

FACTSHEET: THE GROCERY SUPPLY CODE

Overview

This fact sheet provides an overview of the Grocery Supply Code and explains the Code's background, key features and where to get more information.

Who is this fact sheet for?

- Regulated grocery retailers
- Businesses that supply or are actively seeking to supply groceries to regulated grocery retailers (including to an individual supermarket or store).



What is the Grocery Supply Code about?

The Code is a set of rules about the agreements and conduct between regulated grocery retailers (RGRs) and grocery suppliers.

The Code is contained in the Grocery Industry Competition Regulations 2023 which are provided for by the Grocery Industry Competition Act 2023.

What is a regulated grocery retailer?

"Regulated grocery retailers" and related parties for the purposes of the Code are defined under the Grocery Industry Competition Act 2023.

They are the main grocery retailers Woolworths New Zealand (including Countdown, Fresh Choice and Super Value) and Foodstuffs North Island and Foodstuffs South Island (including Pak'n Save, New World and Four Square) and a list of persons and entities connected to them.

Why was the Code created?

The Code was introduced by the Government as a response to the Commission's 2022 Market Study, which found many suppliers are reliant on their trade with the main retailers and that the current state of competition in the grocery retail sector allows the retailers to transfer costs, risks and uncertainty onto suppliers. The power imbalance can reduce the ability and incentives for suppliers to invest and innovate, reducing choice for consumers.



The Code's purpose

The Code is intended to:

- ✓ Promote fair conduct, and prohibit unfair conduct, between RGRs and their suppliers
- ✓ Promote transparency and certainty about the terms of agreements between regulated grocery retailers and suppliers
- ✓ Contribute to a trading environment in the grocery sector that includes a diverse range of suppliers and in which businesses compete effectively
- ✓ Contribute to a grocery sector that consumers and businesses participate in confidently

What the Code covers

The Code covers RGRs' dealings with anyone supplying them with groceries, or actively seeking to supply them with groceries. Groceries are defined in the Grocery Industry Competition Act 2023 as goods in any of these product categories:

- Fresh produce (fruit, vegetables and mushrooms)
- Meat, seafood, or meat substitutes
- Dairy products (eg. milk, cheese and butter)
- Bakery products
- Chilled or frozen food
- Pantry goods or dry goods (eg. eggs)
- Manufacturer-packaged food
- Non-alcoholic drinks
- Personal care products (eg. toiletries)
- Household consumables (eg. cleaning products, laundry products, and stationery products)
- Pet care products (eg. pet food)

Alcoholic drinks are not included in the scope of the Grocery Industry Competition Act 2023.

What rules are in the Code?

This fact sheet only provides a high-level summary of the rules in the Code. Ways to find further information are provided at the end of this fact sheet.

The Code requires some behaviours by RGRs:

Act in good faith Clause 6	Retailers are required to act in good faith when dealing with their suppliers.
Put agreements in writing Clauses 7 & 8	A grocery supply agreement must be in writing, in plain language, provided to the supplier and kept by the RGR for seven years after the agreement ends. There is mandatory content that a grocery supply agreement should cover, such as the payment period, term of the agreement and any quantity or quality requirements.
Pay in reasonable timeframes Clause 12(1)	Payment is to be made within the timeframe set out in the agreement and within a reasonable time from receiving invoice.
Provide reasonable notice and genuine commercial reasons for 'delisting' Clauses 18 & 19	A retailer can only delist a product under the terms agreed in the relevant grocery supply agreement. They must also provide reasonable notice and genuine commercial reasons for delisting a supplier's product. Delisting as a punishment for a complaint, concern or dispute is prohibited.
Provide reasonable notice of an agreed promotion Clause 20(1)	Retailers must provide suppliers with reasonable notice that they are holding a promotion when suppliers have agreed to provide funding towards the promotion.
Be transparent about 'investment buying' Clauses 20(2) to (3)	When ordering stock from a supplier under a funded promotion, a retailer must be transparent about how they calculated the amount of stock to order and agree with the supplier what happens to unsold stock at the end of the promotion. These types of orders can only be cancelled or reduced by more than 10% with a supplier's written consent or reasonable notice or compensation for losses incurred by the supplier.
Be clear & reasonable about standards for fresh produce Clause 21	Standards for fresh produce (fruit and vegetables) need to be set out clearly in writing and a retailer's decision to accept or reject the produce must be made within 24 hours of delivery, with the rejection reasons documented.
Have respect for intellectual property Clause 24	Retailers must respect their suppliers' intellectual property rights and not infringe on these in developing private label products.
Manage use and access to confidential information Clause 25	Retailers should only use suppliers' confidential information (eg. product development, proposed promotions, pricing) for the purpose that it is provided, and have systems in place to manage access to that information.
Follow principles for product ranging and shelf allocation Clause 26	Retailers must make their product ranging and shelf space allocation principles available to suppliers (eg. by publishing them) and follow those principles. Retailers cannot discriminate in favour of their private labels when applying their product ranging and shelf space allocation principles. Clause 26 also sets out a process that retailers need to follow for informing suppliers that are, or might be, affected by a range review.
Respond to notifications of price increases Clause 28	Retailers must respond to being informed of price increase requests from suppliers within 30 days, except when a product has been subject to the same request within the last 6 months, or if the retailer (in good faith) requires further information from the supplier. Special rules apply in relation to fresh produce.

The Code prohibits some behaviours by RGRs:

The Code prohibits some behaviours by RGRs completely. These can't be 'contracted out' of in supply agreements.

Retrospective changes to agreements Clause 10	Retailers cannot vary their supplier agreements with retrospective effect .
Requirements to use specific transport Clause 11	RGRs cannot require suppliers to use specific transport or logistics services , or impose unreasonable service standards for transport or logistics.
Requiring payments for shrinkage Clause 13	Retailers cannot require suppliers to pay for shrinkage (the loss of grocery products due to theft or accounting error).
Obstructing supply to other retailers Clause 22	Retailers cannot engage in any conduct that would hinder or obstruct a supplier from supplying groceries to any other party .
Threatening suppliers with termination Clause 23	Retailers must not threaten suppliers with business disruption or termination of grocery supply agreements without reasonable grounds.
Requiring transfer of intellectual property Clause 27	Retailers cannot require suppliers to transfer or exclusively licence their intellectual property to them as a condition of supplying an equivalent private label product.
Discouraging suppliers from forming associations Clause 29	Retailers cannot discriminate, or take any action, against suppliers for forming an association or lawfully associating. They cannot try to prevent suppliers from associating by offering inducements either.



Some conduct is prohibited with exceptions:

Some conduct is prohibited unless the agreement between an RGR and a supplier provides for it and it is reasonable in the circumstances.

Unilateral variations Clause 9	Retailers cannot vary an agreement without the consent of the supplier (unilateral variation) unless this has been provided for in the supply agreement and is reasonable in the circumstances.*
Set-offs Clauses 12(2) to 12(4)	Set-offs (deductions against payments to a supplier) are prohibited unless the supplier has consented to the set-off in writing, or the set-off has been provided for in the supply agreement and is reasonable in the circumstances. A written explanation of why the set-off is reasonable in the circumstances and how it was calculated must be provided by the RGR if requested by the supplier.
Requiring payments for wastage Clause 14	Requiring payment to cover wastage of groceries that was incurred while the groceries were in the RGRs effective control is prohibited unless unambiguously provided for in the supply agreement (including a method for calculating payment), the payment amount is reasonable, the claim is made within six months of receiving the goods and the wastage was mainly caused by the acts or omissions of the supplier.*
Requiring payments as a condition of stocking products Clause 15	Requiring payment or payment in kind as a condition of stocking or listing groceries is prohibited except in the case of an agreed promotion (see clause 17), or for new items (not stocked in the last year) if provided for in the supply agreement and reasonable in the circumstances.*
Requiring payments for retailer's activities Clause 16	Requiring payment or payment in kind for retailer business activities such as merchandising and transporting goods between distribution centres and retail stores is prohibited unless provided for in a supply agreement and reasonable in the circumstances.*
Requiring payments for promotions Clause 17	Requiring payment or payment in kind for a promotion is prohibited unless provided for in the supply agreement and reasonable in the circumstances. A written explanation of why the funding is reasonable in the circumstances must be provided by the RGR if requested by the supplier.

*RGRs must give suppliers a clear and full explanation as to why the proposed term is reasonable in the circumstances.

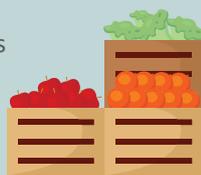
What do I need to do?

RGRs

- Understand the Code and follow it
- Ensure you are satisfied that you have met the requirements of the Code when asking a supplier to agree to “contract out” of a protection. If it is not reasonable even if the supplier has agreed, the term cannot be enforced
- Make sure everyone who deals with suppliers understand the obligations under the Code and are able to do their job in a way that complies with it
- Identify all supplier agreements that are inconsistent with the Code and make offers to vary these so they are consistent with the Code by 28 March 2024

Suppliers

- Understand your rights and privileges under the Code and apply them
- Understand RGRs’ obligations under the Code and respect them



When does the Code take effect?

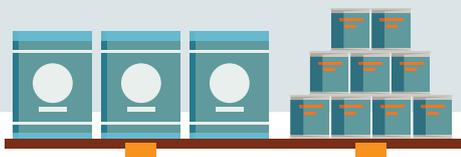


From **28 September 2023**:

- RGRs must comply with the Code
- RGRs must act in good faith when dealing with suppliers
- All **new agreements** and associated conduct needs to comply with the Code



RGRs have until **28 March 2024** to offer their suppliers any necessary variations to ensure **existing agreements** are consistent with the Code. After this date the provisions of the Code apply irrespective of what is in the agreement.



Breaching the Code

What are the consequences of someone breaching the Code?

There are significant consequences for breaching, or attempting to breach the Code, including pecuniary penalties.

- For an individual, a maximum of \$200,000
- In any other case, the greater of
 - \$3 million, or
 - the commercial gain, or if this cannot be easily established, 3% of turnover of the RGR group.

What if I think someone has breached the Code?

Get in touch with the Commerce Commission about your concerns:



You can make a complaint through our website at comcom.govt.nz/make-a-complaint



0800 943 600



contact@comcom.govt.nz

We understand if you want to complain confidentially and take steps to protect your information.

We value information from confidential informants. If you are concerned about the need to protect your identity, please raise it with us.

Further information

You can find the full Grocery Supply Code in Schedule 2 of the Grocery Industry Competition Regulations 2023, on the New Zealand Legislation website: legislation.govt.nz.

We provide a direct link to this on our website comcom.govt.nz/regulated-industries/grocery, which provides the most up-to-date information on our work in the Grocery sector.



Stay in touch with us

market.regulation@comcom.govt.nz. Use the subject line ‘Subscribe Grocery’ to get grocery news and updates from us.



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