

MASTER SUPPLIER TERMS AND CONDITIONS v2.0

In these Master Supplier Terms and Conditions (**Terms**) we have used “**we**”, “**us**” and “**our**” for Foodstuffs South Island Limited and “**you**” and “**your**” for you as Supplier.

Words or phrases in capital letters have a defined meaning in these Terms.

1. Effect of Terms

- 1.1. These Terms apply to the order and supply of Grocery Products to us, including any supply relationships you may have directly with Foodstuffs Affiliates.
- 1.2. You agree that these Terms apply instead of any other standard terms you may have or seek to incorporate, and replace any previous contract relating to your supply of Grocery Products to us or to Foodstuffs Affiliates.
- 1.3. These Terms do not apply to other contractual arrangements we may have with you that are separate to the supply of Grocery Products (for example, but not limited to, media services, transport services, confidentiality, specific IP licensing etc).
- 1.4. We may (acting reasonably) vary these terms to ensure they reflect our current policies and processes and are compliant with all applicable laws (including the Grocery Industry Law). We will give you reasonable notice in writing of any variation to these Terms along with an explanation of the variation.
- 1.5. We will not make any variation that materially affects your rights or obligations under these Terms (other than amendments permitted by the above clause 1.4) without obtaining your prior consent.
- 1.6. The most recent version of these Terms is always accessible on our website at <https://www.foodstuffs-exchange.co.nz/>

2. Commercial Terms

- 2.1. We may separately negotiate commercial terms in writing with you (including but not limited to any special terms, promotions, range terms, discounts, delivery terms, rebates, service levels or similar matters) (**Commercial Terms**), which may document changes to these Terms.
- 2.2. You may negotiate Commercial Terms directly with Foodstuffs South Island Limited or with any of our Foodstuffs Affiliates.

3. Priority and Enforceability

- 3.1. Your Grocery Supply Agreement with us is made up of the following:
 - (a) Accepted Purchase Orders (and any specific agreed written terms that apply to an Accepted Purchase Order);
 - (b) Commercial Terms (as updated from time to time); **and**
 - (c) these Terms (as updated from time to time);**;**
 - (d) Polices and Compliance Requirements.**(together the **Grocery Supply Agreement or Agreement**).
- 3.2. The order of priority in clause 3.1 above will apply to the extent of any inconsistency (reading down from (a) to (c)).
- 3.3. The Grocery Supply Agreement will only apply to the extent that it complies with the Grocery Industry Law. This clause 3.3 applies despite the order of priority set out in clause 3.1 above.
- 3.4. Where a Foodstuffs Affiliate has issued a Purchase Order in connection with these Terms, the resulting Grocery Supply Agreement will be enforceable by that Foodstuffs Affiliate under the Contract and Commercial Law Act 2017.

4. Supply of Grocery Products

- 4.1. You agree to supply us with Grocery Products in accordance with the Agreement.
- 4.2. Unless otherwise agreed in Commercial Terms:
 - (a) The Agreement is not an exclusive supply arrangement. We may purchase Grocery Products from other suppliers at any time and you may supply Grocery Products to other purchasers at any time.

- (b) We make no purchase commitment to you for the Grocery Products, whether in terms of dollar value, volume of Grocery Products, or otherwise.

5. Ordering

- 5.1. Orders for the Grocery Products will be made by Purchase Order in writing.
- 5.2. A Purchase Order will be deemed to be accepted by you at the earlier of:
 - (a) you actively accepting the Purchase Order;
 - (b) 3 Working Days after the date of receipt of the order by you, unless within that period you send us written notification that you do not accept the order; or
 - (c) delivery by you of some or all of the Grocery Products ordered, (in each case, an **Accepted Purchase Order**).

6. Pricing

- 6.1. **Fixed Base List Pricing:** The price for the Grocery Products will be determined by:
 - (a) the base list price for the Grocery Products as agreed between the parties from time to time; and/or
 - (b) the price set out in the Accepted Purchase Order (if different from the base list price); and/or
 - (c) any matters agreed in the Commercial Terms which impact on pricing, (together the **Price**).
- 6.2. **Variable Pricing (e.g. fresh produce):** If the Commercial Terms provide for variable pricing, the Price for the Grocery Products will be negotiated and agreed by the parties on a regular basis.
- 6.3. Subject to clause 6.4,
 - (a) all Pricing will be:
 - (i) in New Zealand dollars and exclusive of GST; and
 - (ii) calculated on a Free Into Store (FIS) basis; and
 - (b) you will be responsible for any applicable taxes, duties, and all delivery, packaging and insurance costs that apply to delivery of the Grocery Products.
- 6.4. For all Overseas Grocery Products, 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 Grocery Products.

7. Price Increases

- 7.1. If you inform us in writing of an increase in the Price for a Grocery Product (**Price Increase Request**) and either:
 - (a) the Price Increase Request is in respect of fresh produce and any negotiations about the Price Increase Request are not concluded within 5 Working Days of the Price Increase Request; or
 - (b) the Price Increase Request is in respect of a Grocery Product other than fresh produce and you have not informed us of the same price increase in respect of the Grocery Product within the last 6 months, 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:
 - (c) accept the price increase; or
 - (d) accept an increase in the price of the Grocery Product but do not accept the amount of the price increase; or
 - (e) we do not accept the price increase.
- 7.2. 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 in good faith about the increase in price for the Grocery Product.
- 7.3. In every case, the parties agree that any variation to pricing will:
 - (f) be mutually agreed in writing (including by way of email) and retained in records by both parties;
 - (g) form part of the Agreement; and
 - (h) be unenforceable to the extent of any inconsistency with the Grocery Industry Law.

8. Payment

- 8.1. For us to pay you, you must provide a compliant tax invoice through the Foodstuffs eXchange Portal or by emailing it to invoices@foodstuffs-si.co.nz with the information reasonably required by us from time to time including, for example, GST and supplier information (**Valid Invoice**).
- 8.2. Valid Invoices must be provided to us within 7 days of delivery.
- 8.3. Unless otherwise agreed in writing, we will make a consolidated payment for all Valid Invoices (subject to adjustment for any Permitted Charges) no later than the last Working Day of the month following the date on the Valid Invoice(s).
- 8.4. If at any time we dispute the amount of an invoice (**Disputed Amount**), then we do not have to pay the Disputed Amount until the dispute is resolved, but we will pay any undisputed amounts.
- 8.5. 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.
- 8.6. You may not suspend, cancel or withdraw the supply of Grocery Products to us pursuant to an Accepted Purchase Order accepted by you solely on the basis that an invoice is being disputed.

9. Permitted Charges

- 9.1. You acknowledge that any Permitted Charges may be either:
 - (a) deducted from the invoiced Price of the Grocery Products by you;
 - (b) deducted from the payment for the Grocery Products by remittance by us; or
 - (c) separately invoiced by us to you.
- 9.2. If requested by you in writing, we will give you a clear and full written explanation as to:
 - (a) how the Permitted Charge is calculated;
 - (b) why we consider that the Permitted Charge is reasonable in the circumstances; and
 - (c) why we consider that the Permitted Charge is provided for in the Agreement.
- 9.3. **Shrinkage not a Permitted Charge:** 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.

10. Delivery

- 10.1. Subject to clause 10.3 below, you will deliver the Grocery Products at your risk and your cost, within the delivery timeframe and to the delivery location set out in the Accepted Purchase Order or the Commercial Terms, as applicable.
- 10.2. All Grocery Products are to be:
 - (a) packaged and transported in accordance with:
 - (i) our Supply Chain Distribution and Procurement policy found at <https://www.foodstuffs-exchange.co.nz/>;
 - (ii) all Policies and Compliance Requirements; and
 - (iii) any other service standards notified by us to you in writing from time to time;
 - (b) delivered within the booked delivery window (if applicable); and
 - (c) delivered in Acceptable Condition as defined in these Terms.
- 10.3. **Overseas Grocery Products:** Overseas Grocery Products must be delivered in accordance with the agreed Incoterms. In every case, you will at your cost:
 - (a) if requested by us, provide advance production samples of the Grocery Products to be supplied to us prior to shipment of the Grocery Products;
 - (b) if requested by us, provide all documentation required to transport the Grocery Products to New Zealand, in the form reasonably required by us and the relevant New Zealand authorities such as New Zealand Customs Services (including inspection and test reports, commercial invoices, packing lists, declarations and certificates of origin); and
 - (c) where you are responsible for the importation of the Grocery Products into New Zealand, obtain all necessary licenses and permissions required to export the Grocery Products from the relevant country and to import the Grocery Products into New Zealand.

11. Ownership and Risk

- 11.1. Ownership of the Grocery Products passes to us on the earlier of the date we have paid for the Grocery Products or the date those Grocery Products have been delivered in accordance with the Agreement.
- 11.2. Risk in the Grocery Products passes to us on delivery (unless the Grocery Products are Overseas Grocery Products, in which case risk and title will be determined in accordance with the agreed Incoterms).
- 11.3. Ownership and risk in any Grocery Products rejected by us under clause 12 will pass back to you as follows:
 - (a) if we have paid you for those rejected Grocery Products, once you have provided a refund or credit in accordance with clause 12.5; and
 - (b) in all other cases, when the rejected Grocery Products are collected from the delivery location.

12. Right to reject Non-Compliant Grocery Products

- 12.1. If we reasonably determine that the Grocery Products are Non-Compliant then we may reject the Grocery Products in accordance with this clause 12.
- 12.2. **Non-Compliant** means the Grocery Products:
 - (a) are not delivered within the agreed delivery timeframe or during the scheduled delivery window (if applicable);
 - (b) are not in Acceptable Condition as defined in these Terms; or
 - (c) have use by or best before dates which we reasonably consider to be insufficient for distribution and resale by us in the normal course of business.
- 12.3. For any Non-Compliant Grocery Products that are fresh produce and do not meet the fresh produce specifications at <https://www.foodstuffs-exchange.co.nz/managing-your-products/fresh-specifications/fssi-product-specifications> we will:
 - (a) within 24 hours of delivery, notify you that the fresh produce is Non-Compliant and that it is rejected;
 - (b) within 48 hours of delivery, advise you in writing of the reasons the fresh produce is rejected as Non-Compliant; and
 - (c) not reject any Non-Compliant fresh produce after we have already accepted it as being in Acceptable Condition.
- 12.4. For Non-Compliant Grocery Products that are not fresh produce, we will advise you promptly in writing that the Grocery Products are Non-Compliant.
- 12.5. For all Non-Compliant Grocery Products (whether fresh produce or otherwise), we will be entitled at our discretion to:
 - (a) return the Non-Compliant Grocery Products to you at your own cost;
 - (b) require you to collect the Non-Compliant Grocery Products from us at your own cost;
 - (c) require you to pay us our reasonable costs incurred in examining and storing the Non-Compliant Grocery Products pending return to you or collection by you; and/or
 - (d) require you refund or credit us for the Non-Compliant Grocery Products.
- 12.6. Any claim made by us under the above clause 12.5 (**Claim**) will be made within a reasonable time (and in any event, no later than 30 days after delivery of the Grocery Products) and you agree that the amount of any Claim may be set-off against a future amount payable by us to you.

13. Supplier obligations and warranties

- 13.1. You must:
 - (a) maintain adequate premises, facilities, equipment and do all other things necessary to ensure that the Grocery Products will be delivered to us in Acceptable Condition and are stored and handled in accordance with our Policies and Compliance Requirements and any other applicable laws;
 - (b) permit us on reasonable notice to audit or inspect the condition of your premises, facilities and equipment used for storage and handling of the Grocery Products;
 - (c) not supply any Grocery Products which do not comply with the warranties in 13.2;
 - (d) immediately notify us if you become aware of a suspected or actual defect in any of the Grocery Products; and
 - (e) support and comply with the requirements of any recall programme for the Grocery Products initiated by any governmental agency or other relevant authority, or reasonably by us or a Foodstuffs Affiliate.
- 13.2. On each occasion that you supply us with Grocery Products, you warrant that:
 - (a) you will supply us with the agreed or requested quantity of Grocery Products in accordance with each Accepted Purchase Order;

- (b) the Grocery Products are manufactured, grown, extracted, produced, packaged, labelled, presented, stored and/or supplied in compliance with the Agreement, our Policies and Compliance Requirements, and any applicable laws;
 - (c) the Grocery Products are in Acceptable Condition and are fit for sale or supply by Foodstuffs South Island Limited to Foodstuffs Affiliates and by Foodstuffs Affiliates to the public (as applicable);
 - (d) the Grocery Products, any packaging, artwork, get up or design of the Grocery Products, and the supply of the Grocery Products to us does not infringe any third-party Intellectual Property Rights; and
 - (e) the Grocery Products will be free from any charge, security interest or encumbrance at the time that they are delivered to us.
- 13.3. You further warrant and represent that you:
- (a) have authority to enter into the Agreement; and
 - (b) 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 Grocery Products.

14. Wastage and Ullage

- 14.1. We may require you to make a payment to us in respect of any Grocery Products that are ~~unfit for sale (Wastage Payment), as provided for in the Commercial Terms~~discovered or determined not to be in Acceptable Condition and which occurred prior to us being in effective control of the Grocery Products (Wastage Payment).
- 14.2. We may only require you to pay a Wastage Payment where:
- (a) such wastage is caused mainly by your act or omission (or that of your contractor or agent) whether by negligence, breach of this agreement or otherwise,~~regardless of which party has control of the relevant Grocery Products at the time of the wastage;;~~
 - (b) the Wastage Payment is reasonable having regard to our costs incurred by the wastage;
 - ~~(c) —we have taken reasonable steps to mitigate those costs incurred by us; and~~
- ~~(d)~~(c) we make a claim in writing for the Wastage Payment no later than 6 months after we receive the relevant wastage, which sets out a clear and full written explanation as to why we consider the Wastage Payment is reasonable in the circumstances ~~and why the above clauses (a) to (c) are satisfied.~~
- 14.3. **Vendor Ullage:** We may agree a vendor ullage or minor damage allowance payment with you in lieu of us claiming for minor damage to Grocery Products, as provided for in the Commercial Terms.

15. Stocking Fee

- 15.1. ~~We~~Subject to clause 15.2, we may require you to pay us a stocking fee as a condition of us stocking or listing certain Grocery Products to be supplied by you (**Stocking Fee**), as provided for in Commercial Terms.
- 15.2. We may only require you to pay a Stocking Fee where:
- (a) the relevant Grocery Products have not been stocked, displayed or listed by us during the preceding 365 days in 25% or more of our stores;
 - (b) 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 Grocery Products; and
 - (c) we give you a clear and full written explanation as to why we consider that the matters in (a) and (b) are satisfied.
- 15.3. This clause 15 is subject to clause 17 (Promotions) and does not apply if the Stocking Fee is made in relation to a Promotion.

16. Business Activity Fee

- 16.1. ~~We~~Subject to clause 16.2, we may require you to pay us a business activity fee for our business activities such as merchandising (including stocking shelves and setting up displays), opening or refurbishing of a store, or transport of Grocery Products within our business operations (**Business Activities**), as provided for in Commercial Terms (**Business Activity Fee**).
- 16.2. We may only require you to pay a Business Activity Fee where:
- (a) the amount of the Business Activity Fee is reasonable in the circumstances, having regard to:
 - (i) the likely benefits to you from the Business Activities;
 - (ii) the likely benefits to us from the Business Activities;

- (iii) the costs borne, or contributions made, by us for the Business Activities; and
- (b) we give you a clear and full written explanation as to why we consider:
 - (i) the Business Activity Fee is reasonable in the circumstances; and
 - (ii) the Business Activity Fee is permitted by the Agreement.

17. Promotions

17.1. **Funding Promotions:** From time to time, we may agree with you to run a Promotion for certain Grocery Products. We may require you to fund part or all of the costs of the Promotion (**Promotion Contribution**), where:

- (a) the Promotion Contribution is reasonable in the circumstances, having regard to:
 - (i) the likely benefits to you from the Promotion;
 - (ii) the likely benefits to us from the Promotion;
 - (iii) the costs borne, or contributions made, by us for the Promotion; and
- (b) we give you reasonable written notice before holding the Promotion.

17.2. If requested by you in writing, we will give you a clear and full written explanation no later than 20 working days after receiving the request as to why we consider that:

- (a) the Promotion Contribution is reasonable in the circumstances; and
- (b) the Promotion Contribution is permitted by the Agreement.

17.3. **Funded Promotions:** If we order Grocery Products from you in connection with a Promotion at a promotional price, we will:

- (a) ensure that the basis on which the quantity of the Purchase Order calculated is transparent; and
- (b) agree to repay you the Commercial Terms on what happens portion of the promotional funding relating to any of the Grocery Products supplied sold at a non-promotional price but which remain unsold at the end of the Promotion period;
- (c) not cancel an Accepted Purchase Order or reduce the volume of the Accepted Purchase Order by more than 10% without your written consent, unless:
 - (i) we have given you reasonable written notice of the cancellation or reduction; or
 - (ii) we 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 do not have to obtain your written consent to cancel or reduce the Accepted Purchase Order.

18. Right of set-off

18.1. Without limiting the below clause 18.2, you agree that the below items in (a) to (g) may be either deducted from the invoiced Price of the Grocery Products by you, deducted from the payment for the Grocery Products by remittance by us, or invoiced separately by us to you:

- (a) Permitted Charges (clause 9)
- (b) Claims for Non-Compliant Grocery Products (clause 12)
- (c) Wastage Payments (clause 14)
- (d) vendor ullage payment or minor damage allowance (clause 14)
- (e) Stocking Fees (clause 15)
- (f) Business Activity Fees (clause 16)
- (g) Promotion Contributions (clause 17)

18.2. We may, where reasonable in the circumstances, and as agreed in writing with you, set off any amounts you owe us or any Foodstuffs Affiliates under the Agreement or otherwise (including any rebates, charges or credits), against any amounts we owe you under the Agreement or otherwise.

18.3. If you make a written request to us, we will give a clear and full written explanation to you as to how the set-off was calculated, why we consider that the set-off is reasonable in the circumstances and why we consider that the Agreement provides for the relevant amount to be set -off.

19. Delisting

19.1. We may at any time decide for genuine commercial reasons to Delist a Grocery Product in accordance with the notice requirements in this clause 19 and any Commercial Terms.

19.2. For the purpose of clause 19.1, **genuine commercial reasons** includes but is not limited to:

- (a) your failure to meet reasonable quality or quantity requirements as agreed with us in respect to the Grocery Products;

- (b) failure of the Grocery Products to meet our reasonable commercial sales or profitability targets as notified to you in, or in accordance with these Terms or any Commercial Terms;
 - (c) your persistent failure to meet our reasonable delivery requirements as notified to you from time to time in accordance with the Agreement.
- 19.3. We will give you reasonable written notice of our decision to Delist the Grocery Products, setting out the **genuine commercial** reasons for Delisting the Grocery Products and informing you of your right to have the decision to delist reviewed by us.
- 19.4. The notice requirements in clause 19.3 above do not apply if:
- (a) time is of the essence (including for Grocery Product recalls, withdrawals or safety issues); or
 - (b) there are persistent issues with supply of the Grocery Product that have resulted in us being out of stock or stocked at significantly reduced levels,
- in which case we may Delist the Grocery Products immediately on written notice to you, explaining why we consider that time is of the essence or there are persistent issues with supply (as applicable).
- 19.5. From the date advised by us, the Grocery Products will be Delisted, and we will be under no further obligation to purchase the Grocery Products from you.
- 19.6. Grocery Products that are Delisted will need to be removed from our premises (including DC, store or Foodstuffs Affiliate premises) by you or sold through to store. Where the stock is not removed within four weeks of the date you were advised of the Delisting, we will claim a credit for the remaining stock and you will be required to collect the same at your cost. If you fail to collect the Delisted stock within a reasonable timeframe, then we may dispose of the stock and recover the costs of disposal from you.
- 19.7. Delisting of an individual Grocery Product shall have no effect on the terms of the Agreement, which will otherwise remain in full force in respect of all other Grocery Products.
- 19.8. We shall have no liability to you for any loss whatsoever in connection with the Delisting of a Grocery Product.
- 19.9. If you make a written request for a statement of our genuine commercial reasons for the delisting, or any information relating to the delisting, we will promptly comply in writing with such request.
- 19.10. If you make a written request for review of our decision to Delist the Grocery Product, we will promptly review the decision regarding the Delisting and provide you with written notice of the review outcome including the basis for that decision.

20. Range Reviews

- 20.1. We may from time to time carry out a range review of the Grocery Products supplied by you (**Category Review**).
- 20.2. Within a reasonable time before conducting a Category Review, we will provide you with clearly expressed written notice of:
- (a) the purpose of the Category Review; and
 - (b) the key criteria governing ranging decisions.
- 20.3. Following the Category Review, we will provide you with a reasonable period of time to discuss the outcomes of the review, including the basis for our final decisions.

21. Overstocked and Dated Stock

- 21.1. Where we are Overstocked with a Grocery Product we may, with at least four weeks written notice, ask you to reduce the level of stock by selling it through to store or we may claim a credit for the Overstocked Grocery Product and ask you to come and collect it.
- 21.2. Where **we have there is** Dated Stock **which you have effective control over** then we may claim a credit for the Dated Stock and ask you to come and collect it. Where you require the Dated Stock to be disposed of by us, we may charge a reasonable fee to cover the cost of disposal. We will give you reasonable written notice that stock may become Dated Stock.

22. Term and Termination

- 22.1. The Agreement will commence on the date that you sign these Terms (including by electronic means through the Foodstuffs eXchange portal) and will continue unless either party terminates the Agreement in accordance with this clause 22.
- 22.2. Either party may give the other party 90 days' notice of termination of the Agreement.
- 22.3. Either party may terminate the Agreement immediately on written notice in the event:
- (a) the other party is declared or becomes insolvent, is unable to pay its debts when they fall due, or is presumed unable to pay its debts in accordance with any applicable legislation; or

- (b) a liquidator, receiver, manager, administrator, mortgagee, or similar official is appointed over all or a substantial part of the other party's assets or undertakings; or
 - (c) an application or order is made for the winding up of the other party or any steps are taken to pass a resolution for the winding up of the other party or dissolution; or
 - (d) the other party enters into, or resolves to enter into, any arrangement, composition, or compromise with, or assignment for the benefit of their creditors or any class of them; or
 - (e) any event or circumstance having a substantially similar effect to any of the events specified above happens in respect of the other party; or
 - (f) the other party disposes of all or a substantial part of their business as it relates to the supply of the Grocery Products.
- 22.4. Where the Agreement is terminated under this clause 22, such terms will continue to bind the parties in connection with all transactions relating to the Grocery Products entered into prior to termination. You will satisfy all outstanding orders and deliveries up to and including the termination date.
- 22.5. This clause 22 shall not affect any clause which is intended to survive termination or expiry of the Agreement, including but not limited to this clause 22 (Term and Termination), clause 23 (Indemnity), clause 24 (Intellectual Property) and clause 27 (Confidentiality).

23. Indemnity

- 23.1. You indemnify us and all Foodstuffs Affiliates against all losses, liabilities, damages, costs (including reasonable legal costs on a solicitor/client basis and disbursements), expenses and any other charges incurred or paid by us (**Loss**) arising out of or in connection with:
- (a) your breach of the Agreement or any other agreement between us or any applicable laws;
 - (b) any negligence by you or on your behalf in connection with your supply of the Grocery Products under the Agreement;
 - (c) any recall or withdrawal of Grocery Products (whether initiated by you, us, any Foodstuffs Affiliate, or ordered by a government agency or other relevant authority) due to a potential risk to the public in relation to the Grocery Products, non-compliance with any applicable laws, or any defects or faults in the Grocery Products;
 - (d) any claim or complaints brought against us or a Foodstuffs Affiliate by a consumer of the Grocery Products under the Consumer Guarantees Act 1993;
 - (e) any death or personal injury, or any loss or damage to our, or a Foodstuffs Affiliate's or any third party's real or personal property, caused by your act or omission;
 - (f) any use or consumption of the Grocery Products by our customer or the customer of a Foodstuffs Affiliate; or
 - (g) any threatened or actual claim of infringement of a third party's intellectual property rights, except to the extent that the Loss is directly attributable to our negligence or wrongful act or omission.

24. Intellectual Property

- 24.1. In respect of any intellectual property used in or arising from the manufacture, supply and resale of the Grocery Products:
- (a) All pre-existing intellectual property that is subject to an Intellectual Property Right, including branding, packaging and advertising, remains the property of the relevant owner as at the date of the Agreement (whether you or us). This clause 24.1(a) does not create, confer or extend any of your Intellectual Property Rights.
 - (b) In developing or producing private label range Grocery Products, we will not infringe any Intellectual Property Rights held by you in relation to the Grocery Products, including Intellectual Property Rights in branding, packaging and advertisement.
- 24.2. You may not use our Intellectual Property Rights without first obtaining our prior written approval.
- 24.3. You grant us and any relevant Foodstuffs Affiliate (as applicable) a perpetual, non-exclusive, royalty-free licence to download, use, **and** copy **and adapt** your Intellectual Property Rights (including any Grocery Product images, trade marks or promotional material) in connection with the use, marketing and sale of the Grocery Products by Foodstuffs Affiliates. We are entitled to take our own photographs of the Grocery Products to be used by us or the relevant Foodstuffs Affiliate (as applicable) to advertise or promote the Grocery Products.

25. Force Majeure

- 25.1. Notwithstanding any other provision of the Agreement, neither we or you will be liable for any failure or delay in complying with any obligation under the Agreement if:
- (a) the failure or delay arises or is caused by circumstances beyond the reasonable control of a party (**force majeure event**); and
 - (b) that party, on becoming aware of the force majeure event, promptly notifies the other party in writing of the nature of, the expected duration of, the obligation(s) affected by, and the steps being taken by that party to mitigate, avoid or remedy, the force majeure event; and
 - (c) that party uses its best endeavours to:
 - (i) mitigate the effects of the force majeure event on that party's obligations under this Agreement;
 - (ii) perform that party's obligations which are not affected by the force majeure event; and
 - (iii) perform that party's obligations under this Agreement on time despite the force majeure event.
- 22.2 Performance of any obligation affected by a force majeure event will be resumed as soon as practicable after the termination or abatement of the force majeure.

26. Insurance

- 26.1. You must obtain and maintain both public liability and product liability insurance cover of not less than \$10,000,000 (or such other amount agreed by us in the Commercial Terms) for any one claim with a reputable insurer and will provide us with proof of such insurance coverage on request by us in writing.

27. Confidentiality

- 27.1. The parties agree that all information disclosed and received between the parties and/or otherwise in connection with the supply of Grocery Products under the Agreement, including information relating to Grocery Product development, proposed promotions or pricing (**Confidential Information**), must be treated as confidential at all times.
- 27.2. 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.
- 27.3. Both parties must establish and monitor systems to ensure compliance with clause 27.2.
- 27.4. This clause 27 does not apply:
- (a) to information that:
 - (i) is publicly available; or
 - (ii) comes into possession or knowledge of a party:
 - A. independently of the other party; and
 - B. without any breach of subclause 27.2; or
 - (b) 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.

28. Dispute Resolution

- 28.1. If any dispute arises out of, or in connection with, the Agreement (**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**).
- 28.2. 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:
- (a) Neither party shall commence proceedings against the other without first complying with this clause 28.2.
 - (b) The parties will engage with each other in good faith and will use all commercially reasonable endeavours to resolve any Dispute that may arise under the Agreement.
 - (c) A party claiming a Dispute shall within 90 days of the Dispute arising, give written notice to the other party detailing the nature of the Dispute (**Dispute Notice**).
 - (d) The contract managers of each party will attempt to resolve the Dispute through direct negotiation.
 - (e) If the contract managers have not resolved the Dispute within 10 Working Days of the Dispute Notice, they will refer it to the parties' senior managers for resolution.

- (f) If the senior managers have not resolved the Dispute within 10 Working Days of the Dispute being referred to them, the parties may, by agreement, refer to Dispute to mediation or some other form of alternative dispute resolution.
 - (g) If a Dispute is referred to mediation, the mediation will be conducted by a single mediator agreed by the parties or, if they cannot agree, appointed by the President of the New Zealand Law Society (or the President's nominee). Each party will pay its own costs of mediation or alternative dispute resolution.
- 28.3. If there is a Dispute, each party will continue to perform its obligations under the Agreement as far as practical given the nature of the Dispute.

29. Wholesale Customer Supply

- 29.1. We may supply the Grocery Products to other third-party wholesale customers that are not Foodstuffs Affiliates (**Wholesale Customers**) if you have agreed in writing to participate in our wholesale offer under Part 3 of the Grocery Industry Act.

30. Grocery Industry Law

- 30.1. The Parties acknowledge that this Agreement is subject to 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 (Grocery Industry Law).Law.**
- 30.2. The parties agree to adhere to the Grocery Industry Law and give effect to its provisions in their dealings with each other.

31. Responsible and Ethical Sourcing

- 31.1. You must comply with our Responsible and Ethical Sourcing Policy which can be found on our website at <https://www.foodstuffs-exchange.co.nz/>

32. Notices

- 32.1. Any notice or other communication given under this agreement must be in writing and notified to the contact person nominated by a party from time to time. The parties will notify each other of any change in address for service or contact details.

33. General

- 33.1. **Governing law:** The Agreement is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of the Agreement.
- 33.2. **Waiver:** No failure or delay by a party to exercise any right, power, or remedy arising under the Agreement or on a Termination Event will operate as a waiver of that right, power or remedy. The single or partial exercise of any right, power, or remedy or a Termination Event does not preclude a party exercising any other right, power or remedy, or its further exercise.
- 33.3. **Invalidity:** If any one or more of the provisions in the Agreement is invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not in any way be affected, prejudiced or impaired.
- ~~33.4. **Amendment:** Subject to clause 1.4, any variations to the Agreement must be agreed by both parties and recorded in writing and signed by an appropriate officer of each party to be binding.~~

~~33.5.~~33.4. **Assignment and subcontracting:** You may not assign, sell, subcontract, transfer or otherwise dispose of any right or obligation under this Agreement without first obtaining our written consent, such consent not to be unreasonably withheld or delayed. We may assign, subcontract, transfer or otherwise dispose of any of our rights or obligations under this Agreement without your prior consent.

~~33.6.~~33.5. **Definitions:**

Accepted Purchase Order means a Purchase Order deemed to have been accepted by you in accordance with clause 5.2.

Acceptable Condition means:

- (a) compliant with any reasonable standards or quality specifications required or notified by us to you in writing from time to time for any Grocery Product (including but not limited to the Policies and Compliance Requirements, Commercial Terms, Accepted Purchase Order or other written communications between us);
- (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;
- (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 ullage
- (h) otherwise in acceptable condition (in our sole discretion, acting reasonably) for distribution and resale by us in the normal course of business.

Agreement or Grocery Supply Agreement means these Terms, the Commercial Terms, each Accepted Purchase Order and any other written terms agreed between the parties from time to time.

Commercial Terms has the meaning given in clause 2.1.

Dated Stock means Grocery Products that were delivered in Acceptable Condition but ~~have since been in the DC for such time~~ that we reasonably consider them to be insufficient for distribution and resale by us in the normal course of business having regard to their use by or best before date.

DC means either of the Foodstuffs Distribution Centres located in Christchurch and Dunedin.

Delist and Delisting means either:

- (a) we remove the Grocery Product from the range of Grocery Products sold by the group to which we belong; or
 - (b) we make a decision to remove the Grocery Product from the range of Grocery Products at one or more retail stores in a way that has or is likely to have a material effect on you; or
 - (c) we make a decision to reduce the distribution of the Grocery Product at one or more retail stores in a way that has or is likely to have a material effect on you,
- and **Delisted** has a corresponding meaning.

Foodstuffs Affiliates means any interconnected bodies corporate, any successor, any franchisee or any transacting shareholder of Foodstuffs South Island Limited.

Grocery Industry Act means the Grocery Industry Competition Act 2023.

Grocery Industry Law means the Grocery Industry ~~Competition Act 2023~~, and all associated regulations (including the Grocery Industry Competition Regulations 2023), codes (including the Grocery ~~Supply Code~~), and any amendments from time to time ~~(as defined in clause 30.1)~~.

Grocery Products has the meaning set out in section 5(1) of the Grocery Industry ~~Competition Act 2023~~ and includes fresh produce, meat and seafood, dairy products, bakery products, chilled or frozen food, pantry goods non-alcoholic drinks, personal care products, household consumables and pet care products, ingredients or raw materials for our in-store bakeries and deli services, and includes packaging and labelling and any accessories, documentation or publication accompanying the Grocery Products.

GST means goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

Intellectual Property Rights includes all rights (present and future) including any applications for such rights in respect of copyright, trade marks, patents, designs, protection of confidential information, inventions, know how, product or business concepts, the right to object to the “passing off” of Grocery Products or misleading or deceptive conduct in relation to Grocery Products, and any other identifiable result of intellectual endeavour, whether arising under statute, contract or otherwise.

Overseas Grocery Products means Grocery Products that are delivered from outside of New Zealand.

Overstocked means that we hold more inventory of a specific Grocery Product in our DC than we are able to sell within a reasonable period of time.

Permitted Charges means those deductions set out in the Commercial Terms and which may include settlement terms, DC terms, co-op fees, volumetric terms, [invoice discounts](#), [vendor temporary discounts](#), [site group trading terms](#) and/or vendor ullage.

Policies and Compliance Requirements means our policies, practices, requirements and standards provided to you on the Foodstuffs eXchange (at the date of the Agreement and as updated from time to time [and notified to you](#)), together with your completed compliance pack which contains important safety and quality compliance requirements.

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; and
 - (ii) as agreed between us 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 Grocery Product placement or promotional display):
 - (i) as agreed between us and you; and
 - (ii) that is intended to last for only a specified period.

Price has the meaning given in clause 6.1 and **Pricing** has a corresponding meaning.

Purchase Order means an order submitted by Foodstuffs or a Foodstuffs Affiliate to you requesting that you supply Grocery Products in accordance with the Agreement and which contains any other terms agreed between the parties relating to discounts, delivery terms, rebates, delivery timeframes, service levels or similar matters.

Working Day means any day of the week except Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Matariki Observance Day, and Labour Day, and a day in the period commencing on 24 December in any year and ending on 5 January in the following year, both days inclusive.

33.7.33.6. Interpretation: Unless the context otherwise requires, in these Terms (and the Agreement):

- (a) A Working Day is deemed to start at 9.00 am and finish at 5.00 pm. Any thing done after the end of a Working Day will be deemed to have been done on the next Working Day.
- (b) References to 'written' and 'in writing' include all means of reproducing words in a tangible and permanently visible form (and includes email).
- (c) Reference to a person includes any other entity or association recognised by law and vice versa.
- (d) Words referring to the singular include the plural and vice versa.
- (e) Any reference to a party includes that party's executors, administrators, or permitted assigns or if a company, limited partnership, or any other body corporate, its successors or permitted assigns or both.
- (f) Where a party is made up of more than one person, the liability of each of those persons is joint and several.
- (g) Clause headings are for reference only.
- (h) References to clauses and schedules are references to clauses of and schedules to this agreement.
- (i) Reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time.
- (j) References to statutory provisions or other laws are references to those provisions or laws as amended or re-enacted from time to time.