

Fuel Industry Guidance: Wholesale Contracts

June 2025



Contents

Glossary	2
Summary	3
Background to this guidance	4
<i>Who should read this guidance</i>	<i>4</i>
Requirements for fixed wholesale contracts	5
<i>Transparency obligation (section 15)</i>	<i>5</i>
<i>Transparent pricing under fixed wholesale contracts (section 16)</i>	<i>6</i>
<i>Variations to pricing methods (section 16(2))</i>	<i>6</i>
<i>Termination of fixed wholesale contracts (section 17) – applies to distributors only</i>	<i>6</i>
<i>Maximum percentage of engine fuel supply that may be subject to exclusivity (section 18) – applies to distributors only</i>	<i>7</i>
<i>Wholesale contract terms that limit the ability of a reseller to compete (section 19)</i>	<i>7</i>
Disputes resolution process	8

Glossary

Term/Abbreviation	Definition ¹
Fuel importer	A fuel industry participant that imports fuel into New Zealand.
Wholesale supplier (wholesaler)	A person that sells and supplies engine fuel, as the whole or part of its business, to persons other than end users.
Reseller	A person that purchases, or intends to purchase, engine fuel from a wholesale supplier to sell and supply to another person; but does not include a person that does so, or intends to do so, only as an incidental part of their business. Independent retailers (dealers) and distributors are both resellers.
Dealers (independent retailers, a subset of resellers)	Resellers that sell and supply engine fuel through their own retail fuel sites using a brand owned by another person that is not an interconnected body corporate of the reseller.
Distributors (a subset of resellers)	Resellers that are not dealers. This includes resellers who sell through retail fuel sites under their own brand.
Retailer	A person that carries on a business of selling and supplying engine fuel to end users; but does not include a person who sells and supplies engine fuel only as an incidental part of their primary business of hiring, leasing, or selling motor vehicles.
Wholesale contract	A contract between a wholesale supplier and a reseller for the sale and supply of engine fuel.
Fixed wholesale contract (FWC)	A wholesale contract that governs,— <ul style="list-style-type: none"> (i) for a fixed period, the wholesale price and other conditions of sale and supply of engine fuel during the period; or (ii) for a fixed amount of engine fuel, the wholesale price and other conditions of sale and supply for that engine fuel; but does not include a wholesale contract for the sale and supply of engine fuel under the terminal gate pricing regime in Subpart 1 of Part 2 of the Fuel Industry Act 2020.

¹ These definitions can also be found in section 4 of the Fuel Industry Act 2020.

Note: This guidance is not exhaustive and should not replace legal advice. We recommend that all resellers and wholesalers seek legal advice before signing a new fixed wholesale contract, or agreeing to any variations to, or renewals of, an existing contract.

Summary

1. This guidance can help fuel resellers and wholesalers understand what the Fuel Industry Act 2020 (the Act) and Fuel Industry Regulations 2021 (Regulations) require for the supply of fuel in fixed wholesale contracts (FWC). Four of the six requirements apply to all resellers and two apply only to distributor contracts.
2. In the main body of the guidance, we provide examples of things to be aware of, however you should obtain your own legal advice to ensure that your FWCs comply with the requirements of the Act.
3. These requirements are also summarised in the following table for ease of reference:

Requirement under the Act and Regulations		Summary
Transparency obligation	Section 15	A wholesaler must ensure that the terms of its FWC are expressed clearly, concisely, and in plain language.
Transparent pricing	Section 16 Regulation 12	A FWC must specify the pricing method by which the price of fuel supplied under that contract is calculated. The wholesaler is responsible for ensuring that this pricing method is followed for all transactions.
Variations to pricing methods	Section 16(2) Regulation 13	The pricing method in a FWC must not be varied throughout the contract, unless the party seeking the variation to the pricing method gives the other party one month's notice of the proposed variation and both parties agree in writing to the variation.
Termination of FWCs (Distributors only)	Section 17 Regulation 14	A distributor may terminate a FWC with a wholesaler at any time after it has been in force for longer than the maximum duration (five years), except under certain conditions, for example where a wholesaler has agreed to make specific investment or there are no minimum volume requirements in the FWC.
Maximum percentage of engine fuel supplied subject to exclusivity (Distributors only)	Section 18 Regulation 15	A FWC must not require a distributor to purchase more than the maximum amount (80%) of the distributor's projected annual fuel requirements from the wholesaler, unless a higher purchase percentage is required in order to recoup specific investment the wholesaler has made for the benefit of the distributor.

Requirement under the Act and Regulations		Summary
Wholesale contract terms that limit the ability of a reseller to compete	Section 19	A wholesaler must not enter into a FWC containing any clause that is likely to limit the ability of the reseller to compete with the wholesaler or any other person; unless such a clause is necessary in order to protect the reasonable commercial interests of the wholesaler.

Background to this guidance

4. The Act was designed to improve competition at the wholesale level. Section 4 of the Act defines ‘fixed wholesale contract’ (FWC) as a wholesale contract that governs:
 - > for a fixed period, the wholesale price and other conditions of sale and supply of engine fuel during the period; or
 - > for a fixed amount of engine fuel, the wholesale price and other conditions of sale and supply for that engine fuel.
5. A FWC does not include a wholesale contract for the sale and supply of engine fuel under the terminal gate pricing regime. Nor do these requirements apply when the wholesaler owns and sets the price of fuel sold to consumers.
6. Each year fuel importers are required to disclose to the Commerce Commission (the Commission) any new or updated FWCs that they have with resellers.² The Commission has reviewed over 300 FWCs and assessed the extent to which these contracts reflected new requirements designed to improve wholesale competition.
7. The Commission raised specific issues identified within FWCs with some importers, and in many cases we provided guidance on how to ensure their FWCs were compliant. Our review, along with the subsequent engagement with wholesalers, was successful in achieving greater compliance with the FWC requirements, facilitating a more competitive wholesale market.
8. We continue to monitor new contracts and contract variations that importers disclose to the Commission to ensure ongoing compliance.

Who should read this guidance

9. This guidance is aimed primarily at fuel resellers.³ This includes:
 - > independent fuel retailers (referred to in the Act as dealers), who operate under a brand owned by another company. This guidance refers to independent fuel retailers and dealers interchangeably.

² Refer Regulation 17D.

³ Refer to the glossary at the beginning of this guidance for definitions in the Act.

- > distributors, who typically retail fuel under their own brand. Some distributors are also wholesalers supplying their own dealer networks.
10. Where this guidance refers to fuel resellers, it means that the provisions relate to both distributors and independent fuel retailers.
 11. The guidance helps resellers understand their rights and obligations under the Act and the Regulations. It outlines the key contract terms that resellers should expect to see in their FWCs.
 12. This guidance will also be useful for wholesalers, as it outlines the requirements they need to meet in their FWCs with fuel resellers. This includes wholesalers who are not importers (and therefore not required to annually disclose copies of their FWCs to the Commission), and wholesalers who are importers entering into agreements with other importers for the supply of fuel.
 13. Independent retailers (dealers) should note that section 17 (Requirement 4 - Termination of FWCs) and section 18 (Requirement 5 - Maximum percentage of annual requirement of engine fuel that may be subject to exclusivity) do NOT apply to their business. These sections apply to distributors only.

Requirements for fixed wholesale contracts

Transparency obligation (section 15)

Contracts must be clear, concise, and easy to understand

14. In addition to ensuring that the terms of a FWC are expressed clearly, concisely, and in plain language, resellers should examine contracts for clauses that:
 - > Contradict each other. For example, a clause stating that the reseller is not obliged to purchase more than 80% of their total fuel requirements from the wholesaler, as well as a minimum volume requirement clause where the volume required is more than 80% of the reseller's total fuel requirements.
 - > Are overly long for their purpose or restate a point multiple times using different wording each time.
 - > Include any clause, wording or term:
 - that could have more than one meaning in the context;
 - where the reseller is unsure of the meaning; and/or
 - where the reason for its inclusion in the contract is unclear.
15. Sometimes wholesalers may make investments into the reseller's business or supply new assets that they own on the reseller's site, and this may be recorded in the FWC and may affect terms in the FWC. For example, a wholesaler may provide a capital grant to upgrade fuel storage and pumping facilities, in return for an extension of the contract term by five years. In such cases, the reseller should seek independent legal or other professional advice to ensure that the terms are transparent, and the implications well understood.

16. Minimum volume requirements must also meet the transparency obligation in the Act. The terms must be clear, concise, and written in plain language. In the case where a contract has a penalty clause should minimum volume requirements not be met (financial or otherwise), we strongly encourage the reseller to ensure that they understand the methodology behind the penalty, and how it is calculated.

Transparent pricing under fixed wholesale contracts (section 16)

Contracts must clearly explain how fuel prices are calculated

17. Resellers should ensure that they understand the pricing method (and calculations behind the final fuel price) used in the FWC. The pricing methodology outlines how the price of fuel is calculated, and may include reference to a terminal gate price, an international reference port price assessment or applicable taxes. The method can take many forms, with varying levels of detail. If the method is a formula, the wholesaler must set out that formula in the FWC.
18. Price transparency enables a reseller to compare and negotiate wholesale prices, and to understand and challenge the justification for price changes imposed by wholesalers. We expect that the terms which contain pricing elements or methodologies specify and clearly explain the elements of the pricing method. Resellers should look for a sufficient level of detail to:
 - > independently calculate the price of engine fuel at any time; and
 - > accurately compare offers/prices from other wholesalers with their current wholesale prices.

Variations to pricing methods (section 16(2))

Pricing method changes must be agreed by both parties

19. Variations to pricing methods must be agreed by both parties in writing and require at least one month's notice. This is set out in Regulation 13.
20. Before agreeing to and signing any variation to the pricing method in a FWC, we strongly encourage resellers to ensure they are satisfied that the new pricing method meets the pricing transparency requirements. Ideally, a change in pricing methodology would result in more transparency for the reseller, not less.

Termination of fixed wholesale contracts (section 17) – *applies to distributors only*

Distributors can end a contract any time after five years

21. A distributor may terminate a FWC at any time after it has been in force for five years. This section applies even if the contract states a duration longer than five years. This ability to terminate does not apply to contracts with a duration of less than five years.

22. A longer contract duration may be acceptable in some circumstances. Occasionally, a wholesaler may offer or agree to make a particular investment that benefits the distributor – for example, providing funds for the purchase of a new fuel tank. In this case, the wholesaler may request a longer contract term, to enable the wholesaler to recover the cost of the particular investment.
23. A distributor who intends to terminate their contract should take care with any investment clause if the wholesaler has at any stage made an investment that benefits the distributor. If this is the case, we recommend that the distributor seek legal advice before terminating a FWC.

Maximum percentage of engine fuel supply that may be subject to exclusivity (section 18) – *applies to distributors only*

Distributors are not required to buy more than 80% of their fuel from one wholesaler

24. Dealers tend to have exclusive supply agreements. Distributors on the other hand, can sell fuel under a brand they control and can obtain fuel from multiple wholesalers.
25. The maximum amount of fuel that a wholesaler can require a distributor to agree to purchase exclusively from that wholesaler annually, is 80% of the distributor's total forecasted annual volume requirement. This is the current maximum set in Regulation 15.
26. A distributor may choose to purchase more than 80% of their fuel from one wholesaler, but this must be the choice of the distributor and not imposed by the wholesaler. Occasionally, a wholesaler may offer or agree to make a particular investment that benefits the distributor – for example, providing funds for the purchase of new fuel tanks. In this case, the wholesaler may require that a distributor purchase a higher percentage of their fuel requirements, to enable the wholesaler to recover the cost of the investment.
27. Distributor contracts may also include a minimum volume requirement. These should be carefully examined by the distributor to ensure that they do not exceed 80% of their total annual volume requirements. However, a minimum volume requirement higher than 80% could be acceptable in some circumstances (see previous example where a distributor benefits from investment by the wholesaler).

Wholesale contract terms that limit the ability of a reseller to compete (section 19)

Contracts should not have terms that prevent resellers from competing in the market

28. FWCs should not contain any clause that limits the ability of the reseller to compete within the market, whether with the wholesaler or any other person, unless the clause is reasonably necessary in order to protect the supplier's commercial interests.
29. This requirement is broad in nature and may require looking beyond individual clauses in a FWC and outside the FWC.

30. The following clauses are provided as examples and are not exhaustive. We advise that if a contract includes clauses like these, the reseller should seek further legal advice before agreeing to the clause as written.
31. Example 1: Unilateral rights of renewal.
- > A unilateral right of renewal clause, if exercisable only by the contracted wholesaler, may limit the ability of a reseller to obtain engine fuel from another wholesale supplier following the end of the term of the contract. The inability of a reseller to obtain a more competitive source of wholesale supply can limit their ability to compete in the local retail market.
32. Example 2: First right of refusal.
- > If an independent retailer's contract is coming to an end, they may find that a first right of refusal to supply clause limits their ability to change wholesale supply, and service station brand.
33. Example 3: Restraint of trade.
- > Some 'restraint of trade' clauses may limit the ability of a reseller to compete. One such example would be if the wholesaler purchases part or all of a reseller's business, with a condition that the reseller is prevented from being directly or indirectly involved in any business which may be in competition for six months following settlement of the purchase.
34. Example 4: Restriction on independent decision making.
- > Any clause that restricts the ability of the reseller to make independent decisions about the conduct of their business may be non-compliant with section 19.

Disputes resolution process

35. The dispute resolution provisions in the Act⁴ and Regulations⁵ provide a pathway for wholesalers and resellers to resolve disputes that relate to FWC terms or the terminal gate pricing regime.
36. The dispute resolution process requires that disputes must be referred to mediation if unable to be resolved by mutual agreement.⁶ Subsequently, if the parties are unable to resolve the dispute at mediation, either party may refer the dispute to arbitration.⁷
37. Either party can initiate the mediation by serving a written request for mediation on the other party. The served party must reply to the request within 10 working days. If the parties are unable to resolve the dispute at mediation, either party may refer the dispute to arbitration.

⁴ Section 46 of the Act.

⁵ Part 4 of the Regulations.

⁶ Section 46(2) of the Act.

⁷ Section 46(4) of the Act.

38. Whilst this process may not be used often, it is helpful for resellers to know that the Act does provide some options in the event of a dispute.