

TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

1. ORDERS FOR THE SUPPLY OF GOODS AND SERVICES

1.1 You agree to supply Us with the Goods and/or Services set out in the Order.

2. PROVISION OF THE GOODS AND SERVICES

2.1 We engage You as a non-exclusive independent contractor. We may obtain Goods or Services from any other person during the Term.

2.2 You must provide the Goods and Services:

- (a) in accordance with Good Industry Practice, these Terms and Conditions and all Applicable Laws;
- (b) when on a Site, the WHS Requirements and Our Site procedures; and
- (c) in accordance with Our reasonable directions;

2.3 You must ensure the provision of the Goods and Services does not interfere with Our activities at the Site.

2.4 If You fail to comply with Your obligations under an Order or these Terms and Conditions and You do not remedy the non-compliance within any reasonable period We allow for that purpose then We may:

- (a) withhold payment of any Fees until the failure has been remedied;
- (b) require the Goods or Services to be provided again, at no cost to Us; or
- (c) require You to reimburse any Fees paid by Us.

3. VARIATION OR CANCELLATION OF ORDERS

3.1 We may vary an Order by giving You written notice at any time after placing the Order.

3.2 We may at any time cancel an Order and We will not be required to pay You or any third party for the cancelled Order if:

- (a) the Goods or Services are not Delivered by the Delivery date in the Order;
- (b) the Delivery date is varied and the Goods or Services are not delivered by that varied date;
- (c) You breach these Terms and Conditions or the Order and fail to remedy the breach within 7

days of receiving notice to do so; or

(d) You become Insolvent.

3.3 We may at any time cancel an Order and We will only be required to pay You or any third party for the Goods or Services provided up to the date upon which We cancel the Order.

4. PACKING, TRANSPORTATION AND DELIVERY OF GOODS

4.1 You must ensure the Goods are labelled and packed and loaded in accordance with the Order and Our instructions and comply with Applicable Laws and also all requirements of the carrier to ensure no damage occurs to the Goods whilst in transit.

4.2 Unless otherwise agreed, We may keep any packaging or packing materials for the Goods, whether or not the Goods are accepted by Us.

4.3 If the Goods are Delivered:

(a) FIS, You must deliver the Goods to the Delivery Address on the Delivery Date during Our usual business hours or within the period and in the manner set out in the Order; or

(b) FOB, then We will take delivery of the Goods at Your premises, or You must engage a carrier to take delivery of the Goods at Your premises and at Our cost.

4.4 If You are a Coles Collect Supplier, We will arrange the Carrier and transportation, and We will collect the Goods from You on the date advised to You by the Carrier.

5. TITLE AND RISK IN GOODS

(a) If the Goods are delivered FIS, then the risk of damage to or loss of the Goods passes to Us when the Goods are delivered to the Delivery Address.

(b) If the Goods are delivered FOB, then the risk of damage to or loss of the Goods passes to Us when We, or our carrier, obtains possession of the Goods.

(c) Title in the Goods passes to Us when the Goods are delivered to the Delivery Address, unless we make any payment for the Goods prior to delivery, in which case title in the whole of the Goods passes to Us when any payment is made.

6. CHECKING GOODS AND CLAIMS

6.1 You must immediately advise Us of any problems with the Goods when You become aware of them.

6.2 We may check the Goods for compliance with the Order. If the Goods do not comply in with the Order in any respect, We may:

- (a) pay only for the Goods delivered, if the quantity is less than the quantity Ordered;
- (b) reject any Goods that do not comply with the Order or the Terms and Conditions and Claim against You in respect of those Goods and the cost of returning the Goods.

6.3 If the non-compliance becomes apparent later, We may still reject Goods and make a Claim.

6.4 The rejection of part of a Delivery will not affect the validity of the remainder of the Order.

7. FEES, INVOICING AND PAYMENT

7.1 You must Invoice Us for payment of the Fees for the Goods and Services promptly after Delivery of the Goods or completion of the Services, and in any event no later than 90 days after the Goods and Services are supplied.

7.2 You must provide Us with proof of Delivery of the Goods and provision of the Services with an Invoice.

7.3 Subject to Your full compliance with an Order these Terms and Conditions and Applicable Laws, We will pay all correctly issued Invoices in accordance with the Order, or as otherwise agreed in writing.

7.4 Our Payment of an Invoice does not constitute Our acceptance that the Goods or Services have been provided in accordance the Order and these Terms and Conditions.

7.5 Our obligation to pay the Fees is subject always to You performing Your obligations in accordance with the Order and these Terms and Conditions.

8. GOODS AND SERVICES TAX

8.1 All Invoices should show the Fees for the Goods and Services and separately itemise the applicable GST.

8.2 We will pay the full amount of each correctly issued Invoice, being the amount for the Taxable Supply plus the GST.

8.3 Where an Adjustment Event occurs in respect of any amount paid or

payable by Us for Taxable Supplies, We will issue, on Your behalf, an Adjustment Note as required under the GST Law. Any Adjustment Note that You purport to issue will not have legal status.

9. COMPLAINE WITH LAWS AND POLICIES

9.1 You must comply with:

- (a) all Applicable Laws applicable to the manufacture, packaging, packing and delivery of the Goods and the provision of Services;
- (b) Our WHS Requirements and Our security, administrative and other policies whilst You or Your employees or contractors are on Our premises or using any of Our equipment or property.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 We retain all right, title and interest in all of Our IPR. You must keep confidential and not copy, use or disclose Our IPR except to the extent necessary to perform Your obligations under an Order.

10.2 You retain all right, title and interest in all of Your IPR. We must keep confidential and not copy, use or disclose Your IPR except to the extent necessary to ensure the full benefit of an Order is accorded to Us.

10.3 All rights, title and interests subsisting in any IPR developed by or on behalf of You in the course of fulfilling Your obligations under an Order vests absolutely in Us upon creation of the IPR.

10.4 You must do everything necessary to obtain all IPR referred to in clause 10.3 including obtaining an assignment of rights from any subcontractor.

10.5 You grant Us a non-exclusive, perpetual, irrevocable, royalty free licence to use, reproduce, modify and adapt Your IPR for Our business purposes and to enable Us to gain full benefit of the Order without further reference to You.

10.6 If You have contributed to the creation of any specifications or the Goods together with Us, then all IPR in the specifications and the Goods will be owned by Us absolutely regardless of whether You had any IPR subsisting in the Specifications or the Goods prior to the date of the Order.

11. YOUR WARRANTIES

11.1 In respect of each Order, You warrant that:

- (a) You are legally entitled to contract with Us and supply the Goods and Services;
- (b) You will comply with the Order and all Applicable Laws;
- (c) the Goods and Services will be provided in accordance with Good Industry Practice;
- (d) You can Deliver the Goods and provide the Services in accordance with the Order and these Terms and Conditions;
- (e) all information You provide with the Goods and Services is comprehensive and current and accurate;
- (f) the Goods and all other materials You provide under the Order are newly manufactured and fit for the purpose they were supplied;
- (g) the Goods are free of any encumbrance, safe, free from defects and are of merchantable quality;
- (h) the Goods comply with all specifications and relevant standards and recommendations of the original manufacturer;
- (i) You have all licences, permits, consents and authorisations necessary to Deliver the Goods and provide the Services;
- (j) all of Your employees are legally entitled to work in Australia;
- (k) if You provided Us with a sample, the Goods correspond with the most recent sample We approved;
- (l) the Goods and Services will not infringe any IPR; and
- (m) You are not aware of any Claims in relation to the Goods and Services and have made reasonable enquiries to determine if there are any Claims if the Goods are imported from a third party.

12. INDEMNITY

12.1 You indemnify Us against all Claims made against or Costs incurred by Us arising out of or in connection with:

- (a) any breach by You of an Order, these Terms and Conditions and/or any Legal Requirement;
- (b) any loss of, damage to, or loss of use of tangible property caused

by any act, omission or negligence of You or Your employees, agents or subcontractors;

- (c) any injury to or death of any person caused by any act, omission or negligence of You or Your employees, agents or subcontractors;
- (d) use or possession by Us of any Goods or material provided by You under an Order;
- (e) any breach of warranty or negligence or other claim with respect to Goods and Services provided by You;
- (f) any defects the in Goods or recall or withdrawal of the Goods;
- (g) any Claim of infringement of IPR by any person in respect of the Goods or the Services; and
- (h) the supply, importation, promotion, sale or re-sale of the Goods by Us or You, or use of the Goods by Us or any of Our customers;

except to the extent that the Claim made against or Cost incurred by Us is directly attributable to Our negligence or wrongful act or omission.

12.2 The indemnity in clause 12.1 includes any loss of or damage to any property; the injury or death of any person and any costs or liabilities incurred in respect of a Claim by a third party.

13. INSURANCE

13.1 Prior to providing the Goods and Services You must obtain and maintain with insurers acceptable to Us a:

- (a) Public Liability insurance policy of \$10,000,000 per occurrence and unlimited in the aggregate, indemnifying You against liability for property damage, personal injury or death arising from the Services or the Goods manufactured, distributed or sold by You; and
- (b) Product Liability insurance policy of \$10,000,000 per occurrence;
- (c) Professional Liability insurance policy of \$5,000,000 per occurrence and unlimited in the aggregate, which must be maintained for two years following the completion of the Order.

14. CONFIDENTIALITY

14.1 You must:

- (a) keep all Our confidential information confidential and not disclose it to any third party without Our prior written consent;
- (b) not copy or make available Our confidential information to any person other than to those of Your officers, employees or subcontractors who need to know and who have agreed to keep that information confidential;
- (c) only use Our confidential information to perform the Order; and
- (d) immediately return or permanently delete or destroy all records of Our confidential information in Your possession or control upon completion or cancellation of an Order or otherwise when We direct you to do so.

14.2 Disclosure of Our confidential information must be limited to those in Your organisation who need to know, and no disclosure may be made to anyone else without Our consent, with the exception of disclosure required by law, in which case prior notice of the disclosure must be given to Us.

15. ASSIGNMENT AND SUBCONTRACTING

15.1 You will not in whole or in part assign, transfer or novate any of Your obligations under an Order or these Terms and Conditions without Our prior written consent.

15.2 If You subcontract the manufacture or Delivery of the Goods or the provision of the Services, You must ensure the subcontractor complies with the Order and these Terms and Conditions; and

15.3 You are liable to Us and responsible for the acts, defaults and omissions of Your subcontractors and employees and agents of subcontractors as if they were Yours.

16. DISPUTE RESOLUTION

16.1 If a dispute arises in connection with an Order or the Terms and Conditions, we will both use our reasonable endeavours to;

- (a) bring that issue to the other's attention as soon as possible; and
- (b) resolve the dispute through good faith discussions, and
- (c) promptly elevate the dispute through management as appropriate given the nature of the dispute.

16.2 Neither of us will refer the dispute to mediation nor start litigation unless this clause 16 has been followed and, after reasonable negotiation, one party reasonably believes the dispute cannot be resolved, or resolution would be faster if the dispute was referred to mediation or litigation.

16.3 Each party must continue to perform the Order despite the existence of a dispute, except if the makes it impossible to do so.

17. NOTIFICATIONS

17.1 Any formal notification to the other party required by an Order or these Terms and Conditions must be in writing, sent to the address for service of notices each has advised to the other (or if nothing has been advised, to each other's office with which we usually deal).

17.2 Notices are taken to be received:

- (a) if hand delivered, at the time of delivery;
- (b) in the case of a posted letter, on the third day after posting within Australia or the fifth day after posting for international mail; and
- (c) in the case of a facsimile or email, when the senders machine confirms sending the facsimile or email.

18. GENERAL PROVISIONS

- (a) **Set-Off:** Any amount You owe Us may, if not paid to Us within 14 days of request, be offset by Us against any amounts We owe You, until the full amount owed has been offset.
- (b) **Severance:** If any part of these Terms and Conditions is illegal or unenforceable for any reason, that part will be regarded as removed, and the remainder of the Terms and Conditions will remain effective.
- (c) **Survival:** Any obligations in these Terms and Conditions which continue or which are not fully discharged on fulfilment or

termination of an Order, continue to apply.

(d) **Waiver:** If either of us fails to insist on strict performance of any condition by the other, it is not a waiver of any later breach or default. A waiver is only valid or binding on the party granting that waiver if made in writing.

(e) **Amendments:** An amendment of an Order is valid only if it is made in writing signed by an authorised representative of each party.

(g) **Further Assurances:** Each party must do everything necessary to give full effect to an Order and the transactions contemplated by it.

(g) **Relationship:** The parties are independent contractors. Neither party may act as or represent itself to be the agent or partner of the other. Neither party may bind or purport to bind the other.

(h) **Governing Law:** The laws of the State of Victoria and the Commonwealth of Australia govern an Order and these Terms and Conditions.

19. DEFINITIONS

In these Terms and Conditions, the following terms have these meanings:

Adjustment Note and **Adjustment Event** have the meaning given by Section 195-1 of the GST Law. **Applicable Laws** means all the state, territory and commonwealth laws of Australia, regulations, and industrial awards, mandatory standards and requirements of any relevant authority to the extent applicable to the provision the Goods and Services. **Carrier** means Our nominated transport carrier. **Claim** means any claim made by allegation, demand, suit, action or other proceeding of any nature, whether arising under contract, tort, equity, and negligence or otherwise. **Coles Collect Supplier** means a supplier from whom We will arrange collection and transportation of Goods to Our premises. **Costs** mean any, cost, loss, liability, damage charge, outgoing or expense, including any costs and disbursements on a full indemnity basis. **Deliver** means delivery to the

Delivery Address, or in the case of Coles Collect Suppliers, making the Goods available for collection by Us from the agreed premises. **Delivery Address** means the place specified by Us in the Order to which the Goods must be delivered. **Fees** means the fees for the Goods and Services set out in an Order and includes all taxes, levies and duties; all labelling and packaging charges; all charges, including labour, for storage, packing, loading, transportation (including shipping, carriage, freight) and Delivery and off-loading of the Goods; and all insurance costs. **FIS** means Free into Store wherein You will deliver the Goods into Our store, including procuring storage, loading, freight and transportation of the Goods services as required. **FOB** means Fee on Board wherein You will deliver the Goods to Us at an agreed delivery point, from which point We are responsible for the freight. **Good Industry Practice** means that degree of skill, care, judgement and foresight that would reasonably be expected of a skilled and experienced person, engaged in the same type of activities as You under the same or similar circumstances. **Goods** mean the goods described in an Order and includes samples, packaging and labelling and any accessories and documentation pertaining to the Goods. **GST** has the meaning given by Section 195-1 of the GST Law. **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended or replaced from time to time. **Insolvent** means a party: (a) is in liquidation or provisional liquidation or under administration; (b) has a Controller (as defined in the *Corporations Act 2001*) appointed to it or any of its property; (c) has failed to comply with a statutory demand under section 459F(1) of the *Corporations Act 2001*; (d) is unable to pay its debts as they fall due; (e) does or omits to do anything resulting in insolvency under administration (as defined in section 9 of the *Corporations Act*); (f) enters into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; (g) any

analogous event under the laws of any jurisdiction; (h) unless occurring as part of a solvent reconstruction, amalgamation, merger or consolidation. **IPR** means intellectual property rights and includes all present and future rights including any applications for such rights in respect of copyright, trade marks, patents, designs, protection of confidential information, inventions, know how, product or business concepts, the right to object to the passing off of goods or services or misleading or deceptive conduct in relation to goods or services, and any other identifiable result of intellectual endeavour, whether arising under statute, contract or otherwise. **Invoice** has the meaning given to Tax Invoice by Section 195-1 of the GST Law. **WHS Requirements** mean the work health and safety requirements set out at www.contractor.colesgroup.com.au. **Order** means Our order for the purchase of Goods or Services. **Services** mean the services described in an Order. **Sites** mean any of Our premises where the Goods are Delivered and Services are provided. **Taxable Supply** has the meaning given by Section 195-1 of the GST Law. **Us or We or Our** means, as the case may be, Coles Supermarkets Australia Pty Ltd and its subsidiaries, Bi-Lo Pty Ltd and its subsidiaries, Coles Online Pty Ltd and its subsidiaries, Eureka Operations Pty Ltd and its subsidiaries, Liquorland (Aust) Pty Ltd and its subsidiaries and Liquorland (Qld) Pty Ltd and its subsidiaries. **You** means the supplier of the Goods and/or Services, as the case may be.