

June 26, 2024
CONFIDENTIAL

Canadian Grocery Industry Code of Conduct Provisions

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 environmental, social and governance 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 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 a 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 the 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 –

are expected to 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.

Nothing in the Code shall require a Party to purchase a Product from or supply a Product to another Party. In addition, nothing in the Code shall require a Supplier to accept an order from a Retailer or a Retailer to place an order with a Supplier. Where:

- a. A Supplier does not accept an order from a Retailer in whole or in part, or
- b. A Retailer does not place an order with a Supplier in respect of products that have been previously forecasted or provides an order with a material variance from a previous forecast,

The relevant Party shall provide an explanation of its decision with reasonable substantiation to allow the other Party to understand the basis for such decision.

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. Where the retailer does not issue an order, the supplier will not impose fines or penalties on a retailer solely as the result of the retailer failing to make an order.

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 DRMP as outlined in the governance model.

Simplicity

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

Application of the Code

The Code applies to all Retailers and Suppliers.

Effective Date and Transition Period

The Code will come into effect on the Compliance Date.

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 an Agreement, such Parties will have an obligation to negotiate and conclude Agreements by mutual consent.
- 1.3. Parties may not alter contracts unilaterally.
- 1.4. Parties may prospectively or retroactively alter an Agreement, provided that the Agreement provides for so doing 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 the Code.

2. Commercial Agreements

- 2.1. Parties are encouraged to enter into written agreements (including amendments)- defining the commercial terms agreed to by the Parties- as the chief vehicle for ensuring certainty, clarity, and transparency in commercial relationships. However, 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 should cover all terms and conditions of the Parties 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 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 an Agreement (particularly a written Agreement) with that other Party.
- 2.5. 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.

2.6. The following are non-exhaustive examples of critical program elements that should be clearly 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 and Charges

Payments - Timing

3.1. Payment for Products 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 in an Agreement.

Retailer Charges 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 shall:

- a. Provide reasonable substantiation in sufficient detail, referencing the transaction or event, 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.

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

- 3.5. A Party may levy non-compliance charges 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 such charge it must first:
- a. Provide the other Party with Reasonable Notice prior to taking steps to execute the 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 through the dispute resolution process within the Reasonable Notice period, and Parties should make best efforts to resolve the dispute before the end of the Reasonable Notice period.
 - d. Where a dispute cannot be resolved within the Reasonable Notice period, the other party shall not deduct the disputed sum from a trading account or otherwise from money owed for Products until the challenge is resolved, unless the charging Party demonstrates, acting reasonably, that the challenge is vexatious or wholly without merit.
- 3.6. Subject to section 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.

Payments as a Result of Audits

- 3.7. An Agreement should specify the time period within which 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 from the date of the initial transaction or event 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

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

Retailer Charges for Consumer Complaints

- 3.9. 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 Retailer to levy a charge on Supplier for resolving consumer complaints, the following conditions must be met:

- a. Retailer believes on reasonable grounds that the consumer complaint is justifiable and attributable to negligence, breach of an Agreement or violation of Applicable Law on the part of Supplier or anyone for whom at law it is responsible;
- b. 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 Applicable Law on the part of Supplier or anyone for whom at law it is responsible; and
- c. the payment is reasonably related to 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:
 - a. Reasonable Notice of such change is provided in writing; and
 - b. In the absence of such Reasonable Notice, the Parties should work cooperatively to come to an agreement on mitigating and/or offsetting the financial implications (if any) to the other Party of the change.

Tying of Third-Party Goods or Services

- 4.2. Where an activity requires the use of third-party goods or services, a Party can directly or indirectly require the other Party to obtain any such 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
 - b. is provided at a cost that is competitive and reasonable, taking into account the circumstances of the partner.

Good Faith Forecasting, Ordering and Allocation of Supply

- 4.3. Parties are encouraged to document in Agreements their forecasting procedures, order/acceptance policies, lead times, minimum and maximum order quantities, , communication protocols, service level compliance arrangements, safety stock

requirements and other considerations designed to bring increased certainty and clarity around forecasting and ordering procedures.

- 4.4. Each party should prepare their own forecast in Good Faith taking into consideration relevant factors. Retailers and suppliers should then collaborate and mutually agree on forecasts, in accordance with the processes and protocols relevant to each category of product and subject to confidentiality requirements.
- 4.5. A Retailer shall prepare and issue purchase orders and a supplier shall fulfill orders based on applicable agreed-to forecasts, in Good Faith subject to Force Majeure events.
- 4.6. 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.
- 4.7. Where total demand Products exceeds available supply, Suppliers will take into consideration all requested orders from all retailers.

Guidelines Relating to Supplier Cost Changes

- 4.8. Parties retain full discretion to negotiate Supplier costs and either Party is free to accept or decline proposals with respect to costs.
- 4.9. 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 effective date/s.
- 4.10. Any dispute regarding the magnitude of any Supplier cost increase is exempt from the DRMP. To the extent that Parties have included terms in their Agreement pursuant to section 4.9, related to procedures to be followed in respect of such Cost increases, such procedures shall be subject to the Dispute Resolution procedure set out in section 6, including referral to the DRMP.

Duties in Relation to De-listing / Supplying

- 4.11. Where Retailer seeks to de-list Product(s), or Supplier seeks to discontinue supplying Product(s) it shall:
 - a. provide Reasonable Notice of the intention, including reasons for the decision;
 - b. offer the other Party an opportunity to discuss the reasons for the decision with a representative empowered to make decisions on the matter; and
 - c. work in Good Faith with the other Party to manage depletion, supply and related issues fairly.

Protection of Confidential Information and Respecting Intellectual Property

- 4.12. Except as required by Applicable Laws and/or subject to any Agreement between the Parties, no Party to an Agreement shall oblige the transfer of intellectual property rights from the other Party, nor require the disclosure of the other Party's Confidential Information, except as reasonably required to meet a Party's obligations to provide information under the provisions of the Code.
- 4.13. 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

- 4.14. 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 an Agreement. Without advance agreement 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.
- 4.15. Where circumstances reasonably beyond the control of a Party create a materially significant situation where such Party cannot fulfill its responsibilities under the Agreement, it must promptly notify its affected Party.

5. Duty to be Responsive 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 between Parties.
- 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.

6. Dispute Resolution

- 6.1. Parties should have clear dispute resolution and escalation mechanisms set out in their Agreements, if any.
- 6.2. A key principle of dispute resolution under the Code will be that the Parties should first exhaust all internal dispute resolution and escalation mechanisms set out in any Agreements prior to resorting to the DRMP.

6.3. If the Agreement is silent on a dispute resolution and escalation mechanism, then the following steps should be fully exhausted as a precondition of either Party referring any dispute relating to the Agreements or the Code to the DRMP:

- a. The dispute should be reviewed by the representative, as set out in section 5.1, in a timely and effective manner; and
- b. If dispute is still unresolved, the dispute should be escalated to a designated member of senior management for each Party with a decision to be provided to the Parties in a timely and effective manner.

Definitions

Note – other definitions may be required, and to be finalized shortly. E.g Require – capitalizing the word “Require” throughout the code document.

Agreement means anything that defines the material elements of a relationship between Retailers and Suppliers. This can include contracts, deal sheets, invoices, purchase orders, bills of lading, notices, emails and any other document that records an understanding between Parties.

Applicable Laws means any and all federal, provincial or territorial laws, ordinances, regulations, statutes, treaties, rules, codes, licenses, permits, principles of common law and civil law, requirements and orders adopted, enacted, implemented, promulgated, issued, entered or deemed applicable by or under the authority of any governmental body having jurisdiction over a Party or any of such Party’s properties or assets.

Compliance Date For parties to be in compliance by June 1, 2025

Confidential Information means commercially sensitive, proprietary or non-public Retailer or Supplier information. The term “Confidential Information” shall not include such portions of the Confidential Information which:

- a. are, or prior to or after the time of disclosure or utilization become, generally available to the public other than as a result of a disclosure by the receiving Party;
- b. are received by the receiving Party from an independent third Party who had obtained the Confidential Information lawfully and to its knowledge was not under an obligation of secrecy or duty of confidentiality owed to the disclosing Party;
- c. the receiving Party can show were in its lawful possession before it received such Confidential Information from the disclosing Party, as evidenced by written records kept by the receiving Party in the ordinary course of its business or as evidenced by proof of actual prior use by the receiving Party; is independently developed by the receiving Party, without use of the Confidential Information of the disclosing Party, and

the Receiving Party provides clear and convincing evidence of such independent development; or

d. is specifically excluded by the terms of an Agreement between the Parties.

DRMP means the Dispute Resolution Management Process introduced pursuant to the Code as outlined in the Code governance model.

Force Majeure means events or circumstances beyond a Party's reasonable control, without its fault or negligence, and which it could not reasonably anticipate and take action to avoid or mitigate. A "Force Majeure" shall be as defined in the Parties' Agreement(s).

Good Faith means (i) a standard of conduct characterised by honesty, fair and open dealing, without duress and with due regard to the interests of the other party (which does not equate to not acting in or acting against one's own legitimate interests) and acting in accordance with the legitimate and reasonable expectations of the Parties upon entering the Agreement and; (ii) not acting in bad faith, which would include not acting arbitrarily, capriciously, unreasonably, opportunistically, recklessly, or with extraneous or ulterior motives.

Interim Board means the industry members designated by the Federal, Provincial and Territorial government to oversee the negotiation and implementation of the Code.

Party means Retailer or Supplier, as the case may be, and Parties means Retailer and Supplier.

Reasonable Notice means a period of notice, set out in the Agreement or, in the absence of any provision in the 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.

Products refer to products sold in a typical grocery, supermarket format offered for resale by a Supplier and for sale by a Retailer in the following categories:

To the extent that any Retailer elects to be covered by the provisions of the Code, if that Retailer operates (directly or indirectly) pharmacies that sell grocery products included within the scope of the Code, then the Code will apply in respect of such grocery products.

Categories Included:

- All food categories
 - Bakery
 - Deli
 - Grocery (** major categories below*)
 - Meat & Seafood
 - Produce
- Non-food categories:
 - Haba
 - Household products (** see subcategory description below*)
 - Paper products
 - Pet food.

Subsection:

*** Grocery (centre store, frozen, dairy) major categories, including all food products if not highlighted below:**

- Beverages
- Condiments & sauces
- Confectionary
- Dessert
- Frozen foods
- Prepared foods
- Dairy/refrigerated foods
- Snacks

*** Household category description examples. These products are typically found within centre store aisles. Different than general merchandise/ seasonal general merchandise that is planogrammed out of centre store aisles.**

- laundry
- cleaners
- dish detergents
- air care
- food storage
- food wrap

Categories Not Included:

- Pharmaceuticals (prescription drugs, vaccines)
- OTC (**definition outlined below*)
- General Merchandise (**see household section*)
- Apparel
- Electronics
- Books & Magazines
- Automotive
- Gasoline
- Financial services
- Newspapers/ books
- Magazines/ greeting cards
- Toys
- Cosmetics
- Fragrances (perfumes)
- Tobacco & Tobacco products
- Cannabis and Cannabis-products
- Lottery
- Alcoholic beverages
- Floral & Garden

OTC includes non-prescription drugs and other products that must be sold under the supervision of a pharmacist. The following are the sub-categories of products included in the definition of non-prescription drugs:

- ALLERGY & SINUS RELIEF PRODUCTS
- ANALGESIC & DECONGESTANT PRODUCTS - TOPICAL
- BORIC ACID
- COLD REMEDIES
- CORN & CALLOUS TREATMENTS
- COUGH REMEDIES
- DIARRHOEA REMEDIES
- EAR DROPS
- ENEMAS
- GLUCOSE TEST STRIPS
- HEADACHE & MIGRAINE PAIN RELIEF
- HEMORRHOIDAL REMEDIES
- LANCETS
- LAXATIVES
- MENS ANTIFUNGAL PRODUCTS

- MENSTRUAL PAIN RELIEF PRODUCTS
- NASAL INHALERS
- NASAL PREPARATIONS
- ORAL BACKACHE REMEDIES
- PINWORM TREATMENTS
- SLEEPING AIDS
- THROAT SPRAYS
- UPSET STOMACH REMEDIES
- WOMENS ANTIFUNGALS

Retailer means any person or entity carrying on a business in Canada where a substantial portion of their sales are generated from retail sales of Products whether in-store or online **[or a buying group that negotiates the sale of Products on behalf of multiple Retailers]**, including all relevant subsidiaries and banners, as well as mass merchants, warehouse clubs and resellers of Products, regardless of format or channel.

Supplier means any person carrying on (or actively seeking to carry on) a business directly supplying Products to any Retailer for resale in Canada.