



**AGRICULTURE FISHERIES AND FOOD AUTHORITY
(Horticultural Crops Directorate)**

HORTICULTURE CODE OF CONDUCT

**GUIDELINES FOR CONTRACTUAL AGREEMENTS BETWEEN THE PRODUCER
AND DEALER IN THE INDUSTRY**

The guidelines shall:

- i) Act as a memorandum of understanding between the producer and dealer of fresh horticultural produce.
- ii) Serve as a guideline for the producer and dealer in order to conduct good business practices, which will be mutually beneficial, and help promote the well-being of the horticultural industry in Kenya.
- iii) Act as a guideline or framework to development of a legally binding contract to be executed by the producer and dealer.

OBLIGATIONS OF THE PRODUCER AND DEALER

- a) The **producer** shall
 - i) Be organized into well-managed group or registered legal entities.
 - ii) Relate to specific dealers only under a contract as specified in this Order. Producers dealing with different dealers shall clearly designate blocks
 - iii) Request for training on any aspect that deals with quality control as need arises
- b) The **dealer** shall:
 - i) Relate to specific producer entities under a contract as specified in this Order

- ii) Provide the necessary extension services to the producer(s).
 - iv) Relate directly with the producer.
 - v) Not engage sub-dealers
 - vi) Establish means and ways of financing the producer where necessary
 - vii) The dealer should be a member in a duly registered industry association
 - viii) Submit agreement between the exporter to the directorate or relevant county government for verification and witnessing before execution
 - ix) The marketing agent shall be responsible for traceability of the product
 - x) Relate to a specific exporter/dealer/buyer for specific crops
- c) All parties in the contract shall
- i) Undertake to conduct their business diligently and professionally at all times.
 - ii) Submit agreement to the directorate or county government for verification and witnessing before execution
 - iii) Seek for mediation from the directorate or court of law in the event that there is breach of the contract
 - iv) Ensure that the contract is adhered to
- e) **Obligations of the regulator in collaboration with County government**
- The regulator shall:
- i. Provide specialized advisory services to the producers, marketing agents and exporters
 - ii. Arbitrate on disputes arising from the contracts
 - iii. Enforce the agreements/contracts
 - iv. Maintain a database of registered agents for reference
 - v. Enforcement of the relevant laws, codes of practice
 - vi. Implement sampling and testing plan to check on compliance to industry requirements
 - vii. Provide a service charter to the marketing agent
 - viii. Undertake field surveillance to ensure adherence to the code

ESSENTIAL ELEMENTS OF THE CONTRACT

The contract shall include specific terms and conditions for production, handling and collection of produce, payment, and any other essential elements, which will create a clear understanding of obligations of both the producer, the marketing agent and the exporter.

The elements include:

- a) **Quantity and quality of produce to be supplied at a particular time and contract price**

- i) The contract shall specify the **quantity** in either boxes/cartons/crates or kilos to be supplied by the producer(s) over a period of time.
 - ii) Contract should specify a **minimum quantity** of produce to be supplied by the contracted produce source. (i.e. quantity below which no collection will be effected.)
- b) **Seed and other Inputs**
- i) The contract shall specify who is responsible for inputs, including labour.
 - ii) If buyer requires the use of certified seeds/planting materials by the seller, it shall be specified in the contract.
 - iii) Contract shall address which party will be responsible for supplying and applying other inputs such as fertilizer and pesticides.
 - iv) The dealer shall ensure that all procurement, distribution, safe storage, usage and disposal of agro-chemicals for the producer(s) shall be in accordance with the provisions of the Pest Control Products Act.
 - v) The dealer shall ensure production of safe and quality produce and ensure sustainable management of pest at all times.
 - vi) The dealer shall ensure that a grower maintains all records of chemicals used and avail the records to the horticultural inspectors at all times.
- d) Terms and conditions for purchase or sale of inputs must be included within the contract.
- c) **Generally Accepted Production Practices**
All parties shall commit to implement Good Agricultural Practices and procedures.
- d) **Record Keeping and traceability**
- i) Each grower and dealer shall implement a complete record keeping and traceability system for production and handling of produce.
 - ii) Minimum record keeping requirements for traceability and pest management accountability shall include:

- Identification of previous crop.
- Type of seed used and treatment given.
- Date of planting.
- Scouting records
- Pest product used
- Application of pest control products; date, rate, weather conditions.
- Irrigation dates and quantities.
- Harvesting: dates and weather conditions.

e) **Field Support and Training**

(a) Every dealer shall provide contracted producer with sufficient training, during the contract period on:

- Group management and administration.
- Good Agricultural Practices

f) **Harvesting and Post-Harvest Practices**

(i) Seller shall agree to undertake acceptable management practices for harvesting and handling of produce, which will ensure high quality levels.

(ii) These practices include:

- Use of clean containers during field handling of produce.
- Protection of produce from heat and direct sunlight.
- Maintenance of hygienic conditions.
- Use of clean water for washing of produce where necessary.

g) **Inspection and Grading**

Dealer and producer shall agree and specify responsibilities for inspection and grading of produce, type of document to be executed upon collection/delivery of produce, agree at what stage goods change title and obligations of each party.

h) **Packaging Supply and Procedures**

i) Contract shall specify which party is obligated to supply packaging materials.

- ii) Packaging procedures such as condition and quantity of produce, grade and type of produce, placement within a container.

i) Conditions of Collection and/ or Delivery

- i) The contract shall specify the collection periods of produce (time and year).
- ii) Specify conditions for the events of non-collection.
- iii) If dealer fails to collect at specified time, he shall be obliged to pay the contracted price for that produce.
- iv) Specify collection times and penalties in case of default of either party.
- v) Agree on tolerance levels (%) on shortages and excesses.

j) Dealings with third parties

- i) Both producer and dealer shall not engage in any transactions with other individuals or intermediaries involving the contracted produce.
- ii) The produce under contract should only be sold to the dealer of the produce.

k) Rejected Produce

- i) Point of rejection of produce shall be specified upon in the contract.
- ii) Conditions for the return of the rejected produce shall be specified.
- iii) Disposal of rejected produce shall be specified.
- iv) Any produce which the dealer has accepted delivery of shall not be returned to the producer.

l) Payment Terms and Mechanism

- (i) Producer and dealer shall specify the mode, terms and mechanism of payment.

m) Penalties

- (i) The contract agreement shall specify penalties including type and amount of compensation to either party as a result of failure to abide by the terms of the contract.

n) Duration of Contract

- (i) Duration and maturity of contract shall be specified.

o) **Termination Clause**

- i) Conditions for termination of contract shall be specified.
- ii) Either party may terminate the contract by giving the other a written notice within a reasonable period equivalent to a full production and marketing cycle of the produce..

p) **Natural Calamities and Non-Commercial Risks (*Force majeure*)**

- (i) In the event of natural calamities (such as floods, hail, earthquakes etc) it shall be stated clearly in the contract that both parties shall not be held responsible.
- (ii) Furthermore, in the event of non-commercial risks (such as war, national labour, strikes, etc) the affected party shall be held harmless for non-performance.

Conditions

1. All contracts must be registered with the Authority and County government within 14 days of signing by both parties
2. Where contracts are breached, aggrieved parties must inform the Authority in writing
3. The Authority must be notified of any variations on the contracts registered within seven days