
Grocery Supplier Contract (excluding Fresh Produce)
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Grocery Supplier Contract (excluding Fresh Produce)

Foodstuffs North Island Limited

[Insert name of supplier]

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PARTIES

Foodstuffs North Island Limited (**we, us, or our**)

[Insert name of supplier] (**you or your**)

AGREED TERMS**1 OVERVIEW OF SUPPLIER CONTRACT****Effect of Supplier Contract**

- 1.1 This Supplier Contract applies to the order and supply of Groceries to us, including any supply relationships you may have directly with an FSNI Business.
- 1.2 You agree that the Supplier Contract applies instead of any other standard terms you may have or seek to incorporate, and replaces any previous contracts relating to your supply of Groceries to us or an FSNI Business.
- 1.3 The Supplier Contract does not apply to other contractual arrangements we may have with you that are separate to the supply of Groceries (for example, but not limited to, media services, transport services, confidentiality, specific IP licensing etc).

Non-exclusivity and no purchase commitment

- 1.4 Unless agreed in your Commercial Terms:
- 1.4.1 the Supplier Contract is not an exclusive supply arrangement. We may purchase groceries from other suppliers at any time and you may supply groceries to other purchasers at any time; and
- 1.4.2 we make no purchase commitment to you for the Groceries, whether in terms of dollar value, volume of Groceries, or otherwise.

2 THE SUPPLIER CONTRACT**What is your Supplier Contract?**

- 2.1 Your Supplier Contract with us is made up of the following:
- 2.1.1 Accepted Purchase Orders (and any specific agreed written terms that apply to an Accepted Purchase Order);

- 2.1.2 your Commercial Terms (as updated from time to time); and
 - 2.1.3 these legal terms (as amended by the agreed changes, if any, set out in the Amendment Schedule attached to these legal terms) (**Legal Terms**),
- (together, the **Supplier Contract**).

Priority

- 2.2 The order of priority in clause 2.1 above will apply to the extent of any inconsistency (reading down from clauses 2.1.1 to 2.1.3).
- 2.3 The Supplier Contract will only apply to the extent that it complies with the Grocery Industry Law. This clause 2.3 applies despite the order of priority set out in clause 2.1 above.

How are Commercial Terms agreed?

- 2.4 We may from time to time negotiate and agree commercial terms in writing with you (including but not limited to any special terms, Promotions, range terms, discounts, delivery terms, rebates, service levels, charges or similar matters) (**Commercial Terms**).
- 2.5 You may negotiate Commercial Terms directly with us or with any FSNI Business.

Enforceability by FSNI Business

- 2.6 Where an FSNI Business has issued a Purchase Order, the Supplier Contract will be enforceable by that FSNI Business under the Contract and Commercial Law Act 2017.

3 ORDERING PROCESS

Issuing of Purchase Order

- 3.1 We or an FSNI Business will issue Purchase Orders to you, including via our Supplier Portal. Each Purchase Order is an offer by us to purchase the groceries described in the Purchase Order.

Acceptance of Purchase Order

- 3.2 A Purchase Order will be accepted by you on the earlier of:
 - 3.2.1 you actively accepting the Purchase Order, for example via the Supplier Portal if applicable;

3.2.2 3 Working Days after the date of receipt of the Purchase Order by you, unless within that period you send written notification that you do not accept the Purchase Order; or

3.2.3 delivery by you of some or all of the Groceries ordered,

(in each case, an **Accepted Purchase Order**).

4 WHAT WILL I GET PAID?

Price

4.1 The price for the Groceries will be determined by:

4.1.1 the base list price for the Groceries as agreed between the parties from time to time;

4.1.2 the price set out in the Accepted Purchase Order (if different from the base list price); and/or

4.1.3 any matters agreed in the Commercial Terms which impact on pricing, (together the **Price**).

4.2 Subject to clause 4.3:

4.2.1 all Pricing will be:

(a) in New Zealand dollars and exclusive of GST; and

(b) calculated on a Free Into Store (FIS) basis; and

4.2.2 you will be responsible for any applicable taxes, duties, and all delivery, packaging and insurance costs that apply to delivery of the Groceries.

4.3 For all Overseas Groceries, the Price will be in the agreed currency and any delivery costs will be determined in accordance with the agreed Incoterms (e.g. FOB). You will be responsible for any applicable taxes and duties relating to the Groceries.

Price increases

4.4 Unless clause 4.6 applies, if you inform us in writing of an increase in the price for Groceries (**Price Increase Request**), then on receipt of the Price Increase Request, we will notify you in writing within 30 days from the later of the Price Increase Request date or the date you provide us with any further information we reasonably request, as to whether we:

- 4.4.1 accept the price increase; or
 - 4.4.2 accept an increase in the price of the Groceries but do not accept the amount of the price increase; or
 - 4.4.3 do not accept the price increase.
- 4.5 If we notify you that either we accept an increase in price but do not accept the amount of the price increase, or we do not accept the price increase, then you may request that we enter into negotiations about the increase in price for the Groceries. We will then engage in negotiations in good faith and take all reasonable steps to conclude our position on the negotiations without delay.
- 4.6 The above does not apply where you have informed us of the same price increase in respect of the Groceries within the last 6 months.
- 4.7 In every case, the parties agree that any variation to pricing will:
- 4.7.1 be mutually agreed in writing (including by way of email) and retained in records by both parties;
 - 4.7.2 form part of the Supplier Contract; and
 - 4.7.3 be unenforceable to the extent of any inconsistency with the Grocery Industry Law.

5 HOW WILL I GET PAID?

Invoicing

- 5.1 For us to pay you, you must provide a compliant tax invoice issued in accordance with our [Supplier Invoicing Handbook](#) (**Valid Invoice**).
- 5.2 Valid Invoices must be provided to us immediately following delivery of the Groceries, or otherwise in accordance with any billing schedule in the Commercial Terms. We may reject invoices that we receive more than 3 months after the applicable Groceries are delivered.
- 5.3 You will prepare and give us statements of accounts in the manner and frequency specified in the [Supplier Invoicing Handbook](#).

Payment

- 5.4 We will pay Valid Invoices (subject to adjustment for any Permitted Charges and our set-off rights under clause 5.8) in accordance with the [Supplier Invoicing Handbook](#) and within the timeframe agreed in the Commercial Terms.

- 5.5 If at any time we dispute the amount of an invoice in good faith (**Disputed Amount**), then we will promptly notify you and we do not have to pay the Disputed Amount until the dispute is resolved (but we will pay any undisputed amounts).
- 5.6 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.
- 5.7 You may not suspend, cancel or withdraw the supply of Groceries pursuant to an Accepted Purchase Order solely on the basis that an invoice is being disputed.

Set off

- 5.8 Where it is reasonable in the circumstances, we may set off any amounts you owe us or an FSNI Business under the Supplier Contract or otherwise (including any Permitted Charges, credits or valid credit note requests) against any amounts we owe you under the Supplier Contract or otherwise. If requested by you, we will give a clear and full written explanation to you as to:
- 5.8.1 how the set-off was calculated;
- 5.8.2 why we consider that the set-off is reasonable in the circumstances; and
- 5.8.3 why we consider that the Supplier Contract provides for the amount to be set off.

6 PERMITTED CHARGES

Deduction or invoicing

- 6.1 You acknowledge that any Permitted Charges may be either:
- 6.1.1 deducted from the invoiced Price of the Groceries by you;
- 6.1.2 deducted from the payment for the Groceries by remittance by us; or
- 6.1.3 separately invoiced by us to you.
- 6.2 If requested by you in writing, we will give you a clear and full written explanation as to:
- 6.2.1 how the Permitted Charge is calculated;
- 6.2.2 why we consider that the Permitted Charge is reasonable in the circumstances; and
- 6.2.3 why we consider that the Permitted Charge is provided for in the Supplier Contract.

6.3 Where Permitted Charges are separately invoiced by us to you, you may reject invoices you receive more than 3 months after the relevant Permitted Charge arises.

Shrinkage not a Permitted Charge

6.4 We will not under any circumstances require you to make any payment as compensation for shrinkage, however we may agree proposals and procedures with you to mitigate the risk and occurrence of shrinkage.

6.4

7 PROMOTIONS

Process for agreeing promotional funding

7.1 From time to time, we or an FSNI Business may agree with you to run a Promotion for certain Groceries (including via our promo portal). We or the FSNI Business may require you to fund part or all of the costs of the Promotion (**Promotion Contribution**), where:

7.1.1 the Promotion Contribution is reasonable in the circumstances, having regard to:

- (a) the likely benefits to you from the Promotion;
- (b) the likely benefits to us or the FSNI Business from the Promotion;
- (c) the costs borne, or contributions made, by us or the FSNI Business for the Promotion; and

7.1.2 we or the FSNI Business give you reasonable written notice before holding the Promotion.

We or the FSNI Business will keep records for at least 7 years for each Promotion Contribution setting out how the matters in clause 7.1.1 are satisfied and that the relevant promotional funding is part of the Supplier Contract.

7.2 If requested by you, we or the FSNI Business will, no later than 20 Working Days after the request, give you a clear and full written explanation as to why we consider that:

7.2.1 the relevant promotional funding is reasonable in the circumstances; and

7.2.2 the relevant promotional funding is part of the Supplier Contract.

Funded Promotions

7.3 If we or an FSNI Business order Groceries from you in connection with a funded Promotion at a promotional price, we or the FSNI Business will:

7.3.1 ensure that the basis on which the quantity of the Purchase Order is calculated is transparent;

~~7.3.2 repay you the portion of the promotional funding relating to any of those Groceries that are sold at a non-promotional price; and~~

~~7.3.2 agree with you what happens to any Groceries supplied at a promotional price but which remain unsold at the end of the Promotion period; and~~

7.3.3 not cancel an Accepted Purchase Order or reduce the volume of the Accepted Purchase Order by more than 10% without your written consent, unless:

(a) we or the FSNI Business have given you reasonable written notice of the cancellation or reduction; or

(b) we or the FSNI Business compensate you for any net resulting costs, losses or expenses incurred or suffered by you as a direct result of us failing to give reasonable notice of the cancellation or reduction,

in which case we or the FSNI Business do not have to obtain your written consent to cancel or reduce the Accepted Purchase Order.

8 DELIVERY**Delivery of Groceries**

8.1 Groceries must be delivered:

8.1.1 to the place set out in each Accepted Purchase Order;

8.1.2 by the agreed delivery timeframe (or if not agreed, as soon as reasonably possible, within normal business hours of the place of delivery); and

8.1.3 during the booked delivery window (if applicable).

8.2 All deliveries must comply with the delivery requirements set out in:

8.2.1 our Policies and Compliance Requirements including, where applicable, the ~~Receiving and Carrier Guidelines~~ Receiving and Carrier Rules and Standards; and

8.2.2 any Commercial Terms agreed with us or an FSNI Business, including if applicable for direct to store delivery.

8.3 You will tell us as soon as possible if you become aware of any manufacturing, packaging, storage, or transport problems that may impact the quality, safety or delivery of Groceries.

8.4 You are not required to use FSNI Transport or Foodstuffs Inbound to deliver the Groceries to our distribution centre or direct to store (as applicable). However, you may choose to appoint FSNI Transport or Foodstuffs Inbound for these deliveries.

Overseas Groceries

8.5 Where Groceries are delivered from a location outside New Zealand, you will provide at your cost:

8.5.1 if requested, advance production samples of the Groceries to be forwarded to us prior to shipment of the Groceries; and

8.5.2 all documentation required to transport the Groceries to New Zealand, in the form reasonably required by us and the relevant New Zealand authorities such as New Zealand Customs Service, including:

(a) prior to shipment, inspection and test reports and other documents; and

(b) within 48 hours of shipment, shipping documents (including commercial invoices, packing lists, declarations, certificates of origin and packing notes).

8.6 Where you are responsible for the importation of the Groceries into New Zealand, you must obtain all necessary licences and permissions required to export the Groceries from the relevant country and to import the Groceries into New Zealand.

9 OWNERSHIP AND RISK

Ownership

9.1 Ownership of the Groceries passes to us or the FSNI Business on the earlier of the date we have paid for the Groceries or the date those Groceries have been delivered in accordance with the Supplier Contract.

Risk

9.2 Risk in the Groceries passes to us or the FSNI Business on delivery (unless the Groceries are Overseas Groceries, in which case risk and title will be determined in accordance with the agreed Incoterms).

Rejected Groceries

- 9.3 Ownership and risk in any Groceries rejected under clause 10 will pass back to you as follows:
- 9.3.1 if we have paid you for those rejected Groceries, once you have provided a refund or credit in accordance with clause 10.5; and
 - 9.3.2 in all other cases, when the rejected Groceries are collected from the delivery location.

10 RIGHT TO REJECT AND CLAIMS**Non-Compliant Groceries**

- 10.1 If we or an FSNI Business reasonably determine that Groceries are Non-Compliant then we or the FSNI Business may reject the Groceries in accordance with this clause 10.
- 10.2 Non-Compliant means the Groceries:
- 10.2.1 are not delivered within the agreed delivery timeframe or during the booked delivery window (if applicable);
 - 10.2.2 are not in Acceptable Condition; or
 - 10.2.3 have use by or best before dates which we or the FSNI Business reasonably consider to be insufficient for distribution and resale in the normal course of business.
- 10.3 We or an FSNI Business may still reject Non-Compliant Groceries despite:
- 10.3.1 the signing of a delivery note or similar; or
 - 10.3.2 where the Non-Compliant Groceries are delivered directly to an FSNI Business, payment for those Groceries by us.
- 10.4 You will be advised promptly in writing that the Groceries are Non-Compliant.

Right to reject Non-Compliant Groceries

- 10.5 For all Non-Compliant Groceries, we or the FSNI Business will be entitled at our discretion to:
- 10.5.1 return the Non-Compliant Groceries to you at your own cost;
 - 10.5.2 require you to collect the Non-Compliant Groceries at your own cost;

10.5.3 require you to pay the reasonable costs incurred in examining and storing the Non-Compliant Groceries pending return to you or collection by you; and/or

10.5.4 require you refund or credit us for the Non-Compliant Groceries.

Time for claims

10.6 Any claim under the above clause 10.5 will be made within a reasonable time (and in any event, no later than 30 days after delivery of the Groceries). The amount of any such claim may be set-off against a future amount payable to you under clause 5.8.

Compliance with Supplier Invoicing Handbook

10.7 Where you deliver Non-Compliant Groceries directly to an FSNI Business, you will co-operate with them and comply with the [Supplier Invoicing Handbook](#) in relation to all returns and credits.

Minor damage allowance

~~We may agree a minor damage allowance discount with you (in place of us or an FSNI Business claiming for minor damage to Groceries), as provided for in the Commercial Terms and our minor damage allowance policy.~~ minor damage allowance policy. However, we will not directly or indirectly recover the cost of Wastage of Groceries incurred while the Groceries are under the effective control of us or an FSNI Business (or a contractor or agent).

~~10.7~~10.8

11 SUPPLIER OBLIGATIONS AND WARRANTIES

General obligations

11.1 You must:

11.1.1 maintain adequate premises, facilities, equipment and do all other things necessary to ensure that the Groceries will be delivered in Acceptable Condition and are stored and handled in accordance with our Policies and Compliance Requirements and any other applicable Laws;

11.1.2 not supply any Groceries which do not comply with the warranties in clause 11.2;

11.1.3 immediately notify us or the FSNI Business if you become aware of a defect in any of the Groceries; and

- 11.1.4 support and comply with the requirements of any recall programme for the Groceries initiated by any governmental agency or other relevant authority, or reasonably by us or an FSNI Business.

Warranties

11.2 On each occasion that you supply Groceries, you warrant that:

- 11.2.1 you will supply us or the FSNI Business with the agreed or requested quantity of Groceries in accordance with each Accepted Purchase Order;
- 11.2.2 the Groceries are manufactured, produced, packaged, labelled, presented, stored and/or supplied in compliance with the Supplier Contract, our Policies and Compliance Requirements, and any applicable Laws;
- 11.2.3 the Groceries are in Acceptable Condition and are fit for sale or supply by us to FSNI Businesses and by FSNI Businesses to the public (as applicable);
- 11.2.4 the Groceries, any packaging, artwork, get up or design of the Groceries, and the supply of the Groceries does not infringe any third-party Intellectual Property Rights; and
- 11.2.5 the Groceries will be free from any charge, security interest or encumbrance at the time that they are delivered.

11.3 You also warrant and represent that you:

- 11.3.1 have authority to enter into the Supplier Contract; and
- 11.3.2 hold, will maintain and will comply with all necessary certificates, licences, permits and other approvals required by applicable Laws or the Policies and Compliance Requirements for the manufacture, packing, supply and storage of the Groceries.

Reporting

- 11.4 You will also provide us with reports and performance updates in relation to the Groceries as required by the Policies and Compliance Requirements or as otherwise reasonably requested by us or an FSNI Business.

12 WASTAGE

Payments for Wastage

~~12.1 Neither we nor an FSNI Business will directly or indirectly require you to make any payment to cover any Wastage of Groceries incurred while the Groceries are under the effective control of us or an FSNI Business (or a contractor or agent).~~

~~12.2 For the avoidance of doubt, unfitness for sale of Groceries discovered or determined while under the effective control of us or an FSNI Business (or a contractor or agent), but incurred earlier is not Wastage to which clause 12.1 applies.~~

~~12.1 Unless such Wastage is covered by an agreed minor damage allowance, you will make payments for Wastage incurred while the Groceries are under the effective control of us or an FSNI Business (or their contractors or agents) in the following circumstances:~~

~~12.1.1 the Groceries are accepted but become Wastage because they were not in Acceptable Condition at the time of delivery;~~

~~12.1.2 the Groceries are damaged in store due to accidental or inappropriate actions or omissions by you or your representatives; or~~

~~12.1.3 the Groceries expire or become dated where you are responsible for managing inventory and this occurs mainly as a result of your acts or omissions.~~

~~12.2 Payments under clause 12.1 will be by way of a credit for the Wastage or as otherwise agreed. We or the FSNI Business will:~~

~~12.2.1 ensure that any such payments are reasonable, having regard to the costs incurred by the Wastage;~~

~~12.2.2 take reasonable steps to mitigate those costs;~~

~~12.2.3 make a claim for any payment under clause 12.1 no later than 6 months after the relevant Groceries were delivered; and~~

~~12.2.4 with each claim, give a clear and full written explanation to you as to why it is considered that:~~

~~(a) the payment is reasonable in the circumstances; and~~

~~(b) the other matters in clause 14(2) of the Grocery Code are satisfied.~~

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~~Minor damage allowance~~

~~12.31.1 We may agree a minor damage allowance discount with you (in place of us or an FSNI Business claiming for minor damage to Groceries), as provided for in the Commercial Terms and our minor damage allowance policy.~~

13 BUSINESS ACTIVITY CHARGES

Requirements

13.1 We or an FSNI Business may require you to pay a charge for our business activities such as merchandising (including stocking shelves and setting up displays), opening or refurbishing of a store, or transport of Groceries within our business operations (**Business Activity**) as ~~agreed~~ provided for in your Commercial Terms (**Business Activity Charge**).

13.2 We or an FSNI Business may only require you to pay a Business Activity Charge where:

13.2.1 the amount of the Business Activity Charge is reasonable in the circumstances, having regard to:

- (a) the likely benefits to you from the Business Activities;
- (b) the likely benefits to us or the FSNI Business from the Business Activities; and
- (c) the costs borne, or contributions made, by us or the FSNI Business for the Business Activities; and

13.2.2 we or the FSNI Business give you a clear and full written explanation as to why we consider:

- (a) the Business Activity Charge is reasonable in the circumstances; and
- (b) the Business Activity Charge is permitted by the Supplier Contract.

Review and collaboration

13.3 We will review any Business Activity Charges in good faith including as part of our business and promotional planning discussions. You may also give notice to us that you wish to discuss any charges. Following a request, we agree to meet with you within a reasonable timeframe and review the charges in good faith.

13.4 At a review, we will discuss with you the reasonableness of the charges, including having regard to the factors described above. Any changes will be mutually agreed.

14 STOCKING FEE

Requirement

- 14.1 We may require you to pay us a stocking fee as a condition of us stocking or listing certain Groceries to be supplied by you (**Stocking Fee**), as provided for in Commercial Terms.

When Stocking Fee is permitted

- 14.2 We may only require you to pay a Stocking Fee where:

- 14.2.1 the relevant Groceries have not been stocked, displayed or listed by us during the preceding 365 days in 25% or more of our stores;
- 14.2.2 the amount of the Stocking Fee is reasonable in the circumstances having regard to the costs and risks to us in stocking, displaying or listing the relevant Groceries; and
- 14.2.3 we give you a clear and full written explanation as to why we consider that the matters in clauses 14.2.1 and 14.2.2 are satisfied.

~~14.3 We will keep records for at least 7 years for each Stocking Fee setting out how the matters in clause 14.2 are satisfied.~~

~~14.3~~ 14.4 This clause 14 is subject to clause 7 (Promotions) and does not apply if the Stocking Fee is made in relation to a Promotion.

15 RANGE REVIEWS

Product ranging and shelf space allocation principles

- 15.1 As required by the Grocery Code, we and each FSNI Business:

- 15.1.1 have adopted [product ranging and shelf space allocation principles](#);
- 15.1.2 will act in accordance with those principles and keep them up to date; and
- 15.1.3 will apply them without discrimination (including without discrimination in favour of our private label products).

Carrying out Range Reviews

- 15.2 We or an FSNI Business may from time to time carry out a range review of the Groceries supplied by you (**Range Review**).
- 15.3 Within a reasonable time before conducting a Range Review, you will receive clearly expressed written notice of:

- 15.3.1 the purpose of the Range Review; and
- 15.3.2 the key criteria governing ranging decisions.

15.4 Following the Range Review, we or the FSNI Business will provide you with a reasonable period of time to discuss the outcomes of the review, including the basis for our final decisions.

16 DELISTING

When can we delist?

16.1 We or an FSNI Business may at any time decide for genuine commercial reasons to delist (as that term is defined in clause 198(2) of the Grocery Code) a Grocery product in accordance with the notice requirements in clause 16.2. Genuine commercial reasons include but are not limited to:

- 16.1.1 your failure to meet reasonable quality or quantity requirements as agreed in respect to the Grocery product;
- 16.1.2 failure of the Grocery product to meet reasonable commercial sales or profitability targets as notified to you in, or in accordance with the Supplier Contract; and
- 16.1.3 your persistent failure to meet reasonable delivery requirements as notified to you from time to time in accordance with the Supplier Contract.

Notice of delisting

16.2 We or the FSNI Business will give you reasonable written notice of the decision to delist the Grocery product, setting out the reasons for the delisting, and informing you of your right to have the decision reviewed.

16.3 The notice requirements in clause 16.2 above do not apply if:

- 16.3.1 time is of the essence (including for Grocery product recalls, withdrawals or safety issues); or
- 16.3.2 there are persistent issues with supply of the Grocery product that have resulted in us or the FSNI Business being out of stock or stocked at significantly reduced levels,

in which case the Grocery product may be delisted immediately on written notice to you, giving a clear and full explanation as to why it is considered that time is of the essence or there are persistent issues with supply (as applicable).

Consequences of delisting

- 16.4 From the date advised, the Grocery product will be delisted, and we or the FSNI Business will be under no further obligation to purchase the Grocery product from you.
- 16.5 Delisting of an individual Grocery product shall have no effect on the terms of the Supplier Contract, which will otherwise remain in full force in respect of all other Groceries supplied from time to time.
- 16.6 We will have no liability to you for any loss whatsoever in connection with the delisting of a Grocery product.

Request for reasons and review

- 16.7 If you make a written request for a statement of the genuine commercial reasons for the delisting, or any information relating to the delisting, we or the FSNI Business will promptly comply in writing with such request.
- 16.8 If you make a written request for review of the decision to delist the Grocery product, we or the FSNI Business will promptly review the decision regarding the delisting and provide you with written notice of the review outcome including the basis for that decision.

17 CUSTOMER COMPLAINTS**When clause applies**

- 17.1 This clause applies if we or an FSNI Business receive a customer complaint that we reasonably believe is caused, or contributed to, by your failure to comply with the Supplier Contract.

Resolving a complaint

- 17.2 We or the FSNI Business may:
- 17.2.1 decide to deal with and respond to any complaint regarding the Groceries ourselves; and/or
 - 17.2.2 refer any complaint regarding the Groceries directly to you.
- 17.3 If we or the FSNI Business refer a complaint regarding the Groceries directly to you, then you will:
- 17.3.1 co-operate to help resolve the complaint; and
 - 17.3.2 comply with all reasonable directions provided to you in relation to the complaint.

18 CHANGING THE SUPPLIER CONTRACT

Changes to be agreed

- 18.1 Except as set out below, no change to the Supplier Contract will be effective unless it is agreed in writing by us both. Under no circumstances will we retrospectively seek to vary the Supplier Contract.

Unilateral variation

- 18.2 We may change the Supplier Contract without your agreement if the change is reasonably necessary to comply with Laws.
- 18.3 We may change the Policies and Compliance Requirements without your agreement because of changed business requirements or objectives and where the change does not impose additional obligations or costs on you as a supplier, or if the change is reasonably necessary to comply with Laws.

18.4 We will only make a change under clause 18.2 or 18.3 if the change is reasonable (having regard to the benefits, costs, and risks (if any) for both parties). We will keep records for at least 7 years for each change setting out why we consider that the change is reasonable in the circumstances and that the other matters in clause 9(2) of the Grocery Code are satisfied.

18.5 We will give you reasonable notice of the change, its terms and our reasons for it. This will include a clear and full written explanation as to why we consider that the change is reasonable in the circumstances and that the other matters in clause 9(2) of the Grocery Code are satisfied.

18.4

19 INSURANCE

Public and product liability insurance

- 19.1 You will obtain and maintain public and product liability insurance cover of not less than \$10,000,000 (or such lesser amount agreed in writing by us in good faith, having regard to the size of your business).

Evidence of insurance

- 19.2 If asked, you will promptly give us reasonable evidence that the required insurance is in place.

20 CONFIDENTIALITY

Confidentiality obligations

- 20.1 The parties agree that all information disclosed and received between the parties and/or otherwise in connection with the supply of Groceries under the Supplier Contract, including information relating to Grocery development, proposed Promotions, or pricing (**Confidential Information**), must be treated as confidential at all times.
- 20.2 Neither party may use the Confidential Information of the other party other than for the purpose for which it was disclosed and may only disclose it or make it available or accessible to employees or agents who need to have that information in connection with that purpose.
- 20.3 Both parties must establish and monitor systems to ensure compliance with clause 20.2.
- 20.4 This clause 20 does not apply to information that:
- 20.4.1 is publicly available; or
 - 20.4.2 comes into possession or knowledge of a party:
 - (a) independently of the other party; and
 - (b) without any breach of clause 20.2.
- 20.5 The disclosure restrictions in this clause 20 do not apply to information that is required to be disclosed by law or by the rules of a registered stock exchange, provided that the disclosing party must promptly notify the other party of such requirement (to the extent permitted by law) and must only disclose such information as is strictly required.

Disclosure to Commerce Commission

- 20.6 Nothing in this clause 20 stops you from disclosing any Confidential Information to the Commerce Commission. Where it is reasonable to do so, you will ask the Commission to keep our Confidential Information confidential to the extent it is able to do so under the Official Information Act 1982.

21 INTELLECTUAL PROPERTY

Ownership of Intellectual Property Rights

- 21.1 All Intellectual Property Rights owned by either party (present and future) will remain the property of that party. Neither of us will use the Intellectual Property

Rights of the other except in accordance with this clause 21, or with prior written approval.

- 21.2 In developing or producing private label range products, we will not infringe any Intellectual Property Rights held by you in relation to the Groceries, including Intellectual Property Rights in branding, packaging and advertisement.

Licence given by you

- 21.3 You give to us and the relevant FSNI Business a non-exclusive, royalty-free, sub-licensable, licence to download, use, copy, communicate to the public and adapt your Intellectual Property Rights (including any product images, trade marks or promotional material) in connection with the use, marketing and sale of the Groceries by us or an FSNI Business. For example, we may alter the format (such as by cropping) and make minor changes to layout and colour schemes for the purpose of adapting your marketing material to our promotional display format(s), but we will not make material changes to the overall look and feel of your branding.
- 21.4 We or the FSNI Business will also be entitled to take our own photographs of the Groceries to be used to advertise or promote the Groceries.

22 PRIVACY AND DATA BREACH

Privacy

- 22.1 We both agree to comply with the Privacy Act 2020 where any Personal Information is disclosed by the other party (or disclosed to you by an FSNI Business) under or in connection with the Supplier Contract.
- 22.2 We and each FSNI Business will process Personal Information in accordance with the Foodstuffs and banner privacy policies. Before giving any Personal Information to us or an FSNI Business, you will ensure the individual to whom the Personal Information relates has been provided with all notices, and given any consents, required by applicable privacy Laws, to enable us and each FSNI Business to store and process the Personal Information as contemplated in the Supplier Contract.

Data breach

- 22.3 We or you will immediately tell the other in writing, and give full details, about any actual or suspected accidental or unauthorised access to or data breach involving, or temporary or permanent loss of access to, any Foodstuffs Data or Supplier Data (a **Data Security Incident**) and co-operate with the other in any investigation in respect of the Data Security Incident.
- 22.4 If either party notifies the other of a Data Security Incident, we and you will work together in good faith to determine whether the Data Security Incident is notifiable to any regulator(s) and/or affected individual(s) and, if so, to agree the form and

content of the announcement or notification. Nothing in this clause is intended to restrict a party from complying with its privacy breach notification obligations under the Privacy Act 2020.

- 22.5 This clause 22 applies in addition to any other privacy or data protection requirements in the Policies and Compliance Requirements or terms that apply to your use of other services we make available to you (such as the Supplier Portal).

23 RECORD KEEPING AND AUDITS

Record keeping

- 23.1 Both parties will keep reasonable records in relation to the Supplier Contract (including, in your case, any documents necessary for tracing purposes) for at least 7 years or any longer period required by Laws. If reasonably asked, either party will provide the other with copies of, or access to, these records.

Audits

- 23.2 We may conduct food safety related audits as provided in the Policies and Compliance Requirements. Otherwise, if we reasonably suspect any material non-compliance, we may audit your compliance with the obligations under the Supplier Contract if we give you at least 10 Working Days' written notice. If this happens, you will promptly provide us with any access, information or assistance reasonably required.
- 23.3 For all audits, we agree to comply with your reasonable confidentiality and security requirements, and that the audit will be done in a way that reasonably minimises any disruption to you.

24 TERM AND TERMINATION

Term of agreement

- 24.1 The Supplier Contract will commence once both parties have signed this agreement, and will continue unless either party ends it under this clause 24.

Termination for convenience

- 24.2 Either party may terminate the Supplier Contract at any time by giving 3 months' written notice to the other party. At the end of the 3-month period, the Supplier Contract will terminate. We will only exercise our rights under this clause acting in good faith and for genuine commercial reasons.
- 24.3 Termination under clause 24.2 will not affect any Accepted Purchase Order for Groceries and the Supplier Contract will continue for this purpose.

Our rights of termination

- 24.4 Acting in good faith, we may terminate the Supplier Contract and any Accepted Purchase Orders immediately by giving you notice in writing if:
- 24.4.1 you are in material breach of the Supplier Contract and that breach is not capable of remedy;
 - 24.4.2 you are in material breach of the Supplier Contract that is capable of remedy and such breach is not remedied within 10 Working Days of receipt of notice of the breach given by us;
 - 24.4.3 you become bankrupt, are placed in administration or liquidation, have a receiver or statutory manager appointed over any of your assets, become insolvent, cease to carry on your business, or make any composition or arrangement with your creditors other than because of a genuine solvent reconstruction, amalgamation or scheme of arrangement;
 - 24.4.4 you sell, or agree to sell, your business without our prior written consent;
 - 24.4.5 you are a body corporate and undergo a change of control that we reasonably believe could materially affect our interests. For the purposes of this clause, "control" means the power to exercise more than 50% of the voting interests of you, or ownership of more than 50% of the beneficial or legal interests in your income or capital; or
 - 24.4.6 anything substantially similar to the events above happens in the jurisdiction of your incorporation or registration.

Your rights of termination

- 24.5 You may terminate the Supplier Contract and any Accepted Purchase Orders immediately by giving us notice in writing if:
- 24.5.1 we are in material breach of the Supplier Contract and that breach is not capable of remedy;
 - 24.5.2 we are in material breach of the Supplier Contract that is capable of remedy and such breach is not remedied within 10 Working Days of receipt of notice of the breach given by you; or
 - 24.5.3 we become bankrupt, are placed in administration or liquidation, have a receiver or statutory manager appointed over any of our assets, become insolvent, cease to carry on our business, or make any composition or arrangement with our creditors other than because of a genuine solvent reconstruction, amalgamation or scheme of arrangement.

25 GENERAL**Event beyond control**

25.1 Neither of us is liable for any act, omission or failure under the Supplier Contract (except failure to meet an obligation to pay money) if that act, omission or failure arises directly from an event beyond the reasonable control of the relevant party.

25.2 If either party wishes to rely on this clause, it will:

25.2.1 notify the other party in writing, including with reasons and perceived impacts, that such an event has occurred or is likely to occur; and

25.2.2 take all reasonably practicable steps to limit the effects of that event on the performance of its obligations under the Supplier Contract and continue to carry out its obligations under the Supplier Contract to the extent possible.

25.3 Performance of any obligation affected by an event under this clause will be resumed as soon as practicable after the termination or abatement of that event.

Notices

25.4 We will each give notices under the Supplier Contract in writing to:

25.4.1 the other party's physical or contact email address;

25.4.2 by hand, prepaid post, or by email to the address for the other party's contact person as agreed from time to time; and

25.4.3 copying legal@foodstuffs.co.nz (or such other legal email address that we notify you in writing).

Disputes

25.5 If any dispute arises out of, or in connection with, the Supplier Contract (**Dispute**), you may refer the Dispute to the Grocery Industry Dispute Resolution Scheme in accordance with Part 4, Subpart 5 of the Grocery Industry Act (**Grocery Dispute Resolution Scheme**).

25.6 If the Dispute does not meet the criteria set out in the Grocery Industry Act, or you do not elect to refer the Dispute to the Grocery Dispute Resolution Scheme, then the following dispute resolution procedure will apply. The parties' respective contact persons will, within 10 Working Days of written notice by either party to the other of the Dispute (**Dispute Notice**), negotiate in good faith with a view to resolving the Dispute. If the Dispute is unable to be resolved within 20 Working Days of the Dispute Notice, the parties will refer the Dispute to senior management of each party.

No retaliation

~~25.6~~25.7 Under no circumstances will we or an FSNI Business Retaliate against you.

Wholesale supply

~~25.7~~ We or an FSNI Business may supply the Groceries to other third-party wholesale customers that are not FSNI Businesses if you have agreed in writing to participate in our wholesale offer under Part 3 of the Grocery Industry Act.

Assignment

25.8 Neither party will directly or indirectly assign, transfer, or otherwise dispose of any of its rights or obligations under the Supplier Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

Relationship of the parties

25.9 Nothing in the Supplier Contract will make either party a partner, agent or joint venturer of the other.

Further acts

25.10 Each party will, at its own expense and when requested by the other party, promptly do, sign and deliver everything reasonably required for the purposes of and to give full effect to the Supplier Contract, its provisions and any transactions contemplated by it.

Governing law

25.11 The Supplier Contract shall be governed by and interpreted in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

Survival

25.12 Termination or expiry of the Supplier Contract will not affect the rights and obligations of the parties immediately prior to termination, or any provisions of the Supplier Contract which are intended to, or should reasonably, survive termination.

Invalidity

25.13 If any one or more of the terms of the Supplier Contract is invalid, void, illegal or unenforceable, it will not affect the validity, existence, legality and enforceability of the remaining terms.

Waiver

- 25.14 Failure to exercise or delay in exercising any right under the Supplier Contract will not operate as a waiver of that right. A party will not be deemed to have waived any right under the Supplier Contract unless the waiver is in writing and signed by an authorised representative of that party. Any such waiver will not be a waiver of any subsequent or continuing right or of any other provision in the Supplier Contract.

Consumer Guarantees Act

- 25.15 The parties agree that the Groceries are supplied under the Supplier Contract for resale and otherwise in trade, and that the provisions of the Consumer Guarantees Act 1993 will not apply to that supply.

Counterparts and electronic signatures

- 25.16 This agreement may be signed in any number of counterparts (including by email or other electronic means). The counterparts, taken together, constitute one and the same instrument.
- 25.17 The parties each consent, for the purposes of the Contract and Commercial Law Act 2017, to any party signing this agreement by electronic signature in accordance with the above.

26 DEFINITIONS

- 26.1 In these Legal Terms, the following definitions apply:

Acceptable Condition means:

- (a) compliant with any reasonable standards or quality specifications required or notified by us or an FSNI Business to you in writing from time to time for any Groceries (including but not limited to the Policies and Compliance Requirements, Commercial Terms, Accepted Purchase Orders or other written communications);
- (b) produced in accordance with all applicable food and safety standards and Laws;
- (c) of correct size, quantity and quality and conforms with any samples provided to us or an FSNI Business;
- (d) in acceptable presentation and packaging (i.e. no damaged or dirty packaging or stock);
- (e) in food grade packaging;

- (f) appropriately labelled and within acceptable use by dates/best before dates (as applicable);
- (g) appropriately segregated; and
- (h) otherwise in acceptable condition (in the reasonable discretion of us or an FSNI Business) for distribution and resale in the normal course of business;

Accepted Purchase Order has the meaning given in clause 3.2;

Business Activity has the meaning given in clause 13.1;

Business Activity Charge has the meaning given in clause 13.1;

Commercial Terms has the meaning given in clause 2.4;

Confidential Information has the meaning given in clause 20.1;

Data Security Incident has the meaning given in clause 22.3;

Dispute has the meaning given in clause 25.5;

Dispute Notice has the meaning given in clause 25.6;

Disputed Amount has the meaning given in clause 5.5;

Foodstuffs Data means confidential information of us or an FSNI Business, and any Personal Information disclosed to you by us or an FSNI Business;

Foodstuffs Inbound means Foodstuffs Inbound Limited;

FSNI Business means any Member Store, or any company owned or controlled by us;

FSNI Transport means FSNI Transport Limited;

Groceries means the groceries described in each Accepted Purchase Order that are supplied, or to be supplied, by you and includes samples, packaging and labelling, and any accessories, documentation, or publication accompanying the groceries;

Grocery Code means:

(a) the Grocery Supply Code 2025; or

(b) any replacement Grocery Supply Code made in accordance with the Grocery Industry Act;

Grocery Dispute Resolution Scheme has the meaning given in clause 25.5;

Grocery Industry Act means the Grocery Industry Competition Act 2023;

Grocery Industry Law means the Grocery Industry Act, and all associated regulations (including the Grocery Industry Competition Regulations 2023), codes (including the Grocery Code), and any amendments from time to time;

GST means goods and services tax;

Intellectual Property Rights means all intellectual property rights (present and future) and includes any patents, registered designs, trade marks, copyright, know-how, trade secrets, and product or business concepts, in each case whether registered or unregistered and any analogous right worldwide;

Laws means all laws, regulations, bylaws, rules, industry codes of practice, and licensing and consent requirements (including, without limitation, the Grocery Code, the Australia New Zealand Food Standards Code and all applicable product safety and packaging requirements);

Legal Terms has the meaning given in clause 2.13;

Member Store means a person that is a franchisee of us;

Non-Compliant has the meaning given in clause 10.2;

Overseas Groceries means Groceries that are delivered from outside of New Zealand;

Permitted Charges means those deductions set out in the Commercial Terms which may include settlement terms, logistics terms, volumetric terms, co-op charges, merchandising charges and/or our ~~minor damage allowance~~ minor damage allowance;

Personal Information has the meaning given in the Privacy Act 2020;

Policies and Compliance Requirements means our policies, practices, requirements and standards found at <https://www.foodstuffs.co.nz/partnering-with-us/Working-together-with-suppliers> (at the date both parties have signed this agreement and as updated from time to time with your prior agreement or in accordance with clause 18), together with your completed compliance pack which contains important safety and quality compliance requirements, and payment obligations relating to product recalls;

Price has the meaning given in clause 4.1;

Price Increase Request has the meaning given in clause 4.4;

Promotion means, from time to time:

- (a) any offer for sale (whether or not accompanied by some other benefit to a customer):
- (i) at an introductory or reduced price, or involving non-standard sales activity;
 - (ii) as agreed between us or an FSNI Business, and you; and
 - (iii) that is intended to last for only a specified period; or
- (b) any advertising or other in-store or online marketing activity (including a giveaway or an in-store product placement or promotional display):
- (i) as agreed between us or an FSNI Business, and you; and
 - (ii) that is intended to last for only a specified period;

Promotion Contribution has the meaning given in clause 7.1;

Purchase Order means an order submitted by us or an FSNI Business to you requesting that you supply groceries in accordance with the Supplier Contract;

Range Review has the meaning given in clause 15.2;

Retaliate has the meaning given in clause 30 of the Grocery Code;

Security Interest has the meaning given in the Personal Property Securities Act 1999;

Stocking Fee has the meaning given in clause 14.1;

Supplier Contract has the meaning given in clause 2.1;

Supplier Data means your confidential information and any Personal Information disclosed by you to us or an FSNI Business;

Supplier Portal means [Foodstuffs eXchange](#) or such other URL as notified to you by us;

Valid Invoice has the meaning given in clause 5.1;

Wastage means Groceries that are unfit for sale; and

Working Day means any day other than Saturday, Sunday or any public holiday in Auckland.

SIGNATURE PAGE

Executed as an agreement.

Date: Date of last signature below.

Foodstuffs North Island Limited by:

.....
Signature of authorised person

.....
Name of authorised person (print)

.....
Office held

.....
Date

[Name of Supplier] by:

.....
Signature of authorised person

.....
Name of authorised person (print)

.....
Office held

.....
Date

FOR INFORMATION ONLY - NOT A CONTRACT

AMENDMENT SCHEDULE

FOR INFORMATION ONLY - NOT A CONTRACT