

# **GOOD WINE BUYER AND SUPPLIER PRINCIPLES**

*A Code for Fairness  
and Transparency.*



**WOOLWORTHS LIQUOR GROUP**

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## **Plain English Guide to the Good Wine Buyer and Supplier Principles**

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### 1. INTRODUCTION

#### 1.1 What are the Good Wine Buyer and Supplier Principles?

The Good Wine Buyer and Supplier Principles (the Principles) have been agreed between the Winemakers' Federation of Australia (WFA) and Woolworths Liquor Group (WLG). They were created to provide guidance to wine suppliers and WLG employees in managing their commercial relationships. The Principles are to be used in creating and managing relationships between WLG and individual wine suppliers. The Principles manifest WLG's and wine suppliers intention to work collaboratively.

#### 1.2 What are the Principles meant to achieve?

The Principles are intended to set a minimum standard of behaviour for both individual wine suppliers and WLG when:

- (a) negotiating the commercial relationship ;
- (b) working together;
- (c) communicating about issues and concerns;
- (d) dealing with each other's intellectual property; and
- (e) dealing with disputes.

They basically require the parties to act honestly and deal fairly with each other and be transparent in their processes and decision making.

#### 1.3 What are the Principles not designed or intended to do?

The Principles are not intended to resolve all issues relating to supply and demand imbalances and structure within the wine industry and should not provide any form of advantage for either WLG or wine suppliers. Instead, the Principles are intended to encourage fair and balanced behaviours in the commercial relationships between WLG and individual wine suppliers.

Importantly, the Principles are not designed to be used by groups of wine suppliers to extract concessions from WLG by working together. Wine suppliers who collude or coordinate their negotiations with WLG might breach competition laws. You should never coordinate your negotiations with other wine suppliers without first obtaining independent legal advice to make sure you won't breach any competition laws.

#### 1.4 How the Principles apply?

The Principles are not legally binding on any party. Rather, parties will be bound by the terms of any commercial agreement they might enter into. The Principles give parties guidance on how they should act when negotiating and operating within the commercial relationship.

Importantly, it is not necessary for a wine supplier to be a WFA member to be able to use the Principles.

#### 1.5 Who is responsible for the Good Wine Buyer Principles?

Both WLG and wine suppliers should follow the Principles. A joint forum, made up of representatives of both WLG and WFA, will be responsible for making sure they are promoted, monitored for compliance and reviewed every two years.

Both WFA and WLG have appointed Compliance Managers to act as the first point of contact in understanding how the Principles work. Compliance Managers also have a role to help parties work together to address any problems between them and are a step in the dispute resolution process.

#### 1.6 What does this guide contain?

This guide provides a 'plain English' explanation of the Principles and how they are intended to work in practice. Whilst it is meant to help you in negotiations and dealings with WLG, it is not meant to replace the Principles and does not bind any party. You should always refer to the Principles directly when you have a concern about the other party's behaviour.

## 2. BEFORE YOU ENTER A COMMERCIAL RELATIONSHIP

### 2.1 Acting honestly and fairly

Both wine suppliers and WLG must act honestly and fairly at all times when dealing with each other, before and during a commercial relationship.

That does not mean that parties are required to act against their own interests or that they can't take a firm commercial position. Instead, it is intended to make sure that the parties:

- (a) act honestly and fairly with each other;
- (b) do not mislead or deceive each other;
- (c) never intimidate the other party or force them to take any action or position beyond using reasonable commercial pressure;
- (d) never make unrealistic threats or promises;
- (e) never hide or fail to disclose important facts or issues;
- (f) maintain lines of communication with appropriate levels of management;
- (g) never unreasonably delay decisions or negotiations; and
- (h) never assert that they have rights or powers beyond those that they do have.

Parties should strive to act commercially, honestly and fairly in all of their dealings.

### 2.2 Transparent communications

The Principles require parties to maintain an open dialogue in relation to brand performance and to be otherwise transparent in their processes and decision making (within the limits of commercial confidentiality). This is to ensure that neither WLG nor wine suppliers face unexpected issues in their business relationship. While recognising that WLG retains the right to rapidly respond to competitor activity, the parties should endeavour to clearly communicate with each other:

- (a) their expectations of how the other party is to act;
- (b) the reason for decisions ;
- (c) any changes in quality, volume or availability of a given product;
- (d) any changes to trading terms or supply chain or purchasing practices (to be communicated well in advance);
- (e) planned promotions or changes to promotions; and
- (f) any decision to delist, review the "ranging" of or modify an order for a particular product.

In regards to sales figures and other industry data, wine suppliers are encouraged to access their own data on sector and company performance as this information cannot always be seamlessly shared by the retailer due to confidentiality agreements between them and the data supplier. However, WLG will provide supporting data to verify any claims with suppliers.

WLG reserves the right to conduct promotional activity with a view to ensuring their retail customers receive the best possible value. Equally, wine suppliers have the right to negotiate and set a wholesale price that meets the supplier's sales and margin objectives.

By providing regular and honest communications, parties can avoid disputes and work together to address issues that arise.

### 2.3 What does 'plain English' drafting mean?

While commercial agreements are legal documents, every effort should be made to make them easy to understand. Technical terms, legal phrases, ambiguity and complicated language should be avoided, if possible, and short sentences should be used. If a technical term needs to be used, it should be explained clearly wherever possible.

### 2.4 Informal agreements vs formal agreements

WLG and WFA have recognised that, in the wine industry, commercial agreements are sometimes reached informally. This could be in person, over the phone or via email. Common law recognises that both formal and informal agreements have legal force. The Principles encourage equal respect be given by WLG and wine suppliers.

To make sure that this happens, all informal agreements should be confirmed in writing as soon as possible after they have been made. This does not have to be in a long-form legal document, but could be as simple as a letter or email which is agreed by both parties, setting out the agreement or variation in plain English terms.

### 3. NEGOTIATING A COMMERCIAL RELATIONSHIP

#### **3.1 How should the Principles be used in negotiations?**

The Principles are intended to be used as a tool by WLG and individual wine suppliers when negotiating a commercial relationship, promotional agreement or variation. Both parties are expected to ensure that agreements are consistent with the Principles.

The Principles can be used in two ways:

- (a) to set the agenda for the negotiations; and
- (b) as a reference point to make sure that the commercial relationship is fair and transparent.

We recommend that you read through this guide and the Principles before you begin negotiations, with a view to having a smooth negotiation and achieving a fair outcome.

If you consider that the other party is requesting a provision that is inconsistent with the Principles, you should feel free to point them to the relevant clause of the Principles and request their compliance. If they disagree with you, you could require the issue to be resolved by dispute resolution, as discussed in section 7 of this guide.

Once a commercial agreement has been drafted and negotiated, but before it has been signed, both WLG and the wine supplier should compare it to the Principles and consider whether or not it is consistent. Any issues should be raised and changes should be made to the agreement to ensure that it complies with the Principles.

Both parties are encouraged to obtain legal advice on the terms of all commercial agreements, promotional agreements and variations before they are signed.

#### **3.2 What should your documents for the commercial relationship contain?**

The Principles encourage the parties to consider a number of key issues when negotiating the commercial relationship. These include:

- (a) production targets and indications of proposed purchase volumes;
- (b) delivery requirements;
- (c) trading and payment terms (including supply chain, ordering, invoicing and packaging requirements);
- (d) who bears the costs of trading;
- (e) ranging and rebate expectations;
- (f) promotional activity;

- (g) how variations and changes to commercial agreements are to be handled;
- (h) the process for suggesting (and agreeing to) new promotions during the term of the commercial relationship ;
- (i) processes for how a product can be delisted or discontinued and how the process will be managed; and
- (j) processes for dealing with disputes and complaints and reviewing decisions.

The commercial relationship should make clear:

- (a) the methodologies of how ranging decisions are made; and
- (b) agreed promotional activities, including the timing and duration of those activities and anticipated sales to be provided by either party.

#### **3.3 What should not be allowed in a commercial relationship?**

Parties should not include in the commercial relationship :

- (a) a right for one party to make changes to the agreement without the other party also agreeing to that change (a unilateral change);
- (b) any penalty for or restriction against using a distributor
- (c) a unilateral right to commence or extend an agreed promotion, except for WLG in response to competitor activity and where permitted in an agreement or promotional programme agreed by the parties;
- (d) a prohibition against reviewing decisions or using dispute resolution mechanisms; or
- (e) terms that are otherwise unfair.

#### **3.4 Are there rules for how parties behave in negotiations?**

In negotiations, each party is entitled to seek a commercially sound and competitive deal. WLG can expect a price that reflects the commercial advantages it can provide to the wine supplier. The parties must, however, ensure that the agreement is beneficial to both parties and sustainable for the wine supplier in the long term. WLG reserves the right to conduct promotional activity with a view to ensuring their retail customers receive the best possible value and that they meet their commercial objectives. Equally, wine suppliers have the right to negotiate and set a wholesale price that meets the wine supplier's sales and margin objectives.

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Whilst WLG has committed to give regard to the sustainability and diversity of Australia's wine industry, wine suppliers should be careful to make sure they do not coordinate their negotiations with WLG to force it to change its pricing practices, or threaten to collectively refuse to deal with WLG if they don't grant particular concessions (a collective boycott against dealing with WLG). Doing this is likely to breach competition laws and could have serious consequences for wine suppliers.

### **3.5 What rules apply when negotiating promotions?**

The obligations to act honestly and fairly with each other, and to follow the spirit and intent of the Principles, apply to parties during the negotiation of promotional activity. During negotiations each party should, whilst acting commercially and in their own best interests, be as open and transparent as is commercially possible in explaining their expectations of the other party and be honest at all times.

When negotiating promotions, parties should balance these important considerations:

- (a) ensuring that retail customers receive the best possible value for money and that WLG meets its commercial objectives; and
- (b) respect for the wine supplier's right to set a wholesale price that meets the supplier's sales and margin objectives.

Parties should set out the promotional activities they will implement. This should cover how the costs of a promotion will be allocated, the duration of the promotion and any limitations on the promotional activity. How the parties will report on, and review the success of, the promotional activity may be outlined, plus any rights to terminate the promotion.

Where possible, specific promotions should be described and provision should be made for the parties negotiating and agreeing to new promotions during the term of the agreement.

Neither party should be forced to take part in a promotion.

In order to rapidly respond to its competitors' activities, WLG will generally reserve the right under a promotional agreement to make changes to promotional activities. When it does this, it will provide wine suppliers with as much notice as reasonably possible, with reasons for the change. Where a change causes hardship or unreasonable disadvantage to either party, both parties should seek to negotiate a mutually acceptable outcome.

### **3.6 When can commercial agreements be varied unilaterally?**

Commercial agreements should not allow one party to change any of their terms without the agreement of the other party (i.e. no unilateral changes are allowed).

### **3.7 Can I be penalised for using a distributor?**

WLG respects the rights of wine suppliers to sell to WLG through distributors and distributors should respect the rights of wine suppliers to utilise WLG's distribution and logistics infrastructure.

WLG may inform wine suppliers of the advantages of using WLG's distribution and logistics infrastructure, but should not pressure wine suppliers into taking that route. On the other hand, wine suppliers should feel free to deal direct with WLG if they wish.

## **4. DURING THE TERM OF A COMMERCIAL RELATIONSHIP**

### **4.1 What is the 'spirit and intent' of the Principles?**

The Principles require both WLG and wine suppliers to honour the 'spirit and intent' of the Principles; in other words, to ensure and maintain honest, fair and transparent dealings between the parties. This means that parties should not try to use loopholes or over-legalistic interpretation of the wording of the Principles, or of a commercial agreement, to avoid acting honestly, transparently and fairly.

### **4.2 Variations**

A commercial agreement may only be varied if:

- (a) The commercial relationship allows for that type of variation;
- (b) the party requesting the variation gives the other as much notice of the desired variation as possible; and
- (c) both parties agree to the variation.

Unilateral variations should not be allowed.

### **4.3 What information and data can I get?**

WLG has committed to maintaining an "open dialogue" with wine suppliers on the performance of their brands. Notice for a range review will be publicised by WLG on the [www.wlgpartners.com.au](http://www.wlgpartners.com.au) website which wine suppliers are encouraged to monitor and the outcomes will be communicated to the wine supplier. The type of data a wine supplier could expect to be discussed includes:

- (a) the performance of the wine supplier's products in WLG's retail operations;
- (b) the reasons for decisions of WLG to stock or delist the wine supplier's products (including benchmarks and indicators); and
- (c) discussion on market trends and performance of a product against its competitors.

Wine suppliers are entitled to information regarding the calculation of rebates, marketing and promotional claims. They are also entitled to the reasons for stocking, promotional and trading term changes. Any other information required by a wine supplier should be negotiated with WLG and included in the commercial agreement.

### **4.4 How do promotions work?**

Promotional activity should proceed in accordance with the terms of the commercial relationship. Each promotion should be for a set period of time and should not change without agreement between the parties (except where WLG changes a promotion where it needs to rapidly respond to the activities of its competitors, as discussed in section 3.5 above).

### **4.5 When can new promotions be proposed and do I have to agree?**

WLG may offer wine suppliers the opportunity to participate in so called 'over and above' promotional activities, being promotions additional to those in the commercial agreement (e.g. inclusion in seasonal catalogues and buyer's guides, receipt offers and sponsorship opportunities). Importantly, there is no obligation for wine suppliers (or WLG) to agree to participation in a promotion and the negotiation of any such promotion must be fair and pay due regard to the value of the wine supplier's and retailer's brand. Neither party should pressure the other to take part in a promotion that has not been agreed.

### **4.6 What happens if there is a change to trading terms?**

The Principles recognise that, as wine is an agricultural product, during the term of a commercial agreement, certain terms (including supply chain, ordering, invoicing, delivery or packaging requirements) may change, which may lead to price adjustments (which must be reasonable). If a term changes, WLG and wine suppliers must give each other as much notice of the change as they reasonably can. Neither party is required to agree to any amendment of an agreement, as discussed in sections 3.6 and 4.2 of this guide.

If there is a dispute about price adjustment or any other decision, the dispute resolution mechanism discussed in section 7 of this guide may be utilised. In all cases, the parties should work together to minimise any disadvantage or detriment caused by the change.

### 5. COMMERCIAL RELATIONSHIPS

#### 5.1 Confidentiality of trade information

WLG and wine suppliers are required to keep confidential any information that is not in the public domain regarding their respective businesses. This includes (but is not limited to) information about business plans, promotions, pricing, discounts, financial information, intellectual property, brand development, product development, marketing strategies and development plans. Wine suppliers should not share details of their negotiations with WLG if those details are confidential.

The Principles recognise that WLG is an integrated business, which includes a winemaking and contracting business (called Pinnacle Drinks Group (Pinnacle) that may compete with wine suppliers. Accordingly, the Principles prevent WLG from disclosing sensitive information about wine supplier's operations to Pinnacle.

To avoid disputes about which information wine suppliers consider to be confidential, the commercial agreement should specify clearly that WLG will ensure that confidential wine supplier information is not shared with Pinnacle.

#### 5.2 What rights are there for the protection and use of intellectual property?

Each party is required to respect the other party's intellectual property. "Intellectual property," in this context, includes branding, packaging designs and marketing strategies.

Commercial agreements should provide details of what WLG and wine suppliers may and may not do with the other party's intellectual property. Parties should never take any action that would be likely to either reduce the value of the other party's intellectual property or unfairly profit from it.

#### 5.3 Open and honest communication

Many disputes in commercial relationships arise because of a lack of open and honest communication. The Principles require parties to make reasonable efforts to communicate regularly, and honestly about the business relationship. This means that concerns about the performance of products and changes to the commercial agreement, and information regarding the reasons behind decision making, should be raised at the earliest opportunity.

Whilst the parties are expected to act in their own and their stakeholders' commercial interests, they should never intentionally mislead or deceive the other party or act dishonestly or unfairly.

### 6. DELISTING

#### 6.1 When can a product be delisted?

Under the Principles, WLG should provide clear details of what circumstances will justify WLG delisting a product. This could include instances where:

- (a) WLG has conducted a 'range review' and decided on reasonable grounds that it will no longer stock the product in question. Relevant factors might include sales performance, margins, market trends, changes in the retailer's strategy and performance against competitive products; or
- (b) there are health or safety grounds for delisting a product.

#### 6.2 What is the process for delisting a product?

Before a product is delisted, WLG will provide the wine supplier with:

- (a) reasonable notice of the range review on the website [www.wlgpartners.com.au](http://www.wlgpartners.com.au)
- (b) a clear explanation of the outcome of the range review (including what indicators and benchmarks were used) and the decision to delist the product;
- (c) range reviews generally take between ten to twelve weeks to finalise.

Wine suppliers should constantly monitor the performance of their range and understand which lines may have the potential for delisting before a range review and make sufficient preparations should this eventuate.

### 7. DISPUTE RESOLUTION

#### 7.1 What happens if a party does not follow the Principles?

The Principles are non-binding and do not contain any penalties for non-compliance. WLG has, however, committed to the Principles and WFA strongly recommends that wine suppliers do also.

The Principles have been designed as a step towards greater fairness and transparency in commercial relationships between retailers and wine suppliers and are an indication of WLG's desire to work collaboratively with the wine industry to ensure its long term survival and success. We believe that it is in your interests as a wine supplier to follow the Principles.

If a party does not follow the Principles, it may not be in breach of its obligations under the commercial agreement (depending on the wording of the agreement). However, if you believe that WLG is non-compliant with the Principles at any stage during negotiation of the agreement, during its term or following its expiry, you are encouraged to:

- (a) First seek resolution directly with the respective WLG buying team and are able to request a review by the banner Merchandise Manager.
- (b) If still unresolved, the wine supplier can request a review by the WLG General Manager Merchandising.

- (c) Where matters cannot be resolved, the wine supplier can have the matter referred to WLG's and/or WFA's Compliance Manager to conduct a review.

Where matters are still unresolved to both parties satisfaction, an independent expert will be appointed from a list of experts agreed to by a panel of WLG and WFA representatives. We also advise wine suppliers to follow the suggestion in the Principles to establish their own dispute resolution mechanism, to deal with concerns raised by WLG that wine suppliers may not be following the Principles. That might be as simple as the mechanism recommended in section 7.1 of this guide.

#### 7.2 Which decisions can be reviewed?

In general, the Principles allow WLG or wine suppliers to review any decision they think is unfair or in breach of the Principles or their spirit or intent. The parties should include a dispute resolution mechanism as part of their commercial agreement. The dispute resolution mechanism should encourage the parties to discuss issues within the spirit of the Principles, but confidentially, and as soon as possible to resolve them before they escalate.

### 8. WHO CAN I CONTACT IF I HAVE A QUESTION ABOUT THE PRINCIPLES?

WLG and WFA have both nominated contacts within their organisations, who are responsible for administering the Principles and dealing with any concerns that arise, either from WLG's staff or from wine suppliers.

If you have any questions, in the first instance you should send them via e-mail to:

**Shane Tremble, Head of Corporate Development at Woolworths Liquor Group:**

shane.tremble@wowliquor.com.au

**Paul Evans, Chief Executive, Winemakers' Federation of Australia:** paulevans@wfa.org.au



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