

15 March 2024

Attention: Dr Alice Hume

New Zealand Commerce Commission  
Level 9, 44 The Terrace  
Wellington 6140  
New Zealand

Email: 

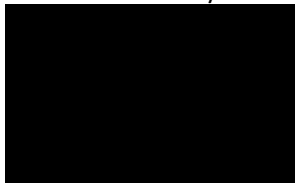
**By email**

Dear Alice

**Updates to Woolworths' Grocery Supply Agreements**

1. We refer to your letter dated 28 February 2024.
2. We appreciate the Commerce Commission taking the time to review and provide feedback on our grocery supply agreement (**GSA**) before our offers to suppliers in accordance with the Grocery Supply Code 2023 (**Code**). The purpose of this letter is to briefly explain how we have addressed each of the issues that the Commerce Commission has raised.
3. Please see **enclosed** with this letter an updated version of Part B of our Vendor Trading Terms, with the changes since the previous version tracked. We have also set out in the Schedule to this letter (in a table format) our responses to the Commerce Commission's particular areas of concern.
4. In addition to the Commerce Commission's feedback, we have carefully considered the feedback received from suppliers and other stakeholders, including the New Zealand Food and Grocery Council. This has resulted in further changes to our GSA, which we think are beneficial to suppliers and demonstrate our willingness to consult meaningfully with our supplier network in advance of the 28 March 2024 deadline.
5. For your ease of reference, the high-level summary of the updates to Part B of our Vendor Trading Terms that we propose to send to suppliers (at the time we send them the final version of the Vendor Trading Terms) is also **enclosed** with this letter.
6. Please let us know if you have any further questions.

Yours faithfully



James Radcliffe  
General Counsel  
**Woolworths New Zealand Limited**

Schedule 1

Topic	NZCC Comment	WWNZ Comment
Unilateral variation	<p>While we note that your Vendor Trading Terms (VTT) state that suppliers must regularly monitor PartnerHub for written notifications, we are concerned that WWNZ's Partner Hub can be easily updated unilaterally without supplier knowledge and that a variation notice notifying suppliers of a change is delivered to them either via PartnerHub or written notice.</p>	<p>We are continuing to improve our systems and processes for notifying suppliers of variations. However we are not able to overhaul our system by the end of this month. This means that, for now, suppliers will continue to receive notice of variations through Partner Hub or through other forms of written notice we are able to effectively develop and deploy. We have, however, made some improvements in this area to address the feedback from the Commerce Commission (and other stakeholders), as follows:</p> <ul style="list-style-type: none"> <li>• rather than <i>all documents</i> on Partner Hub forming part of the GSA, only certain of our policies and procedures will form part of the GSA and need to be complied with. We are arranging for these relevant policies and procedures to be located at a single link on Partner Hub which is identified in the VTTs and simple for suppliers to access and download;</li> <li>• if a variation will have a material effect on suppliers or a particular category of suppliers, we have outlined in our VTTs that we will consult with suppliers in good faith before making that variation, including by providing a reasonable opportunity for affected suppliers to provide feedback and considering that feedback in good faith before finalizing the variation;</li> </ul>

		<ul style="list-style-type: none"> <li>• we have clarified that not less than four weeks' notice is required before a unilateral variation takes effect, unless the circumstances require more limited notice to be provided (e.g. in respect of variations that are required by law or concern health and safety); and</li> <li>• if a supplier does not consider a variation to be reasonable in the circumstances, we have agreed to seek to resolve in good faith any concerns they have regarding the impact of the variation – we have also highlighted the rights of suppliers to terminate the GSA on short notice, to refer the matter to dispute resolution and/or to not accept purchase orders from us.</li> </ul> <p>Taken together, we believe these clauses strike an appropriate balance between the interests of Woolworths and suppliers, noting it is important to us that we have as much consistency as possible as well as some flexibility to vary our GSAs over time within the parameters of the Code (e.g. to introduce reasonable variations in the circumstances having regard to the benefits, costs and risks for the parties etc.).</p>
Transport	There are no specific references indicating WWNZ must allow the supplier the choice of their preferred transport or logistics service.	We have clarified in clause 1(f) that we will not require a supplier to use a particular transport or logistics service or impose unreasonable service standards in respect of transport of logistics. This reflects the restriction in clause 11 of the Code.
Payments for retailer's business activities	We note from your summary of key changes to Part B document (change summary) that you treat Freight Charge Rate and warehouse/distribution allowance	We give more prominence to the Freight Charge Rate and warehouse/distribution allowances in our VTTs because those are payments that we currently charge

	<p>differently to other payments required in relation to your business activities.</p> <p>We are concerned that the phrase “you are entitled to receive a clear and full written explanation” does not make it clear that you <i>must</i> give a clear and full written explanation to a supplier as to why you consider any payments reasonable in the circumstances.</p>	<p>to some suppliers (<i>by agreement</i>). We use the VTTs to also explain why we consider those payments to be reasonable in the circumstances. By contrast, clause 6.5(a) to (c) is a generic framework for us to <i>agree</i> other Retail Costs Contributions with suppliers over the course of our dealings in accordance with the Code, and we would provide a clear and full written explanation at the time of any such agreement explaining why those payments would be considered reasonable in the circumstances.</p> <p>We have clarified clause 6.5(c) to better reflect the wording of the Code – i.e. that we must give a supplier a clear and full written explanation.</p>
Limited Payments for Wastage	<p>We are concerned that the phrase “you are entitled to receive a clear and full written explanation” does not make it clear that you <i>must</i> give a clear and full written explanation to a supplier as to why you consider any payments reasonable in the circumstances.</p>	<p>We have clarified clause 2.3(c) to better reflect the wording of the Code – i.e. that we <i>must</i> give a supplier a clear and full written explanation.</p>
Payments to stock or list grocery products in limited circumstances	<p>We are concerned that the phrase “you are entitled to receive a clear and full written explanation” does not make it clear that you <i>must</i> give a clear and full written explanation to a supplier as to why you consider any payments reasonable in the circumstances</p>	<p>We have clarified clause 6.1 to better reflect the wording of the Code – i.e. that we must give a supplier a clear and full written explanation.</p>
Delisting without notice	<p>We are concerned that the phrase “you are entitled to receive a clear and full written explanation” does not make it clear that you <i>must</i> give a clear and full written explanation to a supplier as to why you consider it necessary to delist without notice.</p>	<p>We have clarified clause 11.2 to better reflect the wording of the Code – i.e. that we must give a supplier a clear and full written explanation.</p>
Funded Promotions	<p>Your VTT does not set out the process that WWNZ intends to follow to reach agreement with suppliers for</p>	<p>We have clarified clause 6.3 to make it clear that where we order goods from a supplier in connection with a</p>

	<p>situations where funded promotions result in excess promotional stock</p>	<p>funded promotion at a promotional price, we must ensure that the basis on which the quantity of the order is calculated is transparent and we must agree with the supplier on what happens to the goods supplied at the promotional price but which remain unsold. This reflects clause 20 of the Code.</p> <p>It is not possible to include a more detailed process because it is likely to be very fact specific and needs to be agreed with suppliers at the time when discussing and agreeing any funded promotion – also, as you know, in practice we would not expect to have unsold goods purchased at a promotional price given the way in which we currently operate funded promotions (with promotional in our business agreed with suppliers on the basis of units sold ("scanned out") by our retail business, not on the basis of the number of units we purchase).</p>
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