

MEMBER BRIEF

COLES – FGCC OFFER TO VARY AGREEMENTS

Coles became a signatory to the Food and Grocery Code of Conduct (FGCC) on 1 July 2015. During October and November they ran a series of roadshows to outline their approach to vary agreements with existing suppliers to ensure compliance with the FGCC.

Member companies will have recently received communication from Coles providing Terms and Conditions for the supply of goods and details on supporting policy documentation held on the Coles supplier portal.

The proposed Coles Terms and Conditions are available on the Supplier Portal. Like all aspects of a Grocery Supply Agreement, these can be the subject of negotiation and variation. Some areas of particular note include –

- Clause 3 relates to the application of terms and conditions to individual supplies. The language of the section refers to Terms and Conditions (essentially set for all suppliers), Trading Terms (individually negotiated), Policies and Procedures (essentially set for all suppliers, see below) and Orders (where price is offered). Care should be taken to ensure you understand how each of these documents applies and the hierarchy in which they are to be applied.
- Clause 16 relates to variations of Policies and Procedures. It correctly notes that the relevant document version is that which exists at the time the GSA is created, but this clause provides for the notification and acceptance of variations and updates to the Policies and Procedures. Aside from highlighting the importance of Supplier Portal registration, this clause essentially permits unilateral variation of the terms of your GSA (as policy documents are incorporated by reference). You should note this clause, the mechanism it provides for objection, and also that the FGCC limitations relating to retailer unilateral variation (Code clause 9) would apply.
- Clause 28 relates to dispute resolution. Such clauses requiring dispute processes ahead of litigation are common in commercial contracts, but you should note that the clause does not preclude you from seeking your own independent legal advice nor from making a complaint to the ACCC.
- Clause 31 is a ‘gag’ clause that you should note and consider.
- As with all contracts, you need to read documents carefully to make sure you understand the deal on offer. Clause 17.1(i), for example, uses the undefined term “chain of responsibility requirements”, clause 18 refers to “all loss” not “all reasonable loss”, and clause 21 provides for retailer access to premises. If in need to assistance, have all GSA documents reviewed by legal advisers.

Next steps

Member companies should evaluate the Terms and Conditions provided to them for consideration, and should seek legal advice if questions remain. If you consider that the Terms and Conditions provided to you does not comply with the FGCC's requirements, you should contact the retailer with suggested amendments.

AFGC operates an assessment line to provide assistance to members on whether a specific practice may be covered by the Code and, if so, what options exist to seek a remedy. To access, please contact [Chris Preston](#) at the AFGC. For general enquiries pertaining to the Code you can also contact [Samantha Blake](#).

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