

SUPPLY AGREEMENT (GOODS)

This Agreement is made on [insert date] between:

- (1) **COCA-COLA AMATIL (AUST) PTY LTD** ABN 68 076 594
119 of Level 14, 40 Mount Street, North Sydney NSW 2060
(the "Company")
and
(2) [INSERT SUPPLIER] ABN [INSERT] of [INSERT ADDRESS]
(the "Supplier").

1. **Definitions.** The following definitions apply in this Agreement:

Applicable Laws means all laws and regulations applicable to the supply of the Goods by the Supplier to the Company pursuant to this Agreement;

Goods means the goods to be supplied by the Supplier as described in the Schedule;

Intellectual Property Rights means all current and future rights conferred by law in or in relation to copyright, designs, trade marks, trade secrets, know-how, confidential information, patents, inventions, discoveries and all rights in the nature of these rights, whether or not registrable, registered or patentable and includes all rights in applications to register these rights and all renewals and extensions of these rights;

Loss means any loss, liability, costs (including legal costs at the higher of an indemnity or solicitor-client basis) or expense of whatsoever nature incurred by the Company relating to this Agreement;

Order means the Company's written order requesting that the Supplier supplies Goods in accordance with this Agreement;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Representative of a party means that party's director, or authorised officer, employee or agent;

Schedule means the schedule annexed to this Agreement as Attachment 1; and

Specifications means any technical or other specification relating to the Goods referred to in the Schedule.

2. **Role of Supplier.** The Supplier must:

- (a) sell the Goods to the Company, who will purchase the Goods from the Supplier, on the terms of this Agreement;
- (b) deliver the Goods in full to the Company's nominated delivery point by the date for delivery specified by the Company in Schedule 1. Time is of the essence. The Supplier must notify the Company immediately if it cannot supply the Goods within the time stated in the Schedule. If the Supplier fails to meet any such deliver date, the Company may, without limiting its other rights and remedies, cancel all or part of the Order without any liability to the Supplier. If the Company has paid a deposit, it is entitled to be refunded in full to the Company, unless otherwise stated or agreed in writing. The Supplier undertakes to

refund any such deposit as soon as practicable but in any event within 7 days from the date the Order was cancelled by the Company.

3. **Term.** Subject to clause 0, the term of this Agreement is as set out in the Schedule.

4. **Supplier Warranties.** The Supplier warrants that:

- (a) the Goods are safe;
- (b) the Goods are free from all charges and encumbrances and all other adverse interests (other than encumbrances which will be released at or before the time title in the Goods passes to the Company) and that the Company will enjoy quiet possession of the Goods;
- (c) the Goods are free from defect or fault;
- (d) the Goods are of merchantable quality;
- (e) where applicable, the Goods will have an appropriate proportion of their standard shelf life remaining on delivery to the Company;
- (f) the Goods include appropriate and correct warnings, labelling and instructions;
- (g) the Goods are fit for the purpose for which the Goods are being purchased by the Company (as communicated by the Company to the Supplier before, or at the time of, this Agreement or as should be reasonably understood by a supplier of the Goods who is experienced in such technical and specific matters relating to the Goods and the purpose they are intended for);
- (h) the Goods comply with any representations, descriptions, samples or other specifications (including the Specifications) including (but not limited to) quality, function, performance or design;
- (i) the Goods include any applicable manufacturer's warranty which passes to the Company (or the consumer from the Company) without liability to the Company (and the Supplier will either assign to the Company, or hold on trust for the Company and the consumer, the benefit of any applicable warranty or guarantee that the Supplier has received from any supplier of the Supplier); and
- (j) the Goods comply with all Applicable Laws, rules, statutory and other legal requirements;
- (k) the Supplier holds and will comply with all necessary licences, permits and other approvals required for the manufacture, packing, supply and storage of the Goods; and
- (l) is aware of, and will comply with, all anti-corruption, anti-bribery, anti-trust and anti-money laundering laws and other criminal laws, rules and regulations which may be applicable to the performance of the Agreement.

5. **Payment.** Provided the Supplier complies with the terms of this Agreement, the Company must pay the Supplier the price set out in the Schedule for the Goods. Unless otherwise agreed in writing, the price includes (but is not

limited to) all taxes and duties, and all costs of testing, inspection, labelling, packing and freight, insurance and delivery to and off-loading (including, where relevant, the use or supply of pallets and containers) at the destination as specified in the Schedule. The Company will reimburse expenses incurred by the Supplier in providing the Goods provided the Company's prior written approval of such expenses has been obtained. Unless agreed otherwise, the Supplier must conduct all transactions concerning the supply of the Goods to the Company via the Company's Ariba system, including the submission of invoices for the supply of the Goods to the Company. No invoices will be accepted by the Company without an approved Order.

6. **Title.** Legal title in the Goods passes to the Company upon delivery. The Goods must be free of encumbrances and all other adverse interests (including any Security Interest, as that term is defined in the PPSA).
7. **Risk.** The Supplier bears all risks of loss and damage to the Goods until final acceptance by the Company.
8. Notwithstanding any prior inspections, usage or payments by the Company or its Representatives, all Goods shall be subject to:
 - (a) final inspection which may include (but is not limited to) measurement, testing or examination; and
 - (b) acceptance at the Company's facility within a reasonable time (but not more than 30 days) after receipt of the Goods.
9. **Acceptance.** Acceptance of the Goods by the Company will occur:
 - (a) on the date upon which the Company notifies the Supplier in writing that the Goods have been accepted by the Company; or
 - (b) automatically upon the lapsing of the 30 day period stipulated in this clause 8(b) if the Company has not provided written notice pursuant to this clause.
10. Notwithstanding any provision of the Agreement, the Company's acceptance of Goods does not waive rights, remedies or entitlements. If the Company accepts any Goods, this does not extinguish any of the Company's rights if the Goods do not comply with a term of this Agreement.
11. **Payment Terms.** The payment terms under this Agreement are as set out in the Schedule.
12. **Rejected Goods.** The Company may, within 90 days of delivery at the specified delivery address, reject any Goods which do not comply strictly within the Agreement. Once the Goods are rejected, the Company may (without limiting any of its rights and remedies) require at its election:
 - (a) the Supplier to refund any payment within 7 days; or
 - (b) the Supplier to replace the Goods to the Company's satisfactions.
13. Title and risk in the rejected Goods immediately re-vests in the Supplier. The Supplier is liable for, and will indemnify the Company against, all Loss incurred by the Company due to the rejection of the Goods except to the extent the Company has caused the Loss. Goods rejected will be held by the Company at the Supplier's risk and cost,

for no more than 60 days pending the Supplier's instructions. Any rejected Goods may be returned by the Company to the Supplier at the Supplier's expense. The Company's acceptance of delivery or payment for the Goods prior to the Company's inspection will not be construed as an acceptance of any non-complying Goods.

14. **Limitation of liability.** To the extent permitted by law, in no event will the Company be liable to the Supplier for any loss or damage including loss of profits or other economic loss, indirect, special, consequential, general or other similar damages, arising out of any breach of this Agreement.
15. **Recall.** The Supplier must notify the Company immediately on becoming aware of any problem encountered in the manufacture, packaging, storage or transport of the Goods that may have an adverse impact on the quality and/or safety of the Goods.
16. **Indemnity.** The Supplier must defend, indemnify and hold harmless the Company, its affiliated companies, and their Representatives, successors, and assigns from and against any and all claims, suits, actions, liabilities, Loss, judgments or damages, whether ordinary, special or consequential arising directly or indirectly from or in connection with:
 - (a) the acts, negligence, omissions or wilful misconduct of the Supplier or its Representative;
 - (b) the Goods supplied;
 - (c) a breach of any of the Supplier's warranties or any other term of this Agreement;
 - (d) a claim that any Goods supplied to the Company infringe, misuse or misappropriate any Intellectual Property Right of another; or
 - (e) a claim of any lien, security interest or other encumbrance made by a third party.
17. **Set Off.** The Company may, on 48 hours' notice to the Supplier, deduct from money due to the Supplier any debt or other money due from the Supplier to the Company.
18. **Compliance with Applicable Laws, Policies and Directions.** The Supplier must comply with:
 - (a) all Applicable Laws and Australian Standards relevant to the Goods;
 - (b) the following Company policies as applicable, which are available at: <https://www.ccamatil.com/doing-business-with-cca/expectations-of-suppliers>
 - (i) CCA Responsible Sourcing Guidelines;
 - (ii) Code of Business Conduct;
 - (iii) Drug and Alcohol Policy;
 - (iv) Working Together Policy;
 - (v) Group Health Safety and Wellbeing policy;
 - (vi) Chain of Responsibility;
 - (vii) Mobile Phone and Technology usage while driving;
 - (viii) Social Media Policy; and
 - (c) all instructions given to the Supplier by the Company.
19. **Status.** The parties acknowledge that the Supplier's relationship with the Company is that of independent supplier. Nothing in this Agreement constitutes any

partnership or other fiduciary type of relationship between the parties, and neither party may bind the credit of the other party.

20. **Insurances.** The Supplier must at its own cost:

- (a) take out workers' compensation insurance in accordance with the applicable legislation;
- (b) have in place public liability insurance with a reputable insurer for an amount of not less than \$10 million per claim covering legal liability to any third party for personal injury and property damage;
- (c) have in place product liability insurance with a reputable insurer for an amount of not less than \$10 million per claim; and
- (d) insure the Goods with a reputable insurer for their full replacement cost.

If the Supplier fails to obtain such insurances, the Company may arrange (acting reasonably) for appropriate insurance and charge the Supplier with the cost. The Supplier must, upon request by the Company, provide the Company with evidence satisfactory to the Company of such insurances.

21. **Intellectual Property.** Neither party grants or transfers any right, title or interest in any Intellectual Property Rights of the respective party to the other. The Supplier must not use any of the Company's Intellectual Property Rights unless authorised by the Company in writing. Neither party will cause or permit anything that may amount to infringement of, misuse, interference with, damage or endangerment to the Intellectual Property Rights of the other party or their suppliers, or assist or allow others to do so. Each party undertakes to advise the other party immediately if it becomes aware of any unauthorised use, or attempted use, by any person of the other party's Intellectual Property Rights. The Company and Supplier warrant that acts done by it under this Agreement do not infringe the Intellectual Property Rights of any person.

22. **Confidentiality and Privacy.** The Supplier must keep confidential all of the Company's information provided by or on behalf of the Company, including any Order. This clause does not apply to information which is lawfully obtained from a third party, is public knowledge, is already known or is otherwise independently developed by representatives of the Supplier who have not been exposed to the information. The Supplier must also handle any personal information which it collects or which it discloses in connection with the Order or this Agreement in accordance with the *Privacy Act 1988* (Cth), as if the Supplier were an organisation bound by that Act.

23. **Termination for convenience.** Notwithstanding any other provision of this Agreement, the Company may terminate this Agreement on 60 days' notice to the Supplier. In such circumstances, the Supplier's only entitlement shall be to receive payment for all Services performed up until the date of termination.

24. **Termination for cause.**

24.1 Notwithstanding any other provision of this Agreement and without limiting any of the Company's rights and remedies, the Company may terminate this Agreement with immediate effect, in whole or in part, without liability to the Supplier, if the Supplier:

- (a) fails to perform the Services within the time specified in the Schedule or any applicable Order;
- (b) fails to re-perform any defective Services to the Company's satisfaction;
- (c) breaches any of the Supplier's warranties or fails to perform any other term (including the Service Levels) specified in the Agreement and has failed to rectify the breach or failure to perform within the period specified by the Company; or
- (d) becomes insolvent, files or has filed against it a petition in bankruptcy, or makes an assignment, scheme or compromise for the benefit of creditors.

24.2 Notwithstanding any other provision of this Agreement and without limiting any of the Supplier's rights and remedies, the Supplier may terminate this Agreement with immediate effect, in whole or in part, without liability to the Company, if the Company:

- (a) breaches any of the Company's warranties or fails to perform any other term specified in the Agreement and has failed to rectify the breach or failure to perform within the period specified by the Supplier; or
- (b) becomes insolvent, files or has filed against it a petition in bankruptcy, or makes an assignment, scheme or compromise for the benefit of the creditors (other than a reconstruction scheme undertaken while solvent).

25. **Agreement and Sub-Contracting.** The Supplier may not assign or sub-contract this Agreement (or any part thereof) without the prior written approval of the Company. A change of control of the Supplier, will be deemed to be an assignment by the Supplier.

26. **Variation.** This Agreement cannot be varied except in writing signed by both parties.

27. **Entire Agreement.** This Agreement (together with any applicable Order) represents the entire agreement of the parties in connection with the provision of the Goods. This Agreement shall prevail over the terms and conditions contained in any documentation (including invoices) provided by the Supplier to the Company.

Nothing in this Agreement is intended to exclude liability for fraud or fraudulent misrepresentation or any other representations which cannot be excluded by law.

28. **Survival.** Any obligations in this Agreement which are of a continuing nature or which are not fully satisfied and discharged on fulfilment or termination of an Order, will continue to apply.

29. **Provisions severable.** Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void and unenforceable. The validity or enforceability of the remainder of the Agreement is not affected.

30. **Governing Law.** This Agreement is subject to the laws of New South Wales and each party unconditionally submits to the jurisdiction of the Courts of New South Wales.

31. **GST.**

- (a) GST means the same as in the GST Law;
- (b) GST Law means the same as "GST law" means in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (c) Terms defined in the GST Law have the same meaning in clauses concerning GST;
- (d) Unless otherwise indicated, all amounts stated in this agreement are exclusive of GST;
- (e) If GST is payable on a taxable supply made by a party under this Agreement (the **Supplier**) to another party (the **Recipient**), the Supplier may recover from the Recipient of the supply the amount of that GST in addition to any consideration otherwise provided for;

(f) The Recipient must make the payment of the GST amount referred to in clause 31(e) at the same time and in the same manner as it provides the consideration for the relevant supply subject to the Recipient receiving a valid tax invoice before the due date for payment; and

(g) The Supplier must issue an adjustment note to the Recipient as soon as it becomes aware of an adjustment event relating to the supply and must refund to the Recipient any overpayment of GST.

32. **ABN withholding.** All payments made under this Agreement are subject to any withholding required by any Applicable Law.

Executed as an Agreement.

SIGNED for and on behalf of **COCA-COLA
AMATIL (AUST) PTY LTD** by:

.....
Authorised Representative

.....
Witness

.....
Name and Title (please print)

.....
Name and Title (please print)

SIGNED for and on behalf of **[SUPPLIER]**
by:

.....
Authorised Representative

.....
Witness

.....
Name and Title (please print)

.....
Name and Title (please print)

ATTACHMENT 1 – SCHEDULE

Goods	[insert description of the Goods]
Specifications	[insert Specifications for the Goods]
Date for delivery of Goods	[insert delivery date of the Goods, or specify rate of supply of Goods]
Address for delivery of Goods	[insert delivery address for the Goods, and any particular delivery instructions]
Term of Agreement	[insert Term]
Price (in AUD, <u>excluding GST</u>) and Payment Terms	[insert price for the Goods and Payment Terms]