

# Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to the Trade with Suppliers

November 1, 2005

Fair Trade Commission Notification No. 11 of 2005

In accordance with the provisions of Section 2 (9) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Law No. 54 of 1947), Specific Unfair Trade Practices by Large-Scale Retailers Relating to the Trade with Suppliers shall be designated as follows:

## **Specific Unfair Trade Practices by Large-Scale Retailers Relating to the Trade with Suppliers**

### **[Unjust return of goods]**

1. A large-scale retailer returns goods, which the retailer itself or its franchisees (hereinafter referred to as “the retailer, etc.”) purchased from a supplier, to that supplier (including acts materially equivalent to the return of goods, for example changing the contract from a purchase contract to a consignment sale contract or replacing the goods with other goods; the same shall apply hereinafter), except when it falls under any of the following paragraphs:

(1) Return of goods to a supplier for a reason attributable to the supplier within a reasonable period from the day of receipt and within a quantity limit deemed appropriate in consideration of the reason,

(2) Return of goods to a supplier in accordance with fixed conditions for return based on an agreement with the supplier at the time of purchasing the goods (applicable solely in the cases in which it is the normal trade practice in general wholesale trade, excluding trade between large-scale retailers and suppliers, to return goods within a fixed period after the date of receipt and within the fixed quantity limit, or within a quantity in fixed proportion to the total quantity received and in which the conditions for the return of goods are set forth within the scope of the normal trade practice),

(3) Return of goods to a supplier upon obtaining the supplier’s prior consent, provided that the large-scale retailer bears a loss that should normally occur to the supplier due to the return of goods already delivered, and

(4) Return of goods to a supplier at the request of the supplier, provided that the disposal of the returned goods leads to direct benefits for the supplier.

**[Unjust price reduction]**

2. A large-scale retailer coerces a supplier to accept a price reduction of the delivery price of goods purchased by the retailer, etc. after purchasing the goods from the supplier, except in cases in which it causes the supplier to accept a reduction of the delivered price for any reason attributable to the supplier within a reasonable period from the date of receipt and within a reduction limit that is deemed appropriate in consideration of the reason.

**[Unjust consignment sales contract]**

3. A large-scale retailer coerces a supplier to accept a consignment sales contract with the retailer, etc. under conditions excessively disadvantageous to the supplier in light of normal trade practices carried out in general transactions of consignment sales excluding trade between large-scale retailers and suppliers.

**[Beating suppliers down on price for bargain sales, etc.]**

4. A large-scale retailer sets delivery prices of particular goods excessively lower than the ordinary delivery prices of equivalent goods to the retailer, etc. for the purpose of bargain sales and the like and causes a supplier to deliver the goods at the said prices.

**[Refusal to receive specifically ordered goods]**

5. A large-scale retailer refuses delivery of all or part of specific goods without grounds attributable to the supplier after having entered into a contract in which the large-scale retailer designated specific standards, designs, types, etc. of the goods to be delivered, except in cases in which it obtains the supplier's consent to its refusal and in which the large-scale retailer bears a loss that should normally occur to the supplier due to its refusal.

**[Coercion to purchase, etc.]**

6. A large-scale retailer coerces a supplier to purchase any goods or services designated by the said retailer, unless there is any just reason.

**[Unjust assignment of work to employees of suppliers, etc.]**

7. A large-scale retailer coerces a supplier to dispatch employees to assist with the ordinary operations of the retailer, etc., or the large-scale retailer coerces the supplier to

bear the labor costs of employees hired by the retailer, etc. in lieu of coercing the supplier to dispatch employees, except when any of the following conditions apply:

(1) With the prior consent of the supplier, the large-scale retailer assigns dispatched employees solely to sales operations of those goods delivered by the supplier (or sales and inventory operations for those goods if the dispatched employees of the supplier are regularly stationed at a store of the large-scale retailer), and only in a manner that allows for the effective use of sales techniques or other ability possessed by the dispatched employees that leads to direct benefits for the supplier.

(2) The large-scale retailer reaches a prior agreement with the supplier with respect to the dispatch terms and conditions, such as the types of duties assigned to dispatched employees, their working hours and their dispatch period, and it bears the cost generally required for the dispatch of employees.

**[Unjust receipt of economic benefits, etc.]**

8. Apart from those acts set forth in the preceding section, a large-scale retailer coerces a supplier to provide the retailer, etc. with economic benefit including money and services that the supplier definitely should not need to offer or that exceeds the limit recognized as reasonable in consideration of the benefits reaped by the supplier.

**[Unfavorable treatment in response to refusal of requests]**

9. A large-scale retailer gives unfavorable treatment including the delay of payment for goods delivered, reduction in trade volume, suspension of trade to a supplier for the reason that the supplier refuses any of the requests as set forth in one on the preceding sections.

**[Unfavorable treatment in response to notification to the Fair Trade Commission]**

10. A large-scale retailer gives unfavorable treatment including the delay of payment for goods delivered, reduction in trade volume, suspension of trade to a supplier for the reason that the supplier notified, or was about to notify the Fair Trade Commission of the fact that the large-scale retailer conducted or is engaged or is engaging in any acts in one of the preceding sections.

## **Remarks**

1. For the purpose of this Notification, the term “Large-scale retailer” means an entrepreneur that engages in retail sales of goods that are used by general consumers on a daily basis, including any retailer engaged in a designated chain business (which refers to the designated chain business stipulated in Section 11 (1) of the Act Concerning the Promotion of Small and Medium Retail Business (Law No. 101 of 1973); the same applies hereinafter), and which falls under any of the following paragraphs:

(1) The entrepreneur that has sales of 10 billion yen or more in its last completed fiscal year. If the entrepreneur engages in the designated chain business, the sales earned by the franchisees of the designated chain business shall be taken into account.

(2) The entrepreneur that owns a store that falls under either of the following descriptions.

(i) A store with store floor space (which refers to the floor area that serves as a store for running the retail business; the same applies hereinafter) of three thousand square meters (3,000 m<sup>2</sup>) or larger within the limits of Tokyo Metropolis (special wards only) and designated cities stipulated in Section 252-19 (1) of the Local Governmental Act (Law No. 67 of 1947)

(ii) A store with store floor space of one thousand five hundred square meters (1,500 m<sup>2</sup>) or more within the limits of cities other than those falling under the preceding item, towns and villages

2. For the purpose of this Notification, the term “Franchisee” means a franchisee participating in the designated chain business operated by a large-scale retailer.

3. For the purpose of this Notification, the term “Supplier” means an entrepreneur that supplies a large-scale retailer or its franchisees with goods for their own sales or sales on consignment, excluding any such entrepreneur which bargaining position is recognized as not being inferior to that of the large-scale retailer in question.

### **Supplementary provisions**

1. This Notification shall take effect on November 1, 2005.
2. Designation of Specific Unfair Trade Practices in the Department Store Business (Fair Trade Commission Notification No. 7 of 1954; hereinafter referred to as the "Former Notification") shall be abolished upon this Notification taking effect.
3. Any act conducted prior to the effective date of this Notification by a Department Store Entity prescribed in Section 1 of the remarks of the Former Notification shall be governed as hitherto.