

DRAFT Wholesale Agreement - XXXXXXXX & NZGW

Date XXX

Parties XXX (Customer)

and

Woolworths New Zealand Limited, through its NZ Grocery Wholesalers division, of 80 Favona Road, Favona, Auckland (Supplier)

Background

This agreement sets out the terms on which:

- (a) the Supplier agrees to supply Products to the Customer; and
- (b) the Customer agrees to purchase Products from the Supplier.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement, capitalised terms have the meaning set out below.

Acceptable Quality has the meaning given to the term "acceptable quality" in section 7 of the *Consumer Guarantees Act 1993*.

Affected Party means the party described in clause 16.

Brand means any trade mark, name, design, brand or logo, and in relation to any Product, means a Product bearing such trade mark, name, design, brand or logo.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Auckland, Palmerston North or Christchurch.

Claim means any claim, demand, action or proceeding made by a party or any of its Related Companies against any other party or any of its Related Companies under or in connection with this agreement.

Commencement Date means XXXXXXXX

Confidential Information means in relation to a party (whether in material form or not), all information and data relating to that party (or any of its Related Companies) and its suppliers, retail network members, staff, business dealings, contracts, customers, computer operations and marketing, sales, purchases and business activities, financial and sensitive corporate and commercial information provided to the other party or which the other party (or any of its Related Companies) otherwise acquires in connection with any dealings pursuant or in relation to this agreement and which:

- (a) is designated by the relevant party as confidential;
- (b) this agreement provides is confidential to that party; or

- (c) should reasonably be regarded in all circumstances as confidential to the relevant party.

Consequential Loss means any:

- (a) loss or damage which does not naturally or directly result in the ordinary course of events from the breach, action or inaction in question;
- (b) indirect loss, being loss which may reasonably be supposed to have been in the contemplation of the parties at the time they made this agreement, as the probable result of the breach; or
- (c) special loss or damage, loss of profit or anticipated profit, economic loss, loss of revenue, loss of opportunity, loss of anticipated savings or loss of goodwill,

whether present or future, fixed or unascertained, actual or contingent.

Customer Representative means the person specified in clause 20(a) or such other person notified in writing by the Customer to the Supplier from time to time.

Delivery Location has the meaning given in clause 7.2.

Dispute has the meaning given in clause 18.2(a).

Expiry Date means the second anniversary of the Commencement Date.

Force Majeure Event means for any party as an Affected Party, any act, event or cause which is beyond the reasonable control of the Affected Party, including:

- (a) an act of God, accident of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or Law), martial Law, fire, lightning, flood, cyclone, earthquake, landslide, explosion, power shortage, transportation embargo or failure or delay in transportation, manufacturing plant interruption, epidemic, pandemic, quarantine, radiation or radioactive contamination;
- (b) action or inaction of a government (not being contractual in nature) or other competent authority (including a court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; and/or
- (c) a strike or other serious industrial action.

Grocery Act means the *Grocery Industry Competition Act 2023*.

GST Law means the *Goods and Services Tax Act 1985*.

Initiating Party means the party described in clause 18.3(a).

Insolvency Event means:

- (a) a receiver, manager, receiver and manager, trustee, administrator, or similar officer is appointed in respect of a person or any asset of a person (and that appointment is not withdrawn or dismissed within 7 days);
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation (and that appointment is not withdrawn or dismissed within 7 days);
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:

- (i) appointing a person referred to in paragraphs (a) or (b) above;
 - (ii) winding up a corporation; or
 - (iii) proposing or implementing a creditors' scheme of arrangement;
- (d) a moratorium of any debts of a person, or an official assignment, or a composition, or an arrangement (formal or informal) with a persons' creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared, or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days; or
- (e) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any Law to be, insolvent or unable to pay its debts.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the *World Intellectual Property Organisation 1967*.

Law means all applicable laws, statutes, regulations, ordinance, codes, standards, authorisations, licences, registrations, accreditations, approvals, permits, exemptions and rulings of any government, governmental or semi-governmental body.

Monthly Forecast has the meaning given in clause 5(d).

NZGW Price List has the meaning given to that term in clause 3.2(c).

Order has the meaning given to that term in clause 6(a).

Order Roster Schedule has the meaning given to that term in clause 6(c).

Personal Information has the same meaning as in the *Privacy Act 2020*.

Personnel means a party's directors, officers, employees, agents, contractors and subcontractors who are performing functions in connection with this agreement from time to time. For clarity, upstream suppliers of Products to the Supplier are not "Personnel" of the Supplier.

Pricing Principles means those principles in relation to pricing published by the Supplier (being a 'regulated grocery retailer') in accordance with section 38(1) of the Grocery Act (including as part of the publication of any general principles for wholesale supply), as amended from time to time by the Supplier.

Privacy Law means any Law which relates to the privacy, confidentiality or use of any information about individuals including the *Privacy Act 2020*.

Products means each of the SKU's within the Range and "**Product**" means any one of them (as applicable).

Product Purchase Price has the meaning given in clause 8.2(a).

Quarter means a three month period commencing on 1 January, 1 April, 1 July and 1 October, with the first Quarter (which may be shorter than 3 months) for the purposes of this agreement, commencing on the Commencement Date.

Range means the range of Products that are available for the Customer to purchase from the Supplier under this agreement.

Receivable Record has the meaning given in clause 6.5(b).

Recipient Party means the party described in clause 18.3(a).

Rejected Product has the meaning given in clause 7.7(a).

Related Company has the same meaning as in the *Companies Act 1993*.

Relevant Obligation has the meaning given in clause 16.

Representative means:

- (a) in relation to the Supplier, the Supplier Representative; and
- (b) in relation to the Customer, the Customer Representative.

Requested Product has the meaning given in clause 3.2(e).

Supplier Group means the Supplier and each of its Related Companies.

Supplier Representative means the person specified in clause 20 or such other person notified by the Supplier to the Customer from time to time.

Term has the meaning given in clause 2.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely; and if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (b) a reference to includes or including should be construed without limitation;
- (c) a reference to a party to this agreement or another agreement or document includes the party's successors, permitted substitutes and assigns (and, where applicable, the party's legal personal representatives);
- (d) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it; and
- (e) a reference to a year or to a month is to a calendar year or a calendar month respectively; and a reference to dollars and \$ is to New Zealand currency.

2. Term

2.1 Initial Term

This agreement commences on the Commencement Date and ends on **XXXXXX** (Term), unless terminated or extended in accordance with the terms of this agreement.

2.2 Option

- (a) The Supplier grants to the Customer an option to extend the Term of this agreement in accordance with this clause.

- (b) The Customer may require the Supplier to extend the Term for an additional 2 year period commencing on the date immediately after the Expiry Date of the Term. (**Option Term**). To exercise the option, the Customer must give the Supplier notice in writing at least 12 weeks before the Expiry Date, or as otherwise agreed mutually in writing. This is to enable the Supplier to order in time to supply to forecast, if the Supplier wishes to extend the Term.
- (c) Any extended or additional period of supply granted would be undertaken using the latest version of the NZGW Wholesale Supply Agreement that was available.

3. Products

3.1 Supply and purchase

The Supplier agrees to supply the Products to the Customer, and the Customer agrees to purchase the Products from the Supplier, on the terms of this agreement for the Term.

3.2 Product Range

- (a) The parties will agree to the initial Range.
- (b) All Products supplied to the Customer will be in either inners or outers, with no facility for single unit pick available from any WWNZ DC.
- (c) The '**NZGW Price List**' will be issued by the Supplier to the Customer from time to time and will detail the Products available for supply and the corresponding Product Purchase Price for those Products by pricing region. The Supplier reserves the right to make changes to the NZGW Price List during the Term, provided such changes to the Product Purchase Price are notified in accordance with clause 8.2(b).
- (d) The Supplier may add and remove Products from the Range from time to time, provided that any removal of Products from the Range complies with clause 3.3.
- (e) The Customer may request in writing to the Supplier to add a new product to the Range (**Requested Product**). The Supplier may accept or reject the Customer's request in respect of a Requested Product in its absolute discretion.

3.3 Removal of Products and discontinued Products

- (a) The Supplier may remove any Product from the Range for any reason. It will endeavour to provide the Customer with as much notice as possible of any such removal.
- (b) If the Supplier's own supermarket retail business unit decides to delete a Product from its supermarket stores such that the Supplier will not stock that Product in its own stores or resupply that Product to the Supplier's other wholesale customers, then the Supplier will notify the Customer that it will no longer be resupplying that Product to the Supplier's other wholesale customers and:
 - (i) the Supplier may delete the Product from the Range in accordance with clause 3.3(a); or
 - (ii) the parties may agree for the Supplier to continue supplying the Product to the Customer, in which event clause 3.4 below will apply.

3.4 Stock shortages

- (a) The Supplier must use reasonable endeavours to maintain adequate stock levels of Products to satisfy the Customer's forecast demand based on the Monthly Forecasts.
- (b) If the Supplier is not able to fully satisfy an Order within the time for delivery under this agreement, the Supplier must:
 - (i) give written notice to the Customer, setting out the affected Product(s) and the estimated date on which the Supplier will be able to recommence supply of the affected Product(s); and
 - (ii) use reasonable endeavours to implement a solution to rectify the Product shortfall as soon as possible.
- (c) If:
 - (i) the Supplier is unable to fully satisfy an Order for a Product due to inadequate stock levels of the Product; and
 - (ii) the volume of the relevant Product under the Order is within the Monthly Forecast for that Product (on a week-by-week basis),

then the Supplier must give the Customer's Order the same priority (when allocating the Supplier's available stock of the relevant Product) that it applies to its other wholesale customers and any New Zealand supermarket stores operated by any member of the Supplier Group.

3.5 Non-exclusive agreement

Subject to clause 5(e), the Supplier acknowledges that the Customer's entry into this agreement is for the Customer's sole convenience and the Customer may:

- (a) obtain products similar to the Products from another source in the Customer's sole discretion; and
- (b) enter into agreements with other suppliers for the supply of products similar to the Products that are subject to this agreement.

4. Products - Title, Risk and Resale

4.1 Title

Title in all Products supplied by the Supplier under this agreement will pass from the Supplier to the Customer upon receipt by the Supplier of full payment for the Products from the Customer.

4.2 Risk

Risk in all Products supplied by the Supplier under this agreement will pass from the Supplier to the Customer upon delivery to the relevant Delivery Location.

4.3 Products not for resale

The Products supplied under this agreement are expressly intended for resale by the Customer within New Zealand, at the retail premises directly associated with the Customer. The Customer will notify the Supplier of any plan to onsell the Products to other retailers or exporters, so that the parties can discuss the terms and conditions that would apply in respect

of the supply of Products by the Supplier to the Customer that are intended for any such onsale (recognising that the terms and conditions in this agreement are expressly intended for resale by the Customer of Products within New Zealand).

5. Forecasting

- (a) On a monthly basis, the Customer will prepare for the Supplier a proposed forecast of the Customer's anticipated purchase volumes of Products (itemised by Delivery Location, week and SKU) for the relevant month.
- (b) For Products produced locally in NZ a forecast **12 weeks** in advance is required and for indent (imported) lines a forecast of **26 weeks** out is required, these requirements should be included in the "Monthly Forecast" provided to the Supplier.
- (c) Following receipt of a proposed monthly forecast from the Customer in accordance with clause 5(a), the Supplier must promptly accept or reject the proposed forecast. If the Supplier rejects the proposed forecast, then the parties will engage in good faith to agree the forecast for the relevant month.
- (d) Any monthly forecast that is accepted by the Supplier or otherwise agreed between the parties in accordance with clause 5(b) will be the "**Monthly Forecast**" for the relevant month.
- (e) The Supplier will order sufficient volumes of Products to enable it to fulfill the Customer's Monthly Forecast and in return the Customer agrees to:
 - (i) use all reasonable endeavours to purchase the volumes set out in the Monthly Forecast from the Supplier during that period, and
 - (ii) not purchase any equivalent products to the Products in the Monthly Forecast from a third party, until at least the volume set out in the Monthly Forecast has been purchased from the Supplier.

6. Ordering

- (a) The Customer will order Products from the Supplier using a mutually agreed ordering system. Each such order placed by the Customer will be an "**Order**" for the purposes of this agreement, except to the extent that any such order is validly cancelled by the Customer or rejected by the Supplier in accordance with each party's respective rights under this agreement.
- (b) Subject to clause 6(c), each Order is binding on the Customer upon receipt by the Supplier and cannot be withdrawn or varied without the Supplier's written consent.
- (c) The Supplier and Customer will agree to an "**Order Roster Schedule**" for set days for the Order to be received by the Supplier. Any Orders placed prior to and up until 24 hours before the Order Roster Schedule cut-off, are able to be amended by communication from the Customer to the Supplier.

Subject to clause 3.4(c), the Supplier reserves the right not to accept any Order (or part thereof) if the Supplier is unable to fulfil the Order due to a stock shortage.

7. Delivery

7.1 Delivery schedules and specifications

In relation to deliveries:

- (a) the Supplier must deliver the Products under an Order to the nominated Delivery Location for that Order;
- (b) Products must be delivered to the Delivery Location in accordance with the delivery timetable and frequencies that are available from the Supplier; and
- (c) the Supplier will deliver up to a maximum height of 1.8m for pallets and maximum weight of 980kg.

7.2 Delivery Location

Each Order by the Customer must nominate the location for the delivery of the Products (each being a “**Delivery Location**”).

7.3 Delivery lead times

For all Orders received by the Supplier before 5pm on any given day, the Supplier must dispatch and deliver the Order to the relevant Delivery Location in accordance with the timeframes agreed from to time between the parties for that Delivery Location.

7.4 Cold chain requirements

Upon delivery to a Delivery Location:

- (a) chilled Products must be at a temperature no higher than 5°C; and
- (b) frozen Products must be at a temperature no higher than -15°C with no visible signs of thawing,

unless then-applicable food safety regulation specifies other requirements, in which case the Supplier must comply with such requirements.

7.5 Inspection on delivery

- (a) At the time of delivery to a Delivery Location, the Customer’s Personnel must conduct a visual check to:
 - (i) identify and report to the Supplier any discrepancies or damage on the outside of the packaging;
 - (ii) count the number of pallets delivered by the Supplier and reconcile against the receivable record provided by the Supplier;
 - (iii) in respect of any Products that are:
 - A. delivered to the Delivery Location under clause 7.2; and
 - B. secured in a secure tote (including tobacco Products and razor blades),
 count the number of secure totes delivered by the Supplier and reconcile against the receivable record provided by the Supplier; and
 - (iv) check the pallet temperature for any chilled or frozen Products to confirm compliance with clause 7.4.
- (b) Prior to the Supplier’s delivery driver departing the Delivery Location after delivering any Products, the delivery driver and a member of the Customer’s Personnel must each sign a receivable record (provided by the Supplier) to confirm the number of pallets (and, to the extent applicable under clause 7.5(a)(iii), secure totes) delivered

by the Supplier and any other discrepancies (such as missing or excess pallets delivered), damage or other issues identified by the Customer Personnel during any inspection conducted in accordance with clause 7.5(a) (each such record being a “Receivable Record”).

- (c) In respect of each delivery of Products, the parties acknowledge and agree that the signed Receivable Record for that delivery is evidence of:
 - (i) the condition of the pallets delivered (including the temperature on delivery of any chilled or frozen Product pallets) as at the time of delivery; and
 - (ii) the number of pallets delivered.
- (d) The Customer must inspect all Products and notify the Supplier in writing within 2 days after delivery to a Delivery Location if any Product:
 - (i) is damaged, defective or otherwise does not comply with the standards and requirements of this agreement;
 - (ii) has been incorrectly delivered by the Supplier without an Order; or
 - (iii) is missing from the Order.
- (e) If claims are not made within 3 days after delivery to a Delivery Location, the Supplier has no obligation to accept the claim as valid.
- (f) The Customer must provide all evidence reasonably requested by the Supplier to substantiate any notice issued by the Customer in accordance with 7.5(d), including samples of the relevant Products and photographic evidence (and CCTV footage, to the extent applicable in accordance with clause 7.5(g)).
- (g) Delivery of tobacco lines and some other high-value Products (including razor blade lines) may be made by the Supplier in secure totes. The Customer must open each such tote and count the contents under camera. Any claim by the Customer in respect of any Products that are missing or damaged from within a secure tote must be supported by CCTV footage showing evidence of the issue the subject of that claim. The CCTV footage must be provided to the Supplier upon request.

7.6 Ullage

The Customer acknowledges and agrees that an ullage allowance has been built into the Product Purchase Price and as such, claims under the value of \$50 per Order will not be accepted and the Supplier will not be liable for such claims.

7.7 Rejected Products

- (a) If the Customer gives notice to the Supplier in accordance with clauses 7.5(d)(i) or 7.5(d)(ii), the Products that are the subject of that notice will be taken to be rejected by the Supplier, subject to:
 - (i) clause 7.5(e), 7.5(f) and 7.6; and
 - (ii) the Customer being able to demonstrate to the reasonable satisfaction of the Supplier that the Products:
 - A. are damaged, defective or otherwise do not comply with the standards and requirements of this agreement (excluding any damage, defect or non-compliance caused by the Customer or any member of the Customer’s Personnel or any contractor

engaged by the Customer to provide last-mile delivery to the Delivery Locations); or

B. have been incorrectly delivered by the Supplier without an Order,

(each validly rejected Product being a “**Rejected Product**”).

(b) Subject to clause 7.7(c):

- (i) the Customer shall not be obliged to pay the Product Purchase Price for any Rejected Products;
- (ii) if the Customer has already paid to the Supplier the Product Purchase Price (or any part thereof) for any Rejected Product, the Supplier will issue to the Customer a refund or credit note for that amount;
- (iii) the Customer must return Rejected Products to the Supplier unless:
 - A. the Customer reasonably determines it necessary or appropriate (including for public health reasons) to destroy the Rejected Products; or
 - B. the Supplier requests the Customer to destroy or dispose of the Rejected Products; and
- (iv) the Supplier will be responsible for all reasonable costs incurred by the Customer in connection with returning or destroying Rejected Goods, provided that the Supplier:
 - A. takes all reasonable steps to mitigate such costs; and
 - B. obtains the Supplier’s consent prior to incurring any costs in excess of \$5,000.

(c) If any Rejected Product is suitable and safe for resale to the public, the Customer and the Supplier may negotiate in good faith a discounted Product Purchase Price for the Rejected Product. If the parties agree on a discounted Product Purchase Price for a Rejected Product, then:

- (i) that Product will be deemed to have been accepted by the Customer (and will cease to be a Rejected Product); and
- (ii) the Product Purchase Price payable by the Customer for that Product will be the discounted Product Purchase Price agreed between the parties in accordance with this clause.

7.8 Missing Products

If the Customer gives notice to the Supplier in accordance with clause 7.5(d)(iii), then subject to:

- (a) clause 7.5(e), 7.5(f) and 7.6; and
- (b) the Customer being able to demonstrate to the reasonable satisfaction of the Supplier that the missing Products were not delivered to the Delivery Location,

the Supplier will issue to the Customer a credit note for the full Product Purchase Price of the missing Products.

7.9 Pallet hireage

- (a) The Customer must have a CHEP and a LOSCAM account and provide the details to the Supplier to facilitate the transfer of pallets between Supplier and Customer.
- (b) The Customer must organise and complete the de-hire of pallets directly with CHEP. The Supplier will use its reasonable endeavours to assist the Customer with this process if requested to do so, but is not liable for any resulting expenses or losses claimed by CHEP against the Customer

8. Pricing

8.1 Invoice Price

In consideration of the Supplier supplying the Products, the Customer will pay to the Supplier:

- (a) the Product Purchase Price for each Product; and
- (b) any additional costs or fees payable in accordance with clauses 8.3, 8.4 and 8.5.

8.2 Product Purchase Price

- (a) The purchase price payable by the Customer for each Product (on a SKU-by-SKU basis) (such price in respect of any given Product being the “**Product Purchase Price**”) will be determined by the Supplier and set out in the NZGW Price List. Subject to clause 8.2(b), the Supplier reserves the right to change any Product Purchase Price in its sole direction, provided that any such change must comply with the Supplier's then-current Pricing Principles (if any). The Product Purchase Price includes the Supplier's margin, the applicable 'pick and pack' fee (by reference to the relevant distribution centre used by the Supplier to fulfil the Order) and the freight costs associated with the delivery of the Products to the Delivery Location.
- (b) The Supplier must give the Customer:
 - (i) in respect of produce, meat, seafood or other Products with frequent price variation (as reasonably determined by the Supplier), not less than 7 days' notice of any proposed changes in the Product Purchase Price for any of those Products; and
 - (ii) in respect of all other Products, not less than 2 weeks' notice of any proposed changes in the Product Purchase Price for any of those Products, although the Supplier will endeavour to provide more notice than this where it is reasonably able to do so; and
 - (iii) in respect of any 'pick and pack' fee component of the Product Purchase Price (as identified by the Supplier), not less than 6 weeks' notice of any proposed changes, provided that the Supplier agrees that it will not amend this component more frequently than once every quarter.

8.3 Minimum orders

In respect of any Products that are delivered to the Customer directly by the third-party distributor of those Products, the Customer acknowledges that:

- (a) the minimum Order from each of the Supplier's distribution centres is 60 cartons of Product for each Delivery Location. Any order received under the required minimum order quantity will be rejected and the Customer contacted and advised to place another order of the required volume unless the Delivery Location is an agreed third-

party distributor that will receive the 60 carton minimum as a consolidated Order on behalf of the Customer;

- (b) the minimum Order from each of the Supplier's distribution centres can be adjusted by the Supplier with 6 weeks' written notice to the Customer;
- (c) the manufacturer/supplier/distributor (as applicable) may impose surcharges or additional fees if the order volume is below a minimum order value and agreement has been reached between the Supplier and Customer to continue to supply despite not meeting the minimum Order quantity in clause 8.3(a); and
- (d) the Supplier will pass through any additional costs that may be imposed by the manufacturer/supplier/distributor (as applicable).

8.4 Special Orders

- (a) If the Customer places an Order that involves any special or unusual logistics requirements outside the scope of the standard logistics requirements under this agreement (for example only, pick accuracy audits) (each such Order being a "**Special Order**"), the Supplier must promptly notify the Customer of any additional fees or charges that will be payable by the Customer in connection with the Special Order.
- (b) Unless the Customer cancels a Special Order in accordance with clause 6(c) after being notified by the Supplier of any additional fees or charges payable by the Customer in connection with a Special Order, the Customer will be deemed to have accepted the additional fees and/or charges for the Special Order.

8.5 Additional Costs

- (a) If the Supplier identifies any costs or services not covered by this agreement (whether foreseeable or not, and including for example only weekend shifts, enhanced reporting or rerouting transport due to flooding etc), then the Supplier will communicate those costs and/or services to the Customer and the additional charges that the Supplier proposes to pass on to the Customer (**Additional Costs**).
- (b) Without limiting the Supplier's right to vary the Product Purchase Price from time to time in accordance with clause 8.2, the Supplier must not separately charge the Customer for any Additional Costs unless and until the Customer has agreed to those Additional Costs in writing, provided that the Customer acknowledges that if it does not agree to those Additional Costs that may affect or delay the fulfilment of an Order depending on the circumstances.

8.6 Promotional Funding

To the extent that the Supplier is successfully able to secure any promotional funding with the Supplier's own supplier base for its wholesale customers, including the Customer, the Supplier will pass on or make available that promotional funding to the Customer (whether through its Product Purchase Prices, rebates or otherwise). This does not prevent the Customer from having its own promotional programmes and relationships with the Supplier's supplier base.

9. Invoicing and payment

9.1 Invoicing and payment terms

- (a) In respect of each Order, the Supplier will invoice the Customer the Product Purchase Price payable by the Customer for all Products under the Order (and for any additional costs or fees payable in accordance with clauses 8.3, 8.4 and 8.5) and this will be invoiced upon dispatch of the Order to the Delivery Location.

- (b) All invoices will be due for payment 14 days after the invoice date, payable via weekly direct debit.
- (c) A Statement will be issued weekly on a Monday which will summarise all charges on your account and whether it is due now or in the following week
- (d) The due now balance on your weekly Statements, including GST, must be paid via direct debit on the following Monday.

9.2 Dishonoured direct debit

If the Customer fails to pay any amount owing before the applicable due date for payment, then the Supplier may suspend the supply of Products until such time that the outstanding balance is paid.

9.3 Payments by the Supplier and credit notes

If the Supplier owes any amount to the Customer under this agreement:

- (a) the Customer may issue a tax invoice to the Supplier for such amounts if the Customer has made a taxable supply; or
- (b) the Supplier will promptly issue an adjustment note if an adjustment event has occurred for a taxable supply that the Supplier has made,

and the Supplier must promptly pay such amounts owing by way of a credit applied against future invoices issued by the Supplier to the Customer under this agreement.

9.4 GST

- (a) In this clause 9.4, words or expressions which are defined in the GST Law, have the same meaning as in the GST Law; and
- (b) Subject to any other express statement in this agreement, and subject to the provisions set out below, if any supply made under or in connection with this agreement by one party (**Party A**) to the other party (**Party B**) is subject to GST, the consideration otherwise payable by the Party B for that supply will be increased by an amount equal to the GST payable by the Party A.
- (c) If an adjustment event occurs in respect of a supply under or in connection with this agreement such that the GST liability of Party A is different to the amount used to calculate a payment under clause 9.4(b), then the consideration for the supply will be adjusted by:
 - (i) in the case of an increasing adjustment for Party A, Party B paying an amount in money to Party A equal to the amount of the increasing adjustment; or
 - (ii) in the case of a decreasing adjustment for Party A, Party B paying an amount in money to Party A equal to the amount of the decreasing adjustment.
- (d) The amount payable under clause 9.4(c) is due within seven days of Party A or Party B (as applicable) issuing an adjustment note in respect of the adjustment.
- (e) If a payment made by one party to the other party is a reimbursement or indemnification of a cost, expense, loss or liability incurred by that other party, the payment shall be reduced by an amount for which that party, or the representative member of its GST group, is entitled to an input tax credit.

10. Intellectual Property Rights

- (a) Subject to clause 10(b), neither party transfers to the other party any right, title or interest in any of the Intellectual Property Rights of the respective party.
- (b) In respect of Intellectual Property Rights of a party developed by that party under or pursuant to this agreement, or which are pre-existing Intellectual Property Rights of a party provided to the other party for the purposes of this agreement, the party that is the owner of such Intellectual Property Rights grants to the other a royalty-free, limited, non-exclusive, non-transferable right (with no right to sub-licence) to use those Intellectual Property Rights for the Term only, and for the sole purpose of exercising its rights and performing its obligations under this agreement.

11. Product standards and requirements

- (a) Subject to clause 11(b), the Supplier warrants to the Customer that, in respect of all Products supplied under this agreement:
 - (i) the Products are manufactured, grown, extracted, produced, packaged, labelled, presented, supplied and described in compliance with this agreement and all applicable New Zealand laws and industry codes;
 - (ii) the Products are of Acceptable Quality, fit for any usual or customary purpose and fit for sale by the Customer to the public;
 - (iii) the Products are of good material and workmanship, and free from any defect or fault of any kind whatsoever;
 - (iv) the Supplier has the title and the right to sell the Products in accordance with this agreement, free of all encumbrances, and the Customer will enjoy quiet possession of the Products;
 - (v) the ambient packaged Products supplied will have a minimum life on receipt of at least 30 days before the printed "Best Before" or "Use By" date on the Product; and
 - (vi) the chilled perishable Products supplied will have a minimum life on receipt of at least 14 days before the printed "Best Before" or "Use By" date on the Product.
- (b) If a warranty provided by the Supplier under clause 11(a) above is untrue, then to the extent that:
 - (i) the fact, matter or circumstance causing that warranty being untrue was caused or contributed to by any person (including any supplier of Supplier) other than the Supplier; and
 - (ii) the Supplier could not reasonably have avoided the breach caused by that other person,

the Supplier's liability to the Customer for breach of that warranty is limited to any amount that the Supplier recovers from each of its suppliers and the person referred to in sub-clause (b)(i) that is attributable to the Products supplied to the Customer under this agreement in respect of which the relevant warranty is untrue. Subject to clause 13.3, the Supplier must use reasonable endeavours to maximise recovery for the Customer.

12. Product recalls

- (a) If the Customer receives from the Supplier notice of a recall or withdrawal event, then the Customer must promptly identify and withdraw or recall (as applicable) all affected Products.
- (b) If the Customer recalls or withdraws any Products in circumstances where the Supplier has not issued a notice in accordance with clause 12(a), the Customer must immediately notify the Supplier of the recall or withdrawal and promptly provide all information reasonably requested by the Supplier in connection with the recall or withdrawal (as applicable).
- (c) If a Product is withdrawn or recalled by the Customer due to any act or omission of the Supplier or its Personnel, then the Supplier's liability in connection with that withdrawal or recall is limited to all direct, reasonable and substantiated losses suffered or incurred by the Customer in connection with the withdrawal or recall, including the cost of replacing the withdrawn or recalled Products and reasonable administration fees.
- (d) If a Product is withdrawn or recalled by the Customer due to any act omission by any person other than the Supplier or its Personnel (including any person who supplied the Product to the Supplier), then the Supplier's liability in connection with that withdrawal or recall is limited to any amount that the Supplier recovers from that person that is attributable to the withdrawn or recalled Products. Subject to clause 13.3, the Supplier must use reasonable endeavours to maximise recovery for the Customer.
- (e) The Supplier's liability to the Customer in connection with any withdrawal or recall will be proportionately reduced to the extent the withdrawal or recall is caused, or contributed to, by any wrongful act or omission or negligence of the Customer or its Personnel.

13. Liability

13.1 Indemnities

- (a) Subject to clause 13.1(b) and 13.2, the Supplier indemnifies the Customer against all losses suffered or incurred by the Customer in connection with any allegation, claim or proceeding arising in connection with any loss of life, personal injury or disability or property damage caused by any negligent act or omission of the Supplier under (or incidental to) this agreement.
- (b) The Supplier's liability under the indemnity in clause 13.1(a) shall be reduced to the extent that the loss suffered or incurred by the Customer is attributable to the Customer's negligence, any wrongful act or omission by the Customer or the Customer's failure to use reasonable efforts to mitigate the loss.

13.2 Limitations

To the extent permitted by Law and under this clause 13:

- (a) no party will be liable in respect of a Claim unless the party making the Claim gives the other party written notice of the Claim as soon as practicable and in any event within 90 days after becoming aware of the facts, matters or circumstances on which the Claim is based;
- (b) the maximum aggregate liability of the Supplier and its Related Bodies Corporate:

- (i) in connection with the indemnity given by the Supplier under clause 13.1(a) is limited to \$5 million; and
- (ii) in respect of all other Claims made by the Customer, is limited to \$10 million; and
- (c) neither party is liable to the other party for any Consequential Loss in respect of any Claim.

13.3 Pass-through claims

Where the Supplier is required to use reasonable endeavours to maximise recovery for the Customer under each of clauses 11(b) and 12(d), and the Supplier does not make a claim against the supplier or such other person referred to in the relevant clause in respect of products other than the Products supplied to the Customer, then:

- (a) the Supplier may request that the Customer pay the costs of making the claim in respect of those Products supplied to the Customer;
- (b) if the Customer agrees for the Supplier to proceed with the claim, the Customer will pay the reasonable costs of making the claim only in respect of such Products and subject to:
 - (i) the Supplier keeping the Customer informed of all material matters relating to the claim and following the Customer's reasonable instructions in relation to the conduct of the claim;
 - (ii) the Customer approving costs prior to such costs being incurred; and
 - (iii) the Customer being entitled to discontinue the claim at any time by notice to the Supplier; and
- (c) subject to clause 13.3(b), the Supplier must proceed with the claim.

14. Insurance

14.1 Procurement of insurance

The Supplier must procure at its cost at any time during the Term the following insurances effected by an insurer authorised to carry on insurance in New Zealand:

- (a) public and product liability insurance of not less than \$10 million per occurrence; and
- (b) all such other insurances required by law.

14.2 Certificate of currency

The Supplier must upon reasonable request by the Customer provide to the Customer a certificate or other evidence of the currency and provisions of any insurance to be procured by the Supplier under this provision.

15. Confidentiality and privacy

15.1 Confidentiality restrictions

- (a) Subject to clause 15.1(b), each party must:

- (i) keep the terms of this agreement, information that relates to the transactions contemplated by the agreement and information of which it has become aware in connection with the agreement, confidential;
 - (ii) not disclose to a third party any Confidential Information of the other party; and
 - (iii) not use any Confidential Information other than to perform its obligations and exercise its rights under this agreement.
- (b) The parties agree that either party may disclose information referred to in clause 15.1(a):
- (i) if disclosure is required to be made by Law or the rules of a recognised stock or securities exchange;
 - (ii) to any professional adviser, financial adviser, banker, financier or auditor where that person is obliged to keep the information confidential;
 - (iii) in response to a request from a regulatory authority, in circumstances where a failure to provide information voluntarily is reasonably considered likely to result in a legal notice to provide information;
 - (iv) to any of its Personnel or Related Bodies Corporate to whom it is necessary to disclose the information for the purpose of performing its obligations under the agreement;
 - (v) to enforce its rights or to defend any claim or action under this agreement; or
 - (vi) where the information has come into the public domain through no fault of that party.

15.2 Privacy

- (a) Each party warrants to the other that when it collects, uses, discloses, transfers or otherwise handles Personal Information in the course of performing its obligations under the agreement that it will at all times comply with Privacy Laws.
- (b) Each party indemnifies and holds harmless the other party in respect of any liability, loss, damage or expense incurred by the other party to the extent that such liability, loss, damage or expense was caused by a breach of Privacy Laws by the first party, including, but not limited to a breach of Privacy Laws by the first party in a manner which places the other party in breach of Privacy Laws.

16. Force majeure

If a party (**Affected Party**) becomes wholly or partly unable, by reason of a Force Majeure Event, to perform any obligation (other than an obligation to pay money) placed on it under this agreement (**Relevant Obligation**), then:

- (a) the Affected Party must give to the other party prompt written notice of:
 - (i) reasonable particulars of the nature of the Force Majeure Event and the manner in which the event has resulted in the Affected Party being unable to carry out the Relevant Obligation;
 - (ii) the Relevant Obligation that the Affected Party is unable to carry out; and

- (iii) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its Relevant Obligation;
- (b) subject to clause 16(c), the Relevant Obligation (and any other dependent obligations of either party) will be suspended until the Force Majeure Event has passed and the Affected Party is reasonably able to resume its Relevant Obligations; and
- (c) the Affected Party must use its reasonable endeavours to overcome or remove the Force Majeure Event as quickly as possible.

17. Termination

17.1 Termination for convenience

Either party may terminate this agreement for convenience by giving the other party a minimum notice period of 6 months.

17.2 Termination for cause

In addition to any express right to terminate this agreement specified herein, either party may immediately terminate this agreement:

- (a) by written notice to the other party, if the other party has materially breached the terms of this agreement, where such breach is not remedied within 14 days of written notice of such breach or such breach is incapable of remediation;
- (b) by written notice to the other party, if a party's obligations have been suspended by a Force Majeure Event in accordance with clause 16 for not less than a period of 40 Business Days;
- (c) if a party assigns all or part of its rights or obligations under this agreement, or undergoes a Change of Control, without the consent of the other party pursuant to clause 20.4; or
- (d) if an Insolvency Event occurs in respect of the other party.

17.3 Consequences of termination

Termination of this agreement does not affect any accrued rights or remedies of either party pursuant to this agreement.

17.4 Survival

Clauses 1, 4, 9, 10, 11, 13, 15, 16, 18 and 19 and any other clause intended to survive termination or expiry of this agreement will continue to have effect after the termination or expiry of this agreement.

18. Dispute resolution

18.1 Dispute resolution under the Grocery Act

If a dispute arises between the parties within the scope of section 153 of the Grocery Act (a **Grocery Act Dispute**), then the Customer may refer that Grocery Act Dispute to the dispute resolution scheme established under the Grocery Act by following the procedure for referral set out in the rules of that dispute resolution scheme. Clause 18.3 does not apply to a Grocery Act Dispute referred to the dispute resolution scheme established under the Grocery Act.

18.2 Disputes

- (a) In the event of any dispute arising out of or in connection with this agreement (**Dispute**), then, subject to (and without limiting the Customer's rights under) clause 18.1 in respect of any Grocery Act Disputes, each party must follow the procedures in clause 18.3 before starting court proceedings (subject to clause 18.2(b)).
- (b) Nothing in this clause 18 prevents a party seeking urgent injunctive or similar interim relief from a court.
- (c) The parties must use reasonable endeavours and act in good faith in complying with their obligations under this clause 18.
- (d) Despite the existence of a Dispute, the parties must continue to perform their other obligations under this agreement that are not affected by the Dispute.

18.3 Procedure to resolve a Dispute

- (a) Any party (**Initiating Party**) claiming that a Dispute has arisen must give the other party (**Recipient Party**) a notice setting out details of the Dispute (**Dispute Notice**).
- (b) If a Dispute Notice is issued by an Initiating Party, each party's Representative must promptly meet in good faith to discuss and attempt to resolve the Dispute.
- (c) If the Representatives are unable to resolve a Dispute within 20 Business Days of the Initiating Party issuing a Dispute Notice in relation to the Dispute, then the Initiating Party may refer the dispute to mediation in accordance with clause 18.3(d).
- (d) If a dispute is referred to mediation in accordance with clause 18.3(c), that mediation will be administered by the Arbitrators' and Mediators' Institute of New Zealand Inc (AMINZ) and will be conducted in accordance with the AMINZ Protocols for Mediation which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of that Protocols document are incorporated into this document.

18.4 Confidentiality

Any communication made for the purposes of this clause 18 must be kept confidential and must not be used except to attempt to resolve the Dispute.

19. Personal Property Securities Act 1999 ("PPSA")

- (a) This agreement constitutes a security interest in favour of the Supplier in all the Products and all proceeds of the Products (jointly, Collateral) to secure the Supplier's rights interest and title to the Products pursuant to this agreement, until full payment for the Products has been received by the Supplier.
- (b) The Customer agrees to promptly execute and deliver to the Supplier all assignments, transfers and other agreements and documents and do anything else which the Supplier may deem appropriate to perfect its security interest over the Collateral, or obtain the priority required by the Supplier or register (and/or renew registration of) a financing statement for a security interest in favour of the Supplier.
- (c) To the extent that Part 9 of the PPSA applies, the Customer agrees that the provisions of sections 114(1)(a), 120(1), 122, 133 and 134 of the PPSA which are for the Supplier's benefit, or place any obligations on the Supplier in the Customer's favour, shall not apply; and where the Supplier has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.

- (d) To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Supplier.

20. General

20.1 Notices

- (a) The following address details for the purposes of giving notice are nominated by each party and may be updated by either party providing written notice to the other party from time to time with at least 5 Business Days' notice:

Customer Representative

Address XXXX

Attention XXXX

Email XXXX

Supplier Representative

Address 80 Favona Road, Favona, Auckland 2024

Attention Head of Commercial - Wholesale

Email tim.bastin@woolworthsnz.co.nz

- (b) A notice or other communication required or permitted to be given by one party to another must be in writing and is taken to have been given when (unless otherwise proved):
- (i) delivered personally by hand, at the time it is delivered to the party;
 - (ii) sent by pre-paid mail to the address of the addressee specified in clause 20.1(a) as updated from time to time;
 - A. from NZ to an address within NZ, on the fourth Business Day after posting; or
 - B. from NZ to an address outside NZ or from outside NZ to an address within NZ, on the tenth Business Day (at the address to which it is mailed) after posting; and
 - (iii) sent by email to the address of the addressee specified in clause 20.1(a) (as updated from time to time), 24 hours after receipt by the sender of a "delivery receipt" message from the recipient.
- (c) The parties agree that each Representative will be the initial and central point of contact between the parties in respect of this agreement.

20.2 Subcontracting

- (a) The Supplier may (without the prior written consent of the Customer) subcontract to a third party the performance of the Supplier's obligations under this agreement that relate to freight, delivery and shipping.

- (b) Where the Supplier subcontracts its obligations under the clause above, the Supplier will remain fully liable to the Customer for the due performance of those obligations and for any act or omission of the subcontractor, as if the subcontractor were the Supplier, notwithstanding such delegation or subcontracting.

20.3 Entire understanding

To the extent permitted by Law, in relation to its subject matter, this agreement:

- (a) embodies the entire agreement understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior proposal or written or other agreement of the parties.

20.4 Permitted assignment

- (a) Either party may assign or novate in whole or in part any right or obligation under this agreement to a Related Company without the prior consent of the other.
- (b) Either party may assign or novate in whole or in part any right or obligation under this agreement to any other party, with the written consent of the other, such consent not to be unreasonably withheld.

20.5 Nature of relationship

Nothing in this agreement creates a relationship of partnership, employment, joint venture or agency between the parties.

20.6 Waiver

- (a) A failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this agreement.
- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

20.7 Governing Law

This agreement is governed by and must be construed according to the Law applying in New Zealand.

20.8 Jurisdiction

Each party irrevocably:

- (a) submits to the exclusive jurisdiction of the courts of New Zealand and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 20.8(a).

20.9 Amendments

This agreement may only be varied by agreement executed by or on behalf of each party in writing.

20.10 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterparty.

20.11 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this agreement.

20.12 Further assurances

Each party must do all things reasonably necessary to give effect to this agreement and the transactions contemplated by it.

Signed as an **agreement**:

Executed by Woolworths New Zealand Limited , by its authorised representative:
Signature of authorised representative
Full name of authorised representative
Signed for and on behalf of XXXXXXX by its authorised representative:
Signature of authorised representative
Full name of authorised representative