


Master Purchase Order

DO NOT INVOICE TO THIS ADDRESS			Master Purchase Order No. 0181A0211	
City & County of Denver			Date: May 15, 2013	Revision No. 02
Purchasing Division			Payment Terms Net 30	
201 West Colfax Avenue, Dept. 304			Freight Terms DESTINATION	
Denver, CO 80202			Ship Via Delivery	
United States			Buyer: Jenny Casanova	
Phone: 720-913-8100 Fax: 720-913-8101			Phone: 720.913.8155	

Vendor: 0000001289 Phone: 303-480-8788 Fax: 303-480-8792 Email: fronrangewhol@aol.com

Pearson & Pearson
 dba Front Range Wholesale Restaurant Supply
 PO Box 751
 Castle Rock, CO 80104
 Attn: Mark Domenico

Ship To: City & County of Denver
 Ordering Agency

Bill To: **City and County of Denver**
Accounts Payable
201 West Colfax Ave, Dept 908
Denver, CO 80202

1. Goods/Services:

Pearson & Pearson dba Front Range Wholesale Restaurant Supply, a Corporation in the State of Colorado, ("Vendor") shall provide the goods, and any services related thereto, identified and described on attached **Exhibit A**, to the City and County of Denver, a Colorado municipal corporation (the "City"), all in accordance with the terms and conditions of this Master Purchase Order.

2. Ordering:

The City shall purchase one or more of the goods/services by issuing a written purchase order(s) or similar appropriate written document ("Order"), each of which will be deemed incorporated into this Agreement for purposes of such Order only.

3. Pricing:

The pricing/rates for the goods/services is contained on **Exhibit A** and shall be held firm for the term of this Master Purchase Order.

4. Term:

The term of this Master Purchase Order shall run from Date of City Signature to and including March 1, 2014.

5. Extension or Renewal:

The City and County of Denver reserves the right to renew and extend the executed contract or agreement pertaining to all conditions and specifications of this proposal and the accepted detailed proposal of the vendor, upon mutual agreement between the City and County of Denver and the vendor for additional one (1) year periods but not to exceed one (1) additional year.

6. Non-Exclusive:

This Master Purchase Order is non-exclusive. City does not guarantee any minimum purchase other than as provided herein.

7. Inspection and Acceptance:

City may inspect all goods/services prior to acceptance. Payment does not constitute acceptance. Vendor shall bear the cost of any inspection/testing that reveal goods/services that are defective or do not meet specifications. City's failure to accept or reject goods/services shall not relieve Vendor from its responsibility for such goods/services that are defective or do not meet specifications nor impose liability on City for such goods/services. If any part of the goods/services are not acceptable to City, City may, in addition to any other rights it may have at law or in equity: (1) make a warranty claim; (2) repair and/or replace the goods or substitute other services at Vendor's expense; or (3) reject and return the goods at Vendor's cost and/or reject the services at Vendor's expense for full credit. Any rejected goods/services are not to be replaced without written authorization from City, and any such replacement shall be on the same terms and conditions contained in this Master Purchase Order. Vendor shall perform all services in accordance with the standard of care exercised by highly competent vendors who perform like or similar services.

8. Shipping, Taxes and Other Credits and Charges:

All pricing is F.O.B. destination unless otherwise specified. Shipments must be marked with Vendor's name, the Master Purchase Order number, and contain a delivery or packing slip. Vendor shall not impose any charges for boxing, crating, parcel post, insurance, handling, freight, express or other similar charges or fees. Vendor shall notify City in writing of any price decreases immediately, and City shall receive the benefit thereof on all unshipped items. Vendor shall comply with any additional delivery terms specified herein. Vendor shall be responsible for the cleanup and reporting of any contamination (environmental or otherwise) or spillage resulting from the delivery and/or unloading of goods within twenty-four (24) hours of the contamination or spillage or sooner if required by law. Vendor shall procure all permits and licenses; pay all charges, taxes and fees; and give all notices necessary and incidental to the fulfillment of this Master Purchase Order and all cost thereof have been included in the prices contained herein. City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as required by D.R.M.C. § 20-107, et seq. The price of all goods/services shall reflect all applicable tax exemptions. City's Federal Registration No. is 84-6000580 and its State Registration No. is 98-02890. Vendor shall pay all sales and use taxes levied by City on any tangible personal property built into the goods/services. Vendor shall obtain a Certificate of Exemption from the State of Colorado Department of Revenue prior to the purchase of any materials to be built into the goods/services and provide a copy of the Certificate to City prior to final payment.

9. Risk of Loss:

Vendor shall bear the risk of loss, injury or destruction of goods prior to delivery to City. Loss, injury or destruction shall not release Vendor from any obligation hereunder.

10. Invoice:

Each invoice shall include: (i) the Master Purchase Order number; (ii) individual itemization of the goods/services; (iii) per unit price, extended and totaled; (iv) quantity ordered, back ordered and shipped; (v) an invoice number and date; (vi) ordering department's name and "ship to" address; and (vii) agreed upon payment terms set forth herein.

11. Payment:

12. Payment shall be subject to City's Prompt Payment Ordinance D.R.M.C. § 20-107, et-seq. after City accepts the goods/services. Any other provision of this Agreement notwithstanding, in no event shall the City be liable for aggregate payments under this Master Purchase Order in excess of Six-Million Dollars (\$6,000,000.00). The Vendor acknowledges that any goods/services provided beyond those specifically described in **Exhibit A** are performed at Contractor's risk and without authorization from the City. City's payment obligations hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Master Purchase Order, encumbered by the City after receipt of Vendor's invoice and paid into the Treasury of City. Vendor acknowledges that: (i) City does not by this Master Purchase Order, irrevocably pledge present cash reserves for payments in future fiscal years; and (ii) this Master Purchase Order is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City. City may setoff against any payments due to Vendor any claims and/or credits it may have against Vendor under this Master Purchase Order.

13. Amendments/Changes:

Only the Manager of General Services or his delegate is authorized to change or amend this Master Purchase Order by a formal written change order. Any change or amendment that would cause the aggregate payable under this Master Purchase Order to exceed the amount appropriated and encumbered for this Master Purchase Order is expressly prohibited and of no effect. Vendor shall verify that the amount appropriated and encumbered is sufficient to cover any increase in cost due to changes or amendments. Goods/services provided without such verification are provided at Vendor's risk. The Vendor has no authority to bind City on any contractual matters.

14. Warranty:

Vendor warrants and guarantees to City that all goods furnished under this Master Purchase Order are free from defects in workmanship and materials, are merchantable, and fit for the purposes for which they are to be used. For any goods furnished under this Master Purchase Order which become defective within twelve (12) months (unless otherwise specified) after date of receipt by City, Vendor shall either, at City's election and to City's satisfaction, remedy any and all defects or replace the defective goods at no expense to City within seven (7) days of receipt of the defective goods or accept the defective goods for full credit and payment of any return shipping charges. Vendor shall be fully responsible for any and all warranty work, regardless of third party warranty coverage. Vendor shall furnish additional or replacement parts at the same prices, conditions and specifications delineated herein.

15. Indemnification/Limitation of Liability:

Vendor shall indemnify and hold harmless City (including but not limited to its employees, elected and appointed officials, agents and representatives) against any and all losses (including without limitation, loss of use and costs of cover), liability, damage, claims, demands, actions and/or proceedings and all costs and expenses connected therewith (including without limitation attorneys' fees) that arise out of or relate to any claim of infringement of patent, trademark, copyright, trade secret or other intellectual property right related to this Master Purchase Order or that are caused by or the result of any act or omission of Vendor, its agents, suppliers, employees, or representatives. Vendor's obligation shall not apply to any liability or damages which result solely from the negligence of City. City shall not be liable for any consequential, incidental, indirect, special, reliance, or punitive damages or for any lost profits or revenues, regardless of the legal theory under which such liability is asserted. In no event shall City's aggregate liability exceed the agreed upon cost for those goods/services that have been accepted by City under this Master Purchase Order. Notwithstanding anything contained in this Master Purchase Order to the contrary, City in no way limits or waives the rights, immunities and protections provided by C.R.S. § 24-10-101, et seq.

16. Termination:

City may terminate this Master Purchase Order, in whole or in part, at any time and for any reason immediately upon written notice to Vendor. In the event of such a termination, City's sole liability shall be limited to payment of the amount due for the goods/services accepted by City. Vendor acknowledges the risks inherent in this termination for convenience and expressly accepts them. Termination by City shall not constitute a waiver of any claims City may have against Vendor.

17. Interference:

Vendor shall notify the Director of Purchasing immediately of any condition that may interfere with the performance of Vendor's obligations under this Master Purchase Order and confirm such notification in writing within twenty-four (24) hours. City's failure to respond to any such notice shall in no way act as a waiver of any rights or remedies City may possess.

18. Venue, Choice of Law and Disputes:

Venue for all legal actions shall lie in the District Court in and for City and County of Denver, State of Colorado, and shall be governed by the laws of the State of Colorado as well as the Charter and Revised Municipal Code, rules, regulations, Executive Orders, and fiscal rules of City. All disputes shall be resolved by administrative hearing, pursuant to the procedure established by D.R.M.C. § 56-106. Director of Purchasing shall render the final determination.

19. Assignment/No Third Party Beneficiary:

Vendor shall not assign or subcontract any of its rights or obligations under this Master Purchase Order without the written consent of City. In the event City permits an assignment or subcontract, Vendor shall continue to be liable under this Master Purchase Order and any permitted assignee or subcontractor shall be bound by the terms and conditions contained herein. This Master Purchase Order is intended solely for the benefit of City and Vendor with no third party beneficiaries

20. Notice:

Notices shall be made by Vendor to the Director of Purchasing and by City to Vendor at the addresses provided herein, in writing sent registered, return receipt requested.

21. Compliance With Laws:

Vendor shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules, regulations and executive orders related to its performance under this Master Purchase Order. City may immediately terminate this Master Purchase Order, in whole or in part, if Vendor or an employee is convicted, plead nolo contendere, or admits culpability to a criminal offense of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature.

22. Insurance:

Vendor shall secure, before delivery of any goods/services, the following insurance covering all operations, goods and services provided to City. Vendor shall keep the required insurance coverage in force at all times during the term of the Purchase Order, or any extension thereof, during any warranty period, and for three (3) years after termination of this Purchase Order. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to the Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, Vendor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, City must be notified by Vendor. Vendor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Purchase Order are the minimum requirements, and these requirements do not lessen or limit the liability of Vendor. Vendor shall provide a copy of this Purchase Order to its insurance agent or broker. Vendor may not commence services or work relating to the Purchase Order prior to placement of coverage. Contractor certifies that the attached certificate of insurance attached to the Purchase Order documents, preferably an ACORD certificate, complies with all insurance requirements of this Purchase Order. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Purchase Order shall not act as a waiver of Vendor's breach of this Purchase Order or any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements. Vendor's insurer shall name as Additional Insured to its Commercial General Liability and Business Auto Liability policies the City and County of Denver, its elected and appointed officials, employees and volunteers. Vendor's insurer shall waive subrogation rights against the City. All sub-contractors and sub-consultants (including independent contractors, suppliers or other entities providing goods/services required by this Purchase Order) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Vendor. Vendor shall include all such entities as insureds under its policies or shall ensure that they all maintain the required coverages. Vendor shall provide proof of insurance for all such entities upon request by City. For Worker's Compensation Insurance, Vendor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Vendor expressly represents to City, as a material representation upon which City is relying, that none of the Vendor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Purchase Order, and that any such rejections previously effected, have been revoked. Vendor shall maintain Commercial General Liability coverage with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Vendor shall maintain Business Auto Liability coverage with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-hired vehicles used in performing services under this Purchase Order. For Commercial General Liability coverage, the policy must provide the following: (i) That this Purchase Order is an Insured Contract under the policy; (ii) Defense costs in excess of policy limits; (iii) A severability of interests, separation of insureds or cross liability provision; and (iv) A provision that coverage is non-contributory with other coverage or self-insurance provided by City. For claims-made coverage, the retroactive date must be on or before the first date when any goods or services were provided to City. Vendor must advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

23. Severability:

Master Purchase Order No. 0181A0211

If any provision of this Master Purchase Order, except for the provisions requiring appropriation and encumbering of funds and limiting the total amount payable by City, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of City and Vendor can be fulfilled.

24. Survival:

All terms and conditions of this Master Purchase Order which by their nature must survive termination/expiration shall so survive. Without limiting the foregoing, Vendor's insurance, warranty and indemnity obligations shall survive for the relevant warranty or statutes of limitation period plus the time necessary to fully resolve any claims, matters or actions begun within that period. Bonds shall survive as long as any warranty period.

25. No Construction Against Drafting Party:

No provision of this Master Purchase Order shall be construed against the drafter.

26. Status of Vendor/Ownership of Work Product:

Vendor is an independent contractor retained on a contractual basis to perform services for a limited period of time as described in Section 9.1.1E(x) of the Charter of City. Vendor and its employees are not employees or officers of City under Chapter 18 of the D.R.M.C. for any purpose whatsoever. All goods, deliverables, hardware, software, plans, drawings, reports, submittals and all other documents or things furnished to City by Vendor shall become and are the property of City, without restriction.

27. Records and Audits:

Vendor shall maintain for three (3) years after final payment hereunder, all pertinent books, documents, papers and records of Vendor involving transactions related to this Master Purchase Order, and City shall have the right to inspect and copy the same.

28. Remedies/Waiver:

No remedy specified herein shall limit any other rights and remedies of City at law or in equity. No waiver of any breach shall be construed as a waiver of any other breach.

29. No Discrimination in Employment:

Vendor shall not refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Vendor shall insert the foregoing provision in any subcontracts hereunder.

30. Use, Possession or Sale of Alcohol or Drugs:

Vendor shall cooperate and comply with the provisions of Executive Order 94. Violation may result in City terminating this Master Purchase Order or barring Vendor from City facilities or from participating in City operations.

31. Conflict of Interest:

No employee of City shall have any personal or beneficial interest in the goods/services described in this Master Purchase Order; and Vendor shall not hire or contract for services any employee or officer of City which would be in violation of City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

This Master Purchase Order is acknowledged and agreed to by:

Vendor Name: Front Range Wholesale
(Company Name)

City & County of Denver, Purchasing Division

By: [Signature]
(Authorized Signature)

By: [Signature]

Print Name: Tony Domenico

Print Name: Jenny Casanova

Title: Sales

Title: Associate Buyer

Date: 05/15/13

Date: 5/16/13

EXHIBIT "A"

Vendor: Front Range Wholesale Restaurant Supply
Title: Food: Meat, Dairy, Produce, Dry, Frozen, Bakery
Master Purchase Order No.: GROCERIES____0181A

It is recommended that you use your Master Purchase Order No. – 0181A0111, in all future correspondence, billing, invoicing or other communications.

Description of the goods, and services related thereto, being purchased and pricing:

F.O.B. POINT:

All prices quoted must be quoted at a firm price F.O.B. Denver, Colorado, delivered, unloaded and stacked to various locations around the City and County of Denver.

DELIVERY CONSIDERATIONS:

The Vendor shall be required to maintain adequate local inventories to cover normal usage by agencies of the City. Delivery of any items ordered under this Master Purchase Order shall be made within 24-48 hours from the time the order is placed.

It is anticipated the City will require daily delivery to multiple locations. All deliveries shall be made between the hours of 5:00 A.M. and 1:00 P.M, Monday through Friday, excluding holidays. Agencies reserve the right to limit the delivery hours to meet specific business needs. The City expects consistency in drivers delivering to City locations (no more than 2 different drivers per week).

MINIMUM ORDERS:

The Vendor shall realize City agencies may order small case orders and daily orders as necessary. No minimum order may be enforced by the vendors.

SHELF LIFE LABELING:

Vendor shall be responsible for assuring every item and/or carton/case indicates a "Use By" date by month/year to be determined from the manufactured date based upon an industry standard shelf life at room temperature, refrigerated or frozen as applicable.

QUALITY:

The City requires all items provided under the subsequent contracts to be of first quality, meeting all nutritional industry standards. Seconds are NOT acceptable. Short dated items are NOT acceptable. The City reserves the right to reject any orders found to be unacceptable not meeting the quality required of the requesting agency. The Vendor will be notified of such rejections within 48 hours, or 2 business days, and shall be required to pick up the rejected order and replace with acceptable replacement product. Failure to pickup rejected product within 48 hours will be disposed of at agency discretion. Invoices from the vendor shall reflect only accepted product.

NUTRITION LABELING:

The City requires that all items shall have nutrition labels that contain product-specific information. When City Agencies order product, the product must be labeled appropriately.

SUBSTITUTIONS AND SHORTAGES:

If an item cannot be delivered as ordered, the vendor must notify the City immediately, so decisions may be made concerning menu offerings and potential substitutions. If there are any returns or refuses a credit must be done at time of delivery.

Substitutions must be approved by authorized personnel of the City prior to delivery. Substitute products must be of "EQUAL" quality as determined by the City and shipped at Vendor Cost.

If the Vendor substitutes an item without prior City approval, the City will only pay the Vendors Cost with no mark-up applied.

If an alternate Vendor is arranged for substitutions or shortages, the City will be invoiced at the City Cost or the alternate Vendors selling price, whichever is lower.

If the Vendor is no longer able to purchase the product for any reason, including discontinuance by manufacturer, he/she shall provide a substitute that has been approved by the City Agency Food Services Manager or his/her designee at the same bid price or lower.

ACCOUNT REPRESENTATIVE:

The Vendor shall be responsible for providing an outside account representative to the City who has familiarity with this account. A local phone number, Denver phone number or an 800 number is required. This person shall assist City agencies with all matters to establish ordering, market basket items, supply schedules, pricing and delivery schedules. Indicate contact person and phone and fax number:

Name: Mark Domenico Phone: 720.270.1606 Email: ndcancino@msn.com

The Vendor shall be responsible for providing an in-house contact person who will have familiarity with the City Master Purchase Order. This person shall be available to handle routine communication from the City pertaining to orders.

Name: Tony Domenico Phone: 303.480.8788 Email: fronrangeshsl@aol.com

MARKET TRENDS:

The City encourages the Vendor to provide the City with market information relating to product quality, pricing trends and new products. The Vendor shall also make recommendations on other appropriate products.

LIQUIDATED DAMAGES:

If the vendor fails to deliver the supplies within the time specified in his/her contract, or any extension thereof, the actual damages to the City for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, the vendor shall pay to the City as fixed, agreed and liquidated damages for each calendar day of delay, the amount of \$25.00 per order/per day, deducted from invoice. The City may terminate this contract in whole or in part as provided in the "Default" provision. In that event, the vendor shall be liable for such liquidated damages accruing until such time as the City may reasonably obtain delivery or performance of similar supplies and services. The vendor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the vendor.

EMERGENCY PURCHASES:

The City and County of Denver reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the vendor.

AUDITING:

The City reserves the rights to perform audits that will verify that amounts invoiced are in accordance with the terms of this agreement. Such audits will not unreasonably interfere with the conduct of the Vendor's business and should not be conducted more than four (4) times a year. Each audit will be limited to the months that have transpired since the months covered in the previous audit. Any discrepancies found must be corrected to the City's satisfaction and credited back to the City. Continued discrepancies could, at the sole option of the City, result in termination of the contract. If at any time the City identifies any irregularities in the administration of the contract, the Vendor shall allow the City the privilege of an audit to the beginning of the contract. The Vendor shall provide original invoices for audit purposes.

COOPERATIVE PURCHASING:

The City and County of Denver encourages and participates in cooperative purchasing endeavors undertaken by or on behalf of other governmental jurisdictions, pursuant to Denver Revised Municipal Code Sec. 20-64.5. To the extent other governmental jurisdictions are legally able to participate in cooperative purchasing endeavors, the City and County of Denver supports such cooperative activities. Further, it is a specific requirement of this Master Purchase Order that pricing

offered herein to the City and County of Denver may be offered by the vendor to any other governmental jurisdiction purchasing the same products.

The vendor must deal directly with any governmental agency concerning the placement of purchase orders, freight charges for destinations outside of the Denver Metro area, contractual disputes, invoicing, and payment. The City and County of Denver shall not be liable for any costs, damages incurred by any other entity.

PALLET CHARGE:

All pallets supplied shall be non-returnable, no deposit.

LABORATORY TESTING:

In the event materials shipped to the City as outlined herein indicate substandard specifications in a qualitative or quantitative manner, the City reserves the right to have a laboratory test made. If material is found to be deficient, the vendor shall be required to pay all costs of testing. If product found to meet specifications, the City shall pay all costs.

INVOICES:

All orders must be accompanied by an itemized invoice, to include product name, unit cost, extension, piece count and total charges and the agency Blanket Purchase Order Number, for receiving purposes. A duplicate invoice must be sent to the Centralized Accounts Payable office for Payment purposes. The City's standard payment terms are Net 30.

PRICING INSTRUCTIONS:

For all orders placed the mark up percentages shall be firm and fixed for the specified contract period.

The mark up percentage shall be a 'not to exceed' structure allowing City agencies to price compare daily as ordering.

The Mark-up Formula shall be as follows:

- Supplier Cost x Markup = Net Unit Price to City
 - Markup to be defined as : 10% markup - cost x 1.10 or 5% markup - cost x 1.05

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COMMODITY CATEGORIES:

CATEGORY	Mark Up %	Comments
Meat	6.20%	
Poultry	6.40%	
Fish and Seafood	9.40%	
Eggs	8.90%	
Dairy	REMOVED FROM BID	
Produce	NO AWARD TO FRONT RANGE	
Frozen Foods	10.75%	
Canned and Dry Goods	8.40%	
Bakery, Bulk & Prepared	7.90%	
Sauces, Condiments, Dressings & Oils	10.90%	
Spices & Flavorings	12.80%	
Beverages, Juices, Coffee & Tea	10.78%	