



## Code of Conduct – Exporter Members

### A. Introduction

1. The Fresh Produce Exporters' Forum ("the Forum"), a non-profit company as defined in the Companies Act, with the purpose of providing a forum for exporters of fresh produce from South Africa, provides in its Memorandum of Incorporation for the duties and obligations of members. Whereas Clause 3 of Schedule 1 of the Memorandum of Incorporation requires every member to conduct himself in a manner that does not bring the Forum into disrepute, and which includes (but which is not limited to) the commission of any criminal offense or any action which is contrary to the policy or the interests of the Forum, it is considered appropriate to provide for a more detailed Code of Conduct to act for the guidance of members.

### B. General

2. It is expected of every member of the Forum that he shall conduct himself in the practice of the business of exporter in such a manner that his conduct does not bring, or is not likely to bring, the Forum into disrepute.
3. The Forum expects all members, whether same act as agents on behalf of others or themselves purchase produce from suppliers in terms of a contract of purchase and sale, to act in a manner which is consistent with their membership of the Forum, and in accordance with what may be described as "*honest and lawful business practices*". Without limiting the general ambit of this general intention, the following non-exclusive guidelines may be of assistance in determining conduct which is improper and/or inconsistent with membership of the Forum:
  - 3.1 The making of false and/or derogatory statements concerning the Forum, its office bearers, or fellow members of the Forum, in circumstances where the maker is aware of the falsity of the statements or has no reasonable grounds for believing same to be true;
  - 3.2 The member's conviction of a crime of dishonesty which either relates to, or is relevant to, his business as exporter;
  - 3.3 The estate of a member being sequestrated, or an export company or close corporation of which he is director or member being wound up, in circumstances which it can be shown that such sequestration or winding up was occasioned by the improper or unlawful conducting of the business of exporter;
  - 3.4 A member failing to pay its membership fees within 30 (thirty) days of receiving a statement of account.
  - 3.5 A member not registering with all sub-committees or chambers that the Forum establishes that are relevant to their business. By way of example, members who export citrus are accordingly required to register (and pay any fees democratically determined) with the Citrus Exporters' Forum.

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- 3.6 A member not supplying industry information requested by the FPEF secretariat for the generic compilation of industry statistics, when all individual exporter information will be treated confidentially.
- 3.7 A member not cooperating with the FPEF's mediation or arbitration procedures in the event of a dispute arising (i) between members, (ii) between members and producers, and (iii) between members and service providers.
- 3.8 A member disclosing, publishing or providing details of any dispute notification sent by the FPEF secretariat for the information of members only, to a non-member.
- 3.9 In the event of any Member breaching the Company's Code of Conduct, that Member may, at the discretion of the Board of Directors, be disciplined in accordance with the disciplinary proceedings set out in the Code of Conduct.
- 3.10 The Chief Executive Officer of the Company will engage with the Member in an effort to resolve the matter. Should the dispute not be resolved during this first round of engagement, it will be referred to a disciplinary committee, consisting of the Company's Chief Executive Officer and 2 (two) members of the Board of Directors.
- 3.11 The Disciplinary Committee may:
  - 3.11.1 Warn the member with or without a fine; or
  - 3.11.2 Suspend the member pending the outcome of the disciplinary hearing or for a period of up to 3 (three) years; or
  - 3.11.3 Expel such member.

**C. Specific Rules of Conduct**

**(a) Exporters who act as agents on behalf of others**

- 4. Whilst the Forum does not intend to prescribe how individual members may structure their business, or to limit the general freedom of individual members to establish contractual relationships with clients, the following general Rules of Conduct shall at all times apply to an exporter who acts as an agent on behalf of the supplier of the product:
  - 4.1 The member must take all reasonable steps to:
    - 4.1.1 Acquaint himself with the structure and working of the South African Fresh Produce Industry, and in particular the PPECB, the relevant Phytosanitary Protocols and Disciplines, and other regulations applicable to the country to which the member intends to despatch produce;
    - 4.1.2 Record in writing (either by way of contract, letter or facsimile) to the supplier that he is acting as agent and record the nature and extent of his remuneration (see Annexure A – Checklist for Agency);
    - 4.1.3 Establish a non-statutory, producer trust banking account through which agency monies are channelled and on which there is a clear audit trail;
    - 4.1.4 Display the utmost good faith to his principal and avoid placing himself in a position where his own interests are in conflict with those of his principal;

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- 4.1.5 Disclose to his principal all advantages or benefits received by him in the performance of his mandate, and in particular refrain from making secret profits, or receiving any benefit or commission not disclosed to his principal;
  - 4.1.6 Act with due care and diligence, and display the same care in the performance of his mandate as he would display in the conduct of his own affairs.
- 4.2 An agent is generally required in terms of South African common law to account to his principal with regard to all material aspects of the performance of his mandate. Every member (except where the obligation to account has been limited by way of an express provision which has been reduced to writing and signed by both principal and agent) is therefore expected:
- 4.2.1 To maintain proper books of account which enable him to account to his principal relating to the performance of his mandate;
  - 4.2.2 Within a reasonable time of having been called upon to do so by his principal, to account to his principal to the extent required by the South African common law, (as interpreted from time to time by the High Court of South Africa), and further as may have been contractually undertaken by him;
  - 4.2.3 To allow his principal to inspect his books (relevant to his own transactions) and relevant vouchers, subject to such limitations relating to trade secrets, confidential information and customer information as may be reasonably required and necessary to protect the interests of the member in the conduct of his business.
- 4.3 The member should at all times deal with the proceeds received from the disposal of his principal's produce in accordance with an appreciation that these monies are not his own, but are held by him on behalf of his principal. In pursuance thereto (and subject to such written agreement to the contrary which may be reduced to writing and signed by principal and agent), the member:
- 4.3.1 Shall ensure that he keeps proper books and records relating to the receipt and disbursal of such monies;
  - 4.3.2 Shall not, without the prior written consent of the principal, use such monies for his own purposes, or loan the same from his principal, for any purposes whatsoever.
  - 4.3.3 Shall not, without the prior written consent of the principal, use such monies in any pooling of proceeds of different principals in such a manner that the proceeds received from the sale of the produce of one principal are disbursed to or for the benefit of another principal.
- 4.4 The member may be guilty of improper or dishonourable conduct if he:
- 4.4.1 Fails and/or refuses, after having been called upon in writing to do so, to furnish his principal with a copy of any written contract concluded between the agent and his principal;
  - 4.4.2 Fails and/or refuses to render an account to his principal within a reasonable time of having been called upon to do so in writing;

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- 4.4.3 Consistently fails and/or refuses to answer correspondence received from his principal or from the Forum within a reasonable time;
- 4.4.4 Without good cause, withholds monies due to his principal;
- 4.4.5 Commits conduct, generally in regard to his principal, which amounts to the offences of fraud and/or theft;

**(b) Exporters who do not act as agents**

5. The Forum furthermore expects those members who do not act as an agent on behalf of others, but who purchase produce from suppliers in terms of agreements of purchase and sale, to abide by the following general rules of conduct:

5.1 To record in writing (either by way of contract, letter or facsimile) the following best practices (as laid out in Annexure B – Checklist for Purchase of Produce)

5.1.1 A description of the product to be purchased (e.g. cultivar, class and size);

5.1.2 Place of delivery (or point of intake e.g. in port in South Africa after passing inspection by PPECB or after passing inspection in the E.U.);

5.1.3 Purchase price and when payment is to be made.

5.2 The member may be guilty of improper or dishonourable conduct if he:

5.2.1 Fails and/or refuses, after having been called upon in writing to do so, to furnish the supplier with a copy of any written contract concluded between himself and the supplier;

5.2.2 Consistently fails and/or refuses to answer correspondence received from the supplier or the Forum within a reasonable time;

5.2.3 Without good cause, withholds monies due to the supplier;

5.2.4 Commits, generally in regard to the supplier's conduct, offences amounting to fraud and/or theft;

5.2.5 Purchasers of produce from suppliers, for the purpose of export, without the member having any means, or reasonable expectation, that he will be able to pay the supplier thereof the purchase price that he has undertaken to pay.

Signed: \_\_\_\_\_

Name of Company \_\_\_\_\_

Name of Signatory \_\_\_\_\_

Position in the Company \_\_\_\_\_

Signature \_\_\_\_\_

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed: \_\_\_\_\_