

COCA-COLA AMATIL (N.Z.) LIMITED - PURCHASE ORDER TERMS AND CONDITIONS

– 18 November 2013

These terms & conditions apply to all Purchase Orders issued by Coca-Cola Amatil (N.Z.) Limited on or after 18 November 2013 until further notice.

Definitions

CCA means Coca-Cola Amatil (N.Z.) Limited, the address being that given below.

Auckland Office:

Physical Address: The Oasis, Mt Wellington, Auckland, New Zealand

Postal Address: Private Bag 14 916, Panmure, Auckland, New Zealand

(and all other branches within New Zealand)

Business Day means Monday to Friday inclusive except for statutory holidays.

Contract means the binding contract formed between CCA and the Supplier in relation to the Deliverables.

Deliverables means the articles, things and/or services described in the Purchase Order.

Delivery means the delivery or provision of the Deliverables at a location nominated by CCA. **Deliver** has a corresponding meaning.

Delivery Note means the document that accompanies the Deliverables from the Supplier's premises to CCA's specified place of delivery. The Delivery Note is signed-off by the Supplier, delivery person and the CCA representative responsible for receiving the Deliverables specified on the Delivery Note. The Deliverables delivered are physically checked against the descriptions and quantities, unit rates and dollar values listed on the Delivery Note.

Purchase Order means the order issued by CCA for the supply of the Deliverables which contains the following information:

- (a) the quantity and description of the Deliverables required by CCA;
- (b) the price of the Deliverables;
- (c) the date the Deliverables are to be delivered or performed;
- (d) any particular specifications relating to the Deliverables;
- (e) any special instructions relating to delivery or performance of the Deliverables;
- (f) a Purchase Order Number;
- (g) the CCA representative's name and contact telephone number;
- (h) any other specific information required by CCA's management systems.

Purchase Order Number means the special identification number, unique to each Purchase Order, which is stated on the Purchase Order.

Supplier means the person, firm or company to whom a Purchase Order is addressed.

Supplier Guiding Principles means the set of values that represent the standards of quality, integrity and excellence, required by CCA and TCCC by suppliers and vendors doing business with CCA.

Tax Invoice means a document provided by the Supplier to CCA pursuant to the Goods and Services Tax Act 1985.

TCCC means The Coca-Cola Company.

1. Formation of a contract

1.1 Subject to clause 1.2, a Contract for the sale and purchase of Deliverables will arise on the Supplier's acceptance of a Purchase Order (whether by written acknowledgement or by Delivery) and will embody the terms of the relevant Purchase Order and the following terms and conditions. In the event of any inconsistency between the terms of the Purchase Order and these terms and conditions, the terms of the Purchase Order will prevail.

1.2 In the event that CCA and the Supplier have signed a written agreement for the supply of the Deliverables, the terms and condition of that agreement will apply and not these terms and conditions.

1.3 Subject to clause 1.2, the terms of the Purchase Order together with these terms and conditions comprise the entire agreement of the parties in relation to the supply of Deliverables and supersede any previous discussions, arrangements and representations. Without limiting the foregoing, any terms and conditions asserted or provided by the Supplier in connection with the supply of the Deliverables (e.g. the Supplier's terms and conditions of sale or supply) will not apply.

2. Acceptance of a Purchase Order

2.1 All orders for Deliverables must be made using an authorised Purchase Order.

2.2 A Purchase Order is an offer by CCA that is deemed to be accepted upon the Supplier providing the Deliverables to which the Purchase Order relates.

2.3 A Purchase Order will expire after 21 days of its issue unless accepted by the Supplier.

2.4 CCA can withdraw the Purchase Order at any time prior to acceptance by the Supplier.

2.5 Each Purchase Order placed by CCA and accepted by the Supplier will constitute a separate contract between CCA and the Supplier. Nothing in these terms and conditions will oblige CCA to place a Purchase Order with the Supplier or restrict CCA's ability to acquire goods or services from any other supplier.

3. Price

- 3.1 The price stated in the Purchase Order is in New Zealand dollars exclusive of GST, but is otherwise all inclusive of freight, insurance, storage and any other charges or taxes (including international duty and customs charges).
- 3.2 If the price is omitted on the Purchase Order, then the price payable for the Deliverables is the lower of the price specified in any quotation given by the Supplier and accepted by CCA, or if there is no such quotation, the price will be the lowest prevailing market price for similar goods or services the subject of the Purchase Order as determined by CCA.
- 3.3 Any variation to price must be notified to the CCA representative responsible for issuing the Purchase Order prior to acceptance of the order by the Supplier.

4. Quality and Description

- 4.1 The Deliverables will:
 - 4.1.1 confirm as to quality, quantity and description with the particulars stated in the Purchase Order;
 - 4.1.2 be of stated materials and workmanship;
 - 4.1.3 be equal in all respects to the specifications or samples (if any) provided by either party to the other.
- 4.2 CCA reserves the right to have the Deliverables inspected or tested at its cost before Delivery by a CCA representative. The Supplier will facilitate inspection or testing when required.
- 4.3 Deliverables will not be deemed to be accepted by CCA until they have been inspected by a CCA representative.
- 4.4 CCA may reject any Deliverables, even after they have been accepted, that are:
 - 4.4.1 of inferior quality;
 - 4.4.2 contrary to the quantity, description or specifications required of the Deliverables; and/or
 - 4.4.3 in an unsatisfactory condition or not functioning in the way they are designed to function.
- 4.5 For any such rejected Deliverables (as in clause 4.4 above) the Supplier will, at CCA's sole option and at the Supplier's sole risk and expense, either:
 - 4.5.1 repair or replace; or
 - 4.5.2 remove the Deliverables, and reimburse CCA in full any payments made by CCA in respect of the defective, faulty or otherwise non-compliant Deliverables.
- 4.6 Clauses 4.4 and 4.5 do not limit or negate any other rights or remedies that CCA may have in law.

5. Delivery and Identification

- 5.1 The Purchase Order Number for the Deliverables ordered must be shown on all relevant packages, Tax Invoices, Delivery Notes and correspondence.
- 5.2 The Supplier, at its own expense, will Deliver the Deliverables properly packed and secured to the place specified in the Purchase Order or as subsequently agreed.
- 5.3 Each consignment should be clearly marked with the Supplier's name and will be accompanied by a Delivery Note, detailing the description, quantity with the applicable units of measure, unit rates and dollar values of the Deliverables delivered. Where applicable, the packaging must clearly indicate any substances in the Deliverables which are or may be hazardous to human health, animal health or the environment, and prominent precaution instructions must be displayed on such packaging.
- 5.4 Partial deliveries or performance may be accepted at CCA's discretion.
- 5.5 The Supplier will comply when on any CCA site with the Health and Safety in Employment Act 1992 and the Supplier will have in place and comply with a health and safety management plan. The Supplier will at all times be able to provide proof of its health and safety management plan.
- 5.6 Title to the Deliverables passes to CCA on payment. Every risk to any Deliverables remains with the Supplier until completion of delivery. Anything involved in delivery or acceptance is provided at the Supplier's every risk and cost.
- 5.7 The Supplier agrees to procure and maintain in force during the Term, at the Supplier's expense, a Public Liability policy or policies having a minimum limit of at least \$5,000,000. Supplier will provide a current Insurance Certificate to CCA upon request.
- 5.8 The Supplier will Deliver the Deliverables at the time or times specified in the Purchase Order. If any delay occurs, the Supplier must ensure that CCA is notified as early as possible and before the date of Delivery, as shown on the Purchase Order and the alternative Delivery date must be agreed by CCA. CCA reserves the right to void or cancel the Purchase Order if the Deliverables are not delivered within the agreed time frame.
- 5.9 Deliverables must not without CCA's written consent be delivered earlier than 3 Business Days before the due delivery date, otherwise CCA may reject them.
- 5.10 All Deliverables must be properly packaged to prevent deterioration or damage whilst in transit. The Supplier will with all possible speed, replace, free of charge, all Deliverables damaged or lost in transit, provided that CCA will give the Supplier written notification of such damage or loss within a reasonable time. Transportation and associated costs in relation to the replacement of Deliverables will be to the Supplier's account.

6. Payment Terms

- 6.1 Currently CCA's standard payment term for undisputed invoices is on the 2nd Business Day of the month following the month of receipt of a Tax Invoice, however CCA reserves the right to negotiate discounts for earlier payment with the Supplier which shall be at the Suppliers sole discretion.
- 6.2 All Tax Invoices must be submitted to CCA by the 5th Business Day of the month following the month of invoice.

Example: For monthly services provided in January:

- *An invoice dated 31st January and delivered **by** 5th February will be paid on 5th Business Day in March.*
 - *An invoice dated 31st January and delivered **after** 5th February will be paid on 5th Business Day in April.*
- 6.3 Any Tax Invoices received by CCA without a Purchase Order Number cannot and will not be paid.
- 6.4 Tax Invoices to CCA should be emailed directly to nzl.accounts.payable@anz.ccamatil.com.
- 6.5 The descriptions, quantities, unit rates and dollar values on the Tax Invoices received by CCA must match the signed-off Delivery Notes. If the quantities and dollar values on the Tax Invoices received by CCA do not match the Delivery Notes payment will not be made.
- 6.6 CCA will deduct withholding tax where required by law.
- 6.7 CCA's preferred method of payment is direct credit by electronic file transfer. The Supplier must provide to CCA the required bank account details and a deposit slip for direct payment to be enabled.
- 7. Warranties and Guarantee**
- 7.1 In addition to all other warranties, conditions or other terms expressed or implied by law or otherwise, the Supplier warrants to CCA and to any subsequent purchaser of the Deliverables that the Deliverables:
- 7.1.1 are designed, manufactured and delivered in compliance with all applicable user requirements, specifications and standards; and
 - 7.1.2 are new and unused on delivery unless specified otherwise in each case by CCA; and
 - 7.1.3 are free from any defects and are fit for the purpose intended by CCA; and
 - 7.1.4 are compatible with the other Deliverables available from the Supplier; and
 - 7.1.5 are supplied to CCA using all diligence, care and skill, and using sufficient, appropriately trained, qualified, experienced and supervised persons; and
 - 7.1.6 satisfy the requirements of CCA; and
 - 7.1.7 comply with all applicable:
 - (a) health and safety standards;
 - (b) product packaging and labelling;
 - (c) transport, handling and storage;
 - (d) environmental;
 - (e) weights and measures;
 and all other relevant legislation, regulations, standards, industry codes of practice of New Zealand and any quality assurance system approved or required by CCA and/or TCCC.
- 7.2 The Supplier also warrants:
- 7.2.1 that it has the right to sell the Deliverables specified in the Purchase Order; and
 - 7.2.2 the Deliverables will be free of any security interest, charge, lien or other encumbrance; and
 - 7.2.3 that it has all necessary permits, licenses or consents to supply or perform the Deliverables.
- 7.3 The Supplier's guarantees to CCA that any Deliverables will have an expiry / best before date no sooner than 3 months following the date of Delivery.
- 7.4 Each warranty is to cover any defective labour, materials and performance. The Supplier will, to the extent possible, pass on to CCA the benefit of any warranty or guarantee received from any other person in respect of the Deliverables supplied, so that CCA may have recourse against those persons.
- 7.5 The Supplier guarantees that it can supply CCA with spare parts of the Deliverables for a term of at least 5 (five) years after the date of Delivery.
- 8. Intellectual Property Rights and Indemnity**
- 8.1 All intellectual property rights in any Deliverables which are original work created by the Supplier for CCA pursuant to the Purchase Order will belong to CCA upon creation, and the Supplier undertakes to do promptly all things necessary to transfer such rights to CCA.
- 8.2 The Supplier will fully indemnify CCA against any cost, expense and liability (and legal expenses) arising from any infringement right including but not limited to any patent; design right (whether registered or not); trademark or copyright arising out of CCA's possession, use or distribution of Deliverables supplied by Supplier to CCA.
- 9. Assignment and subcontracting**
- 9.1 The Supplier will not, without the written consent of CCA (such consent not to be unreasonably withheld), assign or transfer the Contract or any part thereof to any third party.
- 9.2 The Supplier must not subcontract or otherwise arrange for another person to discharge any of its obligations (excluding delivery) under the Contract without the prior written consent of CCA. Notwithstanding CCA's consent, the Supplier will remain fully responsible for all obligations to CCA under the Contract.
- 10. Confidentiality and Publicity**
- 10.1 The Supplier will keep confidential and secure, and not misuse, any information of CCA that would reasonably be expected to be proprietary, commercially sensitive or confidential.
- 10.2 Disclosure and use of information by either party is allowed to the extent required by law or to the extent necessary to perform the Deliverables as specified in the Purchase Order.
- 10.3 The Supplier will stop using and return to CCA, or destroy any CCA property and information if requested by CCA.
- 10.4 The Supplier will not represent or publicise in any way to anyone that it is a provider or supplier of CCA, or allow media release or advertising that names or suggests CCA, without CCA's prior written consent.
- 11. Default and Cancellation**
- 11.1 CCA may terminate the Contract or cancel any Purchase Order effective immediately if the Supplier breaches any provision of the Contract and fails to remedy the breach within 10 Business Days of giving

written notice to the Supplier specifying the breach and requiring it to be remedied. Breach of clause 7 and/or 9 by the Supplier may be deemed as breach of the Contract whether or not CCA elects to accept the Deliverables in question.

11.2 CCA may, by written notice to the Supplier, terminate the Contract or cancel any Purchase Order immediately if the Supplier becomes bankrupt, ceases to carry on business, goes into liquidation, becomes insolvent, appoints a receiver or enters into a formal proposal for a compromise with its creditors under the Companies Act 1993.

11.3 CCA may terminate this Contract by giving the Supplier 10 Days written notice. In the event that CCA does so, this Contract will terminate and any outstanding Purchase Orders at the end of the period of notice will be deemed cancelled.

11.4 Subject to CCA's rights of deduction or set-off, CCA will pay the Supplier for any Deliverables validly provided up to the date of termination.

11.5 No failure or delay on the part of CCA to exercise any of its rights in respect of any default by the Supplier will prejudice CCA's rights in connection with that default or any subsequent default.

11.6 Termination of the Contract and/or cancellation of a Purchase Order does not affect any responsibilities which are intended to continue or come into effect after the Contract terminates.

12. Indemnity

12.1 The Supplier will fully protect, indemnify and hold harmless CCA, its officers, employees and agents from and against any liability, losses, damages, actions, proceedings, claims, demands, costs and expenses including solicitor and own client costs, incurred in connection with any breach by the Supplier of any term of the Contract or the negligent or wrongful act or default of the Supplier or any of its employees, subcontractors or agents. This obligation continues after the termination or expiry of the Contract.

13. Documentation and Tools

13.1 All drawings, designs, technical information, advice and other thing communicated or supplied by CCA are confidential and will remain the property of CCA. They will be used solely for the use of the Contract and will not be shown or disclosed to any third party without CCA's prior written consent.

13.2 All tools, moulds, parts, materials and other things supplied by or paid for by CCA in order to assist the Supplier fulfil the Purchase Order will be the property of CCA and will be used solely for the purpose of the Contract and will be returned to CCA or passed to CCA, as the case may be, promptly upon request.

14. The Coca-Cola Company Supplier Guiding Principles

14.1 CCA and TCCC are committed to providing a safe and secure working environment and the protection and advancement of basic human rights. In furtherance of this commitment, TCCC has adopted Supplier Guiding Principles setting out in detail the measures it takes to ensure this commitment is fulfilled. These guidelines may be downloaded at www.ccamatil.co.nz/supplierringuidingprinciples.

14.2 CCA strongly encourages the Supplier to adopt and enforce concepts similar to those embodied in the Supplier Guiding Principles, including conducting the Supplier's operations in a manner that is fully compliant with all applicable laws and regulations.

15. Governing Law

15.1 The construction, validity and performance of a Contract will be governed by the laws of and applicable in New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

16. Waiver

16.1 Any waiver or purported or implied waiver by CCA of strict compliance with these terms and conditions will not be deemed to be a waiver unless it is in writing and signed by an authorised representative of CCA. Any such waiver will not prejudice the rights of CCA in respect of any breach of these conditions to which such waiver does not specifically relate.