

## BY-LAW NO. 1

A by-law relating generally to the conduct  
of the affairs of

**FRUIT & VEGETABLE DISPUTE RESOLUTION CORPORATION/  
LA CORPORATION DE RÈGLEMENTS DES DIFFÉRENDS  
DANS LES FRUITS ET LÉGUMES  
(the "Corporation")**

**SECTION 1  
GENERAL**

**1.01 Definitions**

In this by-law and all other by-laws of the Corporation, unless the context otherwise requires:

- a) "Act" means the *Canada Not-For-Profit Corporations Act* S.C. 2009, c.23, including the Regulations made pursuant to the Act, and any statute or regulations that may be substituted, as amended from time to time;
- b) "articles" means the original or restated articles of incorporation or articles of amendment, amalgamation, continuance, reorganization, arrangement or revival of the Corporation;
- c) "board" means the board of directors of the Corporation and "director" means a member of the board;
- d) "by-law" or "by-laws" means this by-law and any other by-law of the Corporation as amended and which are, from time to time, in force and effect;
- e) "employee or employees" means any affiliation of any person with the business operations of a member or applicant with or without compensation, whether on a permanent, temporary or contract basis, and includes, but is not limited to, owners, self-employed individuals, contractors, associates and consultants;
- f) "member" means a member of the Corporation and "members" or "membership" means the collective membership of the Corporation;
- g) "membership conditions" means the conditions for membership described in section 2.01 including the membership qualifications set forth in the Operating Rules;
- h) "Operating Rules" means the operating rules of the Corporation as prescribed by the board of directors from time to time in accordance with the by-laws and shall include, but not be limited to, any general rules, regulations or policies prescribed by the board from

time to time as well as the Corporation's Trading Standards, Transportation Standards and Mediation and Arbitration Rules; and

- i) "ordinary resolution" means a resolution passed by a majority of not less than 50% plus 1 of the votes cast on that resolution;
- j) "proposal" means a proposal submitted by a member of the Corporation that meets the requirements of Section 163 of the Act;
- k) "Regulations" means the regulations made under the Act, as amended, restated or in effect from time to time;
- l) "responsibly connected person" includes individual owners, partners, members, officers, directors or holders of more than 10% of the outstanding stock of a business, and any individuals or employees who function in an executive or managerial capacity, provided that on the termination of a membership, whether automatically under subsection 3.04 or by expulsion under subsection 3.05, this definition shall extend to those who were responsibly connected persons on the date the infraction that led to the termination or expulsion occurred and/or on the date any unpaid arbitration award was issued whether or not such responsibly connected person has since resigned, been terminated from their position with the member or otherwise changed their position with the member;
- m) "sanctioned individual" means a responsibly connected person who was associated with a member when that member was terminated for not maintaining membership requirements in section 2.02 b), c), d) or e) and that individual may be subject to financial security when either applying for membership or joining a member as either a responsibly connected person or as an employee; and
- n) "special resolution" means a resolution passed by a majority of not less than two-thirds (2/3) of the votes cast on that resolution.

## **1.02 Interpretation**

In the interpretation of these by-laws, words in the singular include the plural and vice-versa, words in one gender include all genders, and "person" includes an individual, body corporate, partnership, trust and unincorporated organization. If any of the provisions contained in the by-laws are inconsistent with those contained in the articles or the Act, the provisions contained in the articles or the Act, as the case may be, shall prevail.

## **1.03 Corporate Seal**

The Corporation may have a corporate seal in the form approved from time to time by the board. If a corporate seal is approved by the board, the secretary of the Corporation shall be the custodian of the corporate seal.

## **1.04 Execution of Documents**

Deeds, transfers, assignments, contracts, obligations and other instruments in writing requiring execution by the Corporation may be signed by any one (1) of its officers or directors. In addition,

the board may from time to time direct the manner in which and the person or persons by whom a particular document or type of document shall be executed. Any person authorized to sign any document may affix the corporate seal (if any) to the document. Any signing officer may certify a copy of any instrument, resolution, by-laws or other document of the Corporation to be a true copy thereof.

**1.05 Financial Year**

The financial year of the Corporation shall be determined by the board of directors.

**1.06 Banking Arrangements**

The banking business of the Corporation shall be transacted at such bank, trust company or other firm or corporation carrying on a banking business in Canada or elsewhere as the board of directors may designate, appoint or authorize from time to time by resolution. The banking business or any part of it shall be transacted by an officer or officers of the Corporation and/or other persons as the board of directors may by resolution from time to time designate, direct or authorize.

**1.07 Public Accountant and Level of Financial Review**

The Corporation shall be subject to the requirements relating to the appointment of a public accountant and level of financial review required by the Act.

**1.08 Annual Financial Statements**

The Corporation may, instead of sending copies of the annual financial statements and other documents referred to in Subsection 172(1) of the Act to the members, publish between 21 to 60 days before the day on which an annual meeting of Members is held a notice to its members stating that the annual financial statements and documents provided in Subsection 172(1) are available at the registered office of the Corporation and any member may, on request, obtain a copy free of charge at the registered office or by prepaid mail.

**SECTION 2**

**MEMBERSHIP - MATTERS REQUIRING SPECIAL RESOLUTION**

**2.01 Membership Conditions**

- a) Membership in the Corporation shall be limited to buyers, sellers, brokers and commission merchants of fresh fruits and vegetables or carriers and transportation intermediaries (inclusive of broker intermediaries and freight contractors) for the transportation of fresh fruits and vegetables. In accordance with subsection 154(1) of the Act, the members of the Corporation may take the legal form of a corporation, association, partnership or other form provided for in the Operating Rules from time to time. The definition of fresh fruits and vegetables includes all fresh and chilled fruits and vegetables, fresh cuts, edible fungi and herbs, but excludes any fresh fruit and vegetable which is frozen or has been planted as seed.

- b) An applicant for membership and all responsibly connected persons to the applicant for membership must meet the membership qualifications set forth in the Corporation's Operating Rules in order for the applicant to be considered for membership in the Corporation.
- c) Each applicant for membership who is subsequently accepted as a member of the Corporation shall, by making the application, or in such other manner as the board of directors may determine, subscribe to, agree to be bound by, and agree to conform with the articles, by-laws, and Operating Rules of the Corporation as currently adopted and as amended from time to time. Each member must agree to submit disputes to arbitration in accordance with the Operating Rules.

## **2.02 Maintaining Membership**

Members must meet and continue to meet the following requirements in order to maintain membership in the Corporation:

- a) must pay membership dues within 60 days of their due date or within such longer time frame determined by the president;
- b) must not fail to post, provide or maintain security as provided in the Corporation's Operating Rules;
- c) must not have become bankrupt or suspended the payment of debts generally or compounded with creditors or made an authorized assignment or been declared insolvent or made an arrangement under the *Companies' Creditors Arrangement Act*, R.S., c. C025, s. 1 as amended from time to time, or a proposal under the *Bankruptcy and Insolvency Act*, R.S. 1985, c. B-3, s. 1; 1992, c. 27, s.2, as amended from time to time, or made a similar arrangement or proposal or sought similar protection under any equivalent statute in the United States or Mexico or other country, province or state;
- d) must not have suspended the operations of a business (sole proprietorship, partnership, corporation or otherwise) without fully meeting its financial obligations;
- e) must not have failed to comply with any order or direction of an arbitration or failed to comply with a mediated agreement and/or arbitration award.

## **2.03 Membership Transferability**

A membership may only be transferred to the Corporation.

## **2.04 Notice of Meeting of Members**

Notice of the time and place of a meeting of members shall be given to each member entitled to vote at the meeting by the following means:

- a) by mail, courier or personal delivery to each member entitled to vote at the meeting, during a period of 21 to 60 days before the day on which the meeting is to be held; or
- b) by telephonic, electronic or other communication facility to each member entitled to vote at the meeting, during a period of 21 to 35 days before the day on which the meeting is to be held.

Notice of a meeting of members shall also be given to each director and to the public accountant of the Corporation during a period of 21 to 60 days before the day on which the meeting is to be held. Notice of any meeting of members at which special business is to be transacted shall state the nature of that business in sufficient detail to permit the member to form a reasoned judgment on the business and provide the text of any special resolution or by-law to be submitted to the meeting. The directors may fix a record date for determination of members entitled to receive notice of any meeting of members in accordance with the requirements of Section 161 of the Act. Subject to the Act, a notice of members' meeting provided by the Corporation shall include any proposal submitted to the Corporation under Section 4.01.

### **SECTION 3** **MEMBERSHIP, INFORMATION, TERMINATION AND DISCIPLINE**

#### **3.01 Application for Membership**

- a) A member must have applied for and been accepted into membership in the Corporation by resolution of the board or in such other manner as may be determined by the board. Where the board has delegated the power to admit members to the president or another officer of the Corporation, it shall be exercised in the sole and absolute discretion of such officer.
  
- b) Every application for membership shall be in writing upon a form prescribed by the board of directors and shall follow the process described in the by-laws and Operating Rules. Each application for membership shall be an application for continuing membership until membership is terminated in accordance with the by-laws of the Corporation. An applicant's membership in the Corporation shall commence on the day the applicant's application for membership has been approved. Admission into membership in the Corporation shall be subject to the applicant:
  - (i) completing an application for membership as required by the by-laws;
  - (ii) meeting the requirements for membership provided in Subsections 2.01 and 2.02;
  - (iii) agreeing in writing to be bound by the articles, by-laws and Operating Rules in such manner as the board may determine;
  - (iv) demonstrating an ability to meet its financial obligations in a timely manner;
  - (v) meeting any other criteria for membership that may be established by the board of directors from time to time by resolution;

Applicants shall provide such information as the president (or other designated officer) of the Corporation may deem necessary in order to fully evaluate a membership application, including further information about the applicant, responsibly connected

persons to the applicant, employees of the applicant, the information supplied on the application and information that may be required by the president in order to verify compliance with the by-laws and Operating Rules.

The president or such other officer designated by the board will notify the applicant regarding whether the applicant will be admitted into membership in the Corporation upon a full review of the application and related information.

If the president (or another designated officer) determines that an applicant does not meet all of the requirements for membership in the Corporation, such officer may, in his or her discretion, admit the applicant as a member upon the applicant providing or posting, and maintaining, financial security in an amount and form, and upon such conditions as may be determined from time to time by the board of directors. In that event, the president or designated officer will notify the applicant that membership will be granted upon the applicant providing or posting financial security as required by the Corporation.

### **3.02 Membership Fees**

Membership fees shall be determined by the board of directors and shall form a part of the Operating Rules of the Corporation. Members shall be notified in writing of the membership fees at any time payable by them and, if any are not paid within the time frame referred to in Subsection 2.02(a), the members in default shall automatically cease to be members of the Corporation. Membership fees for the first year of membership shall be payable when the application is submitted for approval. Fees for subsequent years shall be payable on the date specified by the president.

### **3.03 Communications and Information**

Members shall promptly respond to all communication from the Corporation and shall provide the Corporation with such information as it may request from time to time from the member in order to ensure that the member is fulfilling its obligations under the articles, by-laws and Operating Rules of the Corporation, including but not limited to the information set forth in the Operating Rules.

A member shall not carry on business under a name other than the name(s) specified in its membership. A member shall notify the Corporation in writing and apply for an appropriate amendment to its membership at least 15 days before it commences carrying on business in another name, changes the address of its business or changes the primary type of business it conducts. A member shall notify the Corporation in writing within 7 days of the occurrence of any of the following events:

- a) any change in the ownership or management of its business;
- b) the employment of a person in an executive or managerial capacity or other position of responsibility;

- c) any assignment in bankruptcy, arrangement, proposal, receiving order or other similar arrangement or proposal for the benefit of creditors or arrangement or compromise with creditors under any statute; or
- d) the appointment of a receiver or receiver-manager or trustee to take possession or control of any of the member's business or property.

### **3.04 Automatic Termination of Membership**

A membership in the Corporation is automatically terminated when:

- a) the member dies, or, in the case of a member that is a corporation or partnership, the corporation or partnership dissolves;
- b) the member ceases to carry on the operations of a qualifying business (sole proprietorship, partnership, corporation or otherwise) for a period of three (3) months, in the sole discretion of the president to determine;
- c) a member fails to comply with or maintain the membership requirements set out in Subsections 2.01 and 2.02;
- d) the member resigns by making a resignation request to the president of the Corporation in which case such resignation shall be effective on the earlier of the date provided for in the Operating Rules, if any, or the date on which the resignation is accepted by the President;
- e) the member's term of membership expires, if any; or
- f) the Corporation is liquidated or dissolved under the Act.

Subject to the articles and Subsection 3.06, upon any termination of membership, the rights of the member, including any rights in the property of the Corporation, automatically cease to exist.

### **3.05 Discipline of Members**

The board shall have authority to expel or suspend any member from the Corporation (and may delegate this power to the president or another officer of the Corporation) on any one or more of the following grounds:

- a) violating any provision of the articles, by-laws, policies or Operating Rules;
- b) carrying out any conduct which may be detrimental to the Corporation, as determined by the board in its sole discretion;
- c) for neglecting or refusing to submit to mediation and/or arbitration with another member any controversy subject to mediation and/or arbitration under the Operating Rules or by-laws of the Corporation, after written request to do so by the board or a designated officer of the Corporation;

- d) for the suspension or revocation of a license issued under the *Licensing and Arbitration Regulations* of Canada or the *Perishable Agricultural Commodities Act* of the United States, or any successor legislation;
- e) for being convicted of a criminal act for which a pardon has not been granted;
- f) for being convicted of or pleading guilty to any charges under any statutes for activities which violate any provision of the Articles, by-laws or Operating Rules of the Corporation;
- g) for being named in an outstanding court order regarding matters related to the operation of any business;
- h) for making false or misleading statements, or providing false or misleading information to the Corporation;
- i) for any responsibly connected person to the member failing to meet the membership qualifications in Part V of the Operating Rules – Part 1 - General Administrative Provisions.
- j) for any employee of the member failing to meet the membership qualifications in Part V of the Operating Rules – Part 1 - General Administrative Provisions.
- k) for any other reason that the board in its sole and absolute discretion considers to be reasonable, having regard to the objects of the Corporation.

In the event that the board proposes that a member should be expelled or suspended from membership in the Corporation, the president shall provide ten (10) days written notice of suspension or removal to the member and shall provide reasons for the board's proposed suspension or removal. The member may make written submissions to the president in response to the notice, which must be received by the president within ten (10) days of the date of sending of the notice. In the event that no written submissions are received by the president, the president may proceed to notify the member that the member is suspended or removed from membership in the Corporation. Where written submissions are received in accordance with this section, the board of directors will consider such submissions in arriving at a final decision and shall notify the member concerning such final decision within a further twenty (20) days from the date of receipt of the submissions. A member who would otherwise be suspended or expelled from the Corporation for any reason (except failing to post, provide or maintain financial security) may, upon receiving notice from the president or other designated officer to this effect, avoid such expulsion by providing or posting, and maintaining, financial security in an amount and form, and upon such conditions as may be determined from time to time by the board of directors.

### **3.06 Continuing Obligation**

A former member whose membership in the Corporation has been terminated, whether as a result of resignation, automatic termination, expulsion or otherwise in accordance with the by-laws and Operating Rules of the Corporation, shall continue to submit disputes to arbitration in accordance with the Operating Rules for any claims arising out of transactions that occurred prior to the termination of the member's membership in the Corporation and shall still be bound by the Operating Rules of the Corporation for any such claims. Each member agrees that their



agreement to submit disputes to arbitration in accordance with the Operating Rules survives the termination of the member's membership in the Corporation for all such claims.

### **3.07 Perishable Agricultural Commodities Act**

Notwithstanding any other provision of the by-laws, or of contracts entered into as a result of or in conjunction with membership in the Corporation, any member who is licensed, or subject to license, under the *Perishable Agricultural Commodities Act* of the United States of America, shall not be required to submit to mediation or arbitration any dispute or controversy with any other member who is also licensed, or subject to license, under such Act provided the dispute or controversy is subject to jurisdiction under the *Perishable Agricultural Commodities Act*.

## **SECTION 4 MEETINGS OF MEMBERS**

### **4.01 Proposals at Annual Meetings**

Subject to compliance with Section 163 of the Act, a member entitled to vote at an annual meeting may submit to the Corporation notice of any matter that the member proposes to raise at the annual meeting (a "proposal"). Any such proposal may include nominations for the election of directors if the proposal is signed by not less 5% of the members of the Corporation as prescribed by the Regulations under the Act. Subject to the Act, the Corporation shall include the proposal in the notice of meeting and if so requested by the member, shall also include a statement by the member in support of the proposal and the name and address of the member. The member who submitted the proposal shall pay the cost of including the proposal and any statement in the notice of meeting at which the proposal is to be presented unless otherwise provided by ordinary resolution of the members present at the meeting.

### **4.02 Annual Meetings**

An annual meeting of members shall be held at such time in each year, as the board may from time to time determine, provided that the annual meeting must be held not later than fifteen (15) months after holding the preceding annual meeting and no later than six (6) months after the end of the Corporation's preceding fiscal year. The annual meeting shall be held for the purpose of considering the financial statements and reports of the Corporation required by the Act to be presented at the meeting, electing directors, appointing the public accountant and transacting such other business as may properly be brought before the meeting or is required under the Act.

### **4.03 Special Meetings**

The Board may at any time call a special meeting of members for the transaction of any business which may properly be brought before the Members. On written requisition by members carrying not less than five percent (5%) of the votes that may be cast at a meeting of Members sought to be held, the Board shall call a special meeting of Members, unless the exceptions in the Act are

met. If the Directors do not call a meeting within twenty-one (21) days of receiving the requisition, any Member who signed the requisition may call the meeting.

#### **4.04 Special Business**

All business transacted at a special meeting of Members and all business transacted at an annual meeting of Members, except consideration of the financial statements, public accountant's report, election of Directors and re-appointment of the incumbent public accountant, is special business.

#### **4.05 Persons Entitled to be Present at Meeting**

The only persons entitled to be present at a meeting of members shall be those entitled to vote at the meeting, the directors and the public accountant of the Corporation and such other persons who are entitled or required under any provision of the Act, articles or by-laws of the Corporation to be present at the meeting. Any other person may be admitted only on the invitation of the chair of the meeting or by resolution of the members.

#### **4.06 Waiving Notice**

A member and any other person entitled to attend a meeting of members may in any manner and at any time waive notice of a meeting of members, and attendance of any such person at a meeting of members is a waiver of notice of the meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

#### **4.07 Chair of the Meeting**

In the event that the chair of the board and the vice-chair of the board are absent, the members who are present and entitled to vote at the meeting shall choose one of their number to chair the meeting.

#### **4.08 Quorum**

A quorum at any meeting of the members (unless a greater number of members are required to be present by the Act) shall be two (2) of the members present at the meeting. If a quorum is present at the opening of a meeting of members, the members present may proceed with the business of the meeting even if a quorum is not present throughout the meeting.

#### **4.09 Votes to Govern**

At any meeting of members every question shall, unless otherwise provided by the articles or by-laws or by the Act, be determined by a majority of the votes cast on the questions. In case of an equality of votes either on a show of hands or on a ballot the question or motion shall fail.

#### **4.10 Participation by Electronic Means**

Members shall not vote by electronic means unless the Corporation chooses to make available a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during a meeting of members, any person entitled to attend such

meeting may participate in the meeting by means of such telephonic, electronic or other communication facility in the manner provided by the Act and the Regulations. A person participating in a meeting by such means is deemed to be present at the meeting. Notwithstanding any other provision of this by-law, any person participating in a meeting of members pursuant to this Subsection who is entitled to vote at that meeting may vote, in accordance with the Act and the Regulations, by means of any telephonic, electronic or other communication facility that the Corporation has made available for that purpose.

## **SECTION 5** **DIRECTORS**

### **5.01 Number of Directors**

The board shall consist of a number of directors between the minimum and maximum number of directors specified in the articles. The precise number of directors on the board shall be determined from time to time by the members by ordinary resolution, or, if the ordinary resolution empowers the directors to determine the number of directors, by resolution of the board.

### **5.02 Qualifications of Directors**

Every director shall be at least 18 years old, shall have the power under law to contract and shall be one of the following: (a) a member of the Corporation, or (b) an officer, partner, employee or named representative of a member, or (c) a person representing an affiliated industry organization as same may be defined from time to time in the Operating Rules. No more than one director shall be elected or appointed from each affiliated industry organization at any given time.

### **5.03 Composition of Board**

As much as possible, the board shall be composed of equal representation by residents of Canada, residents of the United States, and residents of Mexico, with no country having less than three (3) or more than five (5) representatives on the board. Subject to the Operating Rules, the board may invite other individuals to attend meetings of the board or any meeting of the board but such individuals shall not have any voting privileges.

### **5.04 Election and Term**

- a) Subject to the articles, directors shall be elected by the members by ordinary resolution at an annual meeting of members at which an election of directors is required, provided that the composition of the board shall meet the requirements of Subsection 5.03.
- b) The terms of office of directors shall be three (3) years or as determined by ordinary resolution of the members.
- c) If directors are not elected at a meeting of members, the incumbent directors shall continue in office until their successors are elected.

#### **5.05 Appointment of Directors**

Pursuant to the articles, following the conclusion of the annual general meeting of members each year, the board may appoint directors (the “appointed directors”) to hold office for a term expiring not later than the close of the next annual meeting of members. The number of appointed directors shall not exceed one-third (1/3) of the number of directors elected by the members at the previous annual meeting of members.

#### **5.06 Ceasing to Hold Office**

A director ceases to hold office when the director dies, resigns, is removed from office by the members in accordance with section 5.07, or no longer fulfils all of the qualifications to be a director set out in section 5.02, as determined in the sole discretion of the board.

#### **5.07 Removal**

The members may, by ordinary resolution, passed at a meeting of members, remove any director from office before the expiration of the director’s term and may elect a qualified individual to fill the resulting vacancy for the remainder of the term of the director so removed, failing which such vacancy may be filled by the Board.

#### **5.08 Filling Vacancies**

In accordance with and subject to the Act and the articles, a quorum of the board may fill a vacancy in the board, except a vacancy resulting from an increase in the number or the minimum or maximum number of directors, or from a failure of the members to elect the number of directors required to be elected at any meeting of members. If there is not a quorum of the board, or if the vacancy has arisen from a failure of the members to elect the number of directors required to be elected at any meeting of members, the board shall forthwith call a special meeting of members to fill the vacancy. If the board fails to call such meeting or if there are no directors then in office, any member may call the meeting. A director appointed or elected to fill a vacancy holds office for the unexpired term of their predecessor.

#### **5.09 Conflict of Interest**

Every director and officer shall disclose to the Corporation the nature and extent of any interest that the director or officer has in a material contract or material transaction, whether made or

proposed, with the Corporation, in accordance with the manner and timing provided in section 141 of the Act.

**5.10 Confidentiality**

Every director, officer, and committee member shall respect the confidentiality of matters brought before the board or before any committee of the board.

**SECTION 6  
MEETINGS OF DIRECTORS**

**6.01 Calling of Meetings**

Meetings of the board may be called by the chair of the board, the vice-chair of the board or any two (2) directors at any time. If the Corporation has only one director, that director may call and constitute a meeting.

**6.02 Notice of Meeting**

Notice of the time and place for the holding of a meeting of the board shall be given in the manner provided in Section 8.01 of this by-law to every director of the Corporation not less than 48 hours before the time when the meeting is to be held. Notice of a meeting shall not be necessary if all of the directors are present, and none objects to the holding of the meeting, or if those absent have waived notice of or have otherwise signified their consent to the holding of such meeting. Notice of an adjourned meeting is not required if the time and place of the adjourned meeting is announced at the original meeting. Unless the by-laws otherwise provide, no notice of meeting need specify the purpose or the business to be transacted at the meeting except that a notice of meeting of directors shall specify any matter referred to in Subsection 138(2) of the Act that is to be dealt with at the meeting.

**6.03 Regular Meetings**

The board may appoint a day or days in any month or months for regular meetings of the board at a place and hour to be named. A copy of any resolution of the board fixing the place and time of such regular meetings of the board shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting except if Subsection 136(3) of the Act requires the purpose thereof or the business to be transacted to be specified in the notice.

**6.04 Participation at Meeting by Telephone or Electronic Means**

If all of the directors consent, a director may, in accordance with the Regulations, participate in a board meeting, by means of a telephonic, electronic or other communications facility that permits all participants to communicate adequately with each other during the meeting. A director participating in the meeting by such means shall be deemed for the purposes of the Act to have been present at that meeting. A consent pursuant to this section may be given before or after

the meeting to which it relates and may be given with respect to all meetings of the board and committees of the board.

**6.05 Quorum**

A majority of the number of directors determined in accordance with Section 5.01 constitutes a quorum for any meeting of the board. For the purpose of determining quorum, a director may be present in person, or, if authorized under this by-law, by teleconference and/or by other electronic means.

**6.06 Votes to Govern**

At all meetings of the board, every question shall be decided by a majority of the votes cast on the question. In case of an equality of votes, the question or motion shall fail.

**6.07 Resolutions in Writing**

A resolution in writing, signed by all the directors entitled to vote on that resolution at a board meeting, shall be as valid as if it had been passed at a board meeting. A copy of every such resolution in writing shall be kept with the minutes of the proceedings of the board or committee of directors.

**6.08 Committees**

The board may from time to time appoint any committee or other advisory body, as it deems necessary or appropriate for such purposes and, subject to the Act, with such powers as the board shall see fit. The terms of reference and any other requirements relating to committees shall be described in the Operating Rules. Any such committee may formulate its own rules of procedure, subject to such regulations or directions as the board may from time to time make in accordance with the Operating Rules. Any committee member may be removed by resolution of the board of directors.

**SECTION 7  
OFFICERS**

**7.01 Appointment**

The board may designate the offices of the Corporation, appoint officers on an annual or more frequent basis, specify their duties and, subject to the Act, delegate to such officers the power to manage the affairs of the Corporation. A director may be appointed to any office of the Corporation. An officer may, but need not be, a director unless these by-laws otherwise provide. Two or more offices may be held by the same person. The duties of officers of the Corporation shall be described in the Operating Rules.

## **SECTION 8**

### **NOTICES**

#### **8.01 Method of Giving Notices**

Any notice (which term includes any communication or document) to be given (which term includes sent, delivered or served) pursuant to the Act, the articles, the by-laws or otherwise to a member, director, officer or member of a committee of the board or to the public accountant shall be sufficiently given:

- a) if delivered personally to the person to whom it is to be given or if delivered to such person's address as shown in the records of the Corporation or in the case of notice to a director to the latest address as shown in the last notice that was sent by the Corporation in accordance with Section 128 or 134 and received by the director; or
- b) if mailed to such person at such person's recorded address by prepaid ordinary or air mail; or
- c) if sent to such person by telephonic, electronic or other communication facility at such person's recorded address for that purpose; or
- d) if provided in the form of an electronic document in accordance with Part 17 of the Act.

A notice so delivered shall be deemed to have been given when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box; and a notice so sent by any means of transmitted or recorded communication shall be deemed to have been given when dispatched or delivered to the appropriate communication company or agency or its representative for dispatch. The secretary may change or cause to be changed the recorded address of any member, director, officer, public accountant or member of a committee of the board in accordance with any information believed by the secretary to be reliable. The declaration by the secretary that notice has been given pursuant to this by-law shall be sufficient and conclusive evidence of the giving of such notice. The signature of any director or officer of the Corporation to any notice or other document to be given by the Corporation may be written, stamped, type-written or printed or partly written, stamped, type-written or printed.

#### **8.02 Computation of Time**

If a given number of days' notice or notice extending over a period is required to be given under the by-laws, the day of service, posting or other delivery of the notice shall not, unless it is otherwise provided, be counted in such number of days or other period.

**8.03 Undelivered Notices**

If any notice given to a member is returned on two consecutive occasions because such member cannot be found, the Corporation shall not be required to give any further notices to such member until such member informs the Corporation in writing of his or her new address.

**8.04 Omissions and Errors**

The accidental omission to give any notice to any member, director, officer, member of a committee of the board or public accountant, or the non-receipt of any notice by any such person or any error in any notice not affecting its substance shall not invalidate any action taken at any meeting to which the notice pertained or otherwise founded on such notice.

**8.05 Waiver of Notice**

Any member, director, officer, member of a committee of the board or public accountant may waive or abridge the time for any notice required to be given to such person, and such waiver or abridgement, whether given before or after the meeting or other event of which notice is required to be given shall cure any default in the giving or in the time of such notice, as the case may be. Any such waiver or abridgement shall be in writing except a waiver of notice of a meeting of members or of the board or of a committee of the board, which may be given in any manner.

**SECTION 9  
ARTICLES AND BY-LAWS**

**9.01 Amendment of Articles**

The articles of the Corporation may only be amended if the amendment is confirmed by a special resolution of the members. Any amendment to the articles is effective on the date shown in the certificate of amendment

**9.02 By-laws and Effective Date**

Subject to the articles and Section 9.03 of this by-law, the board of directors may, by resolution, make, amend or repeal any by-laws that regulate the activities or affairs of the Corporation. Any such by-law, amendment or repeal shall be effective from the date of the resolution of directors until the next meeting of members where it may be confirmed, rejected or amended by the members by ordinary resolution. If the by-law, amendment or repeal is confirmed or confirmed as amended by the members it remains effective in the form in which it was confirmed. The by-law, amendment or repeal ceases to have effect if it is not submitted to the members at the next meeting of members or if it is rejected by the members at the meeting.

**9.03 By-law Sections Requiring Special Resolution to be Effective**

Sections 2.01, 2.02, 2.03 and 2.04 of this by-law and any amendment or repeal of any of these sections shall require a special resolution of the members in order to be effective and need not be submitted to the board for approval.



**SECTION 10**  
**EFFECTIVE DATE**

**10.01 Effective Date**

Subject to Section 9.03 respecting matters requiring a special resolution, this by-law shall be effective when made by the board.

CERTIFIED to be By-Law No. 1 of the Corporation, as amended by the directors of the Corporation by resolution on the 29th day of June, 2018 and to be confirmed by the members of the Corporation at the next annual general meeting in 2019.

Dated as of the 29th day of June, 2018.



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Director/Officer

**FRUIT & VEGETABLE DISPUTE RESOLUTION CORPORATION**

**TRADING STANDARDS**

**ADOPTED - SEPTEMBER 7, 1999**

**AMENDED - SEPTEMBER 29, 2000**

**AMENDED - MARCH 30, 2001**

**IN FORCE AS OF APRIL 30, 2001**

**AMENDED - April 26, 2003**

**IN FORCE AS OF May 27, 2003**

**AMENDED – July 8, 2005**

**IN FORCE AS OF August 8, 2005**

**AMENDED – May 17, 2006**

**IN FORCE AS OF June 16, 2006**

**AMENDED AND IN FORCE – August 9, 2007**

**AMENDED AND IN FORCE – June 25, 2008**

**AMENDED AND IN FORCE – December 4, 2008**

**AMENDED AND IN FORCE – December 3, 2009**

**AMENDED AND IN FORCE – August 19, 2013**

## **DRC Trading Standards**

### **Table of Contents**

1. General Rules of Conduct
2. Liability to Persons Injured
3. General Records
4. Documents to be preserved
5. Receiving Record
6. Sales Tickets/Invoices
7. Lot Numbers
8. Returns, Rejections, or Credit Memorandums on Sales
9. Accounting for Discarded Produce
10. Dealer Duties
11. Broker Duties
12. Commission Merchant Duties
13. Shipper Duties
14. Growers' Agent Duties
15. Conversion of Funds
16. Grade and Condition Standards for Commodities
17. Inspection Policy
18. Membership Declaration
19. Definitions
20. Trade Terms
21. Interpretation
  - References
  - Glossary of Terms

## **Trading Standards**

### **General Rules of Conduct**

#### **Section 1.**

It shall be considered unfair conduct in connection with any transaction whether or not the transaction is with another member of the Fruit and Vegetable Dispute Resolution Corporation or a non-member:

1. For any commission merchant, dealer, broker, carrier or transportation intermediary to engage in or use any unfair, unreasonable, discriminatory, or deceptive practice in connection with the weighing, counting, or in any way determining the quantity of any perishable agricultural commodity received, bought, sold, shipped, or handled.
2. For any dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause any perishable agricultural commodity bought or sold or contracted to be bought, sold, or consigned by such dealer.
3. For any carrier or transportation intermediary to fail to pick-up or deliver in accordance with the terms of the contract without reasonable cause any perishable agricultural commodity contracted by such carrier or transportation intermediary.
4. For any commission merchant to discard, dump, or destroy without reasonable cause, any perishable agricultural commodity received by such commission merchant.
5. For any commission merchant, dealer, broker, carrier or transportation intermediary to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned, by such dealer, or the purchase or sale of which is negotiated by such broker; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had; or to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction.
6. For any commission merchant, dealer, broker, carrier or transportation intermediary to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree of maturity, or State, country, or region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold
7. For any commission merchant, dealer, broker, carrier or transportation intermediary to issue any payment instrument without sufficient funds to allow that instrument to clear normal banking channels.

## **Liability to Persons Injured**

### **Section 2.**

1. Amount of damages. If any commission merchant, dealer, broker, carrier or transportation intermediary violates any provision contained herein he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.
2. Remedies. See Mediation and Arbitration Rules of the Corporation.

## **General Records**

### **Section 3.**

Every commission merchant, dealer, grower's agent, shipper, retailer, broker, carrier and transportation intermediary shall prepare and preserve for a period of two years from the closing date of the transaction the accounts, records, and memoranda that fully and correctly disclose all transactions involved in his business. Members shall keep records which are adapted to the particular business that the member is conducting and in each case such records shall fully disclose all transactions in the business in sufficient detail as to be readily understood.

It is impracticable to specify in detail every class of records which may be found essential since many different types of business are conducted in the produce industry and many different types of contracts are made covering a wide range of services by agents and others. The responsibility is placed on every member to maintain records which will disclose all essential facts regarding the transactions in his business.

## **Documents to be Preserved**

### **Section 4.**

Bills of lading, diversion orders, paid freight and other bills, car manifests, express receipts, confirmations and memorandums of sales, letter and wire correspondence, inspection certificates, invoices on purchases, receiving records, sales tickets, copies of statements (bills) of sales to customers, accounts of sales, papers relating to loss and damage claims against carriers, records as to reconditioning, shrinkage and discarding, daily inventories by lots, a consolidated record of all rebates and allowances made or received in connection with shipments handled for the account of another, an itemized daily record of cash receipts, ledger records in which purchases and sales can be verified, re-packing invoices, evidence of discard, brokers invoices, temperature records and all other pertinent papers relating to the shipment, handling, delivery, and sale of each lot of produce shall be preserved for a period of two years.

## **Receiving Record**

### **Section 5.**

Receivers shall keep in the order of receipt a record of all produce received. This record shall clearly show for each lot the date of arrival and unloading; the car initials and number; the truck license number and the driver's name or the name of the trucking firm; the number of packages or the quantity received; the kind of produce; the name and address of the consignor or seller; whether the produce was purchased; consigned or received on joint account, and the lot number assigned to the shipment by the receiver.

## **Sales Tickets/Invoices**

### **Section 6.**

Sales tickets shall bear serial numbers running consecutively and shall be used in numerical order so far as practicable. No serial number shall be repeated within a 365-day period. The sales tickets shall be prepared and all the details of the sale shall be entered on the tickets in a legible manner. When errors are made in preparing sales tickets, the tickets should be voided. Each sales ticket shall show the date of sale, the purchaser's name (so far as practicable), the kind, quantity, the unit price, and the total selling price of the produce. Each sales ticket shall show the lot number of the shipment if the produce is being handled on consignment or on joint account. Sales tickets on all other lots of the same commodity which are on hand at the same time shall also show a lot number. The original or a legible copy of each sales ticket, including those voided or unused, shall be accounted for and shall be filed or stored either by dates of sales or in the order of the serial numbers for a period of two years. The Corporation has the right to request a copy of the sales ticket(s) in the case of a dispute.

## **Lot Numbers**

### **Section 7.**

An identifying lot number shall be assigned to each shipment of produce to be sold on consignment or joint account or for the account of another person or firm. A lot number should be assigned to any purchased shipment in dispute between the parties to assist in proving damages. A lot number shall be assigned to each purchased shipment of similar produce on hand at that time or received later while the consigned or joint account or disputed lot is being sold. A lot number shall be assigned to each purchased shipment which is reconditioned if the seller is to be charged with the shrinkage or loss. The lot number shall be entered on the receiving record in connection with each shipment and entered on all sales tickets identifying and segregating the sales from the various shipments on hand. The lot number shall be entered on the sales tickets by the salesmen at the time of sale or by the produce dispatcher, and not by bookkeepers or others after the sales have been made. No lot number shall be repeated within a period of 365 days after the last sale from the preceding lot to which such number was assigned.

## **Returns, Rejections, or Credit Memorandums on Sales**

### **Section 8.**

In the event of the rejection and return of any produce sold for or on behalf of another, on consignment, or on joint account, or of any necessary allowance or adjustment being made to the buyers thereof, a credit memorandum showing the buyer's name, sales ticket number, lot number, date of the granting of the allowance, and amount of the credit or adjustment, with reasons therefore, shall be issued or a notation shall be made on the original sales ticket referring to the adjustment and showing where the credit memorandum is filed.

The credit memorandum shall be on a regular form, in a ledger book, or on a sales ticket or invoice properly completed to show the facts and shall be approved by a duly authorized person. Credits granted shall be entered in the same records as the original sales tickets.

## **Accounting for Discarded Produce**

### **Section 9.**

Reasonable cause for destroying or disposing of any produce exists when the commodity has no commercial value or when it is discarded by order of a local health officer or other authorized official or when the shipper has specifically consented to such disposition. The term "commercial value" means any value that a commodity may have for any purpose that can be ascertained by the exercise of due diligence without unreasonable expense or loss of time. When produce is being handled for or on behalf of another person, proof as to the quantities of produce destroyed or discarded in excess of five percent of the shipment shall be provided by procuring an official certificate regarding the actual disposition of the discarded produce from:

1. any person recognized by the Corporation to officially inspect fruits and vegetables; and, where such inspection service is not available, certification may be obtained from:
2. any certified health officer or food inspector;
3. any person making inspections for the fruit and vegetable industry; that is mutually agreed to by the shipper and the receiver; or
4. when neither 1, 2 or 3 are available consideration will be given to other evidence such as inspection and certification made by any two persons having no financial interest in the produce involved or in the business of any person financially interested therein, and who are unrelated by blood or marriage to any such financially interested person, and who, at the time of the inspection and certification, and for a period of at least one year immediately prior thereto, have been engaged in the handling of the same general kind or class of produce with respect to which the inspections and certification are to be made. Any certificate issued by any persons designated in paragraph 4 of this section shall include a statement that each of them possesses the requisite qualifications.

Any certificate issued by anyone named in paragraph 1 through 4 shall properly identify the produce by showing the commodity, lot number, brand or principal identifying marks on the containers, quantity discarded, name and address of shipper, name and address of applicant, time, place, and date of inspection and a statement regarding the actual disposition of the discarded produce.

Certificates issued regarding the actual disposition of the discarded produce are not proof the product has no commercial value. Unless the seller has agreed to the disposition, these certificates need to be accompanied by a full condition inspection pursuant to the Corporation's Good inspection Guidelines to provide evidence that the product has no commercial value.

### **Dealer Duties**

#### **Section 10.**

1. Where a perishable agricultural commodity is in a damaged or deteriorated condition on arrival at its destination, the receiver at that destination shall obtain certificates in respect of that perishable agricultural commodity in accordance with the procedures set out in items 2 to 3 of this Section.
2. Where a receiver has
  - (a) purchased an perishable agricultural commodity that is damaged or in a deteriorated condition, or
  - (b) offered to handle a perishable agricultural commodity on consignment that is damaged or in a deteriorated condition, he shall:
    - (i) within 8 working hours, exclusive of Sundays and holidays, after receipt of notice of arrival of the shipment of a perishable agricultural commodity apply for inspection and, within three hours after he has received an oral or a written report of the result of the inspection, advise the shipper or the seller's local representative in writing that he rejects the perishable agricultural commodity,
    - (ii) within 24 hours of the receipt by him of a certificate in respect of the inspection forward a copy thereof to the shipper of the perishable agricultural commodity,
    - (iii) where any portion of the shipment is marketable make every reasonable effort to market that product as soon as is practicable in the circumstances,
    - (iv) where he has dumped more than five percent of any lot of agricultural product belonging to another person, forward a certificate to that person showing that the agricultural product was dumped and retain a copy of that evidence.
3. Where the temperature is sufficiently below freezing to make a complete inspection dangerous to a perishable agricultural commodity, the licensed dealer shall, on receipt of notice of arrival,



request that a preliminary inspection of the perishable agricultural commodity be made as soon as possible to determine whether freezing damage during transit is present and any further inspection may be deferred until the temperature and weather conditions permit the inspection to be made without endangering the perishable agricultural commodity.

4. At time of the loading of a package that contains a perishable agricultural commodity the package shall be placed in such a manner as to take advantage of its design strength permit adequate bracing to hold the load in alignment under normal transportation service and conditions; and provide for sufficient air circulation around the load when temperature control or ventilation is required.
5. A perishable agricultural commodity shall be precooled, gassed, iced or otherwise prepared by any other prescribed process for the maintenance of suitable product condition under normal transportation service and conditions to the destination specified.
6. The air and surface temperatures inside the vehicle at the time of loading and shipment shall be within a range appropriate for the perishable agricultural commodity being shipped.
7. When different perishable agricultural commodity are shipped together, they shall be suitably compatible so that there will be no adverse effects on any one of them during normal transportation service and conditions.

### **Broker Duties**

#### **Section 11.**

1. General. The function of a broker is to facilitate good faith negotiations between parties which lead to valid and binding contracts. A broker who fails to perform any specification or duty, express or implied, in connection with any transaction may be held liable for damages which accrue as a result thereof. It shall be the duty of the broker to fully inform the parties concerning all of the terms and conditions of the proposed contract. After all parties agree on the terms and the contract is effected, the broker shall prepare in writing and deliver promptly to all parties a properly executed confirmation or memorandum of sale setting forth truly and correctly all of the essential details of the agreement between the parties, including any express agreement as to the time when payment is due. The confirmation or memorandum of sale shall also identify the party who engaged the broker to act in the negotiations. If the confirmation or memorandum of sale does not contain such information, the broker shall be assumed to have been engaged by the buyer. Brokers do not normally act as general agents of either party, and will not be presumed to have so acted. Unless otherwise agreed and confirmed, the broker will be entitled to payment of brokerage fees from the party by whom it was engaged to act as broker. The broker shall retain a copy of such confirmations or memoranda as part of his accounts and records. The broker who does not prepare these documents, retain copies in his files, and deliver copies of these documents to all parties involved in the transaction is failing to perform his duties as a broker. If the broker's records do not support his contentions that a binding contract was made with proper notice to the

parties, the broker may be held liable for any loss or damage resulting from such negligence. The broker shall take into consideration the time of delivery of the shipment involved in the contract and all other circumstances of the transaction, in selecting the proper method for transmitting the written confirmation or memorandum of sale to the parties. A buying broker is required to truly and correctly account to his principal. The broker should advise his principal promptly of rejection by the buyer or of any other unforeseen development of which he is informed.

2. Brokerage fees. A broker is not considered to be entitled to a brokerage fee unless he effects a sale or makes a valid and binding contract, fully performing his duties as a broker. Unless otherwise specifically agreed, the broker does not guarantee the performance of the contracting parties and is entitled to receive prompt payment of the brokerage fee whenever a valid and binding contract is negotiated. Brokerage fees may be charged to only one of the parties to the contract unless by prior agreement the parties agree to split the brokerage fee. A broker employed to negotiate the sale of produce may not employ another broker or selling agent, including auction companies, without the specific prior approval of his principal. When the broker is authorized to sell, invoice the buyer, collect and remit to his principal, he shall render an itemized accounting to the principal promptly on receipt of payment, showing the true gross selling price, all brokerage fees deducted, any auction charges and any other expenses incurred in connection with the sale of the shipment.
3. Broker's responsibility for payment. In the absence of a specific agreement, a broker is not responsible for payment to the seller by the buyer. Agreement to collect from the buyer and remit to the seller is not a guarantee by the broker that the buyer will pay for the produce purchased, unless there is a specific agreement by the broker that he will pay if the buyer does not pay. A broker who agrees to collect funds from the buyer for his principal shall render an itemized accounting to the principal promptly on receipt of payment showing the true gross selling price, all brokerage fees deducted and all expenses including auction charges, incurred in connection with the sale of the shipment. While the broker is not obliged to furnish his principal information regarding the financial condition of the buyer, if the broker furnishes such information, he must truthfully report the information available to him.

A buying broker who negotiates a purchase in his own name under an agreement with his principal, is responsible for payment of the purchase price to the seller. A broker has no authority to grant allowances or adjust the seller's invoice price to the buyer without the specific prior approval of his principal.

4. Purchases and sales by brokers. A person who operates in a dual capacity, both as a broker and a dealer, shall clearly disclose his status prior to completion of each contract to all parties with whom he is dealing. When a person purchases or sells produce as a dealer, he shall not request or receive a brokerage fee from the buyer or the seller. A broker shall not negotiate a transaction where the broker is subject to the direct or indirect control of any party to the transaction other than his principal, or where the other party is subject to the direct or indirect

control of the broker without fully disclosing the circumstances to his principal and obtaining his specific prior approval.

5. Filing carrier claims by brokers. Without prior consent of the owner, a broker has no authority to file claims with carriers in his own name or any other name. A broker has no obligation to file carrier claims for the owners of the shipments. However, when a broker in a transaction receives information valuable to the owner in connection with carrier claim rights, the broker should promptly advise the owner. A broker who agrees to protect the carrier claims of owners shall at all times exercise reasonable care to fulfill such obligation. If a broker makes an agreement with a seller or a buyer to file and handle such a claim for the benefit of the owner of the produce, the claim shall be filed promptly with the carrier, supported by adequate evidence, and he shall take the necessary action to bring the matter to a conclusion.

A copy of the claim shall be forwarded to the owner of the shipment when the claim is filed. When settlement of the claim is effected, the broker shall promptly remit the net amount due the owner, after deducting the agreed or customary charges for handling the claim. Adequate information shall be furnished the owner regarding the claim while the matter is being handled with the carrier. If the owner files the claim, the broker shall promptly furnish any necessary information available in his records which is requested by the owner.

### **Commission Merchant Duties**

#### **Section 12.**

1. General. All members who accept produce for sale on consignment or on joint account are required to exercise reasonable care and diligence in disposing of the produce promptly and in a fair and reasonable manner. A commission merchant engaged to sell consigned produce may not employ another person or firm, including auction companies, to dispose of all or part of such produce without the specific prior authority of the consignor. A commission merchant is not authorized to sell consigned produce outside the market area where he is located without obtaining the permission of the consignor. Averaging or pooling of sales is not permissible unless the receiver obtains the specific written permission of the consignor prior to rendering the accounting. Complete and detailed records shall be prepared and maintained by all commission merchants and joint account partners covering produce received, sales, quantities lost, dates and cost of repacking or reconditioning, unloading, handling, freight, demurrage or auction charges, and any other expenses which are deducted on the accounting. When rendering account sales for produce handled for or on behalf of another, an accurate and itemized report of sales and expenses charged against the shipment shall be made.

Charges which cannot be supported by proper evidence in the records of the commission merchant or joint account partner shall not be deducted. The commission merchant or joint account partner may be held liable for any financial loss resulting from his negligence or failure to perform any specification or duty, express or implied, arising out of any transaction.

2. Commission charges. Before accepting produce on consignment, the parties should reach a definite agreement on the amount of the commission and other charges which will be assessed by the commission merchant. In the absence of such an agreement, only the usual and customary commission and other charges shall be permitted. The receiver may not re-consign produce to another person or firm, including auction companies, and incur additional commissions, charges or expenses without the specific prior authority of the consignor. Unless otherwise agreed upon by the parties, joint account partners shall not charge a commission fee or other selling charges against the joint account for disposing of the produce. When a portion of a consigned shipment is purchased by the commission merchant he shall not charge or receive a commission fee for such sales.
3. Purchasing consigned produce. A commission merchant or joint account partner may not purchase produce received on consignment or joint account or sell such produce to any person or firm over whose business he has direct or indirect control, or to any person or firm having direct or indirect control over his business, without specific prior authority of the consignor or the joint account partner. However, produce may be purchased by the commission merchant or joint account partner at reasonable market value to clean up remnants of shipments so accountings will not be unduly delayed, provided the accounting shows the quantity and price of the goods bought by the commission merchant or joint account partner.

"Remnants", as used here, mean small quantities remaining after the bulk of the shipment has been sold but shall not exceed five percent of the shipment. When consigned produce is purchased by a commission merchant he shall not charge or receive a commission fee for such sales.

4. Filing carrier claims. Without the prior consent of the owner of the produce, a commission merchant has no authority to file claims with carriers in his own name or any other name: Provided, that the commission merchant may file a claim for breakage where the owner has been paid for the full value of the produce without any deduction for damage. Commission merchants have no obligation to file carrier claims on shipments for the owners. However, when a commission merchant in a transaction receives information valuable to the consignor in connection with carrier claim rights, the commission merchant must promptly advise the consignor. Before a commission merchant files a carrier claim on a consigned shipment, a specific agreement shall be reached with the consignor. If a commission merchant is authorized and agrees to file the claim, he shall forward a copy of the claim filed with the carrier to the consignor and shall exercise reasonable care to protect the interests of the consignor by filing the claim promptly and in the proper amount, supported by adequate evidence, and shall take the necessary action to bring the matter to a conclusion. When settlement of the claim is effected, he shall promptly remit the net amount due the consignor, after deducting the agreed handling charges. Full and complete information shall be furnished the consignor while the claim is being handled.

If the consignor is to file the claim, the commission merchant shall exercise reasonable care to protect the claim rights of the consignor and shall promptly furnish all necessary information

and evidence from his records to enable the consignor to file a proper claim. A joint account partner who files a carrier claim on behalf of the partnership shall forward a copy of the claim filed with the carrier to his partner, keep him advised of its status, and remit promptly his share of the net proceeds realized from such claim.

## **Shipper Duties**

### **Section 13.**

1. General. The responsibilities of shippers vary with their contracts with growers to purchase produce or to handle produce on joint account. Similarly, their responsibilities to their customers depend upon their contracts to sell, consign or joint account produce with dealers on terminal markets. Shippers shall pay promptly for produce purchased and any deficits incurred on consigned shipments. They shall fully comply with their obligations in connection with joint account transactions. A shipper who fails to perform any express or implied duty may be held liable for any damages resulting therefrom. The shipper shall prepare and maintain records which fully and correctly disclose the details of his transactions.
2. Receiving records. Each shipper shall prepare and maintain a record of all produce handled including his own production. This receiving record shall show for each lot the date received, whether purchased or received on joint account, the quantity, quality, and kind of produce, the purchase price or joint account cost, and the name and address of the supplier. Shippers shall issue receipts to growers and others for all produce received.
3. Disposition records. When a shipper purchases produce from growers or others, his records shall also show the disposition of the produce, whether sold or consigned, date of shipment, car number, or if shipped by truck, the license number, name and address of the carrier, name and address of the buyer, commission merchant or auction, and other pertinent details of the transaction, such as the terms of sale, selling price, and date of payment.
4. Joint accounts with growers. When a shipper enters into a joint account transaction with growers or others, the agreement between the parties should be reduced to a written contract clearly defining the duties and responsibilities of both parties and the extent of the shipper's authority in distributing the produce. The shipper shall prepare and maintain records to show in detail the actual expenses incurred for the services he furnishes, such as harvesting, grading, packing and selling the produce (unless a fixed charge is agreed upon by the parties to cover the cost of these services), methods of distribution and proceeds received for the produce. If a shipper is at the same time handling similar produce not involved in the joint account transaction, a lot number or other positive means of identification shall be assigned to each lot of produce received in order to segregate and identify the various lots of produce. If a shipper consigns all or part of the produce or employs the services of brokers or terminal market auctions, his records shall show the results of these transactions, including the expenses involved and the names and addresses of the commission merchants, brokers, and the auctions. The shipper shall render a detailed and accurate accounting and pay promptly the

net proceeds due the joint partner. The accounting shall disclose the status of all claims collected or filed with the carriers.

5. Joint accounts with receivers. When a shipper enters into a joint account agreement with a terminal market dealer, the agreement should be reduced to writing clearly defining the terms of the agreement. The shipper's records shall show the expenses which may be properly charged in accordance with the joint agreement, purchase price or joint account cost of the produce, and cost of harvesting, packing, grading, or other expenses. His records shall show the quantity and quality of the produce packed and shipped, the dates and methods of shipment, and all other pertinent details of his operation. At the conclusion of the transaction, a detailed and accurate accounting shall be furnished promptly to the joint partner. If a deficit results, the shipper shall pay promptly his share of the deficit.

## **Growers' Agent Duties**

### **Section 14.**

1. General. The duties, responsibilities, and extent of the authority of a growers' agent depend on the type of contract made with the growers. Agreements between growers and agents should be reduced to a written contract clearly defining the duties and responsibilities of both parties and the extent of the agent's authority in distributing the produce. When such agreements between the parties are not reduced to written contracts, the agent shall have available a written statement describing the terms and conditions under which he will handle the produce of the grower during the current season and shall mail or deliver this statement to the grower on or before receipt of the first lot. A grower will be considered to have agreed to these terms if, after receiving such statement, he delivers his produce to the agent for handling in the usual manner. In the event an unsolicited lot of produce is accepted by an agent for handling in his usual manner, he shall promptly deliver or mail a copy of such statement to the grower. A copy of this statement, showing the name of the grower and the date the statement was delivered to the grower, shall be retained in the agent's files. An agent who does not have in his files either written contracts or a written statement as required herein is failing to prepare and maintain full and complete records. An agent who fails to perform any specification or duty, express or implied, may be held liable for any damages resulting therefrom.
2. Accounting for charges. A growers' agent whose operations include such services as the planting, harvesting, grading, packing, furnishing of containers or other supplies, storing, selling or distributing produce for or on behalf of growers shall prepare and maintain complete records on all transactions in sufficient detail as to be readily understood. Agents must be in a position to render to the growers accurate and detailed accountings covering all aspects of their handling of the produce. Agents shall maintain a record of all produce received, showing for each lot the date received, quantity, the kind of produce and the name and address of the grower. Agents shall issue receipts to growers and others for all produce received. A lot number or other positive means of identification shall be assigned to each lot in order to segregate the various lots of produce received from different growers from similar produce

being handled at the same time. Each lot shall be so identified and segregated throughout all operations conducted by the agent, including the sale or other disposition of the produce. The records shall show the result of all packing and grading operations, including the quantity lost through packing and grading and the quantity and quality packed out. If the culls are sold, they shall be included in the accounting. Unless there is a specific agreement with the growers to pool all various growers' produce, the accounting to each of the growers shall itemize the actual expenses incurred for the various operations conducted by the agent and all the details of the disposition of the produce received from each grower including all sales, adjustments, rejections, details of consigned or jointed shipments and sales through brokers, auctions, and status of all claims filed with or collected from the carriers. The agent shall prepare and maintain full and complete records on all details of such distribution to provide supporting evidence for the accounting. If an agent is working under a pool agreement with growers, the accounting shall show how the pool cost and pool sales prices are computed. If the agent and the growers have agreed on a fixed charge to cover the various operations conducted by the agent, actual expenses incurred for these services covered by the agreement are not required to be shown in the accounting.

3. Sales through brokers or auctions. Unless a growers' agent is specifically authorized in his contract with the growers to use the services of brokers, commission merchants, joint partners, or auctions, he is not entitled to use these methods of marketing the growers' produce. Any expense incurred for such services, without the growers' permission, cannot be charged to the growers.
4. Filing of carrier claims. Without the prior consent of the growers, an agent has no authority to file claims with the carriers in his own name or any other name. An agent has no obligation to file carrier claims on shipments for growers in the absence of a specific agreement to perform these duties. All information which an agent has received in handling the shipment which is essential for the growers to file such claims shall be made available to the growers. If an agent has an agreement with the growers to file and handle carrier claims, he shall exercise reasonable care in handling the claims with the carriers by filing the claim promptly in the proper amount, supported by adequate evidence, and take any necessary action to bring the matter to a conclusion.
5. Purchases and sales by growers' agents. A person who operates in a dual capacity, both as a growers' agent and as a shipper, shall clearly disclose his status in each transaction to all parties with whom he is dealing. A growers' agent shall not charge or receive a fee from the seller or the buyer when he purchases or sells produce as a shipper. A growers' agent shall not negotiate a transaction where he is subject to the direct or indirect control of any party to such transactions, other than his principal, or where the other party is subject to the agent's direct or indirect control, without fully disclosing the circumstances to his principal and obtaining his specific prior approval.

6. Negligence of agent. A growers' agent may be held liable for any loss or damage resulting to the growers due to his negligence or failure to perform any specification or duty, express or implied, arising out of any undertaking in connection with a transaction.
7. Responsibility for payment. An agent is not responsible for the payment by the buyer who has purchased the growers' produce on credit, unless he guarantees payment or is negligent in extending credit. Agreement to collect from the buyer and remit to his principal is not a guarantee by the agent that the agent will pay if the buyer does not pay.
8. Responsibility for payment of selling fees and expenses to the growers' agent. In the absence of a specific agreement to the contrary, the agent does not guarantee the performance of the contracting parties and he is entitled to the payment of his selling fees and expenses incurred in handling the produce of growers or others, providing he fully performs his duties as agent.
9. Agent's financial responsibility to buyers for failure to comply with contracts. If a growers' agent contracts in his own name to deliver produce to a buyer and subsequently cannot deliver produce complying with the contract because the growers cannot or will not deliver such produce to him, he may be liable to the buyer for damages resulting from the breach of the contract.

#### **Conversion of Funds**

##### **Section 15.**

Any member who collects or receives funds for or on behalf of another person or firm in connection with produce shall not make any use or disposition of such funds in his possession or control that will endanger or impair faithful and prompt payment to the owner or consignor of the produce or to any other person having a financial interest therein.

#### **Grade and Condition Standards for Commodities**

##### **Section 16.**

With regard to grade and condition of product, the parties may agree to any specific standards prior to shipment on the condition that such standards are in compliance with any applicable minimum grade and condition standards that have been established by the importing or exporting country. In the absence of an agreement on grade, no grade will be assumed, but the calculation of conformance to contract will default to the Corporation's Good Arrival Guidelines.

#### **Inspection Policy**

##### **Section 17.**

In addition to anything else specified in these standards regarding inspection the parties agree to abide by the Corporation's Good Inspection Guidelines



## **Membership Declaration**

### **Section 18.**

All members must declare their membership number when requested to do so by any Canadian, United States of America or Mexican government department or agency.

### **Definitions**

#### **Section 19.**

1. "Acceptance" means:
  - (1). Any act by the consignee signifying acceptance of the shipment, including diversion or unloading, except for the purposes of inspection under the supervision of a recognized inspector;
  - (2). Any act by the consignee which is inconsistent with the consignor's ownership, but if such act is wrongful against the consignor it is acceptance only if ratified by him; or
  - (3). Failure of the consignee to give notice of rejection to the consignor within a reasonable time: Provided, that acceptance shall not affect any claim for damages because of failure of the produce to meet the terms of the contract.
2. "Accommodation advance" or "regular advance", used in connection with an advance of money or credit against anticipated net proceeds to be realized from the sale of consigned produce, means that the consignor has received an advance of money or credit and that, if the consigned produce does not sell for enough to cover the cost of transportation and handling, including customary or agreed commission and the advance made to him, the consignor must return to the person making the advance a sum equal to the deficit sustained.
3. "Account promptly", except when otherwise specifically agreed upon by the parties, means rendering to the principal a true and correct accounting:
  - (1). In connection with buying brokerage transactions, within 24 hours after the date of shipment;
  - (2). In connection with consignment or joint account transactions, within 10 days after the date of final sale with respect to each shipment, or within 20 days from the date the goods are accepted at destination, whichever comes first: *Provided*, That whenever a grower's agent or shipper distributes individual lots of produce for or on behalf of others, accounting to the principal shall be made within 30 days after receipt of the shipment from the principal for sale or within 5 days after the date the agent receives payment for the goods, whichever comes first. Whenever a grower's agent or shipper harvests, packs, or distributes entire crops or multiple lots therefrom for or on behalf of

others, an accounting on the initial shipment shall be rendered within 30 days after receipt of the goods for sale. Accountings for subsequent shipments shall be made at 10-day intervals from the date of the accounting for the initial shipment and a final accounting for the season shall be made to each principal within 30 days from the date the agent receives the last shipment for the season from that principal: *Provided further*, That whenever the marketing agreement between a principal and agent includes a provision for storage of goods prior to sale, the agent shall render accountings of inventory and expenses incurred to date at 30-day intervals from the date the goods are received by the agent until sales from storage begin; and

- (3). In connection with a consignment or joint account transaction, within 10 days after the date of receipt of payment of a carrier claim filed.
4. "Broker" means any person engaged in the business of negotiating sales and purchases of produce for or on behalf of the vendor or the purchaser, respectively.
5. "Commission merchant" means any person engaged in the business of receiving any perishable agricultural commodity for sale, on commission, or for or on behalf of another.
6. "Corporation" means the Fruit and Vegetable Dispute Resolution Corporation.
7. "Corporation's Grade Tolerances" means Good Arrival Guidelines that the corporation establishes for those commodities for which no established standards exist.
8. "Dealer" means any person engaged in the business of buying or selling .
9. "Firm" means any person engaged in business as a commission merchant, dealer, or broker.
10. "Full payment promptly" means:
  - (1). Payment of net proceeds for produce received on consignment or the pro-rata share of the net profits for produce received on joint account, within 10 days after the date of final sale with respect to each shipment, or within 20 days from the date the goods are accepted at destination, whichever comes first;
  - (2). Payment by growers, growers' agents, or shippers of deficits on consignments or joint account transactions, within 10 days after the day on which the accounting is received;
  - (3). Payment of the purchase price, brokerage, and other expenses to buying brokers who pay for the produce, within 10 days after the day on which the broker's invoice is received by the buyer;

- (4). Payment of brokerage earned and other expenses in connection with produce purchased or sold, within 10 days after the day on which the broker's invoice is received by the principal;
- (5). Payment for produce purchased by a buyer, within 10 days after the day on which the produce is accepted;
- (6). Payment to growers, growers' agents, or shippers by terminal market agents or brokers, who are selling for the account of a grower, growers' agent, or shipper and are authorized to collect from the buyer or receiver, within 5 days after the agent or broker receives payment from the buyer or receiver;
- (7). Payment to the principal, within 10 days after receipt, of net proceeds realized from a carrier claim in connection with a consignment transaction or, in connection with a joint account transaction, payment to the joint account partners of their share of the joint account net proceeds realized from a carrier claim;
- (8). Payment by growers agents or shippers who distribute individual lots of produce for or on behalf of others, within 30 days after receipt of the goods from the principal for sale or within 5 days after the date the agent receives payment for the goods, whichever comes first;
- (9). Whenever a grower's agent or shipper harvests, packs, or distributes entire crops or multiple lots therefrom for or on behalf of others, payment for the initial shipment shall be made within 30 days after receipt of the goods for sale or within 5 days after the date the agent receives payment for the goods, whichever comes first. Payment for subsequent shipments shall be made at 10-day intervals from the date of the accounting for the initial shipment or within 5 days after the date the agent receives payment for the goods, whichever comes first, and final payment for the seasons shall be made to each principal within 30 days from the date the agent receives the last shipment for the season from that principal;
- (10). When contracts are based on terms other than those described herein, payment is due to the supplier-seller within 20 days from the date of acceptance of the shipment under the terms of the contract.
- (11). Parties who elect to use different times of payment than those set forth in paragraphs (1) through (10) must reduce their agreement to writing before entering into the transaction and maintain a copy of the agreement in their records. If they have so agreed, then payment within the agreed upon time shall constitute "full payment promptly": *Provided*, That the party claiming the existence of such an agreement for time of payment shall have the burden of proving it. Nothing in this part shall limit the seller's privilege of shipping under a closed or advise bill of lading or other arrangement requiring cash on delivery unless there has been express prior agreement to the

contrary between the parties. If there is a dispute concerning a transaction, the foregoing time periods for prompt payment apply only to payment of the undisputed amount.

11. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
12. "Grower" means any person who grows produce for marketing.
13. "Growers' agent" means any person operating at shipping point who sells or distributes produce for or on behalf of growers or others and whose operations may include the planting, harvesting, grading, packing, and furnishing containers, supplies, or other services.
14. "Guaranteed advance" used in connection with an advance payment on consigned produce means that the person making the advance guarantees that the net proceeds to the consignor shall at least equal the amount so advanced, and that the consignor cannot be held liable for any deficit resulting from the sale of the produce, if such deficit is not occasioned by or contributed to by an act of the consignor.
15. "Perishable agricultural commodity" includes all fresh and chilled fruits and vegetables, fresh cuts, edible fungi and herbs, but excludes any fresh fruit and vegetable which is frozen or has been planted as seed.
16. "Person" means any individual, partnership, corporation, association, or separate legal entity.
17. "Produce" means any perishable agricultural commodity.
18. "Reasonable time" means:
  - (1). For fresh fruits and vegetables with respect to rail shipments, not to exceed 24 hours after notice of arrival and the car has been placed in a location where the produce is made accessible for inspection; and with respect to truck shipments, not to exceed 8 hours after the receiver or a responsible representative is given notice of arrival and the produce is made accessible for inspection; and, with respect to boat shipments, not to exceed 24 hours after the produce is unloaded and made accessible for inspection and the receiver is given notice thereof;
  - (2). If, within the applicable period, the receiver cannot make a thorough inspection due to adverse weather condition or applies for but cannot obtain recognized inspection before the end of this period, and so notifies the consignor within the applicable period, the period shall be extended until weather conditions permit inspection or until recognized inspection is made, as the case may be, plus two hours after either an oral or written report of the results of such inspection is made available to the receiver; and

- (3). In computing the time periods specified above,
  - a) for shipments arriving on non-work days or after the close of regular business hours on work days when a representative of the receiver having authority to reject shipments is not present, non-working hours preceding the start of regular business hours on the next working day shall not be included; and
  - b) for shipments arriving during regular business hours when a representative of the receiver having authority to reject shipments customarily is present, the period shall run without interruption except that, for shipments arriving less than two hours before the close of regular business hours, the remaining balance of the time period shall be extended and run from the start of regular business hours on the next working day.
19. "Receiving market commission merchant" means any person operating on a receiving market who is engaged in the business of receiving produce in for sale, on commission, for or on behalf of another.
20. "Recognized inspector" means any inspector who has been recognized by the Corporation to provide inspection and inspection related services including but not limited to shipping point and/or destination inspection, issuing inspection certificates and, training and certifying inspectors.
21. "Reject without reasonable cause" means in connection with purchases, consignments, or joint account transactions:
  - (1). Refusing or failing without legal justification to accept produce within a reasonable time;
  - (2). Advising the seller, shipper, or his agent that produce, complying with contract, will not be accepted;
  - (3). Indicating an intention not to accept produce through an act or failure to act inconsistent with the contract; or
  - (4). Any rejection following an act of acceptance.
22. "Retailer" means a dealer engaged in the business of selling any perishable agricultural commodity at retail.
23. "Shipper" means any person operating at shipping point who is engaged in the business of purchasing produce from growers or others and distributing such produce by resale or other methods, or who handles such produce on joint account with others.

24. "Suitable shipping condition", in relation to direct shipments, means that the commodity, at time of shipment, is in a condition which, if the shipment is handled under normal transportation service and conditions, will assure delivery without abnormal deterioration at the contract destination agreed upon between the parties. The seller has no responsibility for any deterioration in transit if there is no contract destination agreed upon between the parties. *(See also definition of "good delivery")*.
25. "Truly and correctly account" means, in connection with:
- (1). Consignments, to account by rendering a true and correct statement showing the date of receipt and date of final sale, the quantities sold at each price, or other disposition of the produce, and the proper, usual or specifically agreed upon selling charges and expenses properly incurred or agreed to in the handling thereof, plus any other information required by the agreement;
  - (2). Joint account transactions, to account by rendering a true and correct statement showing the date of receipt and date of final sale, the quantities sold at each price or other disposition of produce, the joint account cost of the produce, and the expenses properly incurred or other charges specifically agreed to in the handling thereof, plus any other information required by the agreement;
  - (3). Buying brokerage transactions, to account by rendering a true and correct itemized statement showing the cost of the produce, the expenses properly incurred, and the amount of brokerage charged.

### **Trade Terms**

#### **Section 20.**

1. "c.a.f.", "c.a.c.", and "c.i.f." cost and freight, cost and charges, and cost, insurance, and freight, respectively. C.a.f. sales shall be deemed to be the same as f.o.b. sales, except that the selling price shall include the correct freight charges to destination. C.a.c. sales shall be deemed to be the same as f.o.b. sales, except that the selling price includes the correct freight and refrigeration or heater charges to destination. C.i.f. sales shall be deemed to be the same as f.o.b. sales, except that the selling price includes insurance and the correct freight and refrigeration or heater charges to destination.
2. "Deferred billing", see "open price".
3. "Delivered" or "delivered sale" means that the produce is to be delivered by the seller on board car, or truck or on dock if delivered by boat, at the market in which the buyer is located, or at such other market as is agreed upon, free of any and all charges for transportation or protective service. The seller assumes all risks of loss and damage in transit not caused by the buyer. For example, a sale of "U.S. No. 1 potatoes delivered Chicago" means that the potatoes,

when tendered for delivery at Chicago, shall meet all the requirements of the U.S. No. 1 grade as to quality and condition.

4. "F.a.s. steamer" means that the produce is to be delivered free alongside the steamer, in suitable shipping condition (*see definition of "suitable shipping condition"*), in accordance with the terms of the contract, and that the buyer assumes all responsibility and risk of damage thereafter.
5. "F.O.B." (for example, f.o.b. Laredo, Tex., or f.o.b. California) means that the produce quoted or sold is to be placed free on board the boat, car, or other agency of the through land transportation at shipping point, in suitable shipping condition (*see definition of "suitable shipping condition"*), and that the buyer assumes all risk of damage and delay in transit not caused by the seller irrespective of how the shipment is billed. The buyer shall have the right of inspection at destination before the goods are paid for to determine if the produce shipped complied with the terms of the contract at time of shipment, subject to the provisions covering suitable shipping condition.
6. "F.o.b. acceptance" or "shipping point acceptance" means that the buyer accepts the produce at shipping point and has no right of rejection. The buyer has recourse against the seller if the produce was not in suitable shipping condition (*see definition*) or has recourse for a material breach of contract, providing the shipment is not rejected. The buyer's remedy under this method of purchase is by recovery of damages from the seller and not by rejection.
7. "F.o.b. acceptance final" or "shipping point acceptance final" means that the buyer accepts the produce at shipping point and has no right of rejection. Suitable shipping condition does not apply under this trade term. The buyer does have recourse for a material breach of contract, providing the shipment is not rejected. The buyer's remedy under this type of contract is by recovery of damages from the seller and not by rejection of the shipment.
8. "F.o.b. inspection and acceptance arrival" means that the produce quoted or sold is to be placed by the seller free on board car or other agency of through transportation at shipping point, the cost of transportation to be borne by the buyer, but the seller is to assume all risks of loss and damage in transit not caused by the buyer, who has the right to inspect the goods upon arrival and to reject them if, upon such inspection, they are found not to meet the specifications of the contract of sale at destination. The buyer may not reject without reasonable cause. Such a sale is f.o.b. only as to price and is on a delivered basis as to grade, quality, and condition.
9. "F.o.b. sale at delivered price" means the same as f.o.b., except that transportation charges from shipping point to destination shall be borne by the seller; that is, the sale is f.o.b. as to grade, quality, and condition, and delivered as to price.
10. "F.o.b. steamer" means that the produce is to be placed free on board steamer at shipping point, in suitable shipping condition (*see definition of "suitable shipping condition"*) in

accordance with the terms of the contract, and that the buyer assumes all responsibility and risk of damage thereafter.

11. "Good delivery" means product, shipped f.o.b., with no grade specified, will arrive at agreed destination without abnormal deterioration. (*See definition of "suitable shipping condition"*).
12. "Joint account transaction" means a produce transaction in which two or more persons participate under a limited joint venture arrangement whereby they agree to share in a prescribed manner the costs, profits, or losses resulting from such transaction.
13. "Joint Account - Split Above" means that the receiving joint partner will pay promptly the agreed cost of the shipment to his joint partner. After disposition of the produce, the parties will divide equally the profits on the shipment after deduction of the cost of the shipment and proper expenses from the gross proceeds. The receiving joint partner will pay all expenses and cannot recover any loss resulting from the joint venture.
14. "Open price" means a sale without a settled price at time of shipment. It is expected in such sales that the price will be settled after the buyer has completed its resales of the product to its customers.
15. "Price after sale" (P.A.S.), see "open price".
16. "Price arrival", in the absence of a contrary specific understanding, means that the produce is shipped either direct to the customer or to an agent of the consignor, for the benefit of the customer, the price to be subject to agreement between the customer and the consignor upon the arrival of the produce at the customer's destination, with sufficient time being permitted for inspection.
17. "Purchase after inspection" means a purchase of produce after inspection or opportunity for inspection by the buyer or his agent. Under this term the buyer has no right of rejection and waives all warranties as to quality or condition, except warranties expressly made by the seller.
18. "Shipping-point inspection" means that the seller is required to obtain recognized inspection, or such private inspection as has been mutually agreed upon, to show the compliance of the lot sold with the quality, condition, and grade specifications of the contract, and that the seller assumes the risk incident to incorrect certification.
19. "Shipping-point inspection final" or "inspection final" following the name of the point of origin, as California inspection final, means that the seller is required to obtain recognized inspection, or such private inspection as has been mutually agreed upon, to show the compliance of the lot sold with the quality, condition, and grade specifications of the contract, and that the buyer assumes the risk incident to incorrect certification and is without recourse against the seller on account of quality, condition, and grade.



20. "Subject approval recognized inspection" means that the seller is required to obtain recognized inspection, or such private inspection as has been mutually agreed upon, and to correctly communicate, by wire or other agreed means, the statements on the certificate as to quality, condition and grade, and other essential information, whereupon the buyer, upon approval thereof, will be deemed to have accepted the produce without recourse against the seller on account of quality, condition, and grade.

## **Interpretation**

### **Section 21.**

In the interpretation of whether a party to a dispute has failed in its obligation to conform to the standards, and in calculating damages arising from any breach, the United States Uniform Commercial Code will be controlling, specifically; Article 1, Part 2, General Definitions and Principles of Interpretation; Article 2, Sales; Article 3, Negotiable Instruments; Article 5, Letters of Credit; and Article 7, Warehouse Receipts, Bills of Lading, and Other Documents of Title. [An alternative to the U.C.C. is the United Nations Convention on Contracts for the International Sale of Goods.]

In addition, when the currency has not been specified in a contract, the currency of the shipper's country will prevail.

Finally, these Trading Standards shall apply to all transactions entered into by a member or associate member of the Fruit and Vegetable Dispute Resolution Corporation, whether or not the transaction is with another member or associate member of the Fruit and Vegetable Dispute Resolution Corporation or a non-member.

## **References**

1) *Regulations under the Perishable Agricultural Commodities Act, 1930, as amended, 7 C.F.R. § 46.*

2) *Perishable Agricultural Commodities Act, 1930, as amended, 7 U.S.C. 499.*

3) *Uniform Commercial Code, Fourteenth Edition, 1995*

## **Glossary of Terms**

This glossary has been prepared to give a more complete explanation of terms often used by fruit and vegetable dealers, but often misunderstood by one or both of the parties to a contract. These definitions repeat, to some extent, the trade terms and definitions that appear in the Trading Standards, but should be helpful in establishing a common business language between trading partners in the three member nations.

**BROKER** - This term is often used by fruit and vegetable dealers to describe a variety of commercial activities, but a true broker is a person or firm which negotiates transactions between buyer and seller, but is not otherwise a party to the transaction. The broker is expected to issue written or electronic confirmations showing all the contract terms that the buyer and seller have agreed to, as well as the identity of both seller and buyer. A broker does not take title to the goods, and is generally not responsible for payment. However, in some instances the broker issues invoices to the buyer, deducts his brokerage charge, and remits the balance to the seller. In these cases the broker must obtain the permission of the seller prior to the transaction, and this authorization must appear on the broker's confirmation of purchase and sale. This "collect and remit " broker, once he has received payment from the buyer, must make payment to the seller. A broker may become liable for payment if he guarantees payment, whether or not payment is received from the buyer.

**BUYING BROKER** - A buying broker, whether at shipping point or on a destination market, is usually a broker who has been contracted to represent one or more buyers. The obligations of a buying broker are similar to those of a BROKER, in that he must issue confirmations of sale, and does not take title to the goods being bought and sold. A buying broker who makes purchases in his own name, thereby becomes a dealer, and is required to pay the seller for the goods, regardless of whether he receives payment from his principal, the buyer.

**COMMERCIAL VALUE** - A product is considered to have commercial value when it can be sold, albeit at reduced prices, in the general course of a buyer's business, without heroic effort. A merchant claiming that a product has no commercial value should obtain a certificate from a recognized inspection service showing the condition of the product, and should document its efforts to offer the product for sale prior to discarding it.

**COMMISSION MERCHANT** - This term generally refers to a firm at the destination market, which sells produce for a shipper or grower's account on a load-by-load basis. The commission merchant does not take title to the goods, but merely acts as the shipper's agent for the purpose of selling the product. While a written contract for each load is not a requirement, the parties should develop a clear understanding of what expenses and what commission rate the commission merchant will be allowed to recover from the sales proceeds. As in the case of a grower's agent, the commission merchant should keep records that will allow a detailed, accurate accounting of the disposition of the product. The commission merchant sells the product, deducts its expenses and commission (usually a percentage of the gross sales return), and remits the balance to the grower or shipper.

**DEALER** - Any person or firm engaged in the business of buying and selling produce. This term applies to any of the above who take title to produce for the purpose of re-sale.

**DEFERRED BILLING, OPEN PRICE, PRICE AFTER SALE** - These terms are used when seller and buyer have not established a price at the time the product is shipped. While it is preferable to establish prices prior to shipment, it is not always possible. In each case, the final price is not established until after the buyer has sold the product to his customers. The price is then negotiated between seller and buyer. To use these terms requires a great deal of trust between seller and buyer, since the seller must

rely on the buyer's report of his sales when negotiating a price. When a price cannot be settled, the buyer normally has the burden of proving that his reported sales were true and accurate.

**FIXED PRICE CONTRACT** - This term is used when buyer and seller agree to a price prior to shipment which is not revocable unless the product at destination fails to meet the agreed quality and/or condition specifications, or unless the parties mutually reach an agreement to alter that price.

**GROWER'S AGENT** - A grower's agent is a firm contracted by a grower or growers to merchandise, on behalf of the grower(s), multiple shipments of fruits and/or vegetables. Quite often, this will involve an entire season's production. The grower's agent may perform a wide variety of functions, including planting, harvesting, grading, packing, furnishing of packaging materials, precooling, storage, and sales. The relationship between a grower and his agent can be complex, and should be reduced to writing, specifying the expectations of each party. As an agent, the grower's agent is expected to perform his functions with the best interests of the grower in mind. The agent's records must clearly show the disposition of all products received for sale, and must permit the grower's agent to provide the grower with a detailed, accurate accounting of sales and expenses. As a general rule, the grower's agent is expected to obtain inspection certificates to show that the product was substandard, in order to justify price reductions to its customers. Other allowances, such as for market decline, are generally considered to be improper, unless provided for in the contract, or the grower has given the agent specific authorization to make such allowances. A grower's agent generally receives payment from its customers, prepares a detailed accounting of those sales, and deducts its commission and expenses, remitting the balance to the grower.

**GUARANTEED MINIMUM PRICE** - This term is used when the buyer and seller agree on a minimum guaranteed unit price, in order for the producer to be assured that the cost of production will be covered. The price may be adjusted upward when the final price is negotiated after the product has been received and/or sold.

**JOINT ACCOUNT AGREEMENT** - A joint account agreement is a temporary partnership between a shipper or grower and a firm that performs sales. Similar in some ways to a consignment agreement, in this instance the partners agree to divide the profit based on an agreed formula. Since the profit is based on the returns, the selling firm should keep records that will allow it to prepare a detailed, accurate accounting to its partner, and the partners should develop a clear understanding about their respective responsibilities before the product is shipped.

#### **PACKAGING, STORAGE AND TRANSPORTATION GUIDELINES:**

The definitions for the packaging, storage and transportation guidelines are provided in order to provide mediators and arbitrators guidance when dealing with a complaint. Industry standards in any particular area are considered the bench marks for interpretation. The guidelines work with the understanding that when a shipment is handled under normal conditions, the agricultural product will arrive at its destination without abnormal deterioration.

#### **Packaging :**

Every package containing a perishable agricultural commodity should be of sufficient strength to withstand normal handling and transportation; and provide for adequate ventilation when required.

Where an perishable agricultural commodity is packed in a container, the product should be packed in a manner that is not likely to result in damage to the product or the container during handling or transport, the container should contain not less than the net quantity of product declared on the label; the container should not be stained, soiled, warped, broken or otherwise damaged in such a manner as to affect the shipping quality or saleability of the perishable agricultural commodity, and if the container is a closed container, it should be securely closed in a manner appropriate for the type of container and the kind of perishable agricultural commodity.

### **Storage:**

Storage facilities for a perishable agricultural commodity should be suitable to maintain the product in salable condition, and maintained within a temperature and relative humidity range to maintain the condition of the product in a suitable condition. The shipper has the responsibility to properly store produce until shipped and the receiver has the responsibility to properly store produce upon arrival.

### **Transportation:**

A perishable agricultural commodity should be transported in a vehicle suitable for that product, and maintained within a recommended temperature range such that under normal transportation and conditions, the product is maintained in a suitable condition.

**PRICE ARRIVAL** - This term, while similar to the above, has one major difference. Although the price is not established prior to shipment, the final price is not determined by referring to the buyer's sales, but is based on general market conditions as reported by official market news quotes for the commodity at destination.

**PURCHASE AFTER INSPECTION** - Under the Standards, this term is defined as "a purchase of produce after inspection or opportunity for inspection by the buyer or his agent. Under this term, the buyer waives all warranties as to quality or condition, and cannot recover damages regardless of how bad the product is when it arrives at its destination. Given the severity of this term, the party invoking it (usually the seller) should be able to provide proof that both parties agreed to its use prior to the shipment, preferably through the issuance of a written confirmation at the time the contract is formed.

**RECEIVER** - Any firm or company which purchases or receives produce at its facilities. This term does not apply to individual warehouse or unloading dock personnel.

**SALES AGENT** - That person or firm which acts as an agent for the seller of produce, generally invoicing in his own name, deducting a per-package sales fee, and remitting the balance to his principal, the seller. A sales agent's duties are normally restricted to performing sales. A sales agent does not take

title to the product, and is not liable to the seller for the invoice price until that amount has been collected from the buyer. A sales agent may become liable for payment, however, if he has guaranteed payment in the event that the buyer does not pay the invoice.

**SUITABLE SHIPPING CONDITION/GOOD DELIVERY** - The concept of suitable shipping condition (often called GOOD DELIVERY) is one of the most misunderstood in the fruit and vegetable trade. This concept applies only in connection with FOB transactions involving perishable commodities. Under the terms of an FOB transaction, the seller assures that the product will meet the agreed quality and condition requirements when the product is shipped. The seller also assures that the product will not deteriorate abnormally if proper transit conditions are maintained during shipment. This implies that some degree of deterioration will normally occur over time, even under the best of transit conditions. The suitable shipping condition concept allows the arbitrator to make a determination of whether the FOB terms were met, by interpreting a timely inspection made at destination. For instance, suppose the FOB contract called for a maximum of not more than 10% defective fruit at time of shipping. An inspection taken a number of days later at destination, showing 15% defective fruit might still be considered to show fruit which met the contract terms at time of shipment, given the fruit's perishable nature. (i.e. the product made good delivery).