

# Summary of Proposed Grocery Supply Code of Practice for Canada

## Supply Agreements/Variation

- Supply Agreements are to be in writing (including any subsequent amendments or modifications) and be readily accessible to suppliers
- Supply Agreements should set out the obligations and duties of retailers and suppliers in a clear and transparent manner, including any terms applicable to situations where either party fails or is unable to comply with its obligations and duties.
- Retailer shall not vary a supply agreement retrospectively and shall not request a supplier consent to a retroactive change unless the supply agreement sets out clearly and unambiguously the specific circumstances that would allow for this
- If a retailer has the right to vary a supply agreement unilaterally, it shall give “reasonable notice” (which is a defined term to give some clarity) of any such variation to the supplier
- A retailer shall not directly or indirectly require a supplier to change significantly any aspect of its supply chain procedures unless it gives reasonable notice or compensates the supplier for the resulting costs

## Payments

- Retailer shall pay supplier in accordance with terms set out in supply agreement and, in any case, within a reasonable time after invoice
- Retailer must not make unilateral deductions unless they are documented with sufficient information to substantiate; suppliers must be given proper time to challenge any deduction and there must be a process in place to do so
- Retailer can't seek to initiate deductions more than 24 months after invoice (other than for fraud)
- Retailer is required to put into place processes for timely resolution of disputes relating to pricing or payments

## Marketing/Shrink/Listing

- Retailer may only require suppliers to make payments towards marketing costs if set out in the supply agreement in clear terms
- Retailer may only require suppliers to make payments to cover groceries that become unsellable after delivery if this is due to negligence/default of supplier and clearly set out in supply agreement
- Supply agreement can allow for programs that minimize wastage of groceries such as reclamation funds
- Retailer may only require suppliers pay for stocking or listing products in the context of a promotion, for a newly listed product or where the supply agreement sets out a payment program that reasonably reflects risk of listing new products
- Retailer shall only be allowed to unilaterally impose a requirement for payment to secure better positioning or increased allocation of shelf space if it is done in connection with a promotion

## Forecasting

- Retailer must prepare forecasts in good faith and with due care following consultation with suppliers
- When a retailer orders at a promotion price, it must take due care to ensure that it does not over order beyond a reasonable margin
- Retailer shall ensure that it properly communicates the basis on which it prepares forecasts and make commercially reasonable attempts to resolve stock issues caused by incorrect forecasts
- If a retailer has over-ordered beyond reasonable margin of error, it shall not fine supplier for failing to deliver the excess quantities

## Other Duties

- Retailer can only delist a supplier for genuine commercial reasons (which do not include as retribution for exercising rights under Code); prior to delisting reasonable notice and sufficient information must be provided and there must be a right to allow for review of the decision
- Retailer can only require supplier to obtain goods, services or property from a third party where retailer makes a profit from this referral only in certain circumstances such as where the alternative third-party supplier can't meet quality or efficiency standards
- Retailer can only require supplier to make payments for resolving customer complaints in clearly defined circumstances
- Retailer shall only require suppliers provide confidential information for a legitimate purpose and once received, only use it for the intended purpose

## Administration

- Each retailer shall have a Code Compliance Officer who is independent of the merchant teams and is charged with impartially overseeing compliance with the Code
- Retailer must provide the members of their buying or merchandising group with a copy of the Code and compliance training on an ongoing basis.
- An independent Adjudicator will be appointed to oversee compliance with the Code
- The Adjudicator shall have the ability and discretion to impose penalties, damages or costs where the Adjudicator believes it is reasonable to do so
- Parties should attempt to resolve disputes under the Code on their own in good faith; where a dispute under the Code cannot be resolved by the Code Compliance Officer, the dispute can be submitted for binding arbitration overseen either by the Adjudicator or by an arbitrator designated by the Adjudicator