

# CODE OF CONDUCT FOR THE PETROLEUM INDUSTRY IN JAMAICA

## Viability of business

1. A Wholesaler shall not, directly or indirectly or through any officer, agent or employee in respect of the sale and distribution of petroleum products:-
  - a. fail to act in good faith in performing or complying with any term or provision of, or collateral to, a contract with a retailer;
  - b. impose on a retailer any contractual provisions including a provision respecting an increase in the rental for a gasoline retail outlet, that are likely to be impossible or unreasonably onerous to perform at the time it is demanded to be performed; or
  - c. cancel or terminate a contract with a retailer for a cause not contemplated in the relevant contract.
2. A wholesaler shall not recommend or suggest to a retailer retail prices of fuels which would make it impossible for the retailer to cover reasonable operational costs of the outlet.
3. A wholesaler shall give notice of no less than three (3) months of any changes in the applicable rents and fees. Increases in such rents and fees shall not be made payable retroactively.
4. A wholesaler shall not refuse to sign a contract with a dealer on the ground that the dealer is a limited liability company.
5. A contract between a wholesaler and a retailer shall contain in clear and unambiguous terms the criteria upon which the wholesaler offers or grants discounts or price support to its retailers.
6. All amounts that shall become due and payable by a wholesaler to a retailer and by a retailer to a wholesaler shall be clearly established in a contract between the parties.
7. A contract between a wholesaler and a retailer shall contain the criteria for determining the goodwill and/or any other payments of a similar nature, that may become due when such contract comes to an end.

## Duration of contract

8. No contract between a wholesaler and a retailer shall be for less than three (3) years, in respect of a company-owned retail outlet, PROVIDED THAT the retailer is not serving a probationary period which must not be more than one (1) year.
9. No contract between a wholesaler and a retailer entered into after the effective date of this Code shall be for more than five (5) years, in respect of a dealer-owned retail outlet.
10. An existing contract between a wholesaler and a retailer, in respect of a company-owned retail outlet, excluding a probationary period, which is for a period less than three (3) years shall be pro-rated so as to comply with Provision (8) herein.
11. All contracts must have a specified duration.

### **Disposal of property**

12. Where a wholesaler is desirous of selling property housing a gasoline retail outlet, the existing retailer shall be given first option to purchase the said property.
13. No agreement for the sale by a wholesaler of property housing a gasoline retail outlet shall contain a provision prohibiting the buyer from operating a gasoline retail outlet or any other business at that location, PROVIDED THAT said business is in accordance with the relevant Town and Country or any other zoning laws for the time being in force in Jamaica.

### **Compensation for termination**

14. Where a wholesaler terminates a contract with a retailer for any cause not contained and recognized in the said contract the wholesaler shall compensate the retailer for the unexpired proportion of the contract.
15. Where a retailer terminates a contract with a wholesaler for any cause not contained and recognized in the said contract the retailer shall compensate the wholesaler for the unexpired part of the contract, PROVIDED THAT the contract is in relation to a dealer-owned retail outlet.
16. The method for calculating the compensation shall be set out in the contract between the parties.

### **Notice of termination or non-renewal**

17. A minimum of three (3) months notice shall be given by any party to a contract who wishes to end the contract before its expiration date PROVIDED THAT

where there is a substantial breach, a contracting party shall have the right to terminate the contract immediately.

18. Notice of renewal or non-renewal of a contract shall be given to either party three (3) months prior to the end of the contract and the parties shall communicate to each other any new terms and conditions within the said time frame.
19. Prior to the commencement of a contract, a wholesaler shall advise retailers of the grounds for termination of that contract.
20. For the purpose of this Code, notice means notice in writing.
21. Any notice or demand to be served or made on any party shall be deemed to be sufficiently served or made if served personally or sent by pre-paid registered post addressed to the relevant party's address and shall be deemed to have been received seven (7) days after date of posting in any post office in Jamaica. This method is not exclusive and shall be in addition to any other available procedure, inclusive of such Notice being served on the Attorney representing a party to the contract, which shall be deemed Notice to such party.

### **Display of pump prices**

22. Gasoline retail outlets shall prominently display the prices of fuels (unleaded 87, unleaded 90 and diesel) on both sides of a double-sided display board.
23. Prices on pumps shall be visible; and no price shall be displayed on pumps that are not operational.
24. Prices displayed on pumps shall be identical to the prices displayed on the display board.
25. The layout of the display board shall be two columns by three rows. The first column shall list the type of fuel in the order of unleaded 87, unleaded 90 and diesel; and the second shall display the corresponding prices.

### **Price discrimination**

26. A Wholesaler who operates a retail outlet directly or indirectly through an agent or employee shall not retail gasoline at that outlet at prices at or below the prices at which it supplies outlets operated by independent retailers, within the same transportation zone.

27. Where a wholesaler grants discounts those discounts shall be made available to all retailers within its network of retail outlets, who meet the criteria under which discounts or price support are/is granted.
28. A wholesaler shall sell to all retailers within the same transportation zone at the same price, except in situations in which discounts or price support are/is given to a dealer at the request of that dealer. A transportation zone is the area in which the transportation cost to deliver fuel to retail outlets is identical.
29. Within fourteen (14) days of the implementation of this Code all wholesalers shall supply to the Fair Trading Commission an up-to-date list of the established transportation zones and indicating all the outlets which fall within each zone and shall provide an updated list within seven (7) days of such update for the life of this Code.
30. Where a wholesaler recommends or suggests the price at which gasoline should be retailed at a dealer operated outlet that price shall not be below the price, discounted or otherwise, at which it supplies another retail outlet within the same transportation zone.
31. Except where discounts are granted, all retailers who operate retail outlets within the same distance from the refinery or distribution racks shall be charged the same price for fuels delivered to such retail outlets.
32. Except where discounts are granted, no retailer who operates a retail outlet which is closer to the refinery or distribution racks than another outlet is, shall be charged a higher price than the price charged to a retailer who operates a retail outlet farther away from the refinery or the distribution racks.

### **Predatory pricing**

33. A Wholesaler shall not sell gasoline to independent retailers at prices below the cost of the gasoline together with and the cost of supplying it.
34. A wholesaler who operates a retail outlet directly or indirectly through an officer, agent or employee shall not retail gasoline at prices that do not allow for the recovery of the operational expenses of retailing the gasoline.
35. Where a wholesaler grants discounts to dealers those discount prices shall not be below the cost of the gasoline together with the cost of supplying it.
36. Where a wholesaler recommends or suggests the price at which gasoline should be retailed at a dealer operated outlet that price shall not be below the cost of the gasoline together with the cost of supplying it.

### **Obligation of wholesaler**

37. A retailer who owns the property housing a retail outlet and who has entered into a contract with a wholesaler shall not be in any way prevented from switching to another wholesaler at the end the contract.

38. At the end of a contract by effluxion of time, or where any party wishes to discontinue the contract, in respect of retailer-owned property, the wholesaler must remove its signage, logo etc within one (1) week of the end of the contract.

#### **Obligation of retailer**

39. A retailer who has contracted with a wholesaler for the supply of fuel exclusively from that wholesaler, to be sold by said retailer at a designated retail outlet, shall not accept delivery of fuel to be sold at said retail outlet from any other supplier or wholesaler.

#### **Effective date of Code**

40. The effective date of this Code is December 20, 2004.