
**Foodstuffs North Island Limited -
Standard Terms and Conditions
for the Wholesale Supply of
Groceries as at 8 September 2023**

PUBLIC VERSION

foodstuffs NORTH
ISLAND

Foodstuffs North Island Limited - Standard Terms and Conditions for the Wholesale Supply of Groceries as at 8 September 2023

1.1. Standard Terms These terms of trade (**Terms**) govern all wholesale supplies of groceries from Foodstuffs North Island Limited (**FSNI**) to you (the **Customer** named above). These terms refer to FSNI, which is the legal entity which sells and supplies the goods to you, and also the FSNI Wholesale division (**FSNI Wholesale**), which is the division of FSNI which manages your wholesale supply relationship, including pricing.

1.2. Act prevails These are our standard terms and conditions for the wholesale supply of groceries as required by section 38 of the Grocery Industry Competition Act 2023 (**GICA**). If there is any inconsistency between these Terms and the requirements of the GICA, the GICA will prevail to the extent of the inconsistency.

2. What makes up your wholesale agreement with us?

2.1. If no other agreement If we do not have any other agreements with you, these Terms form the 'wholesale agreement' referred to in part 3 of the GICA.

2.2. If other agreement If we have other agreements with you (**Other Agreements**) such as:

2.2.1. a Confidentiality and Competition Law Protocol (**NDA**); and/or

2.2.2. an additional supply agreement (**Additional Supply Agreement**),

then those Other Agreement(s) plus these Terms will form the 'wholesale agreement' referred to in part 3 of the GICA.

2.3. Other Agreements prevail If we have entered into Other Agreements with you relating to FSNI's supply of goods to you, then in the event of any inconsistency between these Terms and those Other Agreements, those Other Agreements will prevail.

2.4. Extension of NDA If we have signed an NDA, we both agree that the definition of "Discussions" under that document is amended to cover the provision of ongoing wholesale supply and the confidentiality obligations are correspondingly extended.

3. Range

3.1. Limit to available range Our suppliers may decide they want to opt out of wholesale supply, via FSNI Wholesale, in totality or by customer, or impose other conditions on our wholesale supply. As such, the range available to you may be different from other customers and may change from time to time based on the relevant supplier's decision. FSNI Wholesale may also decide not to range

certain goods for genuine commercial reasons.

3.2. Changes to range In addition, FSNI Wholesale may review and change the available range to you at any time by adding or removing goods for genuine commercial reasons.

3.3. Your available range You can find the range available to you by speaking to your Sales Representative or on your price list.

3.4. Restricted goods Some goods within the FSNI Wholesale range carry restrictions, such as alcohol (**Age Restricted Items**). As part of your customer onboarding process additional information may be required before you can order such goods. If you order alcohol from us, you must be the holder of a licence issued under the Sale and Supply of Alcohol Act 2012 (**SAA**) or one of the other exceptions in section 8 of the SAA must apply and you must provide us with evidence of your licence when requested. It is illegal for us to sell or supply Age Restricted Items to anyone under the age of 18. You will ensure that anyone ordering, and anyone accepting delivery of, Age Restricted Items, on your behalf, is over the age of 18.

3.5. Dangerous goods You will comply with any reasonable direction or restrictions we notify you of in relation to the ordering, transport or storage of any dangerous goods we supply under these Terms.

4. Ordering

4.1. Your volume forecast If you are a large customer (as notified by your Sales Representative), your weekly or monthly volume forecasts need to be provided to FSNI Wholesale at least four weeks in advance (unless otherwise agreed to by us in writing) and need to be submitted as requested us. For peak seasons additional reasonable notice of your forecasts may be required. FSNI will advise you if it requires additional reasonable notice from you.

4.2. Order placement and order must align with forecast Your orders need to be placed electronically via the FSNI ordering platform (or another method we agree with you) and order quantities must be reasonably aligned with the forecast previously submitted for the applicable goods. Orders must be received at least 48 hours in advance of the planned delivery window. If your order is not received at least 48 hours in advance of the planned delivery window, we may not process your order. If order quantities do not reasonably align with your forecasts previously submitted, we may reduce your order to align with your forecast.

4.3. Minimum and maximum order quantities or values There may be minimum and maximum order quantities or values that you must comply with. Quantities are set at a product level by FSNI and may change from time to time for genuine commercial reasons. Where possible, we will advise you in advance of any proposed changes. You can find out about our minimum and maximum order quantities or values by speaking to your Sales Representative. If you do not comply with the minimum or maximum order quantities or values, your order for the relevant goods may be rejected (for orders under the minimum order quantities or value) or scaled down (for orders over the maximum order quantities or value).

4.4. Errors in pricing and orders FSNI Wholesale will endeavor to ensure that the price and description of goods is accurate on your price list. If there is an error in your order or our pricing, we may decline to process your order. In addition, if a price has been loaded incorrectly by us, we reserve the right to retrospectively issue a pricing adjustment invoice or credit to you.

4.5. Equitable distribution when demand is higher than supply Notwithstanding clause 4.3, on occasion there may be instances where we have insufficient availability of particular goods in order to service demand. In these instances, FSNI Wholesale may, in its discretion, limit the quantity of goods purchased, to ensure reasonably equitable distribution across FSNI's franchised stores, to you and to other FSNI Wholesale customers. If this occurs, we will notify you.

4.6. Compliance with credit limit You agree to comply with any credit limit applicable to you. We may reduce or reject orders received from you to ensure you remain within any applicable credit limit.

4.7. Out of stock goods Notwithstanding the rest of this clause, while we will use reasonable endeavors to ensure we will have availability of goods you have ordered, we cannot guarantee this. If a good is out of stock at the time the relevant order is picked at a Distribution Centre, notification will be given via the relevant invoice showing that it is an out of stock or zeroed line.

4.8. Delivery All orders will be delivered by FSNI and cannot be picked up by you.

5. Pricing

5.1. Pricing is plus GST All prices for goods exclude Goods and Services Tax (**GST**). In addition to the price, you must pay GST on the supply at the rate applicable at the time of supply. FSNI will issue you with a GST invoice.

5.2. Method for our pricing The price we charge for a good is calculated using the following method (**Pricing Method**):

- 5.2.1. the good's cost price to us (**Cost Price**) [commercially sensitive];
- 5.2.1.1. [commercially sensitive];
- 5.2.1.2. [commercially sensitive];
- 5.2.1.3. [commercially sensitive];
- 5.2.2. plus [commercially sensitive] (**Cost to Serve Charge**) [commercially sensitive];
- 5.2.2.1. [commercially sensitive]; plus
- 5.2.2.2. [commercially sensitive]; plus
- 5.2.2.3. [commercially sensitive];
- 5.2.3. [commercially sensitive].

This is our Pricing Method as required by section 43 of the GICA. We may provide additional information about the variables in our Pricing Method in any Additional Supply Agreement we have with you. [commercially sensitive]

5.3. Delivery fees [commercially sensitive].

5.4. Changes in pricing As our Pricing Method includes components which can change, the actual prices for the goods you are charged may change from time to time. Prices are subject to change at any time without any notice, however, if any of the components in our Cost to Serve Charge change, we will provide you with at least 20 Working Days' notice of the change. You can obtain our current pricing by speaking to your Sales Representative.

5.5. Actual price charged: The price will be the price for the relevant good on the day you place the relevant order with us in accordance with clause 4.2 (which may be different to the price at the time your order is delivered). If an order is edited in whole or in part by you or us at your direction, you agree the entire order will be repriced to the date of the editing. The prices that apply will be set out in your invoice or other documentation provided by us.

6. Supply

6.1. Transfer of unit load In advance of supply, you must provide FSNI Wholesale with the details of the relevant unit load device account (e.g. Chep, Loscam) for the good/s you anticipate ordering, held in your name for the transfer of the relevant unit load device balances from FSNI Wholesale to you following delivery of goods under these Terms. The process for transferring unit load device balances between us is outlined in FSNI Wholesale's Unit Load Device Transfer Policy which is available from your Sales Representative.

6.2. Delivery schedule A weekly schedule of delivery days and/or windows will be agreed prior to supply commencing. FSNI Wholesale may change this from time to time for genuine commercial reasons and will advise you of any proposed changes in advance. This will generally be during peak trading periods, in response to material volume fluctuations, or in response to any other reasonably required delivery requirements.

6.3. Delays If we anticipate a delay in delivery we will provide notice to you by text or some other method we may agree.

6.4. Consolidation of deliveries We may consolidate multiple orders from the same origin to the same destination for delivery in the same window. FSNI will advise you in advance of any proposed consolidation of multiple orders.

7. Health and Safety

7.1. Both have Health and Safety duties We are each a "Person Conducting a Business or Undertaking" (PCBU) for the purposes of the Health and Safety at Work Act 2015 (H&S Act). We both have duties under the H&S Act and as PCBUs, we must, as far as it is reasonably practicable, consult, coordinate and cooperate in relation to activities with all other PCBUs who have a duty in relation to the same matter.

7.2. Health and Safety requirements for your delivery sites We require your sites which we access when supplying goods under these Terms (to the extent relevant to each site) to have:

- 7.2.1. a process to induct our workers (whether employees or contractors) to the site;
- 7.2.2. a traffic management plan that ensures the separation of people from moving vehicles or equipment;
- 7.2.3. a safe location for loading and unloading our trucks that is isolated from onsite workers and compliant with any local council's requirements (e.g. noise limits and operating hours);
- 7.2.4. a process to ensure that our workers are safe during the loading and unloading of their truck (e.g. driver safe zone, key management system); and
- 7.2.5. a process to ensure any onsite equipment used by our workers is in safe working order (e.g. docking systems, pallet jacks etc).

7.3. Site assessment FSNI may assess your sites' truck loading and unloading location and processes for compliance with this clause 7. If safety concerns are raised, we may decline delivery (or collection) at that site.

7.4. Notification to us In the event of an incident, event, near miss or injury involving our workers on your site, you must notify us verbally as soon as practicable and complete an incident investigation. We may also complete an investigation with both parties meeting to discuss causation and actions.

7.5. Notification to WorkSafe NZ In the event of an injury or illness at your site involving our workers that is notifiable to WorkSafe NZ, there must be prior agreement on who will take responsibility to notify.

8. Invoices and Payment

8.1. Tax invoices Tax invoices are generated on dispatch of goods from FSNI's Distribution Centres and are issued seven days a week. Each FSNI Distribution Centre will produce one tax invoice for each delivery.

8.2. Weekly statement Statements of accounts will be issued on the first Working Day of the week and will record all transactions for the immediately preceding week, Monday to Sunday.

8.3. Payment by direct debit All invoices listed on the weekly statement of accounts are direct debited from your nominated bank account. Each weekly statement is direct debited on the Monday of the week following the statement's issue date.

8.4. Consequences if you are late paying In the event that any direct debit dishonors and a weekly statement of account is not paid in full by the due date, FSNI Wholesale may:

- 8.4.1. immediately charge interest on the overdue balance at the rate normally charged by FSNI to its franchised stores on overdue sums at the relevant time;
- 8.4.2. charge you other costs it directly incurs (including collection costs and legal costs on a full indemnity basis); and
- 8.4.3. suspend sale and/or delivery of further goods until the overdue balance is paid in full.

8.5. No set-off Payment of invoices should be made in full and without set-off, deduction or counter-claim.

9. Credits and claims

9.1. Minor damage allowance Minor damage allowance (MDA) applies in respect of specific suppliers and their goods as outlined in our MDA Policy. Our MDA Policy is available from your Sales Representative. Where a good is subject to MDA, you agree that credits for damaged or defective products under the applicable threshold are not to be raised as you acknowledge that MDA has already been included as a discount to the Cost Price.

9.2. Claims not covered by MDA For any claims relating to goods not covered by MDA or exceeding the MDA threshold:

- 9.2.1. Claims must be made within 48 hours of receipt of faulty or damaged goods or goods sent in error, or within 48 hours of the due date for delivery of missing goods. Invoice number/s and delivery dates must be supplied as proof of purchase.
- 9.2.2. Where FSNI Wholesale accepts liability for damaged, faulty or missing goods, FSNI Wholesale's only liability is to either, at its option, resupply the goods to you or credit or refund you with all or part of the purchase price.
- 9.2.3. Any refund or credit for the goods will only be applied once the goods have been returned to FSNI Wholesale's possession or, by mutual agreement, destroyed by you.
- 9.2.4. Any request for a credit must be approved by an authorised representative of FSNI Wholesale before being processed. The credit will be shown on the next weekly statement after such approval has been granted and clause 9.2.3 has been complied with.

10. Customer queries

- 10.1. All queries should be directed to your Sale Representative, or to FSNI@foodstuffs.co.nz

11. Transfer of ownership and risk

- 11.1. Risk** Risk in any goods supplied to you under these Terms will pass to you on the earlier of actual receipt by you or delivery to the address for delivery specified by you.
- 11.2. PPSA** Legal and equitable ownership of all goods supplied by us under these Terms is retained until full payment is received. You acknowledge FSNI's right to register a security interest under the Personal Property and Securities Act 1999 (**PPSA**). You further acknowledge that:
 - 11.2.1. you will promptly execute any documents and do anything else required by us to ensure that the security interest in the goods constitutes a perfected security interest.
 - 11.2.2. nothing in sections 114(1)(a), 133, and 134 of the PPSA, or your rights under the sections of the PPSA listed in section 107(2) of the PPSA, will apply to the goods or these Terms.

- 11.2.3. you waive your right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these Terms.
- 11.2.4. the goods will be stored in a way which allows the goods supplied or delivered at different times by us to be identified to a particular delivery and/or invoice from us.
- 11.2.5. notwithstanding any appropriation by you, we are entitled to apply any payment you make as we see fit (ie we may apply a payment received against an earlier invoice).

12. Right of resale only within NZ

- 12.1. Sale within NZ only** Due to supplier requirements, you agree you will not sell or supply goods purchased under these Terms outside of New Zealand (unless we have previously agreed in writing).

13. Obligation to maintain confidentiality and prevent fraud

- 13.1. Confidentiality** Subject to any disclosure required under the GICA, your pricing and any other special terms with us are confidential and you must maintain that confidentiality. In addition to any requirements set out in any Other Agreements you have with FSNI, you will limit disclosure of your pricing and other special terms to the extent practicable within your organisation and you will immediately notify us if you become aware of a breach of these confidentiality requirements.
- 13.2. Liability for purchases** You are responsible for ensuring that your FSNI Wholesale account details are not provided or disclosed to any person other than those persons within your organisation who are expressly authorised to act on your behalf. You are liable for all purchases on your FSNI Wholesale account including those made fraudulently where you have failed to comply with this clause.
- 13.3. No publicity** Subject to any requirements of the GICA, unless we have agreed in writing first, neither of us may publicise these Terms or any other matter relating to it (including our business relationship).

14. Exclusions and limitation of liability

- 14.1. CGA does not apply** You agree that the goods we are supplying under these Terms are supplied and acquired in trade, and that the Consumer Guarantees Act 1993 (**CGA**) does not apply to the supply under these Terms, and you expressly agree that this is fair and reasonable.

14.2. Exclusion of guarantees Subject to clause 8 and the rest of this clause 14, if we have the benefit of a warranty from the ultimate supplier of a good we will pass this onto you, but otherwise you acknowledge that, to the fullest extent permitted by the law:

- 14.2.1. all guarantees, warranties and conditions implied by the CGA or the Contract and Commercial Law Act 2017 or otherwise are expressly excluded.
- 14.2.2. we do not warrant that any goods supplied under these Terms will meet any particular specifications or be fit for any particular purpose.

14.3. No liability for indirect loss Notwithstanding any other provision of these Terms, neither party will be liable to the other, in any circumstances, for any losses other than direct losses, and will not be liable at any time and in any circumstances for any indirect and consequential losses.

14.4. Limitation of liability Notwithstanding any other provision of these Terms, each party's liability to the other for losses or damages (under the law of contract, tort, equity or otherwise) arising out of, or in connection with, these Terms will be limited in aggregate to the higher of:

- 14.4.1. NZD\$10 million; or
- 14.4.2. three times the amount paid or payable by you under these Terms in the three-month period prior to the loss or damage arising.

15. Product recall

15.1. Product recall You must co-operate fully if FSNI, or the relevant supplier, decides or is required to recall goods supplied to you under these Terms.

15.2. Must subscribe to recall service As a condition of our supply to you, you must subscribe to GS1's ProductRecallNZ service.

16. Termination

16.1. No obligation to purchase from us You have no obligation to continue to purchase goods from us under these Terms and may cease to do so at any time (unless we have an Other Agreement with you that provides otherwise).

16.2. Your rights of termination: You may terminate these Terms if any of the following occurs:

- 16.2.1. We cease to carry on business in the normal course; or
- 16.2.2. We are subject to an insolvency event (in your reasonable opinion there is a significant risk we are unable to pay our debts as they fall due or if we become insolvent or bankrupt); or

16.2.3. We commit a breach of a material obligation contained in these Terms or an Other Agreement:

16.2.3.1. which is capable of remedy and we fail to remedy such breach within 10 Working Days following receipt of notice from you specifying the breach and requiring it to be remedied; or

16.2.3.2. which is not capable of remedy; or

16.2.4. We commit two or more of the same or similar breaches of non-material obligations in any three month period; or

16.2.5. If, in your reasonable opinion, we engage in conduct which reflects unfavourably on your operation or reputation.

16.3. Our rights of termination We may terminate these Terms, and any obligation to supply goods to you under them, immediately by written notice, and without liability, if any of the following occurs:

16.3.1. You cease to carry on business in the normal course; or

16.3.2. You fail to comply with clause 7 (health and safety obligations); or

16.3.3. You are subject to an insolvency event (in our reasonable opinion there is a significant risk you are unable to pay your debts as they fall due or if you become insolvent or bankrupt); or

16.3.4. You commit a breach of a material obligation of these Terms or an Other Agreement:

16.3.4.1. which is capable of remedy and you fail to remedy such breach within 10 Working Days following receipt of notice from FSNI Wholesale specifying the breach and requiring it to be remedied; or

16.3.4.2. which is not capable of remedy; or

16.3.5. You commit two or more of the same or similar breaches of non-material obligations in any three-month period; or

16.3.6. If, in our reasonable opinion, you engage in conduct which reflects unfavourably on the operation or the reputation of FSNI or FSNI Wholesale; or

16.3.7. If the information given in your application for credit is not correct and you have failed to correct this information within five working days of FSNI Wholesale's request.

16.4. Termination by either party Either party may terminate these Terms by written notice to the other party where that written notice is provided to the other party at least three months prior to the proposed termination date.

16.5. Termination for Force Majeure We can both terminate these Terms immediately by written notice to the other party if the other party is affected by a force majeure event which extends for a continuous period of 14 days.

16.6. Consequences of termination Upon termination of these Terms (or Other Agreement) for whatever reason, all amounts outstanding will become immediately due and owing.

17. Dispute resolution

17.1. GICA prevails Subject to any requirements of the GICA, this clause 17 sets out how we resolve disputes.

17.2. Must comply with this clause If a dispute arises under or in connection with these Terms, no party may commence any court proceedings relating to the dispute unless it has first complied with this clause 17. However, nothing in this clause 17 restricts or limits the right of a party to:

- 17.2.1. obtain urgent injunctive relief; or
- 17.2.2. terminate or suspend these Terms where these Terms provide such a right.

17.3. Dispute Notice If a dispute arises under or in connection with these Terms, a party may, at any time, give notice (**Dispute Notice**) to the other:

- 17.3.1. specifying the nature of the dispute and the position which that party believes to be correct; and
- 17.3.2. requesting a meeting takes place to attempt to resolve the dispute.

17.4. Senior managers to resolve An appropriate senior management representative for each party must meet within five working days of the date of the Dispute Notice and endeavor to resolve the dispute in good faith.

17.5. Mediation If the dispute remains unresolved for a further period of five Working Days, a party may by notice in writing require that the dispute be submitted for mediation by a mediator agreed by the parties or, if no agreement can be reached within two Working Days after receipt of that notice, a mediator nominated by the President of the New Zealand Law Society.

17.6. Court proceedings The mediator will determine the procedure and timetable for the mediation. The costs of the mediation will be shared equally by the parties. If, within two Working Days' following the mediation, the dispute remains unresolved, either party may pursue its legal rights (including commencing any court proceedings).

18. General conditions

18.1. Changes to these Terms: We may change or replace these Terms at any time for genuine commercial reasons or if required as a result of the GICA (including any determination issued under the GICA). We will provide you with at least 10 Working Days notice in writing, or by emailing the revised Terms to you, or by posting the updated Terms on our website. Your continued purchase of good from us means you agree to our revised Terms.

18.2. No waiver If we fail to enforce any term or fail to exercise any of our rights under these Terms at any time, we have not waived that term or right.

18.3. Enforceability If any provision of these Terms is held to be invalid or unenforceable for any reason, the remaining provisions remain in full force.

18.4. Notices Any notice to be given under or in connection with these Terms may be given in writing to the other party's physical address or by email to the address for the other party's contact person, as agreed from time to time. You consent to receiving any correspondence from FSNI or FSNI Wholesale relating to these Terms by email, including invoices.

18.5. Assignment FSNI may assign any of its rights under these Terms to a related entity without your consent.

18.6. Subcontracting You agree we may subcontract supply or delivery of goods under these Terms to a third party without your consent but we will remain liable to you for the acts of that third party.

18.7. Counterparts These Terms may be executed in several counterparts (including facsimile or email copies in PDF or any other agreed format/s), all of which when signed and taken together constitute a single agreement between us.

18.8. Governing law These Terms are governed by and subject to the law of New Zealand, and we both agree to the exclusive jurisdiction of the courts of New Zealand.

18.9. Working Days In these Terms Working Day means Monday to Friday but excludes national public holidays.

18.10. Deductions: You agree we may deduct money we owe to you under these Terms against any amounts outstanding to us.

18.11. Credit checking You agree that any information you have provided to us may be used by us or our agents for credit checking purposes.

Schedule 1 – Additional Documents applicable to these Terms and where to find them

Document	What it covers?	Where you can find it
FSNI Wholesale's Minor Damage Allowance Policy	<p>See clause 9.</p> <p>Minor damage allowance (MDA) applies to specific suppliers and their goods.</p> <p>Credits for damaged or defective products under the applicable threshold are not to be raised, as you acknowledge that MDA has been factored into our pricing under these Terms.</p> <p>The relevant thresholds are set out in the MDA Policy.</p>	Available from your Sales Representative
FSNI Wholesale's Unit Load Device Transfer Policy	<p>See clause 6.</p> <p>The process for transferring unit load device balances between us is outlined in FSNI Wholesales' Unit Load Device Transfer Policy.</p>	Available from your Sales Representative