

# Grocery Supply Code

## Checklist for Suppliers

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## Purpose of this checklist

1. This document acts as a “checklist” for suppliers to:
  - 1.1 guide their review of the new or amended agreements they receive from retailers against the provisions of the [Grocery Supply Code \(Code\)](#).<sup>1</sup>
  - 1.2 assess retailers ongoing conduct against the provisions of the Code.
2. We hope that, by providing this guidance, suppliers are more informed about their rights under the Code when negotiating and entering into agreements with retailers, as well as in their ongoing interactions with retailers.
3. Suppliers may also wish to refer to the Attachment, which sets out the provisions of the Code. Clickable references to the relevant provisions are provided throughout the Checklist.

## About the Code

4. The Code was introduced in September 2023 and is now in force. The Code requires regulated grocery retailers (**retailers**), being Foodstuffs North Island Ltd, Foodstuffs South Island Ltd, Woolworths New Zealand Ltd, and certain other persons related to these companies, to offer compliant grocery supply agreements (**agreements**) to suppliers as well as regulating ongoing retailer conduct.
5. The key purposes of the Code include:
  - 5.1 **promoting transparency and certainty** about the terms of agreements between retailers and suppliers
  - 5.2 **promoting fair conduct, and prohibiting unfair conduct**, between retailers (and certain related parties) and suppliers.

## Application of the Code

6. The Code applies to **all new agreements** between retailers and suppliers made on or after 28 September 2023.
7. For **existing agreements**, retailers have until 28 March 2024 to offer suppliers variations to ensure these existing agreements are consistent with the Code (this is referred to as the ‘grace period’). There is no requirement for suppliers to have signed by the end of the grace period. Once the grace period is up, the provisions of the Code apply irrespective of what is in the agreement.
8. The Code also applies to suppliers that currently have **verbal/unwritten agreements** with retailers. Retailers are required to provide these suppliers with a written agreement that is consistent with the Code.

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<sup>1</sup> The Grocery Supply Code can be accessed at:  
<https://www.legislation.govt.nz/regulation/public/2023/0220/latest/whole.html>



## What you need to know

9. It is important that suppliers note the following:
  - 9.1 A key overarching requirement of the Code is for retailers to act in **good faith** when dealing with suppliers. Always consider if a retailer is acting in good faith across all provisions and in negotiations.
  - 9.2 A requirement of the Code is that all agreements are written in **plain language** and a copy is provided to suppliers.
  - 9.3 An agreement may be made up of multiple documents. Suppliers should ensure that they have access to **all documents comprising the terms of the agreement**.
  - 9.4 The Code requires that certain matters **must be covered** by the agreement, such as price, payment (including circumstances for withholding), quantity, quality, term of the agreement, delivery terms of the groceries (including the grounds for rejections), cancellation and delisting.
  - 9.5 There are a number of protections for suppliers in the Code that prohibit retailers from requiring certain types of payments or engaging in certain conduct, unless the supplier agrees to them under the agreement. **We have highlighted these provisions in the checklist in orange**, and suggest you pay particular interest to these sections when reviewing your agreement. **Suppliers should (a) understand when they are agreeing to contract out of any Code protection; and (b) carefully consider any such terms.**
  - 9.6 There is often a prescribed process for relying on the “carveout” described above, which requires the retailer to provide the supplier with a **written statement** explaining why the agreed change is **reasonable** in the circumstances. This information will be useful evidence to suppliers if any disputes arise.
  - 9.7 We encourage suppliers to keep **written records** of their interactions with retailers.

## Breaches of the Code

10. The Commerce Commission (**Commission**) enforces compliance with the Code. Ultimately only the courts or a dispute resolution scheme can determine if the Code has been breached.
11. There are significant consequences for breaching, or attempting to breach, the Code. For example, a person may be liable for a pecuniary penalty:
  - 11.1 For an individual, a maximum of \$200,000; and
  - 11.2 In any other case, the greater of:

11.2.1 \$3 million; or

11.2.2 The commercial gain, or if this cannot be easily established, 3% of turnover of the retailer group.

12. If you think that someone may have breached the Code, we encourage you to contact us.
- 12.1 You can make a complaint through our website at <https://comcom.govt.nz/make-a-complaint>;
- 12.2 You can call us on 0800 943 600; or
- 12.3 You can email us at [grocery.regulation@comcom.govt.nz](mailto:grocery.regulation@comcom.govt.nz).
13. We understand you may wish to raise a concern confidentially and take steps to protect your information. As we value information from confidential informants, if you are concerned about the need to protect your identity, please raise it with us.
14. You may also wish to use our Anonymous Reporting Tool (**ART**), if you do not want to provide your personal details. More information on the ART may be found here: <https://report.whistleb.com/en/comcom-grocery>.

This document is not exhaustive and is not intended to be legally binding or to replace legal advice.

***We encourage you to seek legal advice if you have specific legal questions relating to the Code. A relevant industry association may also be a source of useful information.***

## Clause 6 – Obligation to deal with suppliers in good faith

### Overview of clause

*Good faith is an overarching obligation on retailers that applies in addition to all specific Code requirements.*

*(See [Figure 1](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<ul style="list-style-type: none"> <li>• Has the retailer at all times dealt with you in good faith?</li> <li>• In determining whether the retailer has acted in good faith, ask yourself the following questions:               <ul style="list-style-type: none"> <li>○ Has the retailer acted honestly?</li> <li>○ Has the retailer co-operated (including by being responsive and communicative) to achieve the purposes of the agreement?</li> <li>○ Has the retailer acted arbitrarily, capriciously, unreasonably, recklessly, or with ulterior motives?</li> <li>○ Has the retailer retaliated against you for any past disputes or complaints?</li> <li>○ Has the trading relationship been conducted under duress?</li> <li>○ Is there certainty around the risks and costs of trading, particularly in relation to production, delivery and payment?</li> <li>○ Has information been provided to the supplier in a timely manner?</li> <li>○ Has the retailer complied with any confidentiality requirements regarding information disclosed or obtained in dealing with or resolving any complaint or dispute with you?</li> <li>○ Has there been any unreasonable discrimination or distinction between suppliers?<sup>2</sup></li> </ul> </li> </ul>	<p>The retailer must at all times deal with you in good faith. If it does not, this is a breach of the Code.</p> <p>The good faith obligation applies to all dealings between you and the retailer, including (but not limited to):</p> <ul style="list-style-type: none"> <li>• bargaining;</li> <li>• establishing an agreement;</li> <li>• negotiating about price increases; and</li> <li>• dealing with a dispute.</li> </ul> <p>The Code lists a number of factors that may be taken into account in determining whether the retailer has acted in good faith, as reflected in these questions. This list is not exhaustive, and other matters may be considered. Note that whether you have acted in good faith when dealing with the retailer may be relevant here.</p>

<ul style="list-style-type: none"><li>○ Have you acted in good faith in your dealings with the retailer?</li></ul>	
<ul style="list-style-type: none"><li>• Does the agreement have any provision that limits or excludes the obligation to act in good faith?</li></ul>	The agreement must not contain a provision that limits or excludes the obligation to act in good faith. However, if it does have such provision the provision does not limit that obligation.

## Clause 7 – Agreement must be in writing and retained

### Overview of clause

*The agreement must be in writing and comprises all documents containing the terms. Suppliers need to see and understand all terms they are agreeing to. One of the fundamental stated purposes of the Code is to promote transparency and certainty about the terms of agreements between retailers and suppliers.*

*(See [Figure 2](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<ul style="list-style-type: none"> <li>Is the agreement written in plain language?</li> </ul>	<p>The Plain Language Act 2022 defines ‘plain language’ as language that is:</p> <ul style="list-style-type: none"> <li>appropriate to the intended audience; and</li> <li>clear, concise and well organised.</li> </ul> <p>If the agreement is not in plain language, this is a breach of the Code.</p>
<ul style="list-style-type: none"> <li>Has a copy of the agreement been provided to you?</li> </ul>	<p>If no, this is a breach of the Code.</p> <p>You should ensure that you:</p> <ul style="list-style-type: none"> <li>are provided with all documents constituting the overall terms of the agreement (including any terms that are captured on a retailer’s online portal);</li> <li>understand the hierarchy of how these documents apply; and</li> <li>understand how changes to these documents will be made/notified to you.</li> </ul>
<ul style="list-style-type: none"> <li>Has the retailer retained the original or a copy of the agreement and any relevant documents that comprise the terms of the agreement for the term of the agreement and for seven years after the agreement ends?</li> </ul>	<p>This requirement includes any document comprising the agreement, and any document made from time to time under the agreement that forms part of the agreement.</p>

## Clause 8 – Matters to be covered by the agreement

### Overview of clause

*Certain specified terms must be included in the agreement. This effectively mirrors the Australian Food and Grocery Code of Conduct, but delisting is specifically included in the New Zealand Code.*

*(See [Figure 3](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<ul style="list-style-type: none"> <li>• Does the agreement specify all of the following matters?               <ul style="list-style-type: none"> <li>○ Any requirements the retailer has for the delivery of the groceries</li> <li>○ Any circumstances in which the retailer may reject the groceries</li> <li>○ The period within which the retailer must pay you for the groceries and the circumstances in which any payment, or part of a payment, may be withheld or delayed</li> <li>○ The term of the agreement (whether fixed or indefinite)</li> <li>○ In clear terms, any quantity and quality requirements relating to the groceries</li> <li>○ If the agreement provides for cancellation by one or more parties to it, the circumstances in which it may be cancelled</li> <li>○ Any terms that apply if the retailer decides to delist the groceries.</li> </ul> </li> </ul>	<p>If the agreement does not specify all of these matters, it is a breach of the Code.</p>

## Clause 9 – Unilateral variation of agreement

### Overview of clause

*Unilateral changes to an agreement by the retailer are prohibited, unless the agreement expressly provides for such changes.*

*Where an agreement provides for unilateral changes, they are only allowed if the retailer meets the clause 9 requirements, including the variation being reasonable and the retailer providing reasonable notice of the variation with a full written explanation as to how the clause 9 requirements are met.*

*(See [Figure 4](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<b>Carefully consider contracting out of Code protections</b>	
<ul style="list-style-type: none"> <li>• Does the agreement contain any terms which expressly provide for the retailer to vary the terms of the agreement without your consent?</li> </ul>	<p>The Code’s starting point is that unilateral variations are prohibited. <u>This is a protection for you under the Code.</u></p> <p>However, it is possible to contract out of this protection in the agreement.</p> <p>You should carefully consider any terms which allow for unilateral variations, including the scope and application.</p>
<b>Questions to consider if the retailer has unilaterally varied the agreement</b>	
<ul style="list-style-type: none"> <li>• Where the retailer has varied the terms of the agreement without your consent, do all of the following apply:               <ul style="list-style-type: none"> <li>○ Did you agree to a term that the agreement expressly provides for the retailer to make the variation?</li> <li>○ Does the agreement clearly set out the changed circumstances in which the variation can be made?</li> <li>○ If the variation involves a quantitative adjustment to the terms of supply,</li> </ul> </li> </ul>	<p>If the retailer has varied the terms of the agreement without your consent, and any of these matters are not satisfied, then this is a breach of the Code.</p> <p>In determining whether a variation was reasonable in the circumstances, the court or dispute resolution scheme (as applicable) will have regard to the benefits, costs, and risks (if any) for you and the retailer which should be included in the written explanation the retailer is required to provide you</p>

<p>does the agreement set out the basis or methodology for calculating that adjustment?</p> <ul style="list-style-type: none"><li>○ Was the adjustment made in accordance with the agreement?</li><li>○ Was the adjustment reasonable in the circumstances?</li><li>○ Were you given reasonable notice, in writing, of:<ul style="list-style-type: none"><li>- the variation;</li><li>- the terms of the variation; and</li><li>- the retailer's reasons for making the variation?</li></ul></li><li>○ Did the written notice include a clear and full explanation as to why the retailer considers that:<ul style="list-style-type: none"><li>- the variation is reasonable in the circumstances; and</li><li>- the other requirements listed above are satisfied?</li></ul></li></ul>	<p>when giving notice of the variation.</p> <p>Among other things, <u>the retailer must provide you with reasonable notice of the variation.</u></p> <p>If you agree to a term which expressly provides for the retailer to vary the terms of the agreement without your consent, you should consider specifying a notice period.</p>
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## Clause 10 – Retrospective variation of agreement

### Overview of clause

*Retailers are prohibited from making retrospective changes to the agreement in all circumstances. This provision takes effect from 28 September 2023.*

*(See [Figure 5](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<ul style="list-style-type: none"><li>• Has the retailer varied the agreement with retrospective effect?</li></ul>	<p>If yes, this is a breach of the Code if the variation took place after 28 September 2023.</p> <p>This applies where the terms of the agreement are changed and backdated in relation to past activities. For example, if a retailer were to make changes to pricing in the agreement and apply those updated terms to groceries supplied prior to the date of the change.</p>

## Clause 11 – Transport or logistics services

### Overview of clause

*Suppliers have freedom to select transport/logistics service themselves – a retailer cannot require suppliers to use a particular service or impose unreasonable service standards in respect of a service.*

*(See [Figure 6](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<ul style="list-style-type: none"><li>• Has the retailer directly or indirectly required you to use a transport or logistics service?</li></ul>	<p>If yes, this is a breach of the Code.</p> <p>If you have existing arrangements in place which were required by the retailer, you should consider whether you want these to continue.</p>
<ul style="list-style-type: none"><li>• Has the retailer directly or indirectly imposed <u>unreasonable</u> service standards in respect of transport or logistics?</li></ul>	<p>If yes, this is a breach of the Code.</p> <p>The Code does not prevent a retailer from imposing reasonable service standards.</p>

## Clause 12 – Payments to suppliers

### Overview of clause

*Retailers must pay on time and without set-off, unless the supplier agrees to the set-off under the agreement and the set-off is reasonable. If a retailer applies set off under an agreement, it must provide a full written explanation as to how the requirements specified in clause 12 are met where this is requested by the supplier.*

*Suppliers can also consent in writing to set-off (i.e., not under the agreement), but retailers are prohibited from requiring a supplier to give this consent.*

*(See Figure 7 of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<b>Carefully consider contracting out of Code protections</b>	
<ul style="list-style-type: none"> <li>• Does the agreement include a term providing for the retailer to set off amounts against your invoice or remittance?</li> </ul>	<p>Retailers are generally prohibited from setting off amounts against your invoice or remittance without your written consent. <u>This is a protection to you under the Code.</u></p> <p>However, it is possible to contract out of this protection in the agreement. You should carefully consider any terms which allow for setting off amounts.</p>
<b>Timing of payment</b>	
<ul style="list-style-type: none"> <li>• Has the retailer paid you for all grocery products delivered and accepted in accordance with the agreement:               <ul style="list-style-type: none"> <li>○ within the timeframe set out in the agreement; and</li> <li>○ within a reasonable time after receiving your invoice for the products?</li> </ul> </li> </ul>	<p>If no, this is a breach of the Code.</p> <p>You could consider specifying timeframes for payment in the agreement to create clarity. When agreeing this timeframe, consider what is a reasonable time for payment.</p>
<b>Setting off amounts</b>	

<ul style="list-style-type: none"> <li>• Has the retailer set off any amount against your invoice remittance?</li> </ul>	<p>If yes, consider the questions below to assess whether this is allowed under the Code.</p>
<ul style="list-style-type: none"> <li>• Did you consent to the set-off of the amount in writing?</li> <li>• If you consented to the set-off of the amount, did the retailer require you to consent?</li> </ul>	<p>If you did not consent in writing to the set-off, this may be a breach of the Code (subject to the further questions below).</p> <p>If consented to the set-off because the retailer required you to consent, this may be a breach of the Code (subject to the further questions below).</p>
<ul style="list-style-type: none"> <li>• Where you did not consent to the set-off, or did consent because the retailer required you to, do both of the following apply to the set-off: <ul style="list-style-type: none"> <li>○ you agreed a term in the agreement to provide for the amount to be set off; and</li> <li>○ the set-off is reasonable in the circumstances?</li> </ul> </li> </ul>	<p>If no to one or both, this is in breach of the Code.</p> <p>If yes to both, you may wish to request a written explanation from the retailer as to how the requirements in clause 12 are met. See the question below for further details.</p>
<ul style="list-style-type: none"> <li>• If the retailer relies on the above applying, have you requested in writing a clear and full written explanation from the retailer as to: <ul style="list-style-type: none"> <li>○ how the set-off was calculated;</li> <li>○ why the retailer considers that the set-off is reasonable in the circumstances; and</li> <li>○ why the retailer considers that the agreement provides for the amount to be set off?</li> </ul> </li> </ul>	<p><u>The retailer is only required to provide you with a written explanation of these matters if you request this in writing.</u></p>
<ul style="list-style-type: none"> <li>• If you have requested a written explanation of the kind described above, has the retailer provided that written explanation?</li> </ul>	<p>If no, this is a breach of the Code.</p>

## Clause 13 – Payments for shrinkage

### Overview of clause

*Retailers are prohibited from requiring suppliers to pay for shrinkage in all circumstances. Retailers and suppliers are allowed to raise, discuss or agree proposals and procedures to mitigate the risk and occurrence of shrinkage.*

*Shrinkage is defined as a loss of grocery products that –*

- occurs after a retailer has taken possession of them; and*
- arises from theft, other loss, or accounting error.*

*(See [Figure 8](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<ul style="list-style-type: none"><li>• Has the retailer directly or indirectly required you to make any payment (including payment in kind) as compensation for shrinkage?</li></ul>	If yes, this is a breach of the Code.
<ul style="list-style-type: none"><li>• Does the agreement require you to make any payment (including payment in kind) as compensation for shrinkage?</li></ul>	If yes, this is a breach of the Code.

## Clause 14 – Payments for wastage

### Overview of clause

*Retailers are prohibited from requiring suppliers to pay for wastage, unless the supplier agrees to the payment under the agreement and the payment is reasonable. If a retailer requires payment under an agreement, it must meet the requirements specified in clause 14(2) and provide the supplier a full written explanation as to how the requirements are met.*

*'Wastage' means groceries that are unfit for sale.*

*Note that references to 'payment' includes payment in kind.*

*(See [Figure 9](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<b>Carefully consider contracting out of Code protections</b>	
<ul style="list-style-type: none"> <li>Does the agreement include any term requiring you, in certain circumstances, to make payments to cover wastage of your groceries while under the effective control of the retailer (or a contractor or agent of the retailer or any other entity that is a retailer)?</li> </ul>	<p>Retailers are generally prohibited from requiring you to make any payment to cover wastage while the groceries are under the effective control of the retailer (or a contractor or agent of the retailer or any other entity that is a retailer). <u>This is a protection for you under the Code.</u></p> <p>However, it is possible to contract out of this protection in the agreement.</p> <p>You should carefully consider any terms relating to payments for wastage.</p>
<b>Questions to consider where you have been required to make wastage payments</b>	
<ul style="list-style-type: none"> <li>Has the retailer directly or indirectly required you to make any payment to cover any wastage of groceries incurred while the groceries are under the effective control of the retailer; a contractor or agent of the retailer; or any other entity that is a retailer?</li> </ul>	<p>If yes, consider the question below.</p>

<ul style="list-style-type: none"> <li>• If the answer to the above question is yes, do all of the following apply? <ul style="list-style-type: none"> <li>○ Did you agree a term in the agreement that sets out expressly and unambiguously the circumstances, which could include negligence by you, in which you would be required to make payments to cover wastage of your groceries incurred while the groceries are under the effective control of the retailer (including a contractor or agent of the retailer) or any other entity that is a retailer?</li> <li>○ Did the wastage occur in such circumstances?</li> <li>○ Was the wastage mainly the result of your actions or omissions?</li> <li>○ Is the basis of the payment set out in the grocery supply agreement?</li> <li>○ Is the payment reasonable, having regard to the retailer’s costs incurred by the wastage?</li> <li>○ Did the retailer take reasonable steps to mitigate those costs?</li> <li>○ Was the retailer’s claim for payment made no later than six months after the goods were received by the retailer (including its contractor or agent) or any other entity that is a retailer?</li> </ul> </li> </ul>	<p>If any of these do not apply, this is a breach of the Code.</p> <p>If all of these apply, consider the question below as <u>the retailer is required to provide you with a written explanation as to how the clause 14 requirements have been met.</u></p>
<ul style="list-style-type: none"> <li>• If the retailer relies on all of the above matters applying, has it provided you with a clear and full written explanation as to why it considers: <ul style="list-style-type: none"> <li>○ the payment is reasonable; and</li> <li>○ all of the above matters are satisfied?</li> </ul> </li> </ul>	<p>If no, this is a breach of the Code.</p>
<b>Negotiating variations to wastage terms</b>	
<ul style="list-style-type: none"> <li>• Do both of the following apply: <ul style="list-style-type: none"> <li>○ Does the agreement provide for you to make payments to cover wastage of your groceries?</li> <li>○ Have you sought to negotiate a variation to the agreement relating to those</li> </ul> </li> </ul>	<p>If yes to both questions, this is a breach of the Code.</p>

payments for wastage?

- If the answer to the above is yes, in the course of negotiations or as a precondition for entering into the negotiations, has the retailer sought to negotiate other variations of the agreement unrelated to those payments for wastage?

## Clause 15 – Payments as condition of being supplier

### Overview of clause

Retailers are prohibited from requiring suppliers to make any payment as a condition of listing or stocking their products, unless either (a) the payment is in relation to a promotion; or (b) the supplier agrees to the payment under the agreement, it is in respect of a new product, and is reasonable. If a retailer requires payment in those circumstances, it must provide a full written explanation as to how these requirements are met.

Note that references to ‘payment’ includes payment in kind.

(See [Figure 10](#) of the Attachment for the full clause.)

Questions to consider	What the answer means for you
<b>Carefully consider contracting out of Code protections</b>	
<ul style="list-style-type: none"> <li>Does the agreement include any term requiring you to make any payments as a condition of stocking or listing grocery products?</li> </ul>	<p>Retailers are generally prohibited from requiring you to make any payment as a condition of stocking or listing grocery products. <u>This is a protection for you under the Code.</u></p> <p>However, it is possible to contract out of this protection in the agreement in certain circumstances (see the question below).</p> <p>You should carefully consider any terms of the agreement that require you to make payments as a condition of stocking or listing grocery products.</p>
<b>Questions to consider where you have been required to make payments a condition of being a supplier</b>	
<ul style="list-style-type: none"> <li>Has the retailer required you to make any payment as a condition of stocking or listing grocery products?</li> </ul>	<p>If yes, consider the question below.</p>
<ul style="list-style-type: none"> <li>If the answer above is yes, do either of the following apply?               <ul style="list-style-type: none"> <li>Was the payment made in relation to a promotion?<sup>3</sup></li> </ul> </li> </ul>	<p>If neither of these apply, this is a breach of the Code.</p> <p>If yes to either, consider the question below as <u>the retailer is required to provide you with a clear written explanation as to how the clause 15</u></p>

the requirements for promotional funding.

for

<ul style="list-style-type: none"> <li>○ Does the payment meet all of the following? <ul style="list-style-type: none"> <li>- You agreed to the payment required under the agreement;</li> <li>- The payment was made in respect of groceries that have not been stocked, displayed or listed by the retailer during the preceding 365 days in 25% or more of the retail stores owned or operated by the retailer's group; and</li> <li>- The payment is reasonable, having regard to the costs and risks to the retailer in stocking, displaying or listing the grocery products.</li> </ul> </li> </ul>	<u>requirements are met.</u>
<ul style="list-style-type: none"> <li>● If the retailer is relying on either of the above applying, has the retailer provided you a clear and full written explanation as to why the retailer considers that the matters above are satisfied?</li> </ul>	If no, this is a breach of the Code.

## Clause 16 – Payments for retailer’s business activities

### Overview of clause

*Retailers are prohibited from requiring suppliers to pay for costs of their ordinary business activities, unless the supplier agrees to the payment under the agreement and the payment is reasonable. If a retailer requires payment in those circumstances, it must provide a full written explanation as to how the clause 16 requirements are met.*

*(See Figure 11 of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<b>Carefully consider contracting out of Code protections</b>	
<ul style="list-style-type: none"><li>• Does the agreement include any term requiring you to make any payment towards the costs of any of the retailer’s ordinary business activities, including:<ul style="list-style-type: none"><li>○ a buyer’s visit to the supplier;</li><li>○ artwork or packaging design;</li><li>○ consumer or market research;</li><li>○ the opening or refurbishing of a store;</li><li>○ hospitality for the retailer’s staff;</li><li>○ merchandising (for example, stocking shelves and setting up displays); or</li><li>○ the transport of goods within a retailer’s business, which may include transport between distribution centres and retail stores?</li></ul></li></ul>	<p>Retailers are generally prohibited from requiring suppliers to pay costs for their ordinary business activities. <u>This is a protection to you under the Code.</u></p> <p>However, it is possible to contract out of this protection in the agreement.</p> <p>You should carefully consider any terms of the agreement that require you to make payments for the retailer’s business activities.</p> <p>Please note that the list of activities here is not exhaustive. The key point is whether the payment is towards an activity undertaken by the retailer in the ordinary course of carrying out its business as a retailer.</p>

<b>Questions to consider where you have been required to make payment for the retailer's business activities</b>	
<ul style="list-style-type: none"> <li>• Has the retailer directly or indirectly required you to make any payment towards the costs of any of the retailer's ordinary business activities (including, but not limited to, those activities listed above)?</li> </ul>	<p>If yes, consider the question below to assess whether this is compliant the Code.</p>
<ul style="list-style-type: none"> <li>• If yes to the above, do both of the following apply:             <ul style="list-style-type: none"> <li>○ Does the agreement provide for the payment?</li> <li>○ Is the payment reasonable in the circumstances?</li> </ul> </li> </ul>	<p>If no, this is a breach of the Code.</p> <p>If yes, consider the question below as <u>the retailer is required to provide you with a full written explanation as to how these requirements are met.</u></p> <p>Whether a payment is reasonable depends on the specific facts and circumstances. Regard will be had to:</p> <ul style="list-style-type: none"> <li>• the likely benefits to you from the retailer's business activity</li> <li>• the likely benefits to the retailer from the retailer's business activity</li> <li>• the costs borne, or contributions made, by the retailer for the retailer's business activity.</li> </ul>
<ul style="list-style-type: none"> <li>• If the retailer relies on the above applying, has it provided you with a clear and full written explanation as to why it considers:             <ul style="list-style-type: none"> <li>○ the agreement provides for the payment; and</li> <li>○ the payment is reasonable in the circumstances?</li> </ul> </li> </ul>	<p>If no, this is a breach of the Code.</p>

## Clause 17 – Funding promotions

### Overview of clause

*Retailers are prohibited from requiring suppliers to fund promotions, unless the supplier agrees to the funding under the agreement and the funding is reasonable. If a retailer seeks promotional funding in those circumstances, it must provide a full written explanation as to how these requirements are met where this is requested by the supplier.*

*Note that references to ‘fund’ includes payment in kind.*

*(See [Figure 12](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<b>Carefully consider contracting out of Code protections</b>	
<ul style="list-style-type: none"> <li>• Does the agreement include a term requiring you to directly or indirectly fund part or all of the costs of a promotion?</li> </ul>	<p>Retailers are generally prohibited from requiring you to fund promotions. <u>This is a protection to you under the Code</u>.</p> <p>However, it is possible to contract out of this protection in the agreement.</p> <p>You should carefully consider any terms of the agreement that require you to fund promotions.</p>
<b>Questions to consider where you have been required to fund any promotion</b>	
<ul style="list-style-type: none"> <li>• Has the retailer directly or indirectly required you to fund part or all of the costs of a promotion?</li> </ul>	<p>If yes, consider the questions below to assess whether this is compliant with the Code.</p>
<ul style="list-style-type: none"> <li>• Do both of the following apply?               <ul style="list-style-type: none"> <li>○ Does the agreement provide for the funding?</li> <li>○ Is the funding reasonable in the circumstances?</li> </ul> </li> </ul>	<p>If no, this is a breach of the Code.</p> <p>If yes, <u>you are entitled to request a written explanation from the retailer, as described below</u>.</p> <p>Whether the funding is reasonable depends on the particular</p>

	<p>facts and circumstances. Regard will be had to:</p> <ul style="list-style-type: none"> <li>• the likely benefits to you from the promotion</li> <li>• the likely benefits to the retailer from the promotion</li> <li>• the costs borne, or contributions made, by the retailer for the promotion.</li> </ul>
<ul style="list-style-type: none"> <li>• If the retailer relies on the above applying, have you requested in writing a clear written explanation as to why the retailer considers that: <ul style="list-style-type: none"> <li>○ the grocery supply agreement provides for the funding; and</li> <li>○ the funding is reasonable in the circumstances?</li> </ul> </li> </ul>	<p><u>The retailer is only required to provide you with a written explanation of these matters if you request this in writing.</u></p>
<ul style="list-style-type: none"> <li>• If you have requested a written explanation of the kind described above, has the retailer provided that written explanation?</li> </ul>	<p>If no, this is a breach of the Code.</p>

## Clause 18 – Delisting products

### Overview of clause

*Delisting can only occur in accordance with the agreement and for genuine commercial reasons following the process set out in clause 19. Any terms agreed are still subject to the overall obligation of good faith. Clause 8 also specifies that delisting terms must be included in the agreement.*

*(See [Figure 13](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<b>Determining whether delisting has occurred</b>	
<ul style="list-style-type: none"> <li>• Do either of the following delisting scenarios apply:               <ul style="list-style-type: none"> <li>○ Has the retailer removed any of your grocery products from the range of grocery products sold by the group to which the retailer belongs?</li> <li>○ Has the retailer made a decision of the kind below that has, or is likely to have, a material effect on you:                   <ul style="list-style-type: none"> <li>- A decision to remove any of your grocery supply products from the range of grocery supply products at one or more of its retail stores?</li> <li>- A decision to reduce the distribution of any of your grocery supply products at one or more retail stores?</li> </ul> </li> </ul> </li> </ul>	<p>If yes, the retailer has delisted your grocery product under the Code. Where you consider that delisting has occurred, see the questions below to determine whether that delisting is compliant with the Code.</p> <p>Note that a retailer’s decision not to extend the agreement, or enter into a new agreement, following the expiry of a fixed term agreement is not a decision to delist a product.</p>
<b>Determining whether delisting is compliant with the Code</b>	
<ul style="list-style-type: none"> <li>• If the answer above is yes, was the delisting:               <ul style="list-style-type: none"> <li>○ in accordance with the terms of the agreement (if any); and</li> <li>○ for genuine commercial reasons?</li> </ul> </li> </ul>	<p><u>Delisting may only occur when it is in accordance with the terms of the agreement and for genuine commercial reasons.</u></p> <p>You should carefully consider terms in the agreement relating to delisting, including whether these are sufficiently targeted and specific.</p>

	In considering whether the delisting was for genuine commercial reasons, consider the questions below.
<ul style="list-style-type: none"> <li>• Are any of the following the reasons for delisting? <ul style="list-style-type: none"> <li>○ You failed to meet reasonable quality requirements as agreed with the supplier in respect to the delisted product.</li> <li>○ Your product failed to meet the retailer’s reasonable commercial sales or profitability targets as notified to you in, or in accordance with, the agreement.</li> <li>○ You persistently failed to meet the retailer’s reasonable delivery requirements as notified to you from time to time in accordance with the agreement.</li> </ul> </li> </ul>	<p>These are genuine commercial reasons for delisting. This list is not exhaustive, and there may be other genuine commercial reasons for delisting.</p> <p>You should make sure any profitability targets or margins agreed with the retailer are clearly recorded so there is transparency as to the application of these rules.</p> <p>If any such reason (or any other genuine commercial reason) applies and the delisting was in accordance with the terms of the agreement, the delisting is likely to be compliant with clause 18.</p>
<ul style="list-style-type: none"> <li>• Was the product delisted as a punishment for a complaint, concern or dispute raised by you?</li> </ul>	<p>This is not a genuine commercial reason for delisting.</p> <p>If the delisting was for this reason, it is in breach of the Code.</p>

## Clause 19 – Process requirements relating to delisting

### Overview of clause

Clause 19 prescribes the process required by the retailer to provide the supplier advance notification and reasons for delisting (including issuing written statements in certain circumstances).

(See [Figure 14](#) of the Attachment for the full clause.)

Questions to consider	What the answer means for you
<b>Notice and other process requirements</b>	
<ul style="list-style-type: none"> <li>• Before delisting your product, did the retailer provide reasonable written notice to you of its decision to delist the product?</li> </ul>	<p>If no, this is a breach of the Code, unless a specific exception applies. Refer to the questions under the heading “<i>Exceptions – when notice requirements do not apply</i>”.</p> <p>If yes, refer to the questions below regarding the contents of the notice.</p>
<ul style="list-style-type: none"> <li>• Did the retailer’s written notice:               <ul style="list-style-type: none"> <li>○ include the genuine commercial reasons for delisting the product; and</li> <li>○ inform you of your right to have the decision to delist the product reviewed by the retailer?</li> </ul> </li> </ul>	<p>If no, this is a breach of the Code, unless a specific exception applies. Refer to the questions under the heading “<i>Exceptions – when notice requirements do not apply</i>”.</p> <p>If yes, the notice is compliant with clause 19. In this case, <u>you are entitled to request a written explanation from the retailer, as described below.</u></p>
<ul style="list-style-type: none"> <li>• Have you requested, in writing, that the supplier provide in writing:               <ul style="list-style-type: none"> <li>○ a statement of the retailer’s genuine commercial reasons for the delisting; or</li> <li>○ information (or additional information) relating to the delisting?</li> </ul> </li> <li>• If so, has the retailer promptly complied, in writing, with your request?</li> </ul>	<p>If you have requested this information, and the retailer has not promptly complied with your request, this is a breach of the Code.</p> <p>The requirement to provide information relating to the delisting in response to a request from you applies whether or not the retailer has complied with the notice requirements above.</p>

<ul style="list-style-type: none"> <li>• Have you requested in writing that the retailer review any decisions regarding delisting made by the retailer?</li> <li>• If so, has the retailer promptly responded to that request and provided you with written notice of the outcome of the review, including the basis for the retailer’s decision?</li> </ul>	<p>This applies to any delisting decision of the retailer, not just those that may be in breach of the Code.</p> <p>If the retailer has not promptly and properly responded to your request, this is a breach of the Code.</p>
<b>Exceptions – when notice requirements do not apply</b>	
<ul style="list-style-type: none"> <li>• Do either of the following apply to the delisting: <ul style="list-style-type: none"> <li>○ Was time of the essence (including for product recalls, withdrawals, or safety issues)?</li> <li>○ Were there persistent issues with supply that have resulted in the retailer being out of stock or stocked at significantly reduced levels?</li> </ul> </li> </ul>	<p>If yes, the notice requirements above do not apply. However, <u>the retailer is required to provide a written explanation</u>. See the question on this below.</p> <p>If no, the notice requirements above apply.</p> <p>For the avoidance of doubt, this does not limit your ability to request information relating to the delisting from the retailer or request any delisting decision be reviewed by the retailer.</p>
<ul style="list-style-type: none"> <li>• If the retailer relies on the above exclusion, has it given you a clear and full written explanation as to why the retailer considers that either: <ul style="list-style-type: none"> <li>○ Time was of the essence (including for product recalls, withdrawals, or safety issues); or</li> <li>○ There were persistent issues with supply that resulted in the retailer being out of stock or stocked at significantly reduced levels?</li> </ul> </li> </ul>	<p>If the retailer has not provided you with a full written explanation, this is a breach of the Code.</p>

## Clause 20 – Funded promotions

### Overview of clause

*If the supplier has agreed to fund a promotion, the retailer must provide the supplier with reasonable notice in writing before holding the promotion. This provision also covers investment buying.*

*(See [Figure 15](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<b>Notice and promotional pricing requirements</b>	
<ul style="list-style-type: none"> <li>• Have you agreed to make a payment in support of the promotion of a product (funded promotion)?</li> <li>• If so, did the retailer give you reasonable notice before holding the promotion?</li> </ul>	<p>If the retailer has not given you reasonable notice before holding the promotion, this is a breach of the Code.</p>
<ul style="list-style-type: none"> <li>• Has the retailer ordered a grocery product from you in connection with the funded promotion at a promotional price (whether calculated by way of discount, rebate, credit, allowance, or otherwise)?</li> <li>• If so, did the retailer do both of the following:               <ul style="list-style-type: none"> <li>○ Ensured that the basis on which the quantity of the order is calculated is transparent?</li> <li>○ Agreed with you (in writing) on what happens to stock supplied at a promotional price, but which remains unsold at the end of the promotional period?</li> </ul> </li> </ul>	<p>If the retailer has not done both of these things, this is a breach of the Code.</p>
<b>Cancelling or reducing an order for a funded promotion</b>	
<ul style="list-style-type: none"> <li>• If the retailer has placed an order for a grocery product with you in connection with the funded promotion, has the retailer done either of the following without your written consent;</li> </ul>	<p>If yes, refer to the question below, as this may be a breach of the Code, subject to the notice and/or compensation provided to you.</p>

<ul style="list-style-type: none"><li>○ Cancelled the order; or</li><li>○ Reduced the volume of the order by more than 10%?</li></ul>	
<ul style="list-style-type: none"><li>● If yes to the above question, do either of the following apply:<ul style="list-style-type: none"><li>○ Did the retailer give you reasonable written notice of the cancellation or reduction?</li><li>○ Did the retailer compensate you for any net resulting costs, losses, or expenses incurred or suffered by you as a direct result of the retailer failing to give reasonable notice of the cancellation or reduction?</li></ul></li></ul>	<p>If yes, the cancellation or reduction without your written consent is acceptable under the Code.</p> <p>If no, the cancellation or reduction without your written consent is in breach of the Code.</p>

## Clause 21 – Fresh produce standard and quality specifications

### Overview of clause

*Special rules apply in relation to fresh produce. The retailer must provide the supplier with fresh produce standards and quality specifications that are reasonable and in clear, unambiguous, and concise written terms. The retailer must accept all fresh produce that meets the standards and specifications. Clause 21 also specifies timeframes for communications and notices by the retailer to the supplier.*

*(See Figure 16 of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<b>Fresh produce standards and quality specifications</b>	
<ul style="list-style-type: none"> <li>Are any fresh produce standards or quality specifications reasonable?</li> </ul>	If no, this is a breach of the Code.
<ul style="list-style-type: none"> <li>Have any fresh produce standards or quality specifications been provided to you in clear, unambiguous and concise written terms?</li> </ul>	If no, this is a breach of the Code.
<b>Requirements relating to rejecting fresh produce</b>	
<ul style="list-style-type: none"> <li>Has the retailer accepted all fresh produce delivered in accordance with any fresh produce standards and quality specifications?</li> </ul>	If no, this is a breach of the Code.
<ul style="list-style-type: none"> <li>Has the retailer rejected any fresh produce?</li> <li>If so, were all of the following conditions satisfied?               <ul style="list-style-type: none"> <li>The produce failed to meet relevant fresh produce standards or quality specifications</li> <li>The retailer rejected the produce within 24 hours after the produce is delivered to the retailer</li> <li>The retailer did not reject the produce after the retailer had accepted the</li> </ul> </li> </ul>	<p>It is acceptable under the Code for the retailer to reject any fresh produce where all of these conditions are satisfied.</p> <p>Where the retailer has rejected fresh produce on the first ground (failing to meet the relevant standards), <u>it must provide you with written reasons</u>. See the question below.</p> <p>If any condition is not satisfied, this is a breach of the Code.</p>

produce.	
<ul style="list-style-type: none"> <li>If the retailer has rejected fresh produce because it did not meet relevant fresh produce standards or quality specifications, did it provide you with written reasons for the rejection within 48 hours?</li> </ul>	If no, this is a breach of the Code.
<b>Labelling, packaging and preparation requirements</b>	
<ul style="list-style-type: none"> <li>Has the retailer communicated any labelling, packaging or preparation requirements in clear, unambiguous and concise written terms?</li> </ul>	If no, this is a breach of the Code.
<ul style="list-style-type: none"> <li>Has the retailer provided you with reasonable written notice of any required changes to packaging, labelling, or preparation standards (unless the change is required immediately by law) taking into consideration existing stock held by suppliers (where known) and any agreement as to stock coverage in the relevant grocery supply agreement?</li> </ul>	If no, this is a breach of the Code.
<b>Claims for damaged grocery products or shortfalls</b>	
<ul style="list-style-type: none"> <li>Has the retailer made any claim for damaged grocery products or shortfalls?</li> <li>If so, has the retailer done so within a reasonable time of, and in any event no later than 30 days after, delivery of the groceries to the retailer or the retailer's nominee?</li> </ul>	If the retailer has made any claim, and it is not within such time, this is a breach of the Code.

## Clause 22 – Unduly hindering or obstructing supply to competitors

### Overview of clause

*Retailers are prohibited from engaging in conduct that hinders or obstructs suppliers from supplying competitors.*

*(See Figure 17 of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<ul style="list-style-type: none"><li>• Has the retailer engaged in any conduct that has the purpose, effect, or likely effect of unduly hindering or obstructing you from supplying groceries to any other party?</li></ul>	<p>If yes, this is a breach of the Code.</p> <p>The wholesale grocery supply regime set up under Part 3 of the Grocery Industry Competition Act 2023 specifically encourages direct supply by suppliers to wholesale customers (retailer competitors).</p>

## Clause 23 – Business disruption

### Overview of clause

*Retailers are prohibited from threatening suppliers with business disruption or termination of an agreement without reasonable grounds.  
(See [Figure 18](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<ul style="list-style-type: none"><li>• Has the retailer threatened you with business disruption or termination of an agreement without reasonable grounds?</li></ul>	If yes, this is a breach of the Code.

## Clause 24 – Intellectual property rights

### Overview of clause

*Retailers must respect the intellectual property rights of suppliers (such as their rights in relation to branding, packaging, and advertising), including in relation to the development of private label products.*

*(See [Figure 19](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<ul style="list-style-type: none"><li>Has the retailer respected the intellectual property held by you in relation to grocery products, including intellectual property rights in branding, packaging, and advertising?</li></ul>	<p>If no, this is a breach of the Code.</p> <p>Note that this does not create or change any intellectual property rights for you.</p>
<ul style="list-style-type: none"><li>In developing or producing private label products, has the retailer infringed the intellectual property rights held by you in relation to grocery products, including rights relating to branding, packaging designs, or advertising?</li></ul>	<p>If yes, this is a breach of the Code.</p>
<ul style="list-style-type: none"><li>Have you respected the intellectual property rights of the retailer?</li></ul>	<p>Your actions in relation to the intellectual property rights of the retailer will be taken into account in any dispute relating to a breach of this clause.</p>

## Clause 25 – Confidential information

### Overview of clause

*Retailers are prohibited from using your confidential information for any purpose other than that disclosed.*

*(See [Figure 20](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<ul style="list-style-type: none"> <li>Have you disclosed confidential information to the retailer in connection with the supply of grocery products, including confidential information relating to product development, proposed promotions, or pricing?</li> </ul>	<p>If yes, consider the questions below relating to the retailer’s use of that confidential information.</p> <p>Information is not confidential information if it is publicly available or comes into the knowledge or possession of the retailer independently of you or as a result of actions that are not a breach by the retailer of this clause.</p>
<ul style="list-style-type: none"> <li>Has the retailer used your confidential information other than for a purpose for which it was disclosed?</li> </ul>	<p>If yes, this is a breach of the Code.</p> <p>Carefully check what the purpose for disclosure is stated as in the agreement to determine what you are agreeing to here. If you have concerns about the retailer’s use and disclosure of your information, you may wish to seek information about how the retailer has dealt with your confidential information.</p>
<ul style="list-style-type: none"> <li>Has the retailer disclosed the confidential information or made it available or accessible to any employee or agent who does not need to have that information in connection with that purpose?</li> </ul>	<p>If yes, this is a breach of the Code.</p> <p>Retailers must not share your confidential information within the business unless persons need that information in connection with the agreed purpose.</p>
<ul style="list-style-type: none"> <li>Has the retailer established and monitored systems to ensure compliance with the above (i.e., that confidential information is only used for the agreed purpose and shared with those persons that</li> </ul>	<p>If no, this is a breach of the Code.</p> <p>If you have concerns about the protection of your confidential information, you may wish to seek information from the retailer about</p>

need to have that information in connection with that purpose)?

the systems it has in place to protect confidential information.

## Clause 26 – Product ranging, shelf space allocation, and range reviews

### Overview of clause

*Retailers must publish and provide to suppliers their product ranging and shelf space allocation principles and apply these without discrimination, including by not discriminating in favour of their private label products. Retailers must also provide suppliers with written notice of the purpose and criteria for range review decisions and give reasonable time to discuss outcomes.*

*(See [Figure 21](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<b>Product ranging and shelf space allocation principles</b>	
<ul style="list-style-type: none"> <li>• Has the retailer published or provided to you:               <ul style="list-style-type: none"> <li>○ the retailer’s product ranging principles; and</li> <li>○ the retailer’s shelf space allocation principles?</li> </ul> </li> </ul>	<p>If no, this is a breach of the Code.</p> <p>Check that the principles provided are detailed enough so that you are able to determine whether the retailer is applying these principles correctly and without discrimination.</p>
<ul style="list-style-type: none"> <li>• Has the retailer acted in accordance with the principles and kept them up to date?</li> </ul>	<p>If no, this is a breach of the Code.</p>
<ul style="list-style-type: none"> <li>• Has the retailer applied its product ranging principles and shelf space allocation principles without discrimination (including without discrimination in favour of the retailer’s private label products)?</li> </ul>	<p>If no, this is a breach of the Code.</p>
<b>Range review process</b>	
<ul style="list-style-type: none"> <li>• Within a reasonable time before conducting a range review, did the retailer provide you with clearly expressed written notice of:               <ul style="list-style-type: none"> <li>○ the purpose of the range review; and</li> <li>○ the key criteria governing ranging decisions?</li> </ul> </li> </ul>	<p>This only applies if you might be affected by any outcome of the review.</p> <p>If this is the case, and written notice of this kind was not provided to you within a reasonable time before a range review, this is a breach of the Code.</p>

- Following the range review, did the retailer provide you with a reasonable period of time to discuss the outcomes of the review, including the basis for the retailer's final decisions?

This only applies if you are affected by the outcome of the review.  
If this is the case, and you were not provided a reasonable opportunity to discuss the outcome, this is a breach of the Code.

## Clause 27 – Transfer of intellectual property rights

### Overview of clause

*Retailers are prohibited from requiring suppliers to transfer or exclusively license their intellectual property as a condition of supplying a private label product to them.*

*(See [Figure 22](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<ul style="list-style-type: none"><li>• Has the retailer directly or indirectly required you to transfer or exclusively license any intellectual property right held by you in relation to a grocery product as a condition or term of supply of an equivalent private label product of the retailer?</li></ul>	<p>If yes, this is a breach of the Code.</p> <p>However, note that the retailer is not prevented from:</p> <ul style="list-style-type: none"><li>• holding an intellectual property right in a private label product of the retailer;</li><li>• having an exclusive right to the retail sale of a private label product of the retailer; or</li><li>• making the holding of a right referred to above by the retailer a condition or term of supply by you of a private label product of the retailer, to the extent that the product, recipe, or formulation of the product was developed, formulated or customised by or for the retailer.</li></ul>

## Clause 28 – Price increases

### Overview of clause

*This clause sets out the process that must be followed where a supplier requests a price increase and specifies timeframes and information requirements, including confidentiality obligations.*

*(See [Figure 23](#) of the Attachment for the full clause.)*

### Scope of clause

#### This clause only applies if:

- The retailer has an agreement with you;
- You inform the retailer, in writing, of an increase in the price (the price increase) of groceries supplied under the agreement;
- If the price increase is in respect of fresh produce that is supplied under the agreement and the agreement includes a mechanism to negotiate on a regular basis the price of that fresh produce, any negotiations about the price increase are not concluded within five working days after you inform the retailer of the price increase; and
- If the price increase is in respect of a product other than fresh produce, you have not informed the retailer of the same price increase in respect of the product within the last 6 months.

### Questions to consider

### What the answer means for you

#### Notice period

- Within 30 days of you informing the retailer of the price increase, has the retailer notified you, in writing, whether the retailer:
  - accepts the price increase; or
  - accepts an increase in the price of the groceries supplied under the agreement but does not accept the amount of the price increase; or

When the 30-day notice period begins depends on whether the retailer has requested further information to make an informed decision. See the question below to help determine the applicable 30-day period.

Where the retailer does not inform you in writing within the applicable 30-day period of its decision to accept the price increase or not, this is a breach of the Code.

<ul style="list-style-type: none"> <li>○ does not accept the price increase?</li> </ul>	
<ul style="list-style-type: none"> <li>● Has the retailer requested further information within a reasonable time frame, in good faith, and not as a tactic to delay decisions regarding price increases, in order for it to make an informed decision on whether it accepts or not the price increase?</li> </ul>	<p>If yes, the 30-day notice period above does not start running until you have provided the requested information to the retailer.</p> <p>If no, the 30-day notice period above starts running from the date of you informing the retailer of the price increase.</p>
<p><b>Negotiations</b></p>	
<ul style="list-style-type: none"> <li>● Has the retailer notified you that either: <ul style="list-style-type: none"> <li>○ it accepts an increase in the price of the groceries supplied under the agreement but does not accept the amount of the price increase; or</li> <li>○ it does not accept the price increase?</li> </ul> </li> </ul>	<p>If yes, you may request that the retailer enter into negotiations about an increase in the price for the groceries.</p>
<ul style="list-style-type: none"> <li>● Where the retailer has entered into such negotiations, has it done so: <ul style="list-style-type: none"> <li>○ in good faith; and</li> <li>○ taking all reasonable steps to conclude its position on the negotiations without delay?</li> </ul> </li> </ul>	<p>If no, this is a breach of the Code.</p>
<p><b>Disclosure of commercially sensitive information</b></p>	
<ul style="list-style-type: none"> <li>● Has the retailer required you to disclose commercially sensitive information in relation to the following: <ul style="list-style-type: none"> <li>○ the price increase; and/or</li> <li>○ negotiations about an increase in the price for the groceries?</li> </ul> </li> </ul>	<p>If yes, this is a breach of the Code.</p>

## Clause 29 – Freedom of association

### Overview of clause

*Retailers may not provide inducements or take action against suppliers to prevent them forming supplier associations.*

*(See [Figure 24](#) of the Attachment for the full clause.)*

Questions to consider	What the answer means for you
<ul style="list-style-type: none"><li>• Has the retailer provided an inducement to prevent you from either:<ul style="list-style-type: none"><li>○ forming an association of suppliers; or</li><li>○ associating with other suppliers for a lawful purpose?</li></ul></li></ul>	If yes, this is a breach of the Code.
<ul style="list-style-type: none"><li>• Has the retailer discriminated or taken any action against you for either:<ul style="list-style-type: none"><li>○ forming an association of suppliers; or</li><li>○ associating with other suppliers for a lawful purpose?</li></ul></li></ul>	If yes, this is a breach of the Code.

## Attachment A – References to the Grocery Supply Code<sup>4</sup>

### 6 Obligation to deal with suppliers in good faith

- (1) The retailer must at all times deal with suppliers in good faith.
- (2) The retailer must ensure that their grocery supply agreements do not contain a provision that limits or excludes the obligation to act in good faith but, if it does, the provision does not limit that obligation.
- (3) In determining whether the retailer has acted in good faith in dealing with a supplier, the following may be taken into account:
  - (a) whether the retailer has acted honestly;
  - (b) whether the retailer has co-operated to achieve the purposes of the relevant grocery supply agreement (including being responsive and communicative with the supplier);
  - (c) whether the retailer has not acted arbitrarily, capriciously, unreasonably, recklessly, or with ulterior motives;
  - (d) whether the retailer has not acted in a way that constitutes retaliation against the supplier for past complaints and disputes;
  - (e) whether the retailer's trading relationship with the supplier has been conducted without duress;
  - (f) whether the retailer's trading relationship with the supplier has been conducted in recognition of the need for—
    - (i) certainty regarding the risks and costs of trading, particularly in relation to production, delivery, and payment; and
    - (ii) provision of information to the supplier in a timely manner;
  - (g) whether the retailer has observed any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving a complaint or dispute with the supplier;
  - (h) whether the retailer has avoided unreasonable discrimination or distinction between suppliers:
    - (i) whether, in dealing with the retailer, the supplier has acted in good faith.
- (4) Subclause (3) does not limit subclause (1).  
Compare: Food and Grocery Code of Conduct cl 6B (Aust)

Figure 1 – clause 6

### 7 Grocery supply agreement must be in writing and retained

- (1) The retailer must ensure that—
  - (a) their grocery supply agreements are written in plain language; and
  - (b) a copy has been provided to the supplier.
- (2) The retailer must keep the original or a copy of each grocery supply agreement to which the retailer is a party while this code applies (including any document comprising the agreement, and any document made from time to time under the agreement that forms part of the agreement)—
  - (a) during the term of the agreement; and
  - (b) for 7 years after the agreement ends.  
Compare: Food and Grocery Code of Conduct cls 7, 42(1) (Aust)

Figure 2 – clause 7

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<sup>4</sup> The full Code can be accessed here:  
<https://www.legislation.govt.nz/regulation/public/2023/0220/latest/whole.html#LMS881004>

## 8 Matters to be covered by agreement

The retailer must ensure that their grocery supply agreements specify all of the following:

- (a) any requirements the retailer has in respect of the delivery of the groceries;
- (b) any circumstances in which the retailer may reject the groceries;
- (c) the period within which the retailer must pay the supplier for the groceries and the circumstances in which any payment, or part of a payment, may be withheld or delayed;
- (d) the term of the agreement (whether fixed or indefinite);
- (e) in clear terms, any quantity and quality requirements relating to the groceries;
- (f) if the agreement provides for cancellation by 1 or more parties to it, the circumstances in which it may be cancelled;
- (g) any terms that apply if the retailer decides to delist the groceries.

Compare: Food and Grocery Code of Conduct cl 8 (Aust)

Figure 3 – clause 8

## 9 Unilateral variation of agreement

- (1) The retailer must not vary a grocery supply agreement without the consent of the supplier concerned.
- (2) Subclause (1) does not apply if—
  - (a) the agreement—
    - (i) provides expressly for the retailer to make the variation; and
    - (ii) sets out clearly the changed circumstances in which the variation can be made; and
    - (iii) sets out the basis or methodology for calculating the adjustment, when the variation involves a quantitative adjustment to the terms of supply; and
  - (b) the variation is made in accordance with the agreement; and
  - (c) the variation is reasonable in the circumstances; and
  - (d) the supplier is given reasonable notice, in writing, of—
    - (i) the variation; and
    - (ii) the terms of the variation; and
    - (iii) the retailer's reasons for making the variation.
- (3) In determining whether the variation is reasonable in the circumstances, regard must be had to the benefits, costs, and risks (if any) for the supplier and retailer.
- (4) Subclause (3) does not limit subclause (2)(c).
- (5) The retailer's notice under subclause (2)(d)(iii) must include a clear and full written explanation as to why the retailer considers that—
  - (a) the variation is reasonable in the circumstances; and
  - (b) the other matters in subclause (2) are satisfied.

Compare: Food and Grocery Code of Conduct cl 9 (Aust)

Figure 4 – clause 9

## 10 Retrospective variation of agreement

The retailer must not vary a grocery supply agreement with retrospective effect.

Compare: Food and Grocery Code of Conduct cl 10 (Aust)

Figure 5 – clause 10

## 11 Transport or logistics services

- (1) The retailer must not directly or indirectly—
  - (a) require a supplier to use a particular transport or logistics service; or
  - (b) impose unreasonable service standards in respect of transport or logistics.
- (2) Subclause (1) does not prevent a retailer imposing reasonable service standards in respect of transport or logistics.

Figure 6 – clause 11

## 12 Payments to suppliers

- (1) The retailer must pay a supplier for all grocery products delivered and accepted in accordance with a grocery supply agreement—
    - (a) within the time frame set out in the agreement; and
    - (b) in any case, within a reasonable time after receiving the supplier's invoice for the products.
  - (2) The retailer must not—
    - (a) set off any amount against a supplier's invoice or remittance unless the supplier has consented in writing to the set-off of the amount; or
    - (b) require a supplier to consent to set off such an amount.
  - (3) Subclause (2) does not apply if—
    - (a) the grocery supply agreement provides for the amount to be set off; and
    - (b) the set-off is reasonable in the circumstances.
  - (4) A retailer that relies on subclause (3) must, after receiving a written request from the supplier, give a clear and full written explanation to the supplier as to—
    - (a) how the set-off was calculated; and
    - (b) why the retailer considers that the set-off is reasonable in the circumstances; and
    - (c) why the retailer considers that the other matters in subclause (3) are satisfied.
- Compare: Food and Grocery Code of Conduct cl 12 (Aust)

Figure 7 – clause 12

## 13 Payments for shrinkage

- (1) The retailer must not—
    - (a) directly or indirectly require a supplier to make any payment as compensation for shrinkage; or
    - (b) have a grocery supply agreement under which a supplier is required to make such payments.
  - (2) Subclause (1) does not prevent the retailer from raising, discussing, or agreeing with a supplier proposals and procedures to mitigate the risk and occurrence of shrinkage.
  - (3) In this clause, **payment** includes payment in kind.
- Compare: Food and Grocery Code of Conduct cl 13 (Aust)

Figure 8 – clause 13

## 14 Payments for wastage

- (1) The retailer must not directly or indirectly require a supplier to make any payment to cover any wastage of groceries incurred while the groceries are under the effective control of—
  - (a) the retailer; or
  - (b) a contractor or agent of the retailer; or
  - (c) any other entity that is a retailer.
- (2) Subclause (1) does not apply if—
  - (a) the relevant grocery supply agreement sets out expressly and unambiguously the circumstances, which could include negligence by the supplier, in which the supplier will be required to make payments to cover wastage of the supplier's groceries incurred while the groceries are under the effective control of a person or entity referred to in subclause (1); and
  - (b) the wastage occurs in such circumstances; and
  - (c) the wastage was mainly the result of actions or omissions by the supplier; and
  - (d) the basis of the payment is set out in the grocery supply agreement; and
  - (e) the payment is reasonable having regard to the retailer's costs incurred by the wastage; and
  - (f) the retailer takes reasonable steps to mitigate those costs; and
  - (g) the retailer's claim for payment by the supplier is made no later than 6 months after the goods were received by the person or entity referred to in subclause (1).
- (3) A retailer that relies on subclause (2) must give a clear and full written explanation to the supplier as to why the retailer considers that—
  - (a) the payment is reasonable in the circumstances; and
  - (b) the other matters in subclause (2) are satisfied.
- (4) Subclause (5) applies if—
  - (a) the relevant grocery supply agreement provides for the supplier to make payments to cover wastage of the supplier's groceries; and
  - (b) the supplier seeks to negotiate a variation of the agreement relating to payments of that kind.
- (5) The retailer must not, in the course of the negotiations or as a precondition to entering into the negotiations, seek to negotiate other variations of the agreement unrelated to payments of that kind.
- (6) In this clause, **payment** includes payment in kind.  
Compare: Food and Grocery Code of Conduct cl 14 (Aust)

Figure 9 – clause 14

## 15 Payments as condition of being supplier

- (1) The retailer must not require a supplier to make any payment as a condition of stocking or listing grocery products.
- (2) Subclause (1) does not apply in relation to the retailer if—
  - (a) the payment is made in relation to a promotion; or
  - (b) the payment—
    - (i) is required under the relevant grocery supply agreement; and
    - (ii) is made in respect of groceries that have not been stocked, displayed, or listed by the retailer during the preceding 365 days in 25% or more of its stores; and
    - (iii) is reasonable, having regard to the costs and risks to the retailer in stocking, displaying, or listing the grocery products.
- (3) Subclause (2)(a) has effect subject to clause 17 (funding promotions).
- (4) A retailer that relies on subclause (2) must give a clear and full written explanation to the supplier as to why the retailer considers that the matters in subclause (2) are satisfied.
- (5) In this clause, unless the context otherwise requires,—
 

**25% or more of its stores**, in the case of a retailer that is part of a group, means 25% or more of the retail stores owned or operated by the group

**payment** includes payment in kind.  
Compare: Food and Grocery Code of Conduct cl 15 (Aust)

Figure 10 – clause 15

## 16 Payments for retailer's business activities

- (1) The retailer must not directly or indirectly require a supplier to make any payment towards the costs of any activity (the **retailer's business activity**) that is undertaken by the retailer in the ordinary course of carrying on a business as a retailer.
- (2) The retailer's business activity includes the following:
  - (a) a buyer's visit to the supplier:
  - (b) artwork or packaging design:
  - (c) consumer or market research:
  - (d) the opening or refurbishing of a store:
  - (e) hospitality for the retailer's staff:
  - (f) merchandising (for example, stocking shelves and setting up displays):
  - (g) the transport of goods within a retailer's business, which may include transport between distribution centres and retail stores.
- (3) Subclause (1) does not apply if—
  - (a) the relevant grocery supply agreement provides for the payment; and
  - (b) the payment is reasonable in the circumstances.
- (4) In determining whether the payment is reasonable in the circumstances, regard must be had to the following:
  - (a) the likely benefits to the supplier from the retailer's business activity:
  - (b) the likely benefits to the retailer from the retailer's business activity:
  - (c) the costs borne, or contributions made, by the retailer for the retailer's business activity.
- (5) Subclause (2) does not limit subclause (1).
- (6) Subclause (4) does not limit subclause (3)(b).
- (7) A retailer that relies on subclause (3) must give a clear and full written explanation to the supplier as to why the retailer considers that—
  - (a) the payment is reasonable in the circumstances; and
  - (b) the other matter in subclause (3) is satisfied.
- (8) In this clause, **payment** includes payment in kind.

Compare: Food and Grocery Code of Conduct cl 17 (Aust)

Figure 11 – clause 16

## 17 Funding promotions

- (1) The retailer must not directly or indirectly require a supplier to fund part or all of the costs of a promotion.
- (2) Subclause (1) does not apply if—
  - (a) the relevant grocery supply agreement provides for the funding; and
  - (b) the funding is reasonable in the circumstances.
- (3) In determining whether the funding is reasonable in the circumstances, regard must be had to the following:
  - (a) the likely benefits to the supplier from the promotion; and
  - (b) the likely benefits to the retailer from the promotion; and
  - (c) the costs borne, or contributions made, by the retailer for the promotion.
- (4) Subclause (3) does not limit subclause (2)(b).
- (5) A retailer that relies on subclause (2) must, after receiving a written request from the supplier, give a clear and full written explanation to the supplier as to why the retailer considers that—
  - (a) the funding is reasonable in the circumstances; and
  - (b) the other matter in subclause (2) is satisfied.
- (6) In this clause, **fund** includes payment in kind.

Compare: Food and Grocery Code of Conduct cl 18 (Aust)

Figure 12 – clause 17

## 18 Delisting products

- (1) The retailer may only delist a supplier's grocery product—
  - (a) in accordance with the terms of the relevant grocery supply agreement (if any); and
  - (b) for genuine commercial reasons.
- (2) The retailer **delists** a supplier's grocery product if either of the following apply:
  - (a) the retailer removes the product from the range of grocery products sold by the group to which the retailer belongs; or
  - (b) the retailer makes a decision of either of the following types that has, or is likely to have, a material effect on the supplier:
    - (i) a decision to remove the product from the range of grocery products at 1 or more retail stores;
    - (ii) a decision to reduce the distribution of the product at 1 or more retail stores.

### Example 1

The parent company (A) of a regulated grocery retailer group decides to stop selling a type of beans across all group stores. A is the entity that delists and that must comply with regulation 19.

### Example 2

A franchisee of A (F) operates one retail store and has a supply agreement with a local supplier for the supply of beans (B). F decides to stop selling B's beans in its store. That decision is likely to have a material effect on B because B currently sells all its beans to F. F is the entity that delists and that must comply with regulation 19.

- (3) For the purpose of subclause (1), **genuine commercial reasons** for delisting a product include the following:
  - (a) failure of the supplier to meet reasonable quality or quantity requirements as agreed with the supplier in respect to the product;
  - (b) failure of the supplier's product to meet the retailer's reasonable commercial sales or profitability targets as notified to the supplier in, or in accordance with, the grocery supply agreement;
  - (c) persistent failure to meet the retailer's reasonable delivery requirements as notified to the supplier from time to time in accordance with the grocery supply agreement.
- (4) Subclause (3) does not limit subclause (1).
- (5) Delisting as a punishment for a complaint, concern, or dispute raised by a supplier is not a genuine commercial reason.
- (6) A decision by the retailer not to extend the agreement, or enter into a new grocery supply agreement, following the expiry of a fixed term grocery supply agreement is not a decision to delist a product.

Compare: Food and Grocery Code of Conduct cl 19(1) to (4), (8) (Aust)

Figure 13 – clause 18

## 19 Process requirements relating to delisting

- (1) Before delisting a supplier's grocery product, the retailer must provide reasonable written notice to the supplier of the retailer's decision to delist the product. The notice must—
    - (a) include the genuine commercial reasons for delisting the product; and
    - (b) inform the supplier of the supplier's right to have the decision to delist the product reviewed by the retailer.
  - (2) Subclause (1) does not apply if—
    - (a) time is of the essence (including for product recalls, withdrawals, or safety issues); or
    - (b) there are persistent issues with supply that have resulted in the retailer being out of stock or stocked at significantly reduced levels.
  - (3) The retailer must promptly comply, in writing, with any written request from the supplier for—
    - (a) a statement of the retailer's genuine commercial reasons for the delisting; or
    - (b) information (or additional information) relating to the delisting. This subclause applies whether or not the retailer complied (or was required to comply) with subclause (1).
  - (4) The retailer must, after receiving a written request from the supplier, promptly review any decisions regarding delisting made by the retailer and provide the supplier with written notice of the outcome of that review, including the basis for the retailer's decision.
  - (5) A retailer that relies on subclause (2) must give a clear and full written explanation to the supplier as to why the retailer considers that the matters in that subclause are satisfied.
- Compare: Food and Grocery Code of Conduct cl 19(5) to (7), (9) (Aust)

Figure 14 – clause 19

## 20 Funded promotions

- (1) If a supplier agrees to make a payment in support of the promotion of a product (the **funded promotion**), the retailer must give the supplier reasonable written notice before holding the promotion.
  - (2) If the retailer orders a grocery product from a supplier in connection with the funded promotion at a promotional price (whether calculated by way of discount, rebate, credit, allowance, or otherwise), the retailer must—
    - (a) ensure that the basis on which the quantity of the order is calculated is transparent; and
    - (b) agree with the supplier (in writing) on what happens to stock supplied at a promotional price but which remains unsold at the end of the promotional period.
  - (3) If the retailer has placed an order for a grocery product with a supplier in connection with the funded promotion, the retailer must not do either of the following without the supplier's written consent:
    - (a) cancel the order; or
    - (b) reduce the volume of the order by more than 10%.
  - (4) Subclause (3) does not apply if—
    - (a) the retailer gives the supplier reasonable written notice of the cancellation or reduction; or
    - (b) the retailer compensates the supplier for any net resulting costs, losses, or expenses incurred or suffered by the supplier as a direct result of the retailer failing to give reasonable notice of the cancellation or reduction.
- Compare: Food and Grocery Code of Conduct cl 20 (Aust)

Figure 15 – clause 20

## 21 Fresh produce standards and quality specifications

- (1) This clause applies only in relation to fresh produce.
- (2) The retailer must ensure that any relevant fresh produce standards or quality specifications—
  - (a) are reasonable; and
  - (b) are provided to the supplier in clear, unambiguous, and concise written terms.
- (3) The retailer must accept all fresh produce delivered in accordance with relevant fresh produce standards and quality specifications.
- (4) The retailer must not reject fresh produce unless all of the following conditions are satisfied:
  - (a) the produce fails to meet relevant fresh produce standards or quality specifications; and
  - (b) the retailer rejects the produce within 24 hours after the produce is delivered to the retailer; and
  - (c) the retailer does not reject the produce after the retailer has accepted the produce.
- (5) If the retailer rejects fresh produce because it does not meet relevant fresh produce standards or quality specifications, the retailer must provide written reasons for the rejection to the supplier within 48 hours.
- (6) The retailer must communicate any labelling, packaging, or preparation requirements for a grocery product to a supplier in clear, unambiguous, and concise written terms.
- (7) The retailer must provide a supplier with reasonable written notice of any required changes to packaging, labelling, or preparation standards (unless the change is required immediately by law) taking into consideration existing stock held by suppliers (where known) and any agreement as to stock coverage in the relevant grocery supply agreement.
- (8) The retailer must make any claim for damaged grocery products or shortfalls, or any similar claims, within a reasonable time of, and in any event no later than 30 days after, delivery of the groceries to the retailer (or the retailer's nominee).

Compare: Food and Grocery Code of Conduct cl 21 (Aust)

Figure 16 – clause 21

## 22 Unduly hindering or obstructing supply to competitors

The retailer must not engage in any conduct that has the purpose, effect, or likely effect of unduly hindering or obstructing a supplier from supplying groceries to any other party.

Figure 17 – clause 22

## 23 Business disruption

The retailer must not threaten a supplier with business disruption or termination of a grocery supply agreement without reasonable grounds.

Compare: Food and Grocery Code of Conduct cl 23 (Aust)

Figure 18 – clause 23

## 24 Intellectual property rights

- (1) The retailer must respect the intellectual property held by suppliers in relation to grocery products, including intellectual property rights in branding, packaging, and advertising.
- (2) Subclause (1) does not create, confer, or extend any intellectual property rights in or of the supplier.
- (3) In developing or producing private label products, the retailer must not infringe the intellectual property rights held by a supplier in relation to grocery products, including rights relating to branding, packaging designs, or advertising.
- (4) In any dispute relating to a breach of this clause, any relevant actions of the supplier in relation to the intellectual property rights of the retailer must be taken into account.

Compare: Food and Grocery Code of Conduct cl 24 (Aust)

Figure 19 – clause 24

## 25 Confidential information

- (1) This clause applies if a supplier discloses confidential information to the retailer in connection with the supply of grocery products, including confidential information relating to product development, proposed promotions, or pricing.
- (2) The retailer must not use that information other than for a purpose for which it was disclosed and may only disclose it or make it available or accessible to employees or agents of the retailer who need to have that information in connection with that purpose.
- (3) The retailer must establish and monitor systems to ensure compliance with subclause (2).
- (4) Information is not confidential information for the purposes of this clause if the information—
  - (a) is publicly available; or
  - (b) comes into the possession or knowledge of the retailer—
    - (i) independently of the supplier; and
    - (ii) without any breach of subclause (2) on the part of the retailer.

Compare: Food and Grocery Code of Conduct cl 25 (Aust)

Figure 20 – clause 25

## 26 Product ranging, shelf space allocation, and range reviews

- (1) The retailer must publish or provide to all suppliers with whom the retailer has grocery supply agreements:
  - (a) the retailer’s product ranging principles; and
  - (b) the retailer’s shelf space allocation principles.
- (2) The retailer must act in accordance with the retailer’s principles and keep them up to date.
- (3) Within a reasonable time before conducting a range review, the retailer must provide suppliers who might be affected by any outcome of the review with clearly expressed written notice of—
  - (a) the purpose of the range review; and
  - (b) the key criteria governing ranging decisions.
- (4) Following the range review, the retailer must provide affected suppliers with a reasonable period of time to discuss the outcomes of the review, including the basis for the retailer’s final decisions.
- (5) The retailer must apply the retailer’s product ranging principles, and the retailer’s shelf space allocation principles, without discrimination (including without discrimination in favour of the retailer’s private label products).
- (6) This clause does not limit clause 19.

Compare: Food and Grocery Code of Conduct cl 26 (Aust)

Figure 21 – clause 26

## 27 Transfer of intellectual property rights

- (1) The retailer must not directly or indirectly require a supplier to transfer or exclusively license any intellectual property right held by the supplier in relation to a grocery product as a condition or term of supply of an equivalent private label product of the retailer.
- (2) Subclause (1) does not prevent the retailer from—
  - (a) holding an intellectual property right in a private label product of the retailer; or
  - (b) having an exclusive right to the retail sale of a private label product of the retailer; or
  - (c) making the holding of a right referred to in paragraph (a) or (b) by the retailer a condition or term of supply by the supplier of a private label product of the retailer, to the extent that the product, recipe, or formulation of the product—
    - (i) was developed or formulated by or for the retailer; or
    - (ii) is customised by or for the retailer.

Compare: Food and Grocery Code of Conduct cl 27 (Aust)

Figure 22 – clause 27

## 28 Price increases

- (1) This clause applies if—
  - (a) the retailer has a grocery supply agreement with a supplier for the supply of groceries; and
  - (b) the supplier informs the retailer, in writing, of an increase in the price (the **price increase**) of groceries supplied under the agreement; and
  - (c) if the price increase is in respect of fresh produce that is supplied under the agreement and the agreement includes a mechanism to negotiate on a regular basis the price of that fresh produce, any negotiations about the price increase are not concluded within 5 working days after the supplier informs the retailer of the price increase; and
  - (d) if the price increase is in respect of a product other than fresh produce, the supplier has not informed the retailer of the same price increase in respect of the product within the last 6 months.
- (2) Within 30 days of being informed by the supplier of the price increase, the retailer must, in writing, notify the supplier whether the retailer—
  - (a) accepts the price increase; or
  - (b) accepts an increase in the price of the groceries supplied under the agreement but does not accept the amount of the price increase; or
  - (c) does not accept the price increase.
- (3) If the retailer needs further information from the supplier in order for the retailer to make an informed decision under subclause (2),—
  - (a) the 30-day notice period in subclause (2) does not start running until the supplier has provided that information to the retailer; and
  - (b) the retailer must request the further information within a reasonable time frame, in good faith, and must not make the request as a tactic to delay decisions regarding price increases.
- (4) If the supplier is notified of a matter referred to in subclause (2)(b) or (c), the supplier may request the retailer to enter into negotiations about an increase in the price for the groceries.
- (5) A retailer that enters into such negotiations must engage in the negotiations in good faith and take all reasonable steps to conclude its position on the negotiations without delay.
- (6) The retailer must not require the supplier to disclose commercially sensitive information in relation to the following:
  - (a) the price increase;
  - (b) negotiations about an increase in the price for the groceries.

Compare: Food and Grocery Code of Conduct cl 27A (Aust)

Figure 23 – clause 28

## 29 Freedom of association

- (1) The retailer must not provide an inducement to prevent a supplier from—
  - (a) forming an association of suppliers; or
  - (b) associating with other suppliers for a lawful purpose.
- (2) The retailer must not discriminate, or take any other action, against a supplier for—
  - (a) forming an association of suppliers; or
  - (b) associating with other suppliers for a lawful purpose.

Compare: Food and Grocery Code of Conduct cl 29 (Aust)

Figure 24 – clause 29