



Store Name: _____

Date of Agreement: _____



Friendly Grocer Banner Agreement (SA)

Between: The Metcash company set out at item 1 of Schedule 1 (IGA>D)
And: The Retailer set out at item 2 of Schedule 1 (Retailer)

Introduction

- A. IGA>D has rights to the Brand and supplies goods and associated services to stores.
- B. The Retailer owns the Store and wishes to join the Banner Group on the terms of this agreement.

Agreement

1. Definition

The definitions in Schedule 2 apply to this agreement.

2. Banner Group benefits

- 2.1 The Retailer agrees to join the Banner Group and comply with this agreement.
- 2.2 Subject to the Retailer's co-operation and to this agreement, IGA>D will undertake the Store Improvements within 90 days after the Retailer signs this agreement, at IGA>D's cost.
- 2.3 The Retailer acknowledges that it will need to remove and destroy all previous Store signage and branding before IGA>D can undertake the Store Improvements where applicable.
- 2.4 Subject to the Retailer's ongoing compliance with this agreement, IGA>D will supply the Store Benefits to the Retailer.
- 2.5 A Friendly Grocer Banner Group Rebate as provided in clause 3.2.
- 2.6 This agreement supersedes any previous agreements or arrangements between the Retailer and IGA>D or any related body corporate of IGA>D, on and from the date IGA>D signs it.

3. Supply Arrangements

- 3.1 The Retailer agrees to use IGA>D as its exclusive supplier of all merchandise available from IGA>D sold in the Store. The parties agree that the standard IGA>D Trading Terms (as varied from time to time) apply and are deemed incorporated into this agreement. This agreement prevails to the extent of any inconsistency.
- 3.2 IGA>D will pay the Rebate to the Retailer, monthly in arrears, by way of adjustment note, while the Retailer complies with this agreement.
- 3.3 If IGA>D advises the Retailer that it is unwilling or unable to supply any particular product in accordance with the Retailer's order within a reasonable time of receipt of the order, the Retailer may purchase that particular product on that occasion elsewhere.
- 3.4 If the Retailer can establish to IGA>D's reasonable satisfaction that the products IGA>D supplies generally are not competitively priced as provided in clause 3.5, the Retailer may purchase its requirements of the products elsewhere.
- 3.5 For the purposes of clause 3.4:

- (a) in determining whether the products generally are competitively priced the following will be taken into account:
 - (i) the average prices of the products charged by IGA>D over the previous 6 months;
 - (ii) the average prices of the same or similar items available from other persons in Australia over the same period;
 - (iii) the terms on which the products are supplied and the provision of any services related to the products; and
 - (iv) the allowances, including rebates, available to the Retailer for buying the products from IGA>D; and
- (b) the prices of the same or similar items available from another person will be disregarded if those prices are:
 - (i) not generally available to that person's customers or any particular class of customer;
 - (ii) offered solely, principally or largely to induce the Retailer to purchase the same or similar items from such other person and those prices are not available to that person's established customers;
 - (iii) only available for a limited period after the Retailer commences to purchase at least 10% of the same or similar items from such other person; or
 - (iv) inclusive or exclusive of different services, benefits and allowances.

4. Trade Mark Licence and Business Name

- 4.1 IGA>D gives the Retailer a royalty-free, non-exclusive licence to use the Branding at the Store in connection with promoting and selling products supplied by IGA>D or its related bodies corporate. Section 26 of the Trade Marks Act 1995 does not apply.
- 4.2 The Retailer may register the Business Name with the relevant State authority and use it in connection with the Store but must not otherwise use any of the Branding in its corporate or business name. Before the Retailer registers the Business Name, it will sign and give to IGA>D an undated notice of cessation of use of the Business Name and otherwise whenever requested by IGA>D. The Retailer irrevocably appoints IGA>D as its attorney to complete, sign and lodge a cessation notice on termination or expiry of this agreement.
- 4.3 The Retailer acknowledges and agrees that all goodwill and reputation arising from the Retailer's use of the Branding and the Business Name accrue to IGA>D.
- 4.4 Except as set out in clause 4.2, the Retailer must not register any business names, domain names or trade marks that are in any way similar to the Trade Marks.
- 4.5 The Retailer must not challenge or help anyone else to challenge the rights of IGA>D to the Branding at any time or do anything else that may damage the reputation of IGA>D or the Branding.
- 4.6 If IGA>D becomes aware that the Branding is being infringed by a third party or that the Branding infringes a third party's rights, IGA>D will take such action as it considers appropriate, in its absolute discretion and without any liability to the Retailer. The Retailer agrees to co-operate in any such action by IGA>D.

5. General obligations and acknowledgements

- 5.1 The Retailer agrees to:
 - (a) ensure that all services it supplies under the Branding or the Business Name are provided in a professional and efficient manner, with due care and skill;
 - (b) without limiting paragraph (a), ensure that the Store is at all times clean, free of clutter and in compliance with all relevant legislation and standards;
 - (c) comply with the standards and directions given by IGA>D from time to time including any Banner Group operations manual that IGA>D issues; and
 - (d) allow IGA>D and its representatives at all reasonable times to enter the Store to assess the Retailer's compliance with this agreement.
- 5.2 The Retailer acknowledges that it has read and had a reasonable opportunity to understand this agreement and has received independent legal advice about this agreement or has been told that it should seek advice but has decided not to seek it.
- 5.3 The Retailer acknowledges that IGA>D makes no promises as to the impact of the re-branding on the Store including as to the success of or sales by the Store following the re-branding. The Retailer releases IGA>D and its related bodies corporate from any liability or obligation in connection with the re-branding.

6. Term and termination

- 6.1 Subject to this clause 6, the term of this agreement is the Initial Term and any Further Terms.
- 6.2 The term of this agreement automatically extends by a further 12 months on the expiry of each Rolling Term unless either party gives the other party written notice under clause 6.3.

- 6.3 If either party does not wish to extend this agreement beyond any Rolling Term, that party must give the other party notice to that effect before, but not more than 3 months before, the expiry of the first year of that Rolling Term.
- 6.4 A party may terminate this agreement:
- (a) if the other party breaches this agreement and fails to correct the breach within 14 days after notice from the first party (where the breach can be corrected); or
 - (b) if the other party becomes subject to any form of insolvency administration, is unable to pay its debts as they fall due or enters into any compromise or arrangement with its creditors.
- 6.5 IGA>D may end this agreement at any time by 90 days notice to the Retailer.

7. Effect of termination

- 7.1 On termination or expiry of this agreement:
- (a) the Retailer must immediately cease using the Branding and the Business Name;
 - (b) the Retailer must immediately remove any reference to Business Names or the Branding in connection with the Store and return or destroy them at IGA>D's direction; and
 - (c) if the agreement is terminated within 12 months of the date IGA>D signs it, the Retailer will reimburse IGA>D the cost of the Store Improvements within 7 days.
- 7.2 If the Retailer has not complied with its obligations under clause 7.1 within 30 days after the termination or expiration of this agreement, IGA>D may perform those obligations for the Retailer and the Retailer must procure all third party consents necessary for IGA>D to do so.
- 7.3 The Retailer indemnifies IGA>D and holds it harmless against all liabilities, costs, losses, expenses and damages and legal fees arising out of the Retailer not complying with its obligations under this clause 7 including IGA>D exercising its rights under clause 7.2.

8. Confidentiality

- 8.1 Except as required by law, the Retailer must not make any statement about or advertise the existence of this agreement, without IGA>D's prior written consent.
- 8.2 Each party must not disclose any of the other party's confidential information. IGA>D's confidential information includes its Trading Terms and other Banner Group materials.
- 8.3 The Retailer agrees to use IGA>D's confidential information only as necessary to operate the Store, and not to permit anyone else to copy or use that confidential information.
- 8.4 Clause 8.2 does not apply to information which:
- (a) is in the public domain (otherwise than as a result of breach of this agreement);
 - (b) is independently developed or known by the receiving party; or
 - (c) is required to be disclosed by law.

9. Liability

- 9.1 Nothing in this agreement excludes, restricts or modifies the application of any legislation which by law cannot be excluded, restricted or modified.
- 9.2 Subject to clause 9.1, any representation, warranty, condition or undertaking by IGA>D which (but for this clause) would be implied in this agreement by law, is excluded.
- 9.3 To the extent permitted by law, IGA>D's liability for any claim arising directly or indirectly from a breach of any non-excludable term or condition implied by statute (except for a breach of Section 69 of the *Trade Practices Act*) is limited, at IGA>D's option, to one or more of the following:
- (a) if the breach relates to the supply of goods, the replacement of the goods, the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; and
 - (b) if the breach relates to the supply of services, the supplying of the services again or the payment of the cost of having the services supplied again.
- 9.4 IGA>D excludes all liability to the Retailer for any special, incidental, indirect or consequential loss or damages and any loss of profits, loss of data, loss of business opportunity or injury to third parties which may be suffered or incurred or which may arise directly or indirectly in respect of any goods or services supplied under this agreement, in respect of any breach, act or omission (negligent or otherwise) on the part of IGA>D or its agents or contractors or otherwise out of the relationship created by this agreement.
- 9.5 To the extent that IGA>D's liability cannot be or is not otherwise limited according to this clause 9, under no circumstances will IGA>D's total aggregate liability under this agreement or arising out of the relationship

created by it and whether based upon warranty, contract, statute, tort (including negligence) or otherwise, exceed the actual amount paid to IGA>D by the Retailer under this agreement in the initial 12 months.

10. General

- 10.1 Each party must do all things necessary to give full effect to this agreement.
- 10.2 This agreement may be signed in counterparts and all counterparts together are one agreement.
- 10.3 Any notice under this agreement must be in writing sent to the address or facsimile number specified in Schedule 1 (as updated from time to time). A notice will be deemed received on the day of sending when delivered by hand or sent by facsimile, on receipt of a clear transmission report, or 3 days after posting if sent by post.
- 10.4 The Retailer must not assign or transfer this agreement without IGA>D’s prior written consent, in its discretion. IGA>D may assign this agreement to any person by notice to the Retailer.
- 10.5 Each provision of this agreement is severable. If any provision is ineffective or unenforceable, it is deemed to be severed and the remaining provisions will bind the parties.
- 10.6 The parties are independent contractors and not partners or joint venturers.
- 10.7 Any variation or change to this agreement must be in writing, signed by the parties.
- 10.8 A party’s failure to require full performance by the other party of this Agreement does not affect the first party’s right to require such performance at any time. No waiver by a party of a breach of this agreement is a waiver of any provision of this Agreement.
- 10.9 Each party bears its own expenses in preparing and signing this Agreement.
- 10.10 This agreement is governed by the laws of the State in which the Store is located. The parties submit to the non-exclusive jurisdiction of the courts of that State.

SCHEDULE 1 – AGREEMENT DETAILS

| Item | Description | Details |
|------|---------------|--|
| 1 | IGA>D | Name: ...IGA Distribution (SA) Pty Limited..... ABN ...57 008 193 155 Address: Fax No. and in relation to the Branding includes any related body corporate that owns or has rights to the Branding. |
| 2 | Retailer | Name:ABN Address:Fax No. Contact: |
| 3 | Store Address | |
| 4 | Business Name | |

SCHEDULE 2 – DEFINITIONS

Definitions

In this agreement, the following terms have the following meanings:

Banner Group means the network of independent Friendly Grocer stores licensed by IGA>D.

Branding means branding used by IGA>D for the Banner Group including the Name and Trade Marks.

Business Name means the business name set out at item 4 of Schedule 1.

Further Term means any 12 month period for which this agreement is extended under clause 6.2.

Initial Term means the period starting on the date IGA>D signs this agreement and ending 3 years from the next 30 June following that date.

Name means “ Friendly Grocer”.

Rebate means 2.5% of rebatable warehouse sales (being the net invoice value before GST but after any other discounts, allowances and other rebates of all sales by IGA>D to the Retailer) excluding tobacco products and Arnott’s biscuits.

Rolling Term means each of the Initial Term and each rolling 3 year period ending on the corresponding anniversary of the expiry of the Initial Term with the first such rolling 3 year period ending on the first anniversary of the expiry of the Initial Term and the second such rolling 3 year period ending on the second anniversary of the expiry of the Initial Term, and so on.

Store means the store set out at item 3 of Schedule 1.

Store Benefits means up to 3 instore corflutes, 4 Banner Group aprons and 2 Banner Group name badges and participation in fortnightly promotional activity including from time to time, case deal discounts and optional catalogue exposure (colour, if required) at the Retailer's cost.

Store Improvements means repainting the external signage of the Store to display the Banner Group branding.

Trade Marks means any trade marks relating to the Banner Group, whether registered or unregistered and used by IGA>D including Australian registered trade mark number 1125879 but excluding Australian registered trade mark number 787774.

SIGNATURES

Executed for and on behalf of the Retailer by its authorised representative(s):

Director/Secretary/Witness/Partner1 (Signature)

Director/Principal/Partner2 (Signature)

Name of Director/ Secretary/Witness/Partner1 (Print Name)

Name of Director/Principal/Partner2 (Print Name)

Date of execution by the Retailer:

Instructions for signature by the Retailer:

- If the Retailer is a multi-director company, it signs pursuant to section 127 of the Corporations Act with 2 directors or a director and a secretary. References to Witness, Partner and Principal are deleted.
- If the Retailer is a sole director company, insert "sole" before the first Director/Secretary and delete the references to Witness/Partner.
- If the Retailer is a sole trader, delete the references to Director, Secretary and Partner. The sole trader signs as Principal on the right hand side in the presence of a witness who signs on the left hand side.
- If the Retailer is a partnership, 2 of the partners sign as partners. Delete references to Director, Secretary, Witness and Principal.

Signed for and on behalf of
IGA DISTRIBUTION (SA) PTY LTD
(ABN 57 008 193 155)
In the presence of:

Authorised Officer (Signature)

Witness (Signature)

Print Name

Print Name

Date of execution by IAG>D: