

# GROCERY SUPPLY AGREEMENTS

## A FOOD AND GROCERY CODE OF CONDUCT GUIDE

The trading relationship between retailers and suppliers can often include a number of different agreements, contracts and conditions. These include trading terms, policies and procedures, supply chain agreements, joint business plans and purchase orders.

### INTENT

The Grocery Supply Agreement (GSA) is designed to create visibility and clarity around the trading relationship with a retailer. GSA is an umbrella term that captures all agreements (including terms and conditions) between a supplier and retailer or wholesaler for the supply of groceries.

A supplier that does not have a document titled "GSA" will still be covered by all provisions and protections offered within the Code.



## RELEVANT FGCC PROVISIONS

### Part 2: Grocery Supply Agreements

- » The GSA must be in writing
- » The retailer or wholesaler must keep the GSA for 6 years after the agreement ends.

The GSA must cover:

- » Any requirement the retailer has in respect of the delivery of groceries
- » Any circumstances in which the retailer may reject the groceries
- » The period within which the retailer must pay the supplier and the circumstances in which any payment, or part of a payment, may be withheld or delayed
- » If the agreement is intended to operate for a limited time, the term of the agreement
- » In clear terms, any quantity or quality requirements relating to the groceries
- » If the agreement provides for termination by one or more parties to it - the circumstances in which it may be terminated.

The retailer or wholesaler must not vary the GSA without consent of the supplier and must not vary the GSA with retrospective effect, unless:

- » The GSA provides expressly for the variation, sets out the circumstances in which the variation can be made and, if the variation involves a quantitative adjustment to supply, sets out the basis or methodology for calculating the adjustment.
- » The variation must be reasonable and the retailer or wholesaler must give the supplier reasonable notice in writing of the terms of the variation, and the retailer/wholesaler's reasons for seeking the variation.

REMEMBER TO KEEP YOUR FOOD & GROCERY CODE TRAINING UP TO DATE. CONTACT THE [AFGC](#) OR [NEXTGEN](#)

## SUPPLIER CONSIDERATIONS

- » A GSA is not necessarily a single document. It may include:
  - Standard terms and conditions
  - Trading terms
  - Policies and procedures
  - Supply chain agreements
  - Joint business plans
  - Purchase orders
  - Freight agreements
  - Web portal access terms and conditions
  - Promotional and other spend agreements
  - New product listing agreements
  - Variation notices
  - Settlement terms
- » Suppliers should consider what their business needs to make a deal profitable both now and into the future and factor this into GSA negotiations. This may include performance expectations, definitions around 'reasonable notice' and the manner in which the agreement can be altered.
- » Suppliers and retailers should note that a new document, communication (such as email) or announcement that changes the position of anything in the existing GSA can be seen as a variation of a GSA (for example, a retailer telling a supplier via its online portal that all goods must be delivered in full pallet loads only and unloaded by retailer staff at supplier's cost could be a variation and be caught by the Code if this changed the delivery terms under the GSA).
- » Suppliers should avoid making assumptions or leaving things to a later date. Upfront certainty and clarity about a GSA will provide greater security, save costs for both parties in the future and minimise supply disruptions.
- » A GSA does not need to be a standard agreement. If a supplier has a new and innovative way of thinking about price, supply chain, marketing etc, it is open to the parties to negotiate this into the GSA to bring it to reality.

## WHAT SHOULD HAPPEN

- » Suppliers should have all agreements in writing and keep a record of all agreements (and variations to the agreement).
- » Any negotiation or implementation regarding any aspect of the trading relationship between a retailer and supplier should be governed by the principles of the Code, in particular the requirement to deal in good faith.

## COMING SOON

Following the 2018 review of the Code, the Government agreed to remove the opt out option (clause 10(2)) in relation to the ban on retrospective variations. The Government will also amend the Code to make it clear that that the term GSA applies to all agreements between a supplier and retailer which relate to the supply of grocery products.

WE WOULD LIKE TO THANK BAKER MCKENZIE FOR THEIR SUPPORT IN PREPARING THIS PUBLICATION.

All companies should seek independent legal advice when considering matters under the Food and Grocery Code of Conduct.