

Grocery Sector Code of Conduct

November 27, 2023

Objectives

The objectives of the Code are to:

1. Contribute to a thriving and competitive grocery industry, delivering the vital goods upon which Canadians in every community depend, recognizing the needs of all stakeholders in the grocery value chain, including the unique realities facing small and medium enterprises, the realities of the Canadian marketplace, and the importance of ESG principles.
2. Promote reciprocal trust and collaboration amongst grocery value chain partners, based on clear standards for fair dealing.
3. Allow all parties governed by the Code to make informed business decisions in a context of commercial certainty, governed by clear agreements.
4. Provide for an effective, equitable mechanism for resolving commercial disputes.

Principles

The Code is based on the following principles, which should guide parties in their behaviour and inform dispute resolution decision-making.

Nothing contained in the Code is meant to override or derogate from the application of any Federal, Provincial or Territorial law (“Applicable Laws”).

In particular, compliance with this Code does not restrict the application of the Competition Act (Canada) to any person, or otherwise imply or require deviation from each party’s applicable regulatory and legal compliance obligations.

Transparency and Certainty

The Code aims to bring transparency and certainty to commercial dealings, with a preference for parties to avoid ambiguity through clear agreements that define conditions for communications between parties and terms for payments, fees, and other obligations.

Fair Dealing Across the Value Chain

Some Code provisions may be specific to certain actors, but in general it is expected that all supply chain players – retailers, suppliers, wholesalers, larger and smaller entities – act in good faith and live up to the spirit of fair and ethical dealing, including concepts around reasonable notice and communicating with one another in sufficient detail and in an effective format. Nothing in the Code should be construed as limiting the ability of any party to compete in the marketplace or negotiate any agreement – so long as it is within the bounds of the Code and Applicable Laws.

Timely Dispute Resolution

The Code aims to enable the effective, equitable and timely resolution of disputes wherein all aspects of an issue are considered, pursuant to the Dispute Resolution Management Process as outlined in the governance model. A key principle of dispute resolution under the Code will be that the parties must first exhaust all internal dispute resolution mechanisms.

Simplicity

The Code should be easy to understand and comply with, favouring simplicity and fairness over detailed rules and unnecessary complexity.

Scope

Grocery products includes the following items:

Provisions

1. Fair and Ethical Dealing & No Punitive/Vexatious Acts

- 1.1. Parties to the Code have an obligation to negotiate with one another in good faith and conduct business in the spirit of fair and ethical dealing.
- 1.2. If two or more Parties wish to enter into a supply arrangement, all parties have an obligation to negotiate and conclude agreements by mutual consent.
- 1.3. Parties to the Code may not alter contracts unilaterally.
- 1.4. Parties to the Code may prospectively or retroactively alter an agreement, provided that the agreement provides for doing so or such change is mutually agreed to.
- 1.5. Parties to the Code shall not undertake punitive or vexatious acts (or threaten same) against parties for exercising rights provided for under this Code.

2. Commercial Agreements

- 2.1. The Code strongly recommends written agreements (including amendments) – defining the commercial terms agreed to by parties – as the chief vehicle for ensuring certainty, clarity, and transparency in commercial relationships. That said, the Code does not obligate parties to conclude written agreements as a condition for entering into a commercial relationship; for some sectors and smaller size companies written agreements may be too time-consuming or otherwise burdensome, and in some cases, parties may wish to operate without an overarching agreement at first, before clarifying terms in writing. Parties engaging in complex or nuanced trading agreements without defining the terms in writing do so at some risk.
- 2.2. Agreements between parties should cover all terms and conditions of their supply arrangements and take into account the contracting provisions prescribed by the Code.
- 2.3. In the case of a conflict between this Code and existing provisions/default rules of the Fruit and Vegetable Dispute Resolution Corporation (DRC), the conflicting provisions of the DRC Rules will apply unless the parties have specifically chosen to adopt the Code. Where the agreement is silent, or parties can't reach agreement, the Code will apply.
- 2.4. No party who conducts or intends to conduct business with another party shall purposely avoid or refuse entering into a commercial agreement (particularly a written agreement) with that other party.
- 2.5. For the purposes of the Code, an agreement is anything that defines the material elements of a relationship between commercial parties. This can include contracts, invoices, purchase orders, bills

of lading, emails and other forms of mutually agreed material that memorializes an understanding between parties. The Code does not dictate the form of what a valid written agreement must be. Parties to a written agreement must ensure that that agreement is written in a clear and unambiguous manner, in English and/or French at the request of either party.

- 2.6. No party shall design an agreement to explicitly work around or willfully disregard the provisions of the Code, and no party may waive any of its rights or obligations under the Code.
- 2.7. The following are non-exhaustive examples of critical program elements that should be clearly spelled out and defined in an agreement:
 - Programs for stocking, listing, positioning and promotions
 - Duration
 - Scope
 - Distribution
 - Key performance indicators
 - Programs for unsellables and shrinkage
 - Product specifications
 - Recall procedures
 - Transfer of responsibility and accountability
 - Disposal and/or reclamation process

3. Payments

Payments - Timing

- 3.1. Payment for goods delivered in accordance with the specifications set out in an agreement shall be made in accordance with the agreed payment terms.
- 3.2. In the absence of an agreement, payment will be made within a reasonable time frame after the date of the invoice (with any disputed invoice to be subject to the dispute resolution process).
- 3.3. It is highly recommended that payment terms be defined by written agreement.

Payments for Programs as Defined in an Agreement

- 3.4. Charges for programs such as stocking, listing, positioning, promotions, marketing costs, unsellables and shrinkage, shall be made in accordance with the agreed upon payment terms and the party making that charge shall:
 - a. Provide reasonable substantiation in sufficient detail and in an effective format sufficient to allow each party to verify the deduction or invoice.
 - b. Allow the other party the ability to dispute the charge within the applicable period set out in the agreement (or, if the agreement is silent, then within the limitation period applicable in the relevant jurisdiction), and such dispute shall be resolved as soon as practically possible.
 - c. Provide the other party with the right to go through an internal escalation dispute resolution process and provide a contact for such process.

Ad-Hoc Payments for Non-compliance with the Terms of an Agreement

- 3.5. A party may charge non-compliance fees if an agreement provides that party with the right to do so and sets out the specific framework for such charge, or, if not specified in an agreement, then in order for a party to levy a charge it must first:
- a. Provide the other party with Reasonable Notice prior to taking steps to execute the non-compliance charge.
 - b. Provide reasonable substantiation in sufficient detail and in an effective format sufficient to allow each party to verify the deduction or invoice.
 - c. Allow the other party the ability to dispute the charge within the applicable period set out in the agreement (or, if the agreement is silent, then within the limitation period applicable in the relevant jurisdiction), and such dispute shall be resolved as soon as practically possible.
 - d. Where a party challenges a proposed charge, the other party shall not deduct the disputed sum from a trading account or otherwise from money owed for goods supplied until the challenge is resolved, unless the charging party demonstrates, acting reasonably, that the challenge is vexatious or wholly without merit.
 - e. Provide the other party with the right to go through an internal escalation dispute resolution process and provide a contact for such process.
- 3.6. Subject to Sections 3.4 and 3.5, for payments outside of the scope of an agreement, the parties must negotiate and agree on the item prior to taking any charge through deduction or invoicing.
- 3.7. For the purposes of this Code, Reasonable Notice means a period of notice, set out in the agreement between the parties or, in the absence of any provision in an agreement, a period of notice the reasonableness of which will depend on the circumstances of the individual case including, but not limited to, factors, such as:
- a. the duration of the agreement to which the notice relates, or the frequency with which orders are placed by the retailer for relevant products;
 - b. the characteristics of the relevant products including durability, seasonality and external factors affecting their production;
 - c. the value of any relevant order relative to the turnover of the supplier in question;
 - d. the nature of the matter and circumstances in respect of which notice is being given; and
 - e. the existence of a force majeure event.

Payments as a Result of Audits

- 3.8. A supply arrangement should specify the time period within which the parties are entitled to seek payments under audit rights and should specify the level of detail to be provided before any such action is initiated, which in any event should not exceed 24 months unless the basis for the action is fraud or intentional misrepresentation on the part of either party.

In cases of material post audit charges, parties will work collaboratively and in good faith to agree on acceptable payment terms.

Payment for Price Matching

- 3.9. Provisions under which a supplier makes payment or allowance to a retailer as compensation for a retailer's price matching program are discouraged.

Payments for Consumer Complaints

3.10. A retailer may charge a supplier a fee for resolving consumer complaints where this is provided for in an agreement that sets out the specific framework for such charge. If not specified in an agreement, for a retailer to levy a charge for resolving consumer complaints, the following conditions must be met:

- the retailer believes on reasonable grounds that the consumer complaint is justifiable and attributable to negligence, breach of an agreement or violation of law on the part of the supplier,
- the retailer has provided the supplier with adequate evidence of the fact that the consumer complaint is justifiable and attributable to negligence, breach of an agreement or violation of law on the part of the supplier, and
- the payment is reasonably related to the retailer's costs and expenses arising from that complaint.

4. Other Items

Changes to Supply Chain Procedures

- 4.1. Parties may affect a change to their own supply chain procedures, provided that, in the case of a material change:
- The change is reasonable,
 - Reasonable Notice of such change is provided in writing, and
 - Parties come to agreement on mitigating and/or offsetting the financial implications (if any) of the change.

Tying of Third-Party Goods or Services

- 4.2. When the parties agree on an activity requiring the use of third-party goods or services, a party can directly or indirectly require another party to obtain any goods, services, or property from a third party, provided that the party's source for those goods, services, or property:
- (a) meets reasonably objective standards relating to quality, timing and/or efficiency defined for the provision of such goods, services, or property or (b) is unique, specialized, exclusive or cannot be comparably offered by any other party; and
 - provides them at a cost that is competitive and reasonable, taking into account the circumstances of the party.

Good Faith Forecasting, Ordering and Allocation of Supply

- 4.3. A retailer shall prepare forecasts in good faith, taking into consideration lead time for the supplier, and with due care in consultation with the supplier (provided that is permitted by Applicable Laws). A retailer shall then prepare its orders in good faith with consideration of applicable forecasts. Parties are encouraged to document their order/acceptance policies for greater certainty around items such as lead times, minimum order quantities, and increased or decreased demand, as well as communication protocols and how orders are to be partially or fully accepted or rejected.

- 4.4. A supplier is under no obligation to accept an order. Where the supplier does not accept a retailer order setting out the quantity of products it wishes to order from the supplier, the retailer shall not impose fines or penalties on a supplier solely as a result of the supplier failing to deliver the quantities in the non-accepted order.
- 4.5. If either party fails, to a material degree, to reasonably act in accordance with mutually planned forecasts, the parties will work cooperatively on mitigation in a timely manner.
- 4.6. Where total demand for a product exceeds available supply, suppliers will take into consideration all requested orders from all retailers.

Guidelines Relating to Cost Changes

- 4.7. Parties retain full discretion to negotiate costs and either party is free to accept or decline proposals with respect to costs. Parties should set out in an agreement the level of notice and information required in order to properly negotiate and decide upon cost change proposals, including cut-off times for acceptance/rejection and effectiveness date.

Duties in Relation to De-listing / Supplying

- 4.8. Where a retailer seeks to de-list product(s) or a supplier seeks to discontinue supplying product(s) it shall:
 - provide Reasonable Notice of the intention, including reasons for the decision;
 - offer the other party an opportunity to discuss the reasons for the decision with a representative empowered to make decisions on the matter; and
 - work in good faith with the other party to manage depletion, supply and related issues fairly.

Protection of Confidential Information and Respecting Intellectual Property

- 4.9. Notwithstanding any provision in this Code, except as required by Applicable Laws and/or subject to any agreement between the parties, no party to an agreement shall require the disclosure of confidential information (including commercially sensitive information), nor oblige the transfer of intellectual property rights, in connection with the supply or sale of grocery products.
- 4.10. Except as required by Applicable Laws and/or subject to any agreement between the parties, where a party chooses to disclose confidential information, the receiving party shall not use that information other than for the purpose for which it was disclosed and may only disclose such information or make it available or accessible to its employees, affiliates or agents who need to have that information in connection with that purpose.

Exceptional Circumstances and Force Majeure

- 4.11. Parties are strongly encouraged to negotiate their own clear provisions for how they will define and respond to instances of exceptional circumstances (including force majeure) that materially affect either party's ability to conform to the terms of a commercial agreement. Without advance discussion and definitional clarity, the ability of the dispute resolution process to deal with such

cases may be limited. If the parties' agreement is silent on force majeure, Applicable Laws and legal principles applicable to force majeure shall apply.

- 4.12. Where circumstances reasonably beyond the control of a party create a materially significant situation where such party cannot fulfill its responsibilities under an agreement, it must promptly notify its affected partner(s).

5. Duty to Participate and Inform Staff

- 5.1. All parties to the Code shall identify and make available, when required, a representative empowered to make decisions on relevant matters, for all issues pertaining to the Code and its administration. This includes points of contact for informal discussion, dispute resolution, and overall communication.
- 5.2. All parties governed by the Code have a duty to inform senior staff of, train commercial teams on, and be aware of the Code and its provisions.