

# MEMBER BRIEF

## WOOLWORTHS: CODE OF CONDUCT UPDATE

AFGC recently advised members (Members Brief 1 September) of several areas within the Woolworths Deed of Variation that may require careful consideration. The Deed of Variation aims to ensure Woolworths comply with the Food and Grocery Code of Conduct. The following is an update on several of these issues which were raised with Woolworths by the AFGC.

### *The request from Woolworths that suppliers not alter or amend the 'Deed of Variation'*

Woolworths has acted promptly to seek to reassure suppliers that they are willing to negotiate terms. They advise that the request to not alter or amend the Deed of Variation is not intended as 'take it or leave it' and as of 24 September, they have written to all suppliers who have to date received offers to amend their GSAs to clarify that:

- The request not to suggest amendments in the documents themselves is purely for administrative reasons;
- They are happy to consider any amendments that suppliers may propose to the standard GSA;
- Any variations to the standard GSA which may be agreed between the parties will be captured in a supplementary document to be agreed and signed by the parties; and
- If a supplier would like Woolworths to consider proposed amendments to the standard GSA - including if the supplier has already signed the GSA – they should contact [tradingterms@woolworths.com.au](mailto:tradingterms@woolworths.com.au).

### *The clauses in relation to possible future unilateral or retrospective changes.*

Clause 17 of Woolworths' new GSA deals with the circumstances in which Woolworths may unilaterally amend a GSA. Woolworths advise they may only unilaterally amend a GSA if the variation is reasonable in the circumstances (ie. takes account of the impact on the supplier) and the variation:

- is necessary in order for either party to comply with any relevant law; or
- arises from or in connection with changed circumstances described in a Variation Schedule which has been agreed between the parties in writing.

Woolworths approach is that if, in a particular case, due to the unique features of that supply arrangement, Woolworths may require the right to unilaterally amend the GSA should certain circumstances arise, Woolworths and the supplier should negotiate and agree on mutually satisfactory terms. These terms would be set out in the Variation Schedule. Importantly, Woolworths has advised in writing that it cannot, nor would it ever seek to, impose a Variation Schedule on a supplier. As a matter of contract law, any Variation Schedule is necessarily subject to both parties' full and free agreement.

***Incorporation of documents by reference.***

A key part of the Code training which Woolworths has provided to its buyers and other staff who deal with suppliers is to emphasise that all suppliers must be signed up to a written GSA and that all important communications with suppliers (i.e. including but not limited to communications which the Code requires be done in writing) must be confirmed in writing and copies must be retained and appropriately filed.

Woolworths have indicated that there will be some specific additional terms which may need to be agreed with suppliers in particular instances. For example, if they wish to commit to purchase certain minimum volumes from a supplier, or to agree to range a particular product on an exclusive basis, then that will need to be agreed in separate terms negotiated, agreed and signed by the parties.

For general enquiries pertaining to the Code and for information on Code training and other Code related member services you can also contact [Samantha Blake](#) or for specific legal issues please contact [Chris Preston](#).

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