s) within the management structure of the Retailer).

**Shrinkage** means losses that occur after the Retailer has taken possession of the Supplier's Groceries and arise as a consequence of theft, the Groceries being lost, or accounting error.

**Supermarket Business** means a business under which a person sells to consumers Groceries from all or most of the following Grocery categories: bread, breakfast cereal, butter, eggs, flour, fresh fruit and vegetables, fresh milk, meat, rice, sugar and other packaged food.

**Supplier** means any person carrying on (or actively seeking to carry on) a business in the direct or indirect supply to any Retailer of Groceries for resale in Australia.

**Supply Chain Contacts** means, in relation to any individual Supplier, the key personnel within the supply chain function who are responsible from time to time for logistics, transport, distribution centres, operations, and stock replenishment functions within their business.

Wastage means Groceries that are unfit for sale.

# Part 2 Grocery Supply Agreements

## 5 Requirement to have and maintain Grocery Supply Agreements

- 5.1 Subject to clause 4.5 which applies to Existing Agreements, Retailers will only trade in Groceries with Suppliers if they enter into a written agreement, prior to supply, which complies with this part and does not include provisions which are inconsistent with this Code.
- 5.2 A Grocery Supply Agreement must be held by a Retailer for a minimum of 12 months after the relevant Grocery Supply Agreement has expired or otherwise come to an end.
- 5.3 Subject to clause 4.5, every Grocery Supply Agreement will be taken to include contractual obligations to comply with this Code to the extent that it relates to the conduct of the parties to the agreement in the performance of, or otherwise in relation to, that agreement whether or not such obligations are expressly included in the relevant Documents.

## 6 Minimum terms of Grocery Supply Agreement

6.1 A Grocery Supply Agreement must:

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- (a) be set out in one or more Documents;
- (b) when the Documents are taken together, evidence that the parties to it have agreed to the terms of the Grocery Supply Agreement (for example, being signed by the parties to it, or email correspondence which confirms agreement, or having an ongoing course of conduct indicating agreement to those terms);
- (c) specify the matters in clause 7; and
- (d) comply with the matters in clause 8.

#### **General matters**

Subject to clause 7.2, a Grocery Supply Agreement must specify:

- (a) any requirements the Retailer has in respect of the delivery of Groceries under the Grocery Supply Agreement;
- (b) any circumstances in which the Retailer may reject Groceries delivered by the Supplier;
- (c) the period within which the Retailer will pay the Supplier for the purchase of the Supplier's Groceries and the circumstances in which a payment, or any part of a payment, may be withheld or delayed;
- (d) if the Grocery Supply Agreement is only intended to operate for a limited time, the term of the Grocery Supply Agreement;
- (e) any quantity and quality requirements relating to the Groceries covered by the Grocery Supply Agreement must be specified in clear terms;
- (f) if the Grocery Supply Agreement provides for termination by one or more parties to it, the circumstances in which it may be terminated; and
- (g) that the Retailer and Supplier must at all times deal with each other lawfully and in good faith as set out in clauses 10.1(a) and 10.1(b).
- 7.2 Clause 7.1 will not apply in respect of a Grocery Supply Agreement that is entered into pursuant to, or in respect of supplies that are the subject of, an existing Grocery Supply Agreement which specifies the matters set out in clause 7.1. For example, an agreement relating to the terms on which the parties will conduct a Promotion in respect of Groceries that are the subject of an existing Grocery Supply Agreement need not comply with clause 7.1.
- 7.3 For the avoidance of doubt, while each of the matters in clause 7.1 above must be specifically addressed in all relevant Grocery Supply Agreements, the particular terms and conditions of each Grocery Supply Agreement will be determined by negotiation between the parties to the relevant Grocery Supply Agreement and may differ from case to case.

## 8 Specific terms

## **Variation**

8.1 Subject to clauses 8.2 to 8.5, a Retailer must not Require that a Supplier consent to variations of a Grocery Supply Agreement.

- 8.2 Subject to clause 8.3, a Retailer must not vary any Grocery Supply Agreement retrospectively, and must not demand or request that a Supplier consent to retrospective variations of any Grocery Supply Agreement.
  - A Grocery Supply Agreement may only be varied by a Retailer with retrospective effect if this is done pursuant to and in accordance with provisions in that Grocery Supply Agreement which set out clearly and unambiguously the specific change of circumstances (being changes beyond the control of the Retailer) which will allow for such variations to be made and, in the case of variations that involve quantitative adjustments, which specify the basis or methodology for calculating the adjustments to the terms of supply.
- 8.4 Subject to clauses 8.2 and 8.3, a Grocery Supply Agreement can only be varied unilaterally by a Retailer if it has the express right to do so under provisions of that agreement which clearly set out the specific change of circumstances which will allow for such variations to be made and, in the case of variations that involve quantitative adjustments, which specify the basis or methodology for calculating the adjustments to the terms of supply, and it exercises that right in accordance with those provisions and it gives reasonable notice of such variation to the Supplier.
- 8.5 The terms of any variation are to be recorded in a Document or Documents, the terms of which have been agreed by both parties.

### **Payments**

8.3

8.6 Payments for Shrinkage

A Retailer will not be party to a Grocery Supply Agreement which includes provisions under which a Supplier is obliged to make payments to the Retailer as compensation for Shrinkage and will not otherwise demand such payments. This prohibition does not limit the ability of a Retailer to raise, discuss or agree with a Supplier proposals and procedures to mitigate the risk and occurrence of Shrinkage.

- 8.7 Payments for Wastage
  - (a) A Retailer will not directly or indirectly Require a Supplier to make any payment to cover any Wastage of that Supplier's Groceries incurred at premises of the Retailer or its contractor or agents.
  - (b) Clause 8.7(a) does not apply in respect of payments for Wastage where:
    - (i) such Wastage is a consequence of the negligence or default of the Supplier and the Grocery Supply Agreement sets out expressly and unambiguously what will constitute negligence or default on the part of the Supplier; or
    - (ii) the basis of such payment is set out in a Grocery Supply Agreement which otherwise complies with this Code.
- 8.8 Limited circumstances for payments as a condition of being a Supplier
  - (a) A Retailer must not Require a Supplier to make any payment as a condition of stocking or listing that Supplier's Grocery products.
  - (b) Clause 8.8(a) does not apply in respect of any payments made:
    - (i) in relation to a Promotion; or



(ii) in respect of Groceries that have not been stocked, displayed or listed by the Retailer during the preceding 365 days in 25 per cent or more of its stores, and reflects a reasonable estimate by that Retailer of the costs and risks of the Retailer in stocking, displaying or listing such new Grocery products. In any dispute, the Retailer has the onus of establishing that the payment that it required did reflect a reasonable estimate by that Retailer of the said costs and risks.

## Payments for better positioning of Groceries

- (a) A Retailer must not Require a Supplier to make any payment in order to secure better positioning or an increase in the allocation of shelf space for any Grocery products of that Supplier.
- (b) Clause 8.9(a) does not apply in respect of any payments:
  - (i) made in relation to a Promotion; or
  - (ii) required pursuant to and in accordance with the provisions of the relevant Grocery Supply Agreement, those provisions set out the particular circumstances where such a payment may be required and the payment required is reasonable having regard to the additional benefits (if any) to the Supplier and/or the costs and risks of the Retailer in allocating additional or different shelf space. In any dispute, the Retailer has the onus of establishing that the payment that it required was reasonable.

## De-listing of a Supplier's Grocery product

#### 8.10 De-listing

- (a) Retailers may only De-list a Supplier's Grocery product in accordance with the terms of the relevant Grocery Supply Agreement and for genuine commercial reasons.
  - (i) To avoid doubt, genuine commercial reasons does not include De-listing as punishment for a complaint, concern, or dispute raised by a Supplier under a Grocery Supply Agreement or this Code.
  - (ii) Without limiting what may constitute genuine commercial reasons for De-listing, the following are examples of what may constitute genuine commercial reasons:
    - (A) failure of the Supplier to meet agreed quality or quantity requirements with respect to the Grocery product;
    - (B) failure of the Supplier's Grocery product to meet the Retailer's commercial sales or profitability targets as notified to the Supplier in, or pursuant to and in accordance with, the relevant Grocery Supply Agreement;
    - (C) persistent failure to meet the Retailer's delivery requirements as notified to the Supplier from time to time pursuant to and in accordance with the relevant Grocery Supply Agreement.
- (b) Prior to De-listing a Supplier's Grocery product, a Retailer must:
  - (i) provide reasonable written notice to the Supplier of the Retailer's decision to De-list that product, which includes the basis for De-listing;
  - (ii) inform the Supplier of its right to have the decision to De-list the Supplier's Grocery product reviewed by a Senior Buyer.

- (b)
  - Reasonable notice is not required to be given under clause 8.10(b) above where: (c)
    - (i) time is of the essence, such as product recalls or withdrawals or safety issues; or
    - (ii) there are persistent issues with supply that have resulted in the Retailer being out of stock or being at significantly reduced levels of stock than as ordered.
  - (d) A Retailer's Senior Buyer will, on receipt of a written request from a Supplier, promptly review any decisions regarding De-listing made by the Retailer and provide the Supplier with written notice of the outcome of that review including the basis for the Retailer's final decision.
  - For the avoidance of doubt, a decision by a Retailer not to extend or enter into a new Grocery Supply Agreement following the expiry of a fixed term Grocery Supply Agreement does not constitute a decision to De-list a Grocery line.

## 8.11 Payments

- A Retailer must pay a Supplier for all Grocery products delivered and accepted in (a) accordance with the relevant Grocery Supply Agreement within the time frame set out in that Grocery Supply Agreement and, in any case, within a reasonable time after the date of the Supplier's invoice in respect of those Groceries.
- Subject to clause 8.11(c), a Retailer must not:
  - (i) set off any amount against a Supplier's invoice or remittance unless the Supplier has consented in writing to the set off of that specific amount from the relevant invoice or remittance: or
  - (ii) Require a Supplier to consent to set off such amount.
- (c) Clause 8.11(b) does not prevent a Retailer from setting off against a Supplier's invoice or remittance any rebates or discounts agreed under a Grocery Supply Agreement which complies with this Code.
- (d) Unless provided for in the relevant Grocery Supply Agreement, a Retailer must not, directly or indirectly, Require a Supplier to make any payment towards that Retailer's costs of:
  - a buyer's visit to that Supplier; (i)
  - (ii) artwork or packaging design;
  - (iii) consumer or market research;
  - (iv) the opening or refurbishing of a store; or
  - (v) hospitality for that Retailer's staff.

#### 8.12 Promotional and in-store Support

- A Retailer must not, directly or indirectly, Require a Supplier predominantly to fund the Retailer's (a) costs of a Promotion.
- Where a Supplier agrees to make a payment in support of a Promotion of one of that Supplier's (b) Grocery Products, a Retailer must only hold that Promotion after reasonable notice has been given to that Supplier in writing. For the avoidance of doubt, a Retailer must not Require a

page | 8 SYDDMS-#1960442-V2



Supplier to participate in a promotion where this would entail a retrospective variation to the relevant Grocery Supply Agreement between those parties except where the variation complies with clauses 8.2 to 8.4 above.

A Retailer must ensure that the basis on which the quantity of any order of stock for Promotion is calculated is transparent.

(d)

(f)

When ordering a Grocery product from a Supplier at a promotional wholesale price (whether calculated by way of discount, rebate, credit, allowance or otherwise) a Retailer must not overorder. If a Retailer over-orders in these circumstances and subsequently sells the Grocery product at a higher non-promotional retail price, it must compensate the relevant Supplier for any Grocery products over-ordered at the promotional wholesale price.

The sum of any compensation required to be paid under clause 8.12(d) above will be calculated as the difference between:

- (i) the promotional wholesale price paid by the Retailer; and
- (ii) the Supplier's non-promotional wholesale price.

Once a Retailer has placed an order for a Grocery product with a Supplier in connection with a Promotion, it must not:

- (i) cancel the order; or
- (ii) reduce the order by more than 10 percent;

without the Supplier's written consent, unless reasonable notice is provided to the Supplier of the cancellation or amendment, or the Retailer compensates the Supplier for any net resulting costs, losses or expenses incurred or suffered by the Supplier as a direct result of the failure to give reasonable notice.

#### 8.13 Product Quality and Standards

- (a) If a Retailer provides fresh produce standards and / or quality specifications to a Supplier, it must do so in clear, unambiguous and concise written terms.
- (b) A Retailer must accept all fresh produce delivered in accordance with fresh produce standards and / or quality specifications provided by the Retailer to the Supplier (or contained in a relevant Grocery Supply Agreement).
- (c) A Retailer may only reject fresh produce supplied by a Supplier if it fails to meet fresh produce standards and / or quality specifications provided by the Retailer to the Supplier (or contained in the parties' Grocery Supply Agreement). A Retailer may only reject fresh produce on this basis within 24 hours of the time of delivery of and prior to the Retailer's acceptance of the fresh produce.
- (d) Where fresh produce is rejected by a Retailer for failure to meet the fresh produce standards and / or quality specifications provided by the Retailer to the Supplier (or contained in the parties' Grocery Supply Agreement), the Retailer must provide written reasons for the rejection to the Supplier within 48 hours of the rejection.
- (e) A Retailer must communicate to a Supplier any labelling, packaging and preparation requirements with respect to a Grocery product in clear, unambiguous and concise written terms.

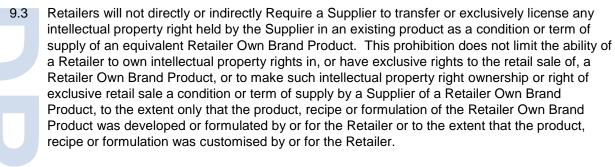
- (f) A Retailer must provide the Supplier with reasonable written notice of any required changes to packaging, labelling or preparation standards (unless the change is required immediately by law) taking into consideration existing stock held by Suppliers (where known) and any agreement as to stock coverage in the Grocery Supply Agreement.
  - (g) A Retailer must make any claim for damaged Grocery stock or shortfalls, or any similar claims, within a reasonable time of, and in any event no later than 30 days after, delivery of the Groceries to the Retailer (or its nominee).
  - 8.14 Changes to Supply Chain Procedures
  - (a) A Retailer must not directly or indirectly Require a Supplier to change materially any aspect of its supply chain procedures during the period of a Grocery Supply Agreement.
  - (b) Clause 8.14(a) does not apply in respect of changes where:
    - (i) the Retailer gives reasonable notice of such change to the Supplier in writing; or
    - (ii) subject to clause 8.14(c), the Retailer fully compensates the Supplier for any net resulting costs, losses or expenses incurred or suffered by the Supplier as a direct result of the failure to give reasonable notice.
    - A Supplier which has not been provided with reasonable notice of a change of the kind described in clause 8.14(a), but consents to the change, may choose to waive its right to receive compensation under clause 8.14(b)(ii).
  - 8.15 Business Disruption

(c)

(a) In its dealings with Suppliers, a Retailer must not threaten business disruption or termination of a Grocery Supply Agreement without reasonable grounds.

### 9 Retailer Own Brand Products

- 9.1 Retailers and Suppliers will respect all intellectual property rights in connection with each other's Grocery Products including but without limitation intellectual property rights in their branding, packaging and advertising. Without limitation, a Retailer will not infringe any intellectual property rights held by a Supplier in connection with the Supplier's Grocery products when developing Retailer Own Brand Products, and the brand names, packaging designs and advertising in relation to such products. Any complaint by a Supplier under the dispute resolution provisions of the Code relating to a breach by the Retailer of this clause 9.1 will include consideration of the performance by the Supplier of the reciprocal obligation to respect the Retailer's intellectual property rights.
- 9.2 If a Supplier discloses confidential information to a Retailer in connection with the supply of the Supplier's Grocery products including confidential information relating to product development, proposed promotions and pricing, the Retailer will only use that information for the purpose for which it is disclosed and will only disclose it or make it available or accessible to those people within the Retailer who need to have that information in connection with that purpose. Without limitation, Retailers will have systems to ensure compliance with this obligation, including without limitation that such Supplier confidential information is not used for a purpose which is inconsistent with the purpose for which it was disclosed. Retailers are free to design these systems and monitor compliance with them as they see fit. For the avoidance of doubt, information that is publicly available or which comes into the possession or knowledge of a Retailer independently of the Supplier and of any breach of an obligation of confidentiality to the Supplier is not confidential information within the meaning of this clause.



- 9.4 Without limiting clause 8.10 above, Retailer's ranging of their Retailer Own brand Products and allocation of shelf space will be principled and transparent in the following ways:
- (a) Retailers must publish or otherwise provide to all Suppliers that contract with them product ranging and shelf allocation principles.
- (b) Retailers will act in accordance with the product ranging and shelf space allocation principles published/provided to their Suppliers and update these from time to time as required.
  - Retailers will provide affected Suppliers, a reasonable time in advance of any range review, with clearly-expressed written notice of the relevant:
  - (i) purpose of the range review; and
  - (ii) key criteria governing ranging decisions.
- (d) Following the conclusion of a range review, a Retailer will provide affected Suppliers with a reasonable period of time during which the Suppliers may discuss the outcome of such range review, including the basis for the Retailer's final decision.
- (e) Retailers' published shelf-space allocation principles must be applied without discrimination in favour of Retailer Own Brand Products.

### Part 3 Other duties

(c)

### 10 Obligation to deal with each other lawfully and in good faith

- 10.1 Retailers and Suppliers must at all times deal with each other lawfully and in good faith. Retailers and Suppliers acknowledge that this will be understood as requiring:
  - (a) a Retailer to conduct its trading relationships with Suppliers in good faith, without duress and in recognition of the Suppliers' needs for certainty regarding the risks and costs of trading, particularly in relation to production, delivery and payment issues;
  - (b) a Supplier to conduct its trading relationships with Retailers in good faith, and in recognition of Retailers' needs for certainty regarding the risks and costs of trading, particularly in relation to delivery issues; and
  - (c) Retailers and Suppliers to include an acknowledgement of the obligation to deal with each other lawfully and in good faith in all Grocery Supply Agreements (as provided in clause 7.1(g)).

#### 11 Provision of contact details

11.1 A Retailer must ensure that the contact details for:

- (a) the Buyers and Senior Buyers that are relevant to a particular Supplier; and
- (b) the Code Compliance Manager,

are made available to a Supplier and updated as soon as reasonably practicable where there is any change to those details.

- A Supplier must ensure that contact details for its Account Managers and Supply Chain Contacts that are relevant to a particular Retailer; are made available to that Retailer and updated as soon as reasonably practicable where there is any change to those details.
- 11.3 At a minimum, the contact details provided pursuant to clauses 11.1 and 11.2 must include the title of the position and telephone number of the relevant contact.

## Part 4 Dispute resolution

- 12 ACCC
- 12.1 As noted in clause 3.2 above and 17.7 below, for the avoidance of doubt nothing in this Code, including this Part 4, precludes any Supplier from raising any complaint or dispute directly with the ACCC without first utilising any procedures provided under this Code.
- 13 Good faith in respect of complaints, disputes and proceedings relating to the Code
- 13.1 If a Supplier wishes to rely upon the provisions of the Code in making a complaint or notifying a dispute pursuant to the dispute resolution provisions in clauses 15, 16 and 17 of this Part 4, to be a valid complaint under these provisions, the Supplier:
  - must do so in good faith and the complaint or dispute must not be vexatious, trivial or lacking in substance;
  - (b) must agree to be bound by the provisions of this Part 4, including in their application to clause 9.1 above; and
  - (c) must agree to comply with the obligations under clause 10.1(b) in respect to the conduct of the complaint or dispute under this Part.
- 13.2 The Supplier will have the onus of establishing that it meets the condition in clause 13.1(a) but will be taken to have discharged that onus if it provides, or offers to provide and is capable of providing, the relevant Retailer(s) with adequate information and documents at the time of making the complaint or notifying the dispute to provide the Retailer(s) with sufficient particulars of:
  - (a) the complaint or dispute;
  - (b) the conduct that is the subject of that complaint or dispute; and
  - (c) the provisions of the Code that are alleged to have been breached and the remedy or relief that that Supplier is seeking,

to enable the Retailer(s) to investigate, consider and respond to the complaint or dispute.

- 13.3 The Supplier may supply any or all such information or documents subject to appropriate confidentiality protections.
- 13.4 For the avoidance of doubt:

- (a) this clause 13 does not operate to the exclusion of other provisions in this Code and is to be read in conjunction with the other provisions of this Code; and
- (b) the existence or conduct of a complaint or dispute under this Part 4 will not relieve the parties from their obligations to continue to perform the relevant Grocery Supply Agreement in accordance with its terms.

### Code Compliance Manager

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- 14.1 A Retailer must appoint a Code Compliance Manager.
- 14.2 A Retailer must ensure that any Code Compliance Manager that it appoints under clause 14.1:
  - (a) has access to the resources necessary for the fulfilment of its role, including access to all documentation relating to the Retailer's obligations under the Code, and access to the Buying Team to discuss issues in connection with the Retailer's obligations under the Code:
  - (b) will be independent of, and must not be managed by any member of the Buying Team, in relation to a Retailer; and
  - (c) acts in accordance with a written complaints handling procedure that has been developed by the Retailer, that is reviewed annually and updated as appropriate and which has been provided in its current form from time to time to the ACCC.

#### 15 Direct referral of complaints

- 15.1 A Supplier may directly refer a complaint relating to its dealings with a Retailer in connection with a matter covered by the Code to the Code Compliance Manager of that Retailer, where a Code Compliance Manager has been appointed, or to the relevant Senior Buyer or Account Manager (as the case may be) where no Code Compliance Manager has been appointed.
- 15.2 If a Supplier directly refers a complaint pursuant to clause 15.1, it must provide the following information with the complaint:
  - (a) identification details, including business or trading name;
  - (b) contact details of the person dealing with the complaint including the name, title and telephone number of that person; and
  - (c) details of the conduct giving rise to the complaint, including the provision of the Code relevant to the complaint, together with any documents or other information that would assist the investigation of the complaint.
- 15.3 On receipt of the details of a complaint made pursuant to clause 15.1, the Code Compliance Manager, or other recipient of the complaint, must undertake all reasonable steps to investigate the complaint.
- 15.4 The Code Compliance Manager, or other recipient of the complaint, is required to take all reasonable steps to conclude investigations within 20 business days.
- 15.5 Following the conclusion of the investigation undertaken pursuant to clause 15.3, the Code Compliance Manager, or other recipient of the complaint, must determine what, if any, action should be taken in response to the complaint.

- 15.6 Within a reasonable time and in any event within 5 business days after the conclusion of the investigation conducted pursuant to clause 15.3, the Code Compliance Manager, or other recipient of the complaint, must provide the Supplier that made the complaint with a summary of the action, if any, that has or will be undertaken in response to the complaint and the timetable for any such action that will be taken.
- 15.7 A Code Compliance Manager is to keep, for a period of no less than three years:
  - (a) a record of the complaints that it has received pursuant to clause 15.1;
  - (b) a record of the investigations that the Code Compliance Manager has undertaken pursuant to clause 15.3; and
  - (c) a summary of the action, if any, undertaken in response to the complaint.

## 16 Internal dispute resolution

- A dispute relating to dealings in connection with a matter covered by this Code may be notified by a Supplier to a Retailer by giving notice in writing to the other which specifies that the procedure set out in this clause 16 is being used to resolve the dispute.
- 16.2 The notice must specify:
  - (a) the nature of the dispute;
  - (b) the provision of the Code relevant to the dispute;
  - (c) the action that the Supplier that has notified the dispute thinks will settle the dispute; and
  - (d) the outcome that the Supplier that has notified the dispute is seeking.
- 16.3 The Supplier and Retailer must then try in good faith to resolve the dispute within 20 business days by elevating the dispute though senior levels of management.
- 16.4 The ability to seek internal dispute resolution under this clause 16 is in addition to any other dispute resolution procedures that may be otherwise agreed between the relevant Supplier and Retailer.

#### 17 Mediation or Arbitration

- 17.1 Subject to clause 17.2 a Supplier may seek either mediation or arbitration of any complaint or dispute made or notified under this Code. Once a notice of dispute has been served in either a mediation or arbitration forum, a notice of dispute must not be lodged by that party in the other forum (ie the mediation or arbitration forum in which the notice of dispute has not been served) in respect of that particular conduct. (For example, if a notice of dispute has been served on a Retailer by a Supplier in a mediation forum, a notice of dispute must not be lodged by that Supplier in an arbitration forum in respect of the conduct that is the subject of the notice of dispute in the mediation forum.)
- 17.2 Where a Supplier has made a complaint under clause 15.1 or notified a dispute under clause 16.1, it may only seek either mediation or arbitration of the dispute under this clause 17 after the conclusion of the process contemplated by those clauses.
- 17.3 A matter may only be referred to either mediation or arbitration under this clause 17 where it relates to a complaint about dealings between a Supplier and Retailer in connection with a matter covered by this Code.



Mediation or arbitration pursuant to this clause 17 is to be conducted in accordance with the Institute of Arbitrators & Mediators Australia Mediation Rules. If the mediator or arbitrator is not agreed by the parties within 10 business days of a Supplier referring a matter to either mediation or arbitration, then a mediator or arbitrator will be appointed by the Institute of Arbitrators & Mediators Australia in accordance with the Institute of Arbitrators & Mediators Australia Mediation Rules.

The parties to a dispute must attend any mediation or arbitration pursuant to this clause 17 and try to resolve the dispute in good faith. For the purposes of this clause 17.5, a party is taken to attend mediation or arbitration if the party is represented at the mediation or arbitration by a person who has authority to enter an agreement to settle the dispute on behalf of the party and will be taken to be trying to resolve the dispute in good faith if the party approaches the resolution of the dispute in a reconciliatory manner, including doing the following:

- (a) attending and participating at meetings that are arranged at reasonable times;
- (b) at the beginning of the mediation or arbitration process, making it clear what the party is trying to achieve through the mediation or arbitration process;
- (c) observing any obligation relating to confidentiality that applies during or after the mediation or arbitration process; and
- (d) not taking or refusing to take action during the dispute, including refusing to supply or accept goods or to make payments, which has the purpose or effect of applying pressure to resolve the dispute outside the dispute resolution process.
- 17.6 All costs of any mediation or arbitration are to be determined pursuant to the Institute of Arbitrators and Mediators Australia Mediation Rules.
- 17.7 The ability to seek either mediation or arbitration under this clause 17 is in addition to any other dispute resolution procedures that may be otherwise initiated under the other clauses of this part of the Code or agreed between the relevant Supplier and Retailer and does not preclude any Supplier or Retailer from unilaterally pursuing rights and remedies by any other means including through the courts or by complaint to the ACCC or any other regulatory authority. For the avoidance of doubt, these other rights and remedies may be pursued in advance of, or concurrently with, the process set out in this Part.

## Part 5 Code Committee

### 18 Establishment and role of the Code Committee

- 18.1 The Retailer and Supplier Roundtable will establish a Code Committee and the parties to a Grocery Supply Agreement will use their reasonable best efforts to support the operation and work of that Committee so that it can perform its role.
- 18.2 The role of the Code Committee will be to:
  - (a) publicise and promote the Code:
  - (b) monitor the operation of the Code;
  - (c) consult with industry participants on the operation and effectiveness of the Code and any proposed amendments to the Code;
  - (d) produce an annual report on the Code and its administration;

- (e) report to industry on the operation and effectiveness of the Code; and
- (f) report to the ACCC on any matters in connection with the Code.

## 19 Register of Code signatories

The Retailer and Supplier Roundtable will maintain a register of all Code signatories and update this on an ongoing basis.

# Part 6 Compliance and reporting

- 20 Duty to train staff with respect to the Code
- 20.1 As soon as reasonably practicable after becoming bound by the Code, a Retailer must provide to its Buying Team:
  - (a) a copy of the Code; and
  - (b) training on the requirements of the Code, within the later of 12 months after the Commencement Date and 6 months after the Code Date.
- 20.2 Any person who becomes part of a Retailer's Buying Team after the Retailer becomes bound by the Code must be provided with:
  - (a) a copy of the Code within 20 business days of becoming part of the Retailer's Buying Team; and
  - (b) training on the requirements of the Code within 20 business days of becoming part of the Retailer's Buying Team.
- 20.3 With the exception of the calendar year in which the Code first applies to that Retailer, that Retailer must provide retraining on the requirements of the Code to all employees in its Buying Team at least once each calendar year.
- 21 Keeping of records and provision of information to, or inspection by, the ACCC
- 21.1 The Code Compliance Manager must, at least every 6 months and on written request from the ACCC, provide to the ACCC or allow the ACCC to inspect, the manuals, records and reports the Code Compliance Manager is required to keep pursuant to clauses 14.2(c), 15.7 and 22.1.
- 22 Code Compliance Managers report to the Code Committee
- 22.1 Code Compliance Managers must prepare six-monthly reports to the Code Committee of the Retailer and Supplier Roundtable on compliance practice. The six-monthly report in respect of January June must be provided to the Code Committee by 15 August of each year. The six-monthly report in respect of July December must be provided to the Code Committee by 15 February of each year.
- 22.2 The Code Compliance Managers report to the Code Committee must set out the following information:
  - (a) the number of complaints received for investigation in the relevant reporting period;
  - (b) in general terms and without identifying the complainant, the nature of the complaints received:



- (c) the time taken to investigate each complaint; and
- (d) the outcome of each complaint investigated.

## 23 Code Committee report to the ACCC

- 23.1
- The Code Committee must prepare a summary report for the ACCC on compliance practice and the operation of the Code. The summary report must be provided to the ACCC on an annual basis and by 31 March each year.
- 23.2 The summary report must set out:
  - (a) the number of complaints received for investigation in the relevant reporting period;
  - (b) in general terms, the nature of the complaints received;
  - (c) the average time taken to investigate complaints;
  - (d) the number of complaints resolved to the satisfaction of the complainant; and
  - (e) any views of the Code Committee or its members on the impact of complaints received in the relevant reporting period, or their resolution, on the Code or its proposed interpretation or development in the future.

DATED: