



# Guidance on Unilateral Amendments Permitted by Agreement

*Application of Sections 1.1, 1.2, 1.4 and 1.5 of the Canada Grocery Conduct*

## Purpose of this Guidance

This guidance is intended to clarify the Office of the Grocery Sector Code of Conduct's expectations regarding the application of Section 1.4 of the Code in circumstances where an Agreement permits one party to make unilateral amendments.

This guidance does not amend the Code. It explains how Section 1.4 should be interpreted and applied consistently with the principles of the Code and in the context of sections 1.1, 1.2 and 1.5 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 1.4 – Amendments to Agreements

Section 1.5 – No Punitive or Vexatious Acts

Principles – Transparency and Certainty (including reasonable notice and communication in sufficient detail)

## Scope of this Guidance

This guidance applies only to situations where:

- an Agreement includes a clause permitting unilateral amendments by one party, and
- a party seeks to rely on Section 1.4 of the Code to implement such an amendment.

This guidance is not focused on amendments made by mutual agreement.

The OGSCC recognizes that unilateral amendment clauses may serve legitimate business purposes, including enabling parties to respond to changing market conditions, operational requirements, or regulatory obligations.



## Core Principle

Section 1.4 does not operate in isolation. Any unilateral amendment permitted by an Agreement must be exercised in a manner consistent with the principles of the Code, including fair and ethical dealing, good faith, and the principles of transparency and certainty.

In applying these expectations, consideration may be given to the commercial context in which unilateral amendments are introduced, including any operational or timing constraints affecting the ability of the other party to assess and respond to the change.

## Relationship Between Sections 1.1, 1.2, and 1.4

Section 1.4 may only be relied upon where the underlying Agreement was negotiated in good faith and concluded by mutual consent, consistent with Sections 1.1 and 1.2 of the Code.

Section 1.4 does not permit unilateral amendments that undermine the foundation of an underlying Agreement to which the parties have mutually consented.

In this context, consideration may be given to whether the process through which the underlying Agreement was formed allowed for a practical and meaningful opportunity for both parties to engage on its terms.

## Expectations When Exercising Unilateral Amendment Rights

Where an Agreement permits unilateral amendments, the OGSCC expects that such amendments will be implemented consistently with the principles of the Code, including the following:

### Reasonable Notice

The party exercising a unilateral amendment right must provide reasonable notice of the change. What constitutes reasonable notice will depend on the nature, scope, and impact of the amendment including whether sufficient time is provided, in the circumstances, to allow the other party to reasonably assess and respond to the change.

### Sufficient Detail

Notice of a unilateral amendment should be communicated in sufficient detail and in an effective format to allow the other party to:

- understand the nature of the change,



- identify, where applicable, the practical or operational implications of the change, and
- reasonably adapt to the change.

## Transparency and Certainty

Unilateral amendments should be communicated in a transparent manner that provides clarity and predictability, consistent with the Code's principles of transparency and certainty.

## Fair and Ethical Dealing

As per section 1.5 of the Code, unilateral amendment rights must not be exercised in a manner that is punitive or vexatious. Unilateral amendments rights should also be exercised in accordance with the Principles of the Code including with Good Faith and in the spirit of fair and ethical dealing.

## What This Guidance Does Not Do

*This guidance:*

- does not prohibit unilateral amendment clauses in Agreements;
- does not require mutual agreement for every amendment where unilateral rights exist; and
- does not override valid contractual terms.

## Application and Compliance

In assessing issues related to unilateral amendments under Section 1.4, the OGSCC will consider:

- whether the Agreement was entered into by mutual consent in accordance with Sections 1.1 and 1.2; and
- whether unilateral amendments were implemented with reasonable notice, sufficient detail, and transparency, consistent with the principles of the Code, including the principles of fair and ethical dealing and Good Faith.

## 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.



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The OGSCC may update this guidance from time to time, including in connection with the annual review of the Code.

