



Guidance on “Click-to-Accept” Practices and Agreement Formation

*Application of Sections 1.1, 1.2, and 2.4
of the Canada Grocery Code*

Purpose of this Guidance

This guidance is intended to clarify the Office of the Grocery Sector Code of Conduct’s expectations regarding the use of “click-to-accept” or similar practices in the formation or amendment of Agreements between Code Members.

The OGSCC recognizes that click-to-accept and similar mechanisms are commonly used to support efficient, large-scale commercial operations, including the management of high transaction volumes and integration with internal systems.

This guidance does not amend the Code and does not determine the legality or enforceability of any particular agreement. It explains how such practices are expected to be applied and assessed in light of the provisions of the Code.

Relevant Code Provisions

Section 1.1 – Fair and Ethical Dealing & Good Faith

Section 1.2 – Agreements Must Be Reached by Mutual Consent

Section 2.4 – Prohibition on Purposely Avoiding or Refusing to Enter into an Agreement

Scope of this Guidance

This guidance applies to situations where:

- a party is required to accept terms and conditions electronically through click-to-accept or similar mechanisms; and
- acceptance is presented as a condition of entering into, or continuing under, an Agreement.

This guidance applies regardless of whether the practice is used by suppliers or retailers.



Core Interpretation

Agreement formation under the Code requires mutual consent, consistent with Sections 1.1 and 1.2. Mutual consent requires more than the technical act of acceptance; it requires a process that allows for good-faith engagement where a party has a practical and meaningful opportunity, in the circumstances, to negotiate proposed terms.

In applying the requirements of Sections 1.1 and 1.2 in this context, consideration may be given to the commercial circumstances in which acceptance is sought, including any operational or timing constraints affecting the ability to engage on proposed terms.

Click-to-Accept Practices and Ongoing Business

In practice, click-to-accept mechanisms are often embedded within electronic portals that parties must access in order to receive purchase orders, manage transactions, or otherwise carry-on day-to-day business. These processes may be embedded within operational systems designed to facilitate timely and consistent execution of day-to-day business activities.

As a result, until a party clicks to accept the proposed terms, it may be unable to access the portal or continue to operate under its existing Agreement. In effect, the click-to-accept function can act as a gatekeeper to ongoing business activity including where access to systems, purchase orders, or other operational functions are contingent on acceptance of proposed terms.

Concerns may arise where a party is required to accept new or amended terms in order to regain access to systems necessary to continue doing business, without being provided an opportunity to negotiate those terms.

Click-to-Accept Practices and Mutual Consent

“Click-to-accept” mechanisms can be an efficient way to document acceptance of agreed terms. However, concerns may arise where such practices are structured or implemented in a manner that:

- does not allow for practical and meaningful opportunity for negotiation of the proposed terms; and
- prevents a party from continuing to operate under an existing Agreement until the new terms are accepted.



Where acceptance is required as a condition of resuming ordinary business activity, questions may arise as to whether the process supports mutual consent and Good Faith negotiation as contemplated by the Code.

Opportunity for Discussion and Continuity of Business

To align with Sections 1.1 and 1.2 of the Code, the OGSCC expects that parties using click-to-accept or similar mechanisms will ensure that:

- there is a practical, timely and meaningful opportunity for the other party to raise questions or seek discussion and negotiation of the proposed terms;
- the process for engaging in such discussion is clear and communicated in sufficient detail; and
- parties are not prevented, either directly or indirectly, from continuing to do business under their existing Agreement solely because they have requested the opportunity to negotiate the proposed terms.

Interaction with Section 2.4

Section 2.4 of the Code provides that parties must not purposely avoid or refuse to enter into an Agreement.

For clarity, a party's refusal to "click to accept" proposed terms, where the party is seeking an opportunity to discuss those terms in accordance with Sections 1.1 and 1.2 of the Code, would not, on its own, be considered a breach of Section 2.4.

Illustrative Example (For Illustration Only)

A supplier and retailer are operating under an existing Agreement. The retailer introduces updated terms through an online portal that requires the supplier to click "accept" before accessing purchase orders and continuing day-to-day business.

The supplier requests an opportunity to negotiate certain aspects of the updated terms before accepting them. Until the supplier clicks "accept," it is unable to access the portal and cannot continue to operate under the existing Agreement.

In this scenario, assuming that the retailer is not subject to any obligations that would prevent it from amending its terms, the issue is whether the process allows for an



opportunity to negotiate the proposed terms before acceptance is required to resume ordinary business operations, consistent with Sections 1.1 and 1.2 of the Code.

What This Guidance Does Not Do

This guidance:

- does not prohibit all use of click-to-accept mechanisms;
- does not require agreements to be negotiated term-by-term;
- does not require parties to agree to requested changes; and
- does not limit a party's right to decide whether to enter into an Agreement or to insist on amended terms and conditions where it would not be subject to any obligations that would prevent it from insisting on such amendment.

Application and Compliance

In assessing issues related to click-to-accept practices, the OGSCC may consider, among other factors:

- whether the agreement process allowed for meaningful engagement and opportunity for negotiation consistent with mutual consent; and
- whether a party was prevented from continuing to do business under an existing Agreement solely because it sought the opportunity to discuss proposed terms.

Status of This Guidance

This guidance is intended to support consistent understanding and application of the Code. It may inform education, compliance discussions, and the Office's assessment of issues raised under the Code.

The OGSCC may update or revise this guidance at any time, including in connection with the annual review of the Code.