

CLAYTON UTZ

Trust Deed

Employee Share Purchase Plan Trust

Woolworths Limited

ABN 88 000 014 675
Company

Woolworths Custodian Pty Ltd

ABN 93 002 940 445
Trustee

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Deed made on

Parties

Woolworths Limited ABN 88 000 014 675 of 1 Woolworths Way
Bella Vista, NSW 2153 ("**Company**")

Woolworths Custodian Pty Ltd ABN 93 002 940 445 of 1 Woolworths Way,
Bella Vista, NSW 2153 ("**Trustee**")

Background

- A. The Company may make offers of Shares under the Plan.
- B. The Company appoints the Trustee, and the Trustee accepts the appointment, to act as trustee of the Trust (which may include the provision of custodial or depository services in connection with the Eligible Offers, or dealings in financial products in the course of providing those services) on the terms and conditions set out in this Deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Deed:

Acquisition Date in respect of a Trust Share of a Participant, means the date on which that Trust Share was allocated or deemed to be allocated by the Trustee to the Plan Account of that Participant in accordance with this Deed.

ASX means ASX Limited.

Board means all or some of the directors of the Company acting as a board, and includes a committee of the Board and a delegate of the Board.

Corporations Act means the *Corporations Act 2001* (Cwlth).

Discretionary Beneficiaries means:

- (a) Participants;
- (b) Employees;
- (c) any incentive plan or scheme for the benefit of all or any Employees in which no Group Company is beneficially interested; or
- (d) a trust established and maintained for the benefit of all or any Employees of Group Companies.

Eligible Offers means offers for issue or sale of Shares in the same class as shares which have been quoted on the financial market operated by ASX throughout the 12 month period immediately before the offer without suspension for more than a total of 2 trading days during that period, made under an employee share scheme extended only to eligible employees of a Group Company.

Employee means a person who is in the full time or part time employment of a Group Company.

Employer means any Group Company, and in relation to any particular Participant means the company by which that Participant is for the time being employed.

Financial Year means a period of 12 months ending on 30 June or any other date determined by the Trustee from time to time.

Group means the Company and each of its Subsidiaries.

Group Company means the Company or any of its Subsidiaries.

Income Beneficiary means a Discretionary Beneficiary, any Employee, any charitable organisation as determined by the Trustee in its discretion or a superannuation fund for the benefit of all or any Employees.

Licences means statutory licences, consents and authorisations required to execute, deliver and perform the obligations of Trustee under this Deed and any other documents to be executed by the Trustee pursuant to or in connection with this Deed.

Listing Rules means the Listing Rules of ASX, except to the extent of any express waiver by ASX.

Market Participant has the meaning given in the ASTC Settlement Rules.

Net Income means in respect of a Year of Income of the Trust, an amount which the Trustee determines to be the "net income" (as defined in section 95 of the *Income Tax Assessment Act* 1936 (Cwlth)) of the Trust for that Year of Income.

Participant means an Employee in respect of whom Trust Shares are held by the Trustee under this Deed.

Plan means the Woolworths Employee Share Purchase Plan established under the Rules.

Plan Account of a Participant means the account maintained in respect of that Participant under clause 6.1.

Plan Shares of a Participant means Trust Shares standing to the credit of the Plan Account of that Participant.

Rights means any rights or options (not being by way of a pro rata bonus issue of Shares or other securities) to acquire Shares or other securities issued or to be issued by the Company.

Rules means the rules of Employee Share Purchase Plan, as amended from time to time.

Shares means fully paid ordinary shares in the capital of the Company.

Subsidiary has the same meaning as in Division 6 of Part 1.2 of the Corporations Act.

Tax Act means the *Income Tax Assessment Act* 1936 (Cwlth) and the *Income Tax Assessment Act* 1997 (Cwlth), as the context requires.

Terms of Issue means, in respect of a Trust Share, the terms of issue of that Trust Share as determined by the Board in accordance with the Plan Rules.

Trust means the trust for the Plan established under this Deed.

Trust Assets means the property, rights and income of the Trust including:

- (a) Trust Shares;

- (b) the amount referred to in clause 2.2 of this Deed; and
- (c) any other moneys or property received by the Trustee for the purposes of the Plan as well as the investments and property from time to time representing such moneys or property and all income, additions or accretions from such investments and property.

Trustee Sole Activities Test means the requirements to satisfy paragraph (hb) of the definition of “fringe benefit” in section 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (Cwlth) .

Trust Share means a Share which is held by the Trustee under the Trust in accordance with this Deed.

Withdrawal Notice means a written request made by a Participant to the Trustee in a form approved by the Board for permission to withdraw all or some of the Trust Shares held in respect of the Participant.

Year of Income means:

- (a) the period commencing on the establishment of the Trust under clause 2.2 and ending on the last day of the Financial Year in which the establishment occurs;
- (b) each subsequent period of 12 months ending on the last day of a Financial Year; and
- (c) the period commencing on the first day of the Financial Year in which the date of termination of the Trust occurs and ending on the date of termination of the Trust.

1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa, and a word indicating a gender includes every other gender;
- (b) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (c) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (d) references to a statute or other law include regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) a reference to the Corporations Act is to the Corporations Act in force in relation to the Company after taking into account any modification, waiver or exemption which is in force either generally or in relation to the Company;
- (f) references to the exercise of a power or discretion include a decision not to exercise the power or discretion;
- (g) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (h) the words "include", "including" or "such as" are not used as, nor are they to be interpreted as words of limitation, and when introducing a list of items does not exclude a reference to other items whether of the same class or genus or not; and

- (i) "Australian dollars", "dollars", "A\$" or "\$" is a reference to the lawful currency of Australia.

1.3 Headings

Headings are for convenience only and do not affect the interpretation of this Deed.

2. Establishment of Trust

2.1 Appointment of Trustee

The Company appoints the Trustee as the trustee of the Trust and the Trustee agrees to be the trustee of the Trust with effect from the establishment of the Trust under clause 2.2.

2.2 Commencement

The Trust is established upon the transfer by the Company to the Trustee of \$10 which is to be held by the Trustee and forms part of the Trust Assets.

2.3 Purpose of Trust

The purpose of the Trust is:

- (a) the acquisition and holding of Shares; and
- (b) the holding of cash, property and other investments

for the benefit of Participants and other Income Beneficiaries in accordance with this Deed.

2.4 Trust Assets

Subject to clause 15.5, the Trust Assets are to be held by the Trustee on trust for the Participants and other Discretionary Beneficiaries from time to time in accordance with the terms of this Deed until termination of the Trust under this Deed or by operation of law.

2.5 Trust name

The trust created by this Deed will be known by the name "Employee Share Purchase Plan Trust".

2.6 Rights of the Company

Nothing in this Deed confers or is intended to confer on any Group Company any charge, lien or any other proprietary right or proprietary or beneficial interest in the Shares acquired by the Trustee in accordance with this Deed or the Trust.

3. Trustee

3.1 General powers

Subject to this Deed, the Trustee in its discretion has the full power to do all things a trustee is permitted to do by law in respect of the Trust and the Trust Assets including the following:

- (a) to enter into and execute all contracts, deeds and documents and do all acts, matters or things which it may deem expedient for the purpose of giving effect to and carrying out the trusts, authorities, rights, powers and discretions conferred on the Trustee under this Deed;

- (b) to acquire, dispose or otherwise deal with on any terms any property and to make investments for the benefit of the Discretionary Beneficiaries;
- (c) to subscribe for, purchase or otherwise acquire and hold Trust Shares and transfer them to persons entitled in accordance with this Deed;
- (d) to receive dividends and distributions paid on Trust Shares and to apply those amounts in accordance with this Deed;
- (e) to sell Trust Shares and apply the proceeds of sale in accordance with this Deed;
- (f) to sell or take up any Rights and apply the proceeds of sale or resulting Shares or other securities in accordance with this Deed;
- (g) to delegate to any person or company the exercise of all or any of the rights, powers or discretions conferred on the Trustee under this Deed and to execute any power of attorney or other instrument necessary to effect that delegation;
- (h) to delegate to any director of the Trustee, or other person appointed by the Trustee, the right and power on behalf of the Trustee to sign, draw, endorse, or otherwise execute, as the case may be, all or any:
 - (i) cheques, drafts and other negotiable or transferable instruments;
 - (ii) receipts for money paid to the Trustee; and
 - (iii) other documents connected with the due administration of the Plan or with this Deed;
- (i) to employ or engage, and at its discretion, remove or suspend custodians, trustees, managers, employees or other agents, determine the powers and duties to be delegated to them, and pay any remuneration to them as it thinks fit;
- (j) to take and act on the advice or opinion of any legal practitioner (whether in relation to the interpretation of this Deed or any other document or statute or as to the administration of the Trust) or any other professional person, and whether obtained by the Trustee or not, without being liable in respect of any act done by it in accordance with that advice or opinion;
- (k) to open and operate any bank or other accounts for the Trust as the Trustee thinks fit;
- (l) to rely on any document provided by a Discretionary Beneficiary whether signed by the Discretionary Beneficiary or otherwise;
- (m) to make rules or to adopt procedures not inconsistent with the provisions of this Deed in relation to the calculation and rounding off of contributions, dividends, interest or other amounts, the determination of periods of time, and any other matters as are appropriate for the convenient administration of the Trust;
- (n) to institute, conduct, defend, compound, settle or abandon any legal proceedings concerning the affairs of the Trust, and also to compound and allow time for payment or satisfaction of any debts due and any claim or demands by or against the Trustee concerning the Trust; and
- (o) to refer any claim or demand by or against the Trustee in respect of the Trust to arbitration and to observe and perform an award made under arbitration; and

- (p) to do all acts and things which the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Trust and the Trust Assets in accordance with this Deed and in the performance of its obligations under this Deed.

3.2 Deemed actions

Any transfer, distribution or payment made in good faith to a person believed by the Trustee to be entitled to receive it is, for the purposes of this Deed, deemed to be a transfer, distribution or payment (as the case may be) to the person entitled to receive it and is a valid discharge to the Trustee in respect of the transfer, distribution or payment.

3.3 Limitation on Trustee

Despite any other provision of this Deed, the Trustee is not permitted to offer, issue or acquire any Share or any right to any Share if to do so would contravene the Corporations Act or the Listing Rules or any other applicable law and is not obliged to offer, issue or acquire any Share or any right to any Share where compliance with any applicable law would in the opinion of the Trustee or the Board be unduly onerous or impractical.

3.4 Remuneration

The Trustee is not entitled to receive from the Trust any remuneration in respect of its performance of its obligations as trustee of the Trust. The Company may pay to the Trustee from the Company's own resources any remuneration and reimburse any expenses incurred by the Trustee as the Company and the Trustee may agree from time to time. The Trustee is entitled to retain for its own benefit any such remuneration or reimbursement.

3.5 Removal of Trustee

The Trustee ceases to be trustee of the Trust:

- (a) upon the Trustee giving a notice of resignation as trustee to the Company;
- (b) upon the Company serving the Trustee with a notice of removal as trustee; or
- (c) immediately when a provisional liquidator, receiver, receiver and manager or administrator is appointed to the Trustee or the Trustee goes into liquidation or an order or resolution is made for its winding up.

3.6 New trustee

When a person ceases to be the trustee of the Trust:

- (a) the Company will appoint a new trustee which will become the trustee of the Trust upon the execution by it of a deed by which it agrees to be bound by this deed as trustee; and
- (b) the trustee which is ceasing to be trustee must promptly and expeditiously execute all transfers, deeds and documents necessary to transfer the Trust Shares and Trust Assets into the name of the new trustee.

3.7 Trustee discretions

- (a) The Trustee may exercise the discretions conferred on it by this Deed or which may otherwise be required in relation to the Trust.

- (b) The Trustee in the exercise of the powers and discretions vested in it by this Deed has an absolute and uncontrolled discretion and may exercise or enforce all or any of those powers and discretions at any time and from time to time or may refrain from exercising all or any of them from time to time or at all.
- (c) The Trustee, or any director or other officer of the Trustee, may exercise or concur in exercising all powers and discretions conferred on the Trustee, director or officer (as the case may be), by law even though it or they may have a direct or other personal interest in the mode or result of exercising that power or discretion. The director or officer may nevertheless abstain from acting, except as a formal party, in any matter in which they may be personally interested.
- (d) If a Participant, or person who is entitled to any Trust Shares or other property or to payment of any amount under this Deed, is under any legal, physical, mental or other disability of any kind and is, in the opinion of the Trustee, unable to properly and competently manage their financial affairs, the Trustee may transfer all or part of the relevant Trust Shares or other property, or make payment of all or part of the relevant amount (as the case may be), to any other person as the Trustee, in its sole discretion, sees fit, to be held for the benefit of the Participant or person otherwise entitled. The Trustee is not liable for or responsible for seeing to the subsequent application of the Trust Shares or other property transferred or amounts paid, and the receipt of the recipient, transferee or payee is a good discharge.
- (e) Without limiting clause 3.7(b), the Trustee has a discretion to extend the period within which a Participant must give a notice to the Trustee or exercise a right conferred on the Participant under this Deed where, in all the circumstances, the Trustee considers that it would unfairly prejudice the Participant or their estate not to do so.

3.8 Trustee not to use trust property as security

The Trustee must not use any Trust Shares as security.

3.9 Good Faith and Resources

If the Trustee is a Group Company:

- (a) the Trustee must provide any custodial or depositary services provided under this Deed in good faith; and
- (b) the Company must ensure that the Trustee has sufficient resources to perform the duties referred to in clause 3.90.

3.10 Investments

Without limiting clause 15.4, any moneys that may be held by the Trustee, but which are not currently required for the purposes of the Trust, may in the absolute discretion of the Trustee be placed on deposit with any bank, company or financial institution or invested in any one or more of the modes of investment authorised by law for the investment of trust funds or in any manner in which the Trustee could invest, if it were personally entitled to those moneys.

3.11 Powers concerning Shares and rights

If, at any time, the Trustee holds Shares or rights issued under any Rights Issue otherwise than for Participants then the Trustee in its discretion may:

- (a) sell the Shares or rights on ASX;

- (b) sell the Shares or rights by private sale; or
 - (c) if the Company offers to buy back the Shares, accept the offer,
- at the price and on the terms the Trustee in its discretion determines.

3.12 No fractions

The Trustee must not hold fractions of Shares on behalf of a Participant. Any Shares remaining after the allocation of whole Shares to a Participant will form part of the Trust Assets.

4. Obligations and Indemnity of the Trustee

4.1 Trustee indemnity

Without derogating from the right of indemnity given by law to trustees, the Company agrees to indemnify and continue to indemnify the Trustee:

- (a) in respect of all liabilities, costs and expenses incurred by the Trustee in the execution or purported execution of the Trust or any of the powers, authorities or discretions vested in the Trustee; and
- (b) from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted to be done,

other than a liability or claim arising out of the Trustee's negligence, dishonesty, fraud or the Trustee wilfully or knowingly being a party to (if internal) a breach of trust.

4.2 No Trustee liability

The Trustee is not under any liability whatsoever to any Group Company except in the event of:

- (a) the Trustee's negligence, dishonesty, fraud or wilful breach of trust; or
- (b) the negligence, dishonesty, fraud or wilful breach of trust of any of the Trustee's employees or agents.

4.3 Participant not liable

Nothing in clause 4 enables the Trustee to recover any liabilities, costs and expenses from any Participant or Discretionary Beneficiary.

4.4 No right against Participant

Except as expressly provided in this Deed, the Trustee has no right of indemnity against a Participant or Discretionary Beneficiary personally.

5. Acquisition of Trust Shares

5.1 Notice from Company

- (a) The Board may by notice in writing instruct the Trustee to acquire (by either or both subscription or purchase) a number of Shares specified in the notice, to be held by the Trustee as Trust Shares.

- (b) The Board may in a notice referred to in clause 5.1(a):
 - (i) offer to the Trustee to have the Company, or a related body corporate of the Company (within the meaning of the Corporations Act) to, provide funds for the purpose of acquiring Trust Shares;
 - (ii) request the Trustee to apply some of the capital of the Trust in accordance with clause 5.2 for the purposes of acquiring Trust Shares; or
 - (iii) effect a combination of the acts in paragraphs (i) and (ii).
- (c) If the Trustee is a Group Company, the Shares to be held by the Trustee following their acquisition pursuant to clause 5.1(a) must be Shares in connection with an Eligible Offer.

5.2 Source of Trust Shares

Subject to the Trustee receiving sufficient payment or having sufficient capital in respect of which the Trustee has received a notice under clause 5.1, by no later than 7 days (or other period as the Board and the Trustee agree) after the receipt of that notice, the Trustee must at the election of the Trustee:

- (a) purchase the requisite number (or a proportion of that number determined by the Trustee) of Shares;
- (b) if the Company agrees to issue Shares, subscribe for the requisite number (or a proportion of that number determined by the Trustee) of Shares; or
- (c) effect a combination of the acts in paragraphs (a) and (b).

The Board may make suggestions to the Trustee regarding which of the acts in clause 5.1(a) to 5.1(c) the Trustee may elect to undertake.

5.3 Subscriptions

The subscription price for each of the Shares referred to in clause 5.2(b) will be as determined by the Board on the date on which the Shares are issued to the Trustee.

5.4 Funding

- (a) The Company must provide the Trustee, or cause the provision to the Trustee of, any funds required by the Trustee in order to comply with its obligations under clause 5.2 (after application by the Trustee of any capital as provided by clause 5.1(b)(ii)).
- (b) The Trustee must not repay to any Group Company any amount received as contributions for the acquisition of Shares.
- (c) The Trustee must apply any funds received under clause 5.4(a) in satisfying its obligation under clause 5.2.

5.5 Expenses

The Company or any Subsidiary may pay to the Trustee any amount in respect of expenses, costs and charges incurred by the Trustee in the establishment or execution or purported execution of the Trust or any of the powers, authorities or discretions vested in the Trustee, including any amount of income or other tax payable by the Trustee in relation to the Trust

(including its establishment or execution) determined by the Company from time to time.

6. Records and accounts

6.1 Plan Accounts

The Trustee must cause a separate account to be established and maintained in respect of each Participant containing details of:

- (a) Shares acquired under the Plan for the benefit of the Participant;
- (b) Shares transferred from the account to the Participant;
- (c) amounts transferred from the account to the Trust Assets;
- (d) any proceeds from the sale or disposal of Shares or entitlements in accordance with the Plan or this Deed; and
- (e) any other credit or debit made to the account for the purposes of, or in accordance with, the Plan or this Deed;

6.2 Notification to Participants

At least once a year, at a time the Trustee considers appropriate, the Trustee will notify each Participant of the number of the Trust Shares credited to their Plan Account and any other information as the Board considers appropriate.

6.3 Other accounts

The Trustee must keep, or cause to be kept, any other accounts and records necessary for the operation of the Plan and the Trust.

6.4 Inspection of accounts

The books of account of the Trust must be maintained at the registered office of the Company and be available for inspection by Participants during normal business hours, or other times agreed between the Trustee and relevant Participants, free of charge, on prior written request.

6.5 Audit of accounts

The Trustee must appoint an auditor of the Trust. The Trustee must cause the books of account to be audited annually by the Trust's auditor and must ensure that the auditor has access to all papers, accounts and documents concerned with or relating to the Trust.

6.6 Interest and earnings

Any interest or other earnings derived by the Trustee and not otherwise provided for under clause 7 attributable to amounts standing to the credit of the Plan Accounts of Participants do not form part of those Plan Accounts but form part of the Trust Assets.

7. Distributions in respect of Trust Shares

7.1 Dividends

Subject to the applicable Terms of Issue, a Participant is entitled to receive from the Trustee all dividends and distributions paid by the Company on that Participant's Plan Shares. Except as expressly provided for in this Deed, the Trustee may determine the most practical means for

the dividend or distribution to be realised.

7.2 Dividend plans

- (a) A Participant is entitled to participate in any scheme for the reinvestment of dividends paid or payable from time to time by the Company, or any bonus election scheme which permits dividends paid or payable from time to time by the Company to be foregone and bonus shares to be issued in lieu, in respect of the Participant's Plan Shares and:
 - (i) may do so by giving written notice to the Trustee;
 - (ii) the Participant's participation must be in respect of all the Participant's Plan Shares, and not some only; and
 - (iii) a Participant's participation in a dividend reinvestment scheme or bonus share scheme under this paragraph continues until the Participant notifies the Trustee in writing that they no longer wish to participate in the scheme.
- (b) Any shares which are received by the Trustee in respect of a Participant's Plan Shares as a result of participation in a dividend reinvestment plan or a bonus share plan will be credited to the Plan Account of that Participant and are to be deemed for the purposes of clause 10 to have been credited to that Plan Account at the same time as the Plan Shares, in respect of which the dividend entitlement derived or which the bonus shares are issued, were credited to that account.

7.3 Rights issues

Subject to applicable Terms of Issue:

- (a) the Trustee must notify each Participant of the Rights issue, and offer each Participant an opportunity to require the Trustee to exercise those Rights in respect of that Participant's Plan Shares;
- (b) if the Participant wants the Trustee to exercise the relevant Rights, they must give a written direction to the Trustee to this effect and pay the issue price to the Trustee by the time and in the manner specified in the notice referred to in clause 7.3(a);
- (c) any Shares or other securities allotted to the Trustee as a result of the Trustee exercising Rights in accordance with this clause 7.4 must be credited to the Plan Account of the relevant Participant and are to be deemed for the purposes of clause 10 to have been credited to that Plan Account at the same time as the Plan Shares, in respect of which the rights arose, were credited to that account; and
- (d) if the Rights are renounceable and a Participant declines, or does not respond to, the offer made by the Trustee under clause 7.3(a), the Trustee must use its best endeavours to sell those Rights. The Participant is entitled to receive the net proceeds of that sale, and the Trustee must pay the net proceeds of that sale to the Participant.

7.4 Bonus Issues

- (a) Subject to clause 7.4(b), any bonus shares which are received by the Trustee in respect of Trust Shares that stand to the credit of a Plan Account of a Participant are to be credited to that Plan Account and are to be deemed for the purposes of clause 10 to have been credited to that Plan Account at the same time as the Plan

Shares, in respect of which the bonus shares are issued, were credited to that account.

- (b) Bonus shares are to be allocated on the same basis that the shares are allotted by the Company and Participant will not be entitled to fractions of bonus shares, which fractions form part of the Trust Assets.

8. Voting rights

8.1 Notices of meetings

The Trustee must forward to each Participant a copy of all notices of meeting of members of the Company received by the Trustee in respect of that Participant's Plan Shares unless the Participant has notified the Trustee that he or she does not wish to receive such notices.

8.2 Voting instructions

- (a) Subject to the Terms of Issue, a Participant may direct the exercise of any voting rights attaching to that Participant's Plan Shares by giving written instructions to the Trustee to vote Plan Shares held by the Trustee on his or her behalf at any meeting of members of the Company.
- (b) The Trustee must exercise the voting rights attached to a Participant's Plan Shares in accordance with the written instructions of that Participant given under clause 8.2(a) and received by the Trustee not less than 72 hours prior to the relevant meeting.
- (c) The Trustee must not exercise any voting rights attaching to any Participant's Plan Shares in respect of which it has not received instructions in accordance with this clause 8.2.

9. Takeovers, Schemes of Arrangement and compulsory acquisition

9.1 Trustee not to accept

The Trustee must not accept any offer made for any Participant's Plan Shares, and any purported acceptance by a Participant in respect of their Plan Shares is of no force or effect, unless the Board makes a decision in accordance with clause 9.2 and a Participant issues a notice in accordance with clause 9.4.

9.2 Takeovers and schemes: Board determination

If:

- (a) an offer is made for all or part of the Shares and the Company has been served with a bidder's statement under the Corporations Act, the Board may declare that a Participant is permitted, if they wish, to direct the Trustee to accept the offer on the Participant's behalf in respect of all or part of that Participant's Plan Shares on the terms, and in the circumstances, determined by the Board in its absolute discretion;
- (b) a proposed Scheme of Arrangement is announced, the Board may:
 - (i) on the terms and in the circumstances determined by the Board in its absolute discretion, declare that a Participant is permitted, if they wish, to direct the Trustee to sell, on the Participant's behalf, the Participant's

Plan Shares by instructing a Market Participant; or

- (ii) make any other determination in relation to Participant's participation in the proposed Scheme of Arrangement as it sees fit including, but not limited to, the matters referred to in clause 9.3.

9.3 Examples of Board determination

Without limiting the scope of the Board's determination under clause 9.2, the Board may determine:

- (a) the form of consideration to be received by the Trustee on behalf of the Participant for that Participant's Plan Shares (for example, cash, shares, other securities or a combination of them);
- (b) the extent to which non-cash consideration received by the Trustee on behalf of the Participant for that Participant's Plan Shares will be converted into cash in accordance with clause 9.9;
- (c) that any shares or other securities received by the Trustee on behalf of the Participant for the Participant's Plan Shares are not to be transferred to the Participant, but rather:
 - (i) be treated in accordance with this Deed as if they were Trust Shares; and
 - (ii) be deemed, for the purposes of clause 10, to have been credited to the Plan Account of that Participant at date(s) as near as possible to the date(s) when the Plan Shares, in respect of which the Participant directed the Trustee to accept the offer, were credited to that account.

9.4 Participant's direction in writing

A Participant, who wishes to direct the Trustee to accept an offer in respect of all or part of that Participant's Plan Shares in accordance with the Board determination (if any), must do so by giving notice in writing to the Trustee on or before the day specified in the Board determination.

9.5 Other Trust Shares

Where an offer is made for all or part of the Shares, the Board may direct the Trustee to accept that offer in respect of all or part of the Trust Shares which are not Plan Shares of any Participant, in which case the money or other consideration received by the Trustee for accepting the offer will form part of the Trust Assets.

9.6 Compulsory acquisition: Plan Shares of Participants

The Board may determine that any shares or other securities received by the Trustee in consideration for the compulsory acquisition of any Participant's Plan Shares are not to be transferred to the Participant, but rather are to be dealt with in accordance with the Board's determination. Without limiting the scope of the Board's determination, the Board may determine that those shares or other securities are to be:

- (a) treated in accordance with these rules as if they were Trust Shares; and
- (b) deemed, for the purposes of these rules, to have been credited to the Plan Account of the Participant at date(s) as near as possible to the date(s) when the Plan Shares, which were compulsorily acquired in consideration for those shares or securities,

were credited to that account.

9.7 Compulsory acquisition: Other Trust Shares

If any Trust Shares which are not Plan Shares of any Participant are subject to compulsory acquisition under any law, the money or other consideration received by the Trustee in respect of that compulsory acquisition forms part of the Trust Assets.

9.8 Procedure to convert non-cash consideration

- (a) If the Trustee is required, by a Board determination, to convert non-cash consideration received on the sale of a Participant Plan Shares to cash the Trustee must apply the cash received on conversion:
 - (i) first, in payment of any stamp duty, tax, brokerage or other costs and expenses of the sale incurred by the Trustee on behalf of the Participant; and
 - (ii) second, the balance (if any) in payment to the Participant.
- (b) A Participant may agree with the Trustee to repay any debts owing or moneys payable to a Group Company, on their behalf from the proceeds of sale of the non-cash consideration.

9.9 Conversion of non-cash consideration

- (a) Each Participant irrevocably authorises the Trustee to take any action reasonably necessary to convert non-cash consideration received by the Trustee on behalf of the Participant for the Participant's Plan Shares, (other than non-cash consideration which is not to be transferred in accordance with clause 9.3 and clause 9.6) to pay the cash received in accordance with clause 9.8.
- (b) Any direction to convert non-cash consideration to cash is a direction to sell that non-cash consideration at any time within 60 days of the date of the direction at the best price reasonably obtainable for that non-cash consideration in the market at the time of sale.
- (c) If the Trustee is required to sell non-cash consideration under clause 9.8, the Trustee may accumulate the non-cash consideration to be sold and deal with them all at or about the same time, provided that all outstanding sales are effected within 60 days of the direction.

9.10 Unclaimed moneys

If the Trustee cannot, within 12 months from the date of sale of non-cash consideration under this clause 9, contact the Participant (at their last residential address, as notified by the Participant) to pay any balance of the proceeds of sale of the Participant's non-cash consideration in accordance with this clause 9, then the Trustee must treat the proceeds as part of the Trust Assets.

10. Transfer of Trust Shares

10.1 Transfer after time expiry

Subject to applicable Terms of Issue and the Plan Rules, the Trustee must transfer to the Participant (or other permitted person) that Participant's Plan Shares in respect of which a period of three years commencing on the Acquisition Date has elapsed. The transfer must take

place within 30 days after the expiration of that three year period.

10.2 Transfer before time expiry

Except as provided in clause 10.3, the Trustee must not transfer a Participant's Plan Shares at the direction of that Participant before the time period referred to in clause 10.1.

10.3 Trustee to transfer

The Trustee must do all things required by it to transfer legal title in a Participant's Plan Shares to that Participant or Trust Shares to a Discretionary Beneficiary:

- (a) where required to do so by any applicable Terms of Issue;
- (b) subject to applicable Terms of Issue and the Plan Rules, where a Participant is no longer employed by the Employer or a Group Company, and gives to the Trustee a Withdrawal Notice (in which case, the Trustee must transfer those Plan Shares within 30 days of receipt of that Withdrawal Notice);
- (c) in accordance with clause 10.1;
- (d) if the Trust is terminated under clause 14.1; or
- (e) otherwise, if the Trustee so determines, following and in accordance with a request from the Board.

11. Sale of Plan Shares

11.1 Sale of Plan Shares at Participant direction

- (a) A Participant may direct the Trustee to sell on behalf of the Participant that Participant's Plan Shares which the Participant is entitled at the time of direction to have transferred to him or her under clause 10, subject to any administrative limitations which the Trustee may impose from time to time.
- (b) Subject to clause 11.1(c), the Trustee must apply the proceeds of sale of a Participant's Plan Shares under clause 11.1(a):
 - (i) firstly, in payment of any stamp duty, tax, brokerage and other costs and expenses of the sale incurred by the Trustee on behalf of that Participant; and
 - (ii) secondly, the balance (if any) in payment to that Participant.
- (c) A Participant may agree with the Trustee to repay debts owing or monies payable to a Group Company on his or her behalf from the proceeds of disposal of the Participant's Plan Shares.

11.2 Manner of Sale of Shares

- (a) Any direction by a Participant to the Trustee under clause 11.1 to sell that Participant's Plan Shares on his or her behalf is a direction to sell those Plan Shares at any time within 60 days of the date of the direction by instructing a Market Participant to sell those Plan Shares at the best price reasonably obtainable for those Plan Shares in the market at the time of sale.
- (b) Where the Trustee is required to sell Shares under clause 11, the Trustee may

accumulate the Shares (regardless of whether the Shares are of the same Participant) to be so sold and deal with them all at or about the same time, provided that all outstanding sales are effected within 60 days from the date of the direction to sell.

- (c) Notwithstanding clauses 11.2(a) and 11.2(b), the Trustee may, having regard to any debts or monies which are owing by or are payable by a Participant to one or more Group Companies, or to the circumstances relating to the cessation of employment of the Participant with the Employer, delay or withhold the actioning of any request to sell Plan Shares of that Participant until satisfactory arrangements have been made for the repayment of the amounts owing by the Participant or the circumstances of cessation of employment have been determined.
- (d) A Participant will not have any claim against the Trustee or the Company as a result of the exercise by the Trustee of a power, discretion or determination under this clause 11.2 regarding the time of sale of particular Plan Shares.

11.3 Unclaimed moneys

If the Trustee cannot within 12 months from the date of sale of Plan Shares under this clause 11 contact the Participant at his or her last residential address as notified by the Participant known to it, to pay any balance of proceeds of sale of Plan Shares in accordance with this clause 11, then the Trustee must pay the proceeds to the Company, in full and complete release and discharge of its obligations under this clause 11.

12. Trustee's warranties

12.1 Trustee authorised

If the Trustee is not a Group Company, the Trustee represents and warrants to the Company on the date of appointment as trustee of the Trust and throughout the term of its appointment as trustee of the Trust that:

- (a) it is duly incorporated and validly exists under the law of its place of incorporation;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms;
- (c) it has full power to enter into and perform its obligations under this Deed and can do so without the approval or consent of any other person; and
- (d) its obligations under this Deed are valid and binding and are enforceable against it in accordance with its terms.

12.2 Compliance with law

If the Trustee is not a Group Company, the Trustee represents and warrants to the Company on the date of appointment as trustee of the Trust and throughout the term of its appointment as trustee of the Trust that the execution, delivery and performance by it of its obligations under this Deed and any other document to be executed by it pursuant to or in connection with this Deed complies with:

- (a) each law, and each regulation, authorisation, ruling, judgment, order or decree of any government agency which is binding on it;
- (b) its constitution; and

- (c) any other document which is binding on it, and will not result in a breach of, or give any third party a right to terminate or modify, any agreement, licence or other instrument or result in a breach of any order, judgment or decree of any court, government agency or regulatory body to which it is a party or by which it is bound.

12.3 Solvency of Trustee

If the Trustee is not a Group Company, the Trustee represents and warrants to the Company on the date of appointment as trustee of the Trust and throughout the term of its appointment as trustee of the Trust that it is not insolvent, in liquidation or administration and no proceedings have been brought or threatened for the purpose of winding it up or placing it in administration. No petition or other process for winding-up has been presented or threatened against it and there are no circumstances justifying such a petition or other process. No writ of execution has issued against it and is outstanding. No receiver, receiver and manager or other controller, administrator or similar official has been appointed over any part of its undertaking or assets and there are no circumstances (including execution of the trust deed constituting the Trust) justifying an appointment.

13. Trustee Licences

If the Trustee is not a Group Company, the Trustee represents and warrants to the Company on the date of appointment as trustee of the Trust and throughout the term of its appointment as trustee of the Trust that:

- (i) it has all Licences;
- (ii) all conditions which apply to each Licence have been (or will be) complied with in all material respects;
- (iii) no Licence have been breached by it or are likely to be suspended, cancelled, refused, materially altered, not renewed, or revoked; and
- (iv) in particular, it warrants that it will comply with its obligations under Part 7 of the Corporations Act with respect to its role as trustee of the Trust and its obligations under this Deed.

14. Termination of the Trust

14.1 Termination

The Trust will terminate and be wound up as provided by law or upon the first to occur of the following events:

- (a) an order being made or an effective resolution being passed for the winding up of the Company (other than for the purpose of amalgamation or reconstruction);
- (b) the Board determining that the Trust is to be wound up; and
- (c) should the Trust be at any time subject to the rule of law against perpetuity, on the later of:
 - (i) the date on which the Trust becomes subject to the rule of law against perpetuity; and
 - (ii) the 80th anniversary of the date of this Deed.

14.2 Distribution of assets

If there are any Trust Assets remaining in the Trust following distribution to Participants of any Plan Shares under clause 10.3, those Trust Assets must be applied by the Trustee for the benefit of any one or more of the Discretionary Beneficiaries nominated by the Board.

15. Income and capital distributions

15.1 Income entitlement

Subject to applicable Terms of Issue, a Participant (but not any other Income Beneficiary) is presently entitled to Net Income of the Trust for a Year of Income which is attributable to:

- (a) the Trust Shares held by the Trustee on behalf of that Participant;
- (b) the proceeds of sales arising from the sale by the Trustee of rights under a Rights Issue on behalf of that Participant; and
- (c) transactions or events related to Trust Shares or property related to or arising from Trust Shares held by the Trustee on behalf of that Participant.

15.2 Other income

- (a) The balance of the Net Income of the Trust for a Year of Income to which no Participant is presently entitled under clause 15.1 may be applied, in whole or in part, for the benefit of one or more of the Income Beneficiaries as the Trustee thinks fit.
- (b) The balance of the Net Income of the Trust for a Year of Income which is not applied in accordance with clause 15.2(a) may be accumulated by the Trustee as an addition to the Trust Assets.

15.3 Characterisation of income and capital

- (a) Before the end of each Year of Income, the Trustee may decide whether:
 - (i) any amount received or held by the Trustee under the Trust is to be treated as being on income or capital account; and
 - (ii) any actual or deemed capital gain arising in that Year of Income under the Tax Act is to be included as income of the Trust.
- (b) Unless the Trustee has made a decision under this clause 15.3, an item is taken into account in calculating the income of the Trust if it would be taken into account in calculating the Net Income of the Trust.
- (c) Where the income of the Trust determined under this clause 15.3 includes the amount of a deemed capital gain arising from the appointment or distribution of part of the income or property of the Trust during a Year of Income in favour of a Participant or Income Beneficiary, or a fund, the Trustee may decide that such amount has been distributed to that Participant or Income Beneficiary or fund by virtue of that appointment or distribution.
- (d) The Trustee may decide that any part of a payment or distribution made under the Trust is to be from a particular class or source of income or property of the Trust.

15.4 Trustee Sole Activities Test

The Trustee must, at all times, satisfy the Trustee Sole Activities Test.

15.5 Capital (including payment of expenses)

If the Trustee thinks fit, prior to the termination of the Trust as set out in clause 14.1, the Trustee may apply that part of the capital of the Trust, in one or more of the following ways:

- (a) in payment of any expenses, costs or charges incurred by the Trustee in the establishment or execution or purported execution of the Trust or any of the powers, authorities or discretions vested in the Trustee, including any amounts of income or other tax payable by the Trustee in relation to the Trust (including its establishment or execution); or
- (b) for the benefit of any one or more of the Discretionary Beneficiaries as the Trustee thinks fit.

16. Taxation liability

16.1 Company liability

If the Company becomes liable to pay any tax in relation to the Trust Shares or other money or entitlements given or paid by the Trustee on behalf of or in relation to a Participant, the Trustee may on the Company's request deduct from any money otherwise payable to the Participant and pay to the Company on behalf of the Participant (or as the Company may direct) sufficient moneys to reimburse any such liability (whether present or future).

16.2 Trustee liability

- (a) If the Trustee, in its discretion, considers that it will be required to deduct or remit any amount in respect of taxation because the Participant's Plan Shares are to be transferred to the Participant or sold under clause 11, then, despite anything else in this Deed, the Trustee may retain and sell (on behalf of the Participant) a sufficient number of the Participant's Plan Shares to obtain cash to meet that obligation.
- (b) If the Trustee becomes liable to pay any tax in relation to the Trust Shares the Trustee may, where it is unable to meet that tax liability from Trust Assets, request the Company's assistance to meet such tax liability.

17. Amendment of the Deed

17.1 Amendment

- (a) Subject to clause 17.2 and the Listing Rules, the Company and the Trustee may at any time by deed amend all or any of the provisions of this Deed (including this clause 17).
- (b) The Trustee must not unreasonably withhold or delay its consent to any amendment to this Deed proposed by the Company.

17.2 No reduction of rights

No amendment of the provisions of this Deed may be made which reduces the rights of any Participant in respect of Shares acquired under the Plan prior to the date of the amendment, other than an amendment introduced primarily:

- (a) for the purpose of complying with or conforming to present or future State, Territory or Commonwealth legislation or the Listing Rules, or a requirement, policy or practice of the Australian Securities and Investments Commission or other foreign or Australian regulatory body;
- (b) to correct any manifest error or mistake; or
- (c) to enable contributions or other amounts paid by a Group Company to the Plan to qualify as income tax deductions for that or another Group Company;
- (d) to enable any Employer to reduce the amount of fringe benefits tax under the *Fringe Benefits Tax Assessment Act 1986* (Cwlth), the amount of tax under the Tax Acts, or the amount of any other tax or impost that would otherwise be payable by the Employer in relation to the Plan;
- (e) for the purpose of enabling the Participants generally (but not necessarily each Participant) to receive a more favourable taxation treatment in respect of their participation in the Plan; or
- (f) to enable the Plan or any member of the Group to comply with the Corporations Act, the Listing Rules or its constitution.

18. General

18.1 No agency

Nothing in this Deed or in the Rules is intended to create an agency relationship between the Trustee and the Company.

18.2 Governing law

This Deed is governed by and must be construed according to the law applying in New South Wales.

18.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 18.3(a).

18.4 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Company

Name: Woolworths Limited
Address: 1 Woolworths Way
Bella Vista, NSW 2153
Fax: (02) 8888 0558
For the attention of: Company Secretary

Trustee

Name: Woolworths Custodian Pty Ltd
Address: 1 Woolworths Way
Bella Vista, NSW 2153
Fax: (02) 8888 0558
For the attention of: Share Registry Manager

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 18.4(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
 - (iv) (in the case of delivery by hand) on delivery,
- (f) but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

18.5 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed.
- (b) A waiver or consent given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.

18.6 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and

delivered that counterpart.

18.7 Stamp duties

The Company:

- (a) must pay all stamp duties and any related fines and penalties in respect of this Deed;
and
- (b) indemnifies the Trustee against any liability arising from failure to comply with clause 18.7(a).

EXECUTED as a deed.

Executed by Woolworths Limited
ABN 88 000 014 675 by or in the presence of:

Signature of Director

Name of Director in full

Executed by Woolworths Custodian Pty Ltd
ABN 93 002 940 445 in the presence of:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full