

[The following certified translation is of a Spanish Code of Good Business Practices in Food Contracting.]

**CODE OF GOOD BUSINESS PRACTICES
IN FOOD CONTRACTING**

On the basis of the experience accumulated in recent years by virtue of the discussions held and the reports drafted within the scope of the “Food Price Observatory”.

Considering prior experience with self-regulation in the food processing sector in Spain, particularly the “Commercial good practice code throughout the food chain in Catalonia”, The “FIAB/ASEDAS Agreement on Good Practice Recommendations” and the Recommendations of the AECOC for “Efficient Commercial Management”.

Having examined the available background material from the European Union and particularly the work of the High Level Group on the Competitiveness of the Agro-Food Industry (HLG), the consultations made by the European Commission in its “Green paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe” [COM (2013) 37 final], as well as the subsequent Communication by the Commission “Tackling unfair trading practices in the business-to-business food supply chain” [COM (2014) 472 final], and the “European Agreement on the Principles of Good Practice in Vertical Relationships in the Food Supply Chain”.

Bearing in mind the stipulations contained in the Unfair Competition Act (Law 3 dated January 10th, 1991), in the Defence of Competition Act (Law 15 dated July 3rd, 2007), in the other domestic and international legislation on the matter and in the Reports of the Spanish National Commission for Markets and Competition (CNMC in its Spanish acronym) and those of other competent bodies.

Taking into consideration that the Food Supply Chain (Improved Operation) Measures Act (Law 12 dated August 2nd, 2013) includes among its aims rendering it possible to achieve greater equilibrium and transparency in the commercial relationships occurring between the different operators involved, the improvement of access to information and traceability throughout the food supply chain, as well as the regulation of commercial practices, and the promotion, among other measures for the achievement of the said aims, of the formalization of business good practice codes for contracting between operators.

Considering that Part III of the aforesaid Act is dedicated to voluntary control systems established under the formula of codes of good practices, with its Chapter I focusing on the regulation of a Code of Good Commercial Practices in Food Contracting, and charges the Ministry of Agriculture, Food and the Environment with driving this initiative together with the Ministry of the Economy and Competitiveness, the Regional

Governments and the organizations and associations representing food production, transformation, industrial and distribution sectors.

Bearing in mind that article 15 of the said Act establishes, in connection with the said Code, its purpose, scope and the process for its preparation.

As article 16 is reserved for specifying different questions regarding its content, which must contemplate the principles which must underlie the commercial relationships between operators, as well as the systems for mediation and the resolution of conflicts, that the economic operators subscribing the same undertake to apply voluntarily in their commercial exchanges in order to facilitate the development of their contractual relationships.

In order to provide a Code that, in the framework of current regulations, can respond to the foregoing and adequately reflect the different circumstances involved in commercial operations for food products, the main associations and organizations representing the various operators involved in the course of the food supply chain have actively collaborated in the preparation of the present Code.

The operators involved in food production, transformation, marketing, industrial preparation and distribution, and whose relationships are covered by the Food Supply Chain (Improved Operation) Measures Act (Law 12 dated August 2nd, 2013), as well as the associations or organizations representing these operators, aware that their most effective contribution to the improved operation of the food supply chain involves their voluntary subscription of the Code of Good Business Practices in Food Contracting, hereby undertake to respect the principles and guidelines indicated below and to submit their commercial relationships, in the case of operators, and their activities, in the case of associations, to the following rules:

I. Basic Principles

1. The operators involved in the phases of food production, marketing, industrial processing and distribution who have subscribed the present Code, as well as their associations or organizations subscribing the same, accept that their commercial relationships will abide by the following general principles:

- Principle of legality: In the application of this Code, all operators and their associations shall at all times act in strict compliance with applicable legislation, especially the National and EU regulations governing matters related to the defence of competition.

And, in particular, they agree to fulfil the provisions contained in Part II of the Food Supply Chain (Improved Operation) Measures Act (Law 12/2013) in all their operations.

- Principle of defence of consumers: All operators in the food supply chain and their associations shall, within the framework of the Law and the present Code, respect the interests of consumers, in order to ensure that the improvement in commercial relationships is translated into conditions offering consumers the most extensive and varied supply, as well as the most favourable and sustainable. Similarly, they shall pay special attention to the improvement of consumers' perception regarding food-related products and the enhancement of the food sector.
- Principles of freedom of enterprise, freedom of markets and freedom to reach agreements: The commercial relationships between food supply chain operators shall be governed by the principle of contractual freedom as the operators are established as independent economic entities respecting the other party's right to establish its own strategy and its own commercial and management policies, including the freedom to determine independently whether or not to enter into an agreement.

The associations and organizations subscribing the Code shall take into account the respect for these same principles in the furtherance of their activities.

- Principle of loyalty: All relations between food supply chain operators and among their associations shall conform to the principle of loyalty, whereby they undertake to treat each other responsibly, in good faith and with professional diligence. In addition to the foregoing rules and principles, the commercial relationship between operators shall also be governed by the principles of mutual interest, fairness, equitable distribution of risks and responsibilities, commitment and mutual trust.

- Principles of transparency, clarity, specificity and simplicity: Whenever operators who have subscribed the Code make use of general trading terms and conditions in food-related contracts, such terms and conditions must conform to the principles of transparency, clarity, specificity and simplicity, on the terms stipulated in the Contracting (General Terms and Conditions) Act (Law 7 dated April 13th, 1998).
- Principle of efficiency: All operators subscribing the Code undertake to guarantee, within the framework of current legislation and the present agreement, the maximum efficiency and optimization of resources in the distribution of goods in the food supply chain. The framework for contractual self-regulation must enable greater flexibility and security in commercial transactions and delve more deeply into the efficiency improvements that have occurred in recent years as well as the improvement in technological development.
- Principle of sustainability in the food supply chain: The operators in the food supply chain and their associations undertake to contemplate commercial relationships between operators from the perspective of the general sustainability of the food supply chain.

II. Scope of the Code

2. The present Code shall extend to the relationships between operators involved in the different phases of food production, transformation, marketing, industrial processing and distribution in the food supply chain, providing the operators have subscribed the same and their activities take place in Spain.

For those aspects inherent to associations or organizations, the present Code shall also extend to the activities of those associations or organizations of operators in the food supply chain that have subscribed the same.

The code shall be subject to formalization and registration in accordance with the provisions contained in Part III of the Food Supply Chain (Improved Operation) Measures Act (Law 12 dated August 2nd, 2013) and as established in Royal Decree 64 dated February 6th, 2015, and other regulations developing the same.

III. Subscription of the Code and removal from the register

3. All operators involved in the food supply chain, as well as associations or organizations of the same, wishing to subscribe the present Code shall have to request this expressly in writing and comply with the requirements of Part III of the Food Supply Chain (Improved Operation) Measures Act (Law 12 dated August 2nd, 2013) on the terms stipulated in the regulations developing the same. Such applications must be supported by those bodies that, in each case, have sufficient legal capacity and authority and must be accompanied by the documentation accrediting compliance with the requirements indicated in the following article.

4. Operators involved in the phases of food production, transformation, marketing, industrial processing and distribution in the food supply chain and wishing to subscribe the Code of Good Business Practices in Food Contracting shall have to comply with the following requirements:

- Have their headquarters in Spanish territory or, where this is not the case:
a) purchase products produced, processed or marketed on the Spanish food supply chain; or b) supply products intended to be processed or marketed on the Spanish food supply chain.
- Engage in commercial activities related with the production, transformation, marketing, industrial processing and distribution of foodstuffs or food products, as defined in article 5 of the Food Supply Chain (Improved Operation) Measures Act (Law 12/2013).
- Undertake to apply the good practice principles contemplated in the Code to all of their trading relationships with other operators in the food supply chain who are operating in Spain.

5. It shall also be possible for organizations or associations on a scale greater than Regional and representing the interests of producers, transformers, marketers, industrial processors and distribution companies to subscribe the Code at an institutional level without thereby binding their respective members.

6. Any operator voluntarily wishing to de-register from application of the present Code must notify this following the procedure indicated in article 8 of Royal Decree 64 dated February 6th, 2015, at which time their inclusion on the State Register for Good Business Practices in Food Contracting shall be cancelled.

7. Where the Oversight Committee referred to in section IX below confirms the reiterated failure to comply with the undertakings assumed by any of the companies or organizations that have subscribed the Code, then this Committee shall be able to

propose temporary suspension or definitive removal of their inclusion on the State Register for Good Business Practices to the Ministry of Agriculture, Food and the Environment.

IV. General undertakings of operators and their associations

8. Clarity and due existence of commercial contracts and agreements:

- All contracts and agreements between operators must be drawn up in writing using, where possible, electronic means for the exchange of information. Whenever, with respect for applicable legislation, a written form is not feasible, one of the parties must subsequently send the other written confirmation.
- All contracts and agreements must be clear and transparent and must set out as many as possible of the pertinent elements that may be foreseeable, including the rights and obligations of the parties.
- All contracts and agreements shall contain the rules for the parties to be able to amend the provisions therein jointly and consciously and, whenever necessary, the parties shall agree on compensation for any cost that may arise as a result of such amendments.
- The associations or organizations subscribing this Code undertake to promote the formalization in writing of contracts and agreements among their members and within the framework of current legislation.

9. Foreseeability of commercial relationships:

- The associations or organizations subscribing the present Code shall promote the use of standards and general terms and conditions that facilitate business activity and contain reasonable clauses.

10. Fulfilment of commercial contracts and agreements:

- Subscribed operators undertake to include operational and functional changes tending to guarantee their complete fulfilment of contracts and agreements and the application of reasonable notice terms prior to any suspension or termination of commercial relationships on the terms foreseen in current legislation.
- Contractual penalties that may be applicable in the event of a failure to comply shall be transparent, justified and not disproportional with regard to the harm suffered.

11. Loyalty, confidentiality and respect for Law in the exchange of information:

- All operators, as well as their associations or organizations, undertake that the exchange of information shall be limited to such information as may be justified in the context of the commercial relationship between them and shall be effected in strict accord with the regulations defending competition and other applicable legislative provisions, particularly the provisions contained in article 13.1 of the Food Supply Chain (Improved Operation) Measures Act (Law 12 dated August 2nd, 2013). For this purpose, they must adopt reasonable precautions to ensure that the information provided is correct and not misleading and that there is no improper use made of the same, with the party receiving the information under an obligation to guarantee its confidentiality.

12. Transfer of risk and responsibilities:

- All operators involved in the phases of food production, transformation, marketing, industrial processing and distribution in the food supply chain must assume their own entrepreneurial risks within the framework of the competition regulations and particularly the provisions contained in article 12 of the Food Supply Chain (Improved Operation) Measures Act (Law 12 dated August 2nd, 2013).
- All operators undertake not to transfer risks unilaterally nor to impose any requirement on the other party to the contract to finance their own business activities.

13. Justification of business demands:

- Food supply chain operators undertake not to use or enforce threats nor impose any unjustified conditions or demands as a prior condition for obtaining commercial advantages, especially during negotiations between the parties.
- Operators undertake to procure the best planning, reception, storage and presentation of the goods delivered. Whenever it is necessary, for operational reasons, for a party to advance, delay or fragment delivery or reception, this will be notified to the other party as promptly as possible and bearing in mind the indications given in the agreement established between the parties. The scheduled calendar for deliveries or reception shall not be interrupted to obtain an unjustified profit.

V. Clauses on commercial practices common to the whole food supply chain

As a supplement to the general undertakings listed in chapter IV, the food supply chain operators and their associations or organizations subscribing the present Code shall assume the following undertakings:

V.1. Commercial negotiations

14. Annual commercial negotiations for the organization of their activities shall be concluded and signed by the companies involved within the framework of reasonable deadlines not greater than 3 months from the start thereof, without any undue delay in the same attributable to one party being used to weaken the position of the other party to the negotiations. For this purpose, an email showing the date of receipt by the other operator shall be deemed sufficient to document the start date. In those cases where the renewal of a food-related contract is foreseen, any new commercial tax shall be negotiated preferably prior to the maturity of the contract in force or within the term of two months following its expiry. During this time, the previous contract shall remain in force but it shall be possible for the parties to agree to backdate the effect of the new commercial conditions to the maturity of the prior conditions.

V.2. Contracts

15. Without prejudice to the provisions contained in Chapter I of Law 12/2013, all operators involved in the phases of food production, transformation, marketing, industrial processing and distribution that have subscribed the present Code shall formalize, in writing, the contracts arising out of the commercial relationships they enter into with any other operator in the food supply chain and they shall promote the use of this practice by the operators with which they have commercial agreements to the rest of the operators in the chain.

16. Contracts shall contain all the terms and conditions applicable to the contractual relationship between the supplier and the purchaser. In particular, the contract shall clearly establish the following aspects in addition to the particulars established in article 9 of Law 12/2013:

- The categories and references contracted and, whenever possible and deemed necessary, those items on which the parties have reached agreement with regard to the fixed or estimated volumes and/or the establishments where the product will be stocked.
- The procedure for invoicing and collection and the handling of any incidents related therewith, which procedure must respect the payment deadlines legally established.

- Any contractual penalties for non-conformities, incidents or any other duly documented circumstance must be proportional and balanced with respect to both parties.
- Exceptions for reasons of *force majeure*. In particular, no penalties shall be applied for delay in the delivery of perishable products when the delays stem from reasons of *force majeure* as foreseen in article 2.8) of the EC Regulation n° 1,857/2006 dated December 15th, 2006, in accordance with the procedures established therein.
- Service contracts must clearly specify the activities and responsibilities attributed to each of the parties to the contract. All operators and their associations shall collaborate within the AECOC to encode these services and identify them in their commercial relationships.
- In all new contracts and as and when pre-existing contracts are reviewed or renewed, an indication will be inserted to reflect the undertaking to resolve any conflicts that may arise during their currency in accordance with the provisions contained in section VIII of this Code.

17. The total or partial suspension of any indefinite commercial relationship or one lasting for 1 year or more (including renewals) must be notified in writing giving reasonable advance notice in the light of the specific circumstances of the commercial relationship (taking particular account of any circumstances in which the parties have agreed on the acquisition of ancillary materials), and complying with the regulations on competition and unfair competition. The minimum period of prior notice to be given must be set in all new contracts and as and when pre-existing contracts are reviewed or renewed.

18. Should a particular business sector have a standard contract approved by the competent Authority, then the companies subscribing the present Code must use it in their commercial relationships without prejudice to the fulfilment of the rest of the provisions established in this Code with regard to contracting.

19. The associations or organizations representing the operators subscribing the Code shall identify and distribute among their members contract templates that containing significant improvements in the contracting regime in accordance with the provisions contained in Law 12/2013 and in other legislation in defence of competition.

V.3. Mediation

20. All the associations or organizations subscribing the present undertake to encourage among their members the use of mediation tools to facilitate the resolution of any discrepancies that may arise in their commercial operations, using for the purpose the most appropriate public and private tools available for this task, including any that may be promoted by the associations themselves. In all cases, the application of such mechanisms shall ensure strict compliance with the legislation on matters relating to contracts and the defence of competition.

21. In the specific case foreseen in article 16.1. of Law 12 dated August 3rd, 2013, with respect to the non-existence of any agreement between an organization of producers and a purchaser on the price of the food-related contracts regarding agrarian produce not transformed prior to their first sale, the mediation process shall be conducted in accordance with the provisions contained in Section 1 of Chapter II in Royal Decree 64 dated February 6th, 2015.

V.4. Contractual duties

22. The parties shall identify the persons empowered to act in direct or indirect representation of their respective companies and shall also indicate the functions entrusted to them.

23. Whenever information is exchanged between the parties, it must be given in writing with sufficient notice and shall be limited to such information as may be justified in the context of the commercial relationship, in strict fulfilment of the regulations on competition and other applicable legislative provisions. All parties must adopt reasonable precautions to ensure that the information provided is correct and not misleading.

V.5. Unilateral amendment of contracts

24. None of the parties shall unilaterally amend the clauses of the food-related contract nor the commercial terms and conditions unless this possibility and the circumstances and conditions for the same have been set down in writing and in advance by mutual agreement between the parties in accordance with the general principles of Law 12/2013. In all new contracts and as and when pre-existing contracts are reviewed or renewed, provisions shall be inserted, whenever necessary and for specific circumstances, for reasonable compensation in proportion to the impact of possible costs potentially incurred by the other party due to the amendment of the contract.

25. Where the food-related contracts foresee the alteration of the prices set on the basis of a general tariff, any modification by the supplier of its general tariff must be notified to its clients at least 30 days in advance. When the produce in question is fresh or perishable this notice period may be shorter in line with customary practice in the sector. Such notice must be given using a system providing a written record, for which purpose email may be used. In any case, clients shall be able to renegotiate their particular commercial terms and conditions or notify the other party by the same system of the rescission of the supply contract prior to the entry into force of the new tariffs.

V.6. Management of categories and innovation.

26. Category Management

1. The criteria for category management shall be determined in advance and shall avoid unfair treatment, such as the exploitation by a company of any situation of economic dependency that may affect their clients or suppliers with no equivalent alternative available for the exercise of their activity. Such a situation shall be deemed to exist whenever, in addition to habitual discounts or terms, a supplier regularly has to grant its client other additional advantages not granted to similar purchasers.

Operators shall manage the trade marks for food products they offer to consumers, whether their own or those of other operators, avoiding any practices contrary to free competition or constituting acts of unfair competition in accordance with the provisions contained in Law 15/2007 and in Law 3/1991, as well as acts of illegal advertising in accordance with Law 34/1988.

2. Furthermore, no improper exploitation of another's entrepreneurial initiative will be made by any operator for its own benefit, nor will it use any advertising deemed illegal or unfair through the use, on packaging, in presentation or on the advertising for the product or service, of any distinctive elements that might give rise to a risk of association or confusion with those of another operator or with brand names or trademarks of another operator, as reflected in point 2 of article 14 of Law 12/2013.

27. Innovation in the food chain.

1. All operators involved in the phases of food production, transformation, marketing, industrial processing and distribution that have subscribed the present Code undertake to work together to facilitate access by consumers to the relevant innovations in food products on the terms defined in section 2. Similarly, they undertake to encourage and spread food-chain innovation in our country so as to

enable a gradual increase in the presence of relevant innovations in the food supply chain.

2. For the purposes of the present Code, regard shall be had for the definition of innovation given in the Oslo Manual (OECD/EC 2005), namely “*the introduction of a new or significantly improved product (good or service), a process, a new marketing method or a new organizational system in the company (whether internal or in its relationships with the outside world)*”, implying four types of innovation depending on whether it affects the company’s product, process, marketing or organization.
3. The organizations and associations subscribing the present Code and present on its Oversight Committee undertake to work jointly with the Ministry of Agriculture, Food and the Environment on the design and implementation within the said Committee of “panel for monitoring innovation in the food sector”.

This panel will be set up with the following aims: a) to improve information about the innovative effort made by the various links in the food processing supply chain as a whole; b) to analyse the aggregate data for the sector to show relevant trends in innovation and their significance on the various links in the chain; c) to contribute to the dissemination of the most relevant experiences and best practices with regard to innovation throughout the chain; d) to contribute to the generation and transfer of knowledge with regard to innovation; e) to improve collaboration between the different agents involved in innovation processes.

In order to drive the development in Spain of food-related innovation, the organizations taking part in the panel shall, jointly with the Ministry of Agriculture, Food and the Environment, promote a strategy for fostering innovation so as to enable Spain to attain levels of innovation similar to those seen in our European neighbours, maintaining proper coherence with the rules on state aid established in the TFEU and in the different Regulations or Directives that may be applicable.

V.7. Ties to third parties

28. The operators subscribing the present Code assume the following principles with respect to the involvement of third parties in their commercial relationships:

- The quality standards imposed by the purchaser and rendering necessary or appropriate the acquisition of third-party products or services by the supplier must be transparent, objective and not discriminatory with respect to other operators.

- It shall not be possible to require that the supplier, as a condition for formalization or maintenance of its commercial relationships, to enter into any kind of contract with third parties, except as required for the fulfilment of the contract. This requirement may not imply the imposition of an obligation considered abusive or contrary to the regulations on the defence of competition.
- The purchaser shall not be able to require or induce the supplier to reduce the amounts supplied or to increase the prices charged in its contracts with other purchasers.
- The conditions for the provision of the service shall always be available for both parties, as well as the report on the effective result of the sub-contracting.
- In those cases where the performance of such a service gives rise to doubts on its application, either of the parties may propose its revision and, if any failure to comply has occurred, provide grounds for the immediate proportional compensation, in accordance with the terms agreed.

V.8. Promotional activities

29. Any and all promotional activities undertaken by the operators subscribing the present Code shall conform to the following principles:

- The launch and execution of promotions must take place on the basis of the following principles: a) agreement and freedom to enter agreements; b) mutual interest; and c) flexibility to adapt to the specific circumstances of the different operators.
- Any agreements on commercial promotions shall be respected in terms of their nature and integrity. Such agreements, which must have received the explicit consent of both parties, must set out the aspects defining the promotion: the deadlines (start and end dates), the transfer prices, the volumes and any other issues of interest, as well as the aspects of the promotion relating to its procedure, type, execution, geographic coverage and the appraisal of its outcome.
- The contents of merchandising services, tastings, or other promotional formats needed for certain actions aimed at encouraging purchase, whether rendered by the supplier or distributor itself or else through third parties chosen by either the manufacturer or the distributor must be set down in writing, ensuring strict compliance with current legislation, especially with regard to labour laws, and must be approved by both parties. The outcome of the promotions, regardless of

who renders the service, will be made available to the parties in due time and manner as agreed.

- All operators subscribing the present Code undertake to collaborate with their suppliers to improve the perception by consumers of food produce as high-quality products of great nutritional value through the appropriate promotional instruments. To do so, they undertake not to engage in promotional activities that may lead to error regarding the price or image of the products. In this sense, so as not to harm consumers' perception about the quality or value of the products referred to in a promotional campaign, all operators must clearly identify the price on the advertising information, posters and on purchase tickets. This must be done in a clear manner that does not give rise to misunderstandings and in such a way that consumers have an exact knowledge of the scope of the promotional campaign.
- Generally speaking, and particularly in the execution of promotional activities, all operators subscribing the present Code shall pay special attention so as not to fail to comply with the provisions contained in current regulations regarding loss-leading sales.
- The party harmed must be compensated for any circumstance under the control of the other party that may give rise to failure to achieve the promotion agreed, or its performance on dates or with terms other than those established. Such compensation must be established by the parties, taking into account the harm caused.
- In those cases where agreements are reached regarding promotional activities with Purchasing Centres, the percentage of inclusion or coverage of such activities by their members shall be included in the agreement, together with the list of sales outlets initially signing up for the promotion, whenever this is possible and has been agreed by the parties.
- Generally speaking, promotions must be agreed in accordance with the present clause. Nonetheless, in the case of promotions and advertising campaigns sponsored by manufacturers on the packaging and labels of their products or by other means under their own control that do not generate an additional economic or operational cost for their distribution, prior notification shall suffice so as to enable the distributor to be aware of the promotion.

V.9. Supply chain and logistics

30. Better logistics is deemed to be a shared benefit in which each party must assume their own responsibility but where the companies must co-operate as far as possible to

ensure maximum efficiency, an indispensable aspect for the proper operation of the food value chain and the competitiveness of its operators. For this reason, operators subscribing to the present Code shall promote the use of work tools that enable the maximum efficiency to be achieved in logistics matters. With regard to incidents and returns that might occur during the logistics process, the following aspects will be taken into account:

- This maximum co-operation on logistics matters will always be based on full compliance with agreements relating to: a) guarantee of supply; b) delivery dates and times, which must be documented in all cases; c) minimum orders, with respect to both individual SKUs and loading units; d) duly identified and quantified conditions and service levels; e) waiting times and penalties; f) product formats; and g) proportionate compensations in the event of any failure to comply with the preceding agreements, enforceable from the moment they are signed.
- Stock outages caused by bad faith or negligence will be avoided, with compensation given by the party at fault for the economic cost incurred. Any failure to supply, in view of the particularly serious harm caused to the whole value chain and to the companies' credibility vis-à-vis consumers, must always be avoided by all parties, particularly through the performance of any and all joint activities for strategy and planning, demand analysis and supply-side administration, execution and other analyses as may be necessary to ensure proper supply.
- The contracts shall stipulate the criteria to be taken into account to determine the compensations that may be appropriate whenever unjustified returns or non-reception of products occur. Such compensation shall be proportional to the result of the incident and must be assumed by the party at fault. The parties shall act in the same way when the returns are due to defects or errors.
- Whenever returns arise in connection with product quality, a clear procedure will be agreed for the resolution of differences, with identification of the interlocutors responsible for each company and for facilitating the handling of incidents.
- The contracts shall stipulate the procedures to be followed in the event of product rejections, whenever these correspond to observable defects including those caused by errors existing on the purchase order. Such rejections, whenever possible, must be identified at the moment of delivery/reception of the merchandise and must be justified and documented. In all other cases, they must take place within a reasonable period of time, in line with the product's turnover period.

- Once incidents have been identified, they must be notified with the greatest possible diligence in such a way as to guarantee their receipt by the other party and the necessary supporting documentation will be provided where appropriate.
- Once the incident has been reported in writing and documented, if the parties fail to reach agreement within the term of two weeks, the operator that has reported the incident may opt to withdraw the claim or resort to the methods foreseen in Chapter VIII of the present Code for the resolution of discrepancies.
- All incidents implying the destruction of the product will be accredited to the supplier by means of documents and any such destruction shall be carried out in accordance with the applicable rules.
- Reasonable prior notice must be given and agreement reached, where appropriate, on changes to any aspect of operators' logistics system not foreseen in the contract.
- Any agreements reached between operators must contemplate the different logistics aspects arising out of their application and they must be complied with on the terms agreed, especially with respect to product formats and codes.
- Bearing in mind the principles of economy and efficacy that advocate standardized codification, the parties shall strive to achieve internal unification of codes at commercial and logistics levels.
- The parties shall co-operate in the fulfilment of the corresponding rules applicable to the pools of pallets and shall facilitate the correct handling of the return of returnable packaging, cases and pallets.

31. With respect to the administrative management procedures associated with the supply chain, all operators subscribing the present Code shall take the following aspects into account:

- Proper identification of the persons responsible for administration and payments within the company.
- Promotion of the use of electronic administrative procedures (order, delivery note, invoice and payment) through the use of the standard mechanisms available, so as not to incur unnecessary and inefficient duplication of information media, provided that this does not imply any additional cost or the supplier.

- Justification, through the corresponding documentation, of all complaints and related charges, establishing clearly and transparently their nature and specifying the concepts involved so that they can be perfectly identifiable for both parties.
- Claims for amounts due for services, incidents or any other circumstance should preferably be brought within the maximum term of two months, in the case of fresh seasonal produce, or six months in all other cases from the occurrence of the event giving rise to the right to complain. In any case, complaints will be entertained after 24 months have elapsed since the occurrence of the event giving rise to the right to complain.

V.10. Payments

32. With regard to the payments made by operators subscribing the present Code, in addition to the provisions foreseen in the current regulations in this respect, particularly for the maximum terms for payment of produce, operators will act in accordance with the indications given in the following points:

- The purchaser must pay the invoices received in their entirety, unless charges previously agreed in the food-related contract or prior to the issue of the invoice must be applied for services, penalties or any other kind of settlement or compensation to the supplier, without prejudice to any actions that may be deemed appropriate in law for claims.
- For the calculation of the payment term, consideration must be given to its effective duration from reception of the merchandise in accordance with the applicable legislation.
- If there are differences between the parties regarding the prices and/or amounts after the invoice is issued, they shall abide by the terms established in the contract. In the absence of any contractual premise, the parties shall proceed to resolve the discrepancy on the terms foreseen in business law and by means of a nimble procedure without undue delays that will enable payment of the parts of the invoice over which there is no discrepancy.
- Payment for the purchaser's services authorized in current regulations shall be substantiated in the form of a discount on the purchase price, duly documented on the supplier's invoice.
- Operators subscribing the present Code undertake, where other companies are used to invoice for the purchase made from their suppliers, not to attribute or charge any additional cost.

- Operators subscribing the present Code undertake not to apply other additional payments on top of the price agreed other than those contemplated in article 12 of the Food Supply Chain (Improved Operation) Measures Act (Law 12/2013). In consequence, additional payments on top of the price agreed will be prohibited except for those referring to the reasonable risk of referencing a new product or the partial financing of a commercial promotion for a product reflected in the unit retail price and agreed and expressly included on the corresponding contract formalized in writing together with the description of the considerations the said payments are associated with.
- Should there be any variations in the taxes, charges and other levies imposed, or in the contributions effected to the integrated management systems, during the currency of the contracts, regard will be had for the provisions contained in contract for these purposes. Where this circumstance has not been foreseen in the contract, its application may not be carried out by operators in any way that may be considered abusive or contrary to the regulations in defence of competition. In any case, such application shall take place in the time frame and manner foreseen in the regulations governing the same.

V.11. Relationships with third parties

33. In order to facilitate relationships with third parties who may be involved in the contractual relationship between the parties and in order to avoid the existence of discrepancies regarding such relationships, both parties shall agree on a protocol establishing their collaboration with regard to handling the claims about products affected by that commercial relationship potentially brought by third parties. The said protocol must include the conditions on which the supplier shall take charge of such claims.

V.12. Communications between operators

34. The following aspects shall be taken into account to facilitate the relationship and communications between operators subscribing the present Code:

- Communication to the competent personnel of each company of everything arising out of the agreements entered into for the correct execution of the undertakings assumed.
- Companies that are not SMEs shall establish a procedure for the resolution of conflicts related to the fulfilment of the present Code, as indicated in clause 42.1.

V.13. Food safety, quality and information for consumers.

35. Operators acknowledge that the quality of products is a shared objective for all participants in the supply chain. To this end, operators shall co-operate in ensuring this quality. Operators, as well as their participating associations or organizations, undertake to co-operate with respect to food safety, using the channels and mechanisms currently in place for the purpose and to comply with the other requirements contained in legislation.

36. Operators, as well as their associations or organizations, shall promote knowledge and use of the suitable recommendations with regard to quality criteria for product storage from delivery to store shelf (temperature, humidity, palletization, placement, information for consumers, etc.).

37. Operators shall apply a clear, co-ordinated procedure for the resolution of the differences arising on quality matters, identifying the persons responsible at the associated companies and facilitating the handling of incidents.

38. Operators shall strengthen their efforts and resources with regard to the handling of claims by consumers. For this purpose, the necessary collaboration channels shall be established for the adequate handling of such claims, with both parties collaborating and assisting each other effectively in the resolution of the incidents.

VI. Clauses on specific commercial practices for certain operators in the food supply chain.

39. Operators in the food supply chain subscribing the present Code undertake to respect the following aspects in their commercial relationships with primary producers:

- Not to divert products acquired for transformation or other uses to the fresh produce market.
- To encourage the adoption of measures that help to achieve the sustainability of the primary sector and to remunerate proportionally the value provided to the supply chain by agricultural production, following the principles of responsible trading and respecting, in all cases, the rules of competition law. For this purpose, whenever possible, the value of seasonal and low-mileage food products will be highlighted within the context of the commercial strategies of operators subscribing the present Code.
- To pay special attention to compliance with the applicable regulations on food-related information furnished to consumers about the origin of products. In

particular, in the case of marketing fresh fruit and vegetables, their country of origin or the real provenance of the produce must be identified in a clearly visible manner in a suitable font or easy identification by consumers.

40. Operators in the food supply chain involved in the phases of marketing, transformation and industrial processing who have subscribed the present Code undertake to respect the following aspects in their commercial relationships with the distribution sector:

- To furnish such technical information about the product and the alteration of its quality as may be necessary to comply with the obligations regarding food-related information for consumers that correspond to the distributor. This information shall be provided in suitable formats for its processing and integration in the processes of face-to-face and distance sales. Whenever the manufacturer and the distributor agree to use the services of a third party to comply with the obligations regarding information for consumers arising out of current regulations, they must reflect in the contract the criteria for sharing out their cost.
- Manufacturers must communicate and justify all alterations in the quality of a product referred to in a contract in force whenever this may represent a disadvantage or an impairment for consumers or for the distributors marketing the same.
- Changes in the sell-by dates or best-before dates on the data sheets for a product referred to in a contract in force must be justified and notified giving reasonable prior notice so as to enable the distributor to adjust the logistics system.
- The launch of shopping vouchers or discount coupons must be agreed in advance with all the operators affected, who must expressly agree to the terms and conditions and the deadline for their placement on the market, as well as the consideration foreseen for the activity of redeeming and handling the coupons. Operators with whom such collaboration has not been agreed shall reserve their right not to participate in such promotional actions and this shall be notified to consumers. For these purposes, the parties undertake to disseminate and oversee compliance with the AECOC Recommendation about promotional coupons.

VII. Other agreements

41. All operators involved in the phases of food production, marketing, transformation, industrial processing and distribution that have subscribed the present Code additionally assume certain other commitments intended to provide special attention for ensuring the

quality of the food products intended to be made available to consumers, in order to reduce the volume of food waste in the different phases of the chain, and to strengthen co-operation between operators when facing crisis situations on the market. Operators hereby assume the following undertakings:

- To have available, regardless of the operator's position in the chain, of management and handling guidelines adapted to the products, so as to enable the conservation of the products' quality and make it possible for them to reach consumers in the best conditions for their conservation.
- To advance in the development of food-handling and processing protocols adapted to the different types of product managed and the position occupied in the supply chain, so as to enable proper control and reduce food waste.
- All operators subscribing the present Code undertake to advance in the implementation of stock management systems for products through the efficient use of product orders and transportation.
- Whenever, due to causes outside the sector itself, a crisis arises or is foreseen in a sector involving any product in the food production chain at any point on the chain and/or in consumption due to a lack of trust among consumers, then the companies subscribing the present Code undertake to collaborate closely, respecting the regulations in defence of competition, to find strategies and mechanisms that may help reduce its impact.

VIII. Compliance with the Code and resolution of discrepancies

42. In the event of any conflict or discrepancy with regard to the application of the present Code to individual companies, the operators subscribing the same undertake to resolve the conflict or discrepancy in good faith and minimizing, as far as possible, the operational and management costs in accordance with the following procedure:

1. The first step to be taken by the operator considering itself to have been harmed shall be to request that the issue be resolved at a higher level of the commercial hierarchy in the company allegedly at fault, within the maximum term of 10 working days from the presentation of the request.

For these purposes, companies subscribing the present Code that are larger than an SME must design and publish an internal conflict resolution procedure that must be independent of the commercial departments and with a function equivalent to an "ombudsman defending clients and suppliers". Its operation must be impartial and, in these cases, it must have the capacity to adopt a

resolution within the maximum term of 20 working days from presentation of the request.

2. Should no answer have been obtained in the deadlines stipulated or if no agreement is reached and the party considering itself to have been harmed wishes to continue with these proceedings, the resolution of the conflict shall be submitted to a mediation system or, if not available, the parties may resort directly to an arbitration system as contemplated in section 3. Such mediation shall be begun and carried out in accordance with the provisions contained in the Mediation (Civil and Business Matters) Act (Law 5 dated July 6th, 2012) and the regulations developing the same.

The subscription of the present Code shall imply for operators their acceptance of the undertaking to submit to mediation any and all disputes between the parties for the purposes foreseen in article 6.2. of the aforesaid Law 5/2012.

3. Where it has not previously been agreed to resort directly to arbitration, and should the previous mediation system conclude without any agreement having been reached, bearing in mind the undertaking to minimize the operational and management costs of conflict resolution, the operators subscribing the present Code may make use of arbitration systems, following for the purpose the procedure foreseen in the Arbitration Act (Law 60 dated December 23rd, 2003).

43. Where the failure by an operator to comply with the principles set out in the present Code affects multiple operators, the subscribing associations or organizations representing these may apply to the Oversight Committee for confidential proceedings to be held anonymously as a collective complaint in order to enable a decision to be reached on the compliance or otherwise of the said practices with the present Code.

The Oversight Committee shall establish the collective complaint procedure in its internal operation regulations in such a way that, as far as possible, is compatible with the rules of procedure of the organ of governance foreseen in the “Principles of Good Practice in Vertical Relationships in the Food Supply Chain” agreed by the European associations representing the industry and the distribution sector. The notification system and the working procedure must at all times ensure anonymity and confidentiality as well as the rules governing competition.

IX. Oversight Committee for the Code of Good Business Practices in Food Contracting

IX.1. Composition and operation

44. The Code's Oversight Committee, as foreseen in article 16.3 of Law 12/2013, shall be chaired by the Director General of the Food Industry and shall additionally comprise a total of 16 members, distributed as follows:

- Two members representing the Ministry of Agriculture, Food and the Environment, designated by the Minister.
- Two members representing the Ministry of the Economy and Competitiveness, designated by the Minister.
- Three members representing producers, proposed by the professional agrarian organizations representing the operators in the production sector subscribing the present Code.
- One member representing the Food and Farming Co-operatives of Spain.
- Four members representing the food industry, proposed by the sectoral organizations and associations representing the operators in the industrial sector subscribing the present Code.
- Four members representing the distribution companies, proposed by the sectoral organizations and associations representing the operators subscribing the present Code in the modern and specialized distribution sector.

A civil servant from the Subdirectorate General for the Structure of the Food Supply Chain shall act as Secretary, with the right to speak but not to vote in the deliberations of the Committee. This civil servant shall be designated by the Chair.

With the right to speak but not to vote, a representative designated by the National Markets and Competition Commission shall be able to attend as a guest, if so requested.

45. The Oversight Committee shall establish its internal operation regulations and the system or monitoring compliance with the Code. The work of the Committee shall be conducted within strict confidentiality and anonymity, for which purpose it must draw up adequate rules of procedure to prevent conflicts of interest, as well as a specific confidentiality agreement, in all cases guaranteeing the regulations in defence of competition. The Oversight Committee shall adopt its decisions by a simple majority, with the Chair having a casting vote in the event of a tie.

IX.2. Functions

46. The work of the Oversight Committee shall cover the following functions:

- The Oversight Committee will be the organ in charge of interpreting and deciding the scope of the clauses making up the present Code.
- Implementation of the monitoring of the introduction and the degree of compliance with the present Code by operators and their associations or organizations.
- Promotion of actions to facilitate the understanding of the Code among food supply chain operators.
- Reporting each year to the Food Supply Chain Observatory on the result of its work and informing it of the proposals deemed appropriate in connection with the improvement and updating of the undertakings contemplated in the Code.
- In accordance with the provisions contained in article 7 of the present Code, it may propose to the Ministry of Agriculture, Food and the Environment the temporary suspension or definitive removal of the inclusion on the State Register for Good Business Practices of those operators known to have failed to comply with the terms of their undertakings.
- It will receive reports from the associations and organizations included in it on the activities promoted among their respective memberships to encourage awareness of the Code and to drive their adoption of the same.
- In collaboration with the Food Supply Chain Observatory, the design and implementation of the “panel for monitoring innovation in the food sector” referred to in article 27 of this Agreement.
- Establishment, within its internal operating regulations, of the collective complaint procedure foreseen in article 43 of this Agreement.

X. Publicity of the Code of Good Business Practices in Food Contracting

47. Regardless of the actions carried out by the Ministry of Agriculture, Food and the Environment to raise awareness of the Code, in accordance with the provisions contained in article 17.3 of Law 12/2013, the associations or organizations representing operators in the food supply chain that have subscribed the present Code undertake to use such means as they may deem appropriate to ensure the maximum dissemination

and information about its contents and to promote the greatest participation by their members.

48. All operators involved in the phases of food production, marketing, transformation, industrial processing and distribution as well as their associations or organizations that have subscribed the present Code undertake to use the mention “Subscribed to the Code of Good Business Practices in Food Contracting” and the logo created for the purpose.

XI. Implementation of the Code

49. All operators subscribing to the present Code shall review and, where necessary, amend their contracts in order to guarantee their compatibility with the present code, so that they can be applied following their subscription of the Code in all new contracts entered into and in those coming up for revision or renewal.

50. In the event of any penalties imposed as a result of the practices and behaviour carried out by application of the Code, it shall not be possible to argue the role and participation of the public powers in the preparation of the present Code, legitimate trust, “regulatory confusion”, presumption of acting in accordance with law, or any analogous circumstances arising out of the role of the public powers in connection with the preparation of the Code.

Madrid, November 24th, 2015

CERTIFICATION

Edward EWING, as Official Translator of Spanish and English duly appointed by the Spanish Ministry of Foreign Affairs and Co-operation, hereby certifies that the foregoing text is a true and complete translation in English of its original in Spanish.

In Madrid, on January 4th, 2016.

CERTIFICACIÓN

Don Edward EWING, Intérprete Jurado de inglés nombrado por el Ministerio de Asuntos Exteriores y Cooperación, certifica que la que antecede es traducción fiel y completa al inglés de un documento redactado en lengua española.

En Madrid, a cuatro de enero de 2016.