

## **Agricultural Justice Project Standards**

### **1.0. Food Business Responsibilities to Farmers<sup>7</sup>**

#### **Introduction**

This section of the standards establishes the intrinsic rights of farmers, regardless of the kind of buying arrangement in which they may be engaged. It covers both formal contracts and less formal marketing arrangements. This section applies to both individual farmers and farmer groups, except where specifically stated otherwise. For the purposes of this document we are broadly interpreting the definition of “contract.” The concepts below may be implemented with great benefit even in situations in which no formal agreement or written contract is established.

#### **1.1. Contracts and Negotiating Process**

##### ***Principle***

Contracts between farmers and buyers will be fair, transparent, and equitable.

##### ***Standards***

##### **1.1.1. Freedom of association and collective bargaining**

- a. All farmers have the right to freedom of association and to organize and engage in collective bargaining, free from retaliation of any kind by the buyer or his/her agents.
- b. Buyers are required to comply with all regional and national laws regarding freedom of association and rights to collective bargaining.
- c. All farmers with whom buyer does business must not be barred by the buyer or the buyer’s agent from access to representatives of organizations assisting farmers in exercising these rights.
- d. If farmers so choose, contracts between buyers and farmers will be negotiated using a collective bargaining process.

##### **1.1.2. Negotiating process**

- a. If a farmer chooses to select a representative, the buyer will recognize and negotiate with representatives chosen by the farmer or democratically chosen by the farmer’s association in the case of collective bargaining.
- b. Farmers shall have the right to choose their representatives in a process free of buyer interference or intimidation.
- c. If the farmers are organized as a group, an association, or cooperative farmer or farmer group, the buyer will engage in collective bargaining to determine equity sharing, contracts, and other benefits and policies if the farmer or farmer group, association or cooperative choose to use collective bargaining.

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<sup>7</sup> These guidelines were developed from the work of RAFI-USA, CPGA Contract Producers Bill of Rights, CATA *Comité de Apoyo a los Trabajadores Agrícolas* social justice guidelines for farm employees, FLO for producers’ rights language, work of AOPEB Association of Organizations of Ecological Producers of Bolivia and others.

- d. Binding arbitration clauses are prohibited between individual certified farmers and buyers, since they eliminate a farmer's access to the courts even when a buyer may have violated state or federal law.

**1.1.3. Conflict resolution procedure**

- a. Formal contracts between certified farmers and buyers must contain a fair conflict resolution process through which farmers and buyers can submit complaints and appeals to address concerns about unfair contracts and other equity/price-setting practices.
- b. In the absence of a formal contract, which provides for fair Conflict Resolution Procedures, mechanisms must be established to provide an equitable procedure by which certified farmers can submit complaints and appeals to address concerns about unfair contracts and other equity/price-setting practices.
- c. Certified farmers will be protected from buyer retaliation for submitting such complaints.
- d. Buyers agree to follow the AJP conflict resolution procedures (outlined in the AJP policy manual) in the case that either party is not satisfied with the outcome of the conflict resolution process outlined in the farmer buyer contract.

**1.1.4. Long-term relationships**

- a. Buyers and farmers will work in good faith to establish long-term and stable relationships which provide mutual respect for the needs and rights of both parties.

**1.1.5. Transparency and contracts**

- a. Written contracts or informal agreements will include terms for: price setting, quality, quantity, shipping schedule, equity-sharing, other benefits, standards, conflict resolution, and any pre-finance/credit arrangements and the right of the farmer to be first in line to recover all payments due from the buyer should the buyer go out of business. Both parties shall agree to the terms of the contract before the harvest season or delivery dates have started.

**1.1.6. "Right to Know" and "Good Faith" clauses for farmer contracts and/or marketing agreements**

- a. Buyers must provide, if requested by farmers, a copy of the contract defining the farmer's roles, payments, benefits and equity-sharing arrangements. Contracts must be written and/or explained in the farmer's native language or in another language accessible to the farmer. The information must be easy to read and understand and must clearly disclose all major material risks to the farmer.
- b. The buyer must provide full transparency of their costs and pricing formulas to certified farmers if farmer(s) feel price is not fair.
- c. The buyer must negotiate the contract in good faith by providing complete, accurate, and honest information to the farmer.
- d. Certified farmers retain the right to seek recovery of damages if they are harmed by misleading or incomplete information.
- e. Any changes in the contracts or agreements between buyer and farmers must be negotiated in good faith.
- f. Farmers must have free access, upon request, to their buyer's contract files on them and be provided a copy thereof upon their request.

- g. All attempts to keep all farmers from discussing the contracts with others are forbidden.
- h. If the buyer goes out of business or files for bankruptcy, the certified farmer(s) is(are) first in line for payments from the company assets. The buyer cannot waive this right. The contract must contain a provision that guarantees the right to recover money from a buyer.
- i. Both the buyer and the certified farmer have up to three business days after signing the contract to change their minds and cancel the agreement without penalty.
- j. The buyer will make transparent procedures for grading and justifications for price differentials based on quality.
- k. The buyer will give the farmer information on the total quantity delivered and the total money paid to the farmer.

**1.1.7. Recapture of capital investment**

- a. When fulfillment of a contract requires that a certified farmer or group of farmers make capital investments and the buyer terminates the contract, if the certified farmer is not guilty of breach of contract with the buyer, the certified farmer can collect damages related to any significant capital investment that was required as part of the contract.
- b. Unless alternative arrangements exist, if a buyer cancels a production contract before a certified farmer's mortgage to engage in that contract is paid in full, the buyer must reimburse the certified farmer for the remainder of his investment. This includes any buyer-required capital improvements or upgrades since the initial mortgage was obtained.

**1.1.8. Anti-discrimination clause**

- a. The buyer shall not discriminate against any farmer, in setting agreements, contracts, pricing, benefits, or any other capacity, on the basis of race, creed, color, national or ethnic origin, nationality, gender, gender identity, age, handicap or disability, union or political activity, immigration or citizenship status, marital status, or sexual orientation.<sup>8</sup>

**1.1.9. Human relations**

- a. All farmers must be treated with dignity and respect, without physical, psychological, verbal, or sexual harassment or other abuse.

**1.1.10. Direct farmer-buyer contracts**

- a. Certified buyers will contract or establish marketing arrangements directly with farmers or farmer associations, whenever possible. Intermediaries such as brokers/subcontractors will be avoided except where explicitly agreed upon and requested by the farmer. In the case of a documented need for the use of such an intermediary, the buyer assumes full legal responsibility that the provisions in these standards are fully complied with and verified.
- b. Buyers will afford the same rights to certified farmers using indirect contracts as certified farmers who contract, negotiate and set agreements directly with the buyer.

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<sup>8</sup> This standard does not restrict an employer from complying with legally required procedures such as in the USA I-9 verification procedures.

**1.1.11. Termination of contracts**

- a. No farmer/buyer agreements or contracts will be terminated without just cause.
- b. All farmers have the right, if they so request, to have a representative of their choosing present during any agreement or contract interview or renewal.
- c. Any certified farmer who is found through the existing Conflict Resolution Procedure to have had his/her agreement or contract unjustly terminated must be reinstated by the buyer and must be compensated for any loss of earnings during the period of such discharge action, as determined by through the conflict resolution procedure.

**1.2. Equity, Price Setting, and Other Benefits**

***Principles***

Farmers should receive a fair price. There should be transparency in the price setting process.

Buyers will be encouraged to increase prices to the farmer through measures such as sharing profits with farmers, and establishing long term relationships based on agreed upon price fairness improvements targets with timelines.

***Standards***

**1.2.1. Fair pricing**

- a. Certified farmers will receive a fair price, which covers the cost of production plus a fair margin for profit and investment and the ability to pay fair wages and other benefits, such as health insurance, for themselves, their families and their workers.
- b. The price paid to the certified farmer will be based on:
  - Documented farmer and buyer costs.
  - Fair and open negotiations that set a fair price that is acceptable to both parties.
  - Where appropriate, the world price or regional price for that specific type of product, whichever is higher.
  - The product's specific market qualities; including but not limited to – additional identity preserved claims of organic, geographic indicators and other verified sustainability claims.
- c. The pitting of one farmer (whether AJP certified or not) against another to drive down prices and the use of a discriminatory ranking system for determining payments is prohibited. Any such retaliation or the spreading of false or misleading information by the buyer or the buyer's agents shall not be allowed.
- d. *Buyers are encouraged to continuously make improvements in sharing the risk with the farmer. This may include paying in advance for an agreed upon quantity of product of agreed upon quality requirements, "locking-in" a fair price for a set portion of farmers' products to be delivered during set time period, or other forms of equity sharing as mutually agreed upon by both parties.*
- e. *Buyers are encouraged to adopt all the practices outlined in these standards with all farmers from whom they buy product.*

**1.2.2. Minimum price fairness protection**

- a. To protect all farmers in markets experiencing extreme price volatility, minimum fair prices will be negotiated by the farmer and the buyer that overrule market prices when market prices fall below the farmer's costs of production.
- b. Minimum fair prices will not preclude additional price differentials based on quality, where such quality is documented in the contract provisions or where the market for such products recognizes such additional qualities.
- c. The farmer and buyer will negotiate this price premium protection based on:
  - i. The current world or the regional price, where appropriate and whichever is higher, for that commodity.
  - ii. Documented farmer and buyers costs.
- d. Minimum fair pricing protection will only be triggered when the documented market prices fall below the farmers cost of production and where the participating farmers specifically seek this protection.

**1.2.3. Credit**

- a. *In countries where farmer access to fair credit is not widely available, buyers may offer credit to all such farmers for up to 60% of their contract in the form of pre-financing or other mechanisms in favor of the producer, as long as these arrangements are deemed mutually beneficial and are not administered in a scale bias manner. If credit is offered:*
  - i. Disbursement of credit shall take place upon signing of the letter of intent, the agreement or the contract, or at any date after that which meets the needs of the farmer.
  - ii. All credit instruments, direct and indirect, are allowed as long as the resources are made available to the producers in an effective, reasonably-priced and timely manner. Interest rates and all other terms shall be clearly established in the agreement or contract.
  - iii. Other benefits such as profit sharing, company stock options, pooling of insurance, and other creative mechanisms for sharing equity are encouraged as long as they are mutually beneficial.
  - iv. The financing and/or subsidizing of organic inputs should also be considered as an alternative to providing cash credit.

**1.2.4. Economic realities**

It is recognized that in the current economy, buyers will not always be able to pay a fair price or offer all of the credit opportunities mentioned above. In such circumstances when a fair price and compliance with all of the outlined credit opportunities mentioned above are not feasible the following standards apply.

**IF BUYERS ARE UNABLE TO PAY A FAIR PRICE:**

- a. The buyer's inability to do so must be fully documented and justified, including full disclosure of financial records pertaining to most recent profit and loss statement.

**IF BUYERS ARE UNABLE TO PAY A FAIR PRICE:**

- b. Actual prices will be determined through a negotiation process between the buyer and certified farmer and/or the farmers' democratically elected representative.

**IF BUYERS ARE UNABLE TO PAY A FAIR PRICE:**

- c. A plan shall be implemented to reach the goal of a fair price with a timeline for improvement and progress towards that goal will be measured.

**1.2.5. Profit sharing**

- a. Prices to farmers shall be increased with increased profitability for the buyer of the farmers' products.

**1.2.6 Buyer responsibility to grower groups**

- a. In cases where growers request it, buyers are encouraged to help support and develop grower groups with democratic Internal Control Systems.

**1.2.7. Payments, penalties, and deductions**

- a. Provisions such as excessive docking for low quality and other unwarranted deductions are prohibited for all farmers.
- b. Withholdings of payments is prohibited. Payments to farmers must meet the terms of the letter of intent, the agreement, or the contract. The buyer must pay the farmer fully and on time as agreed in purchase agreements.
- c. Late payments to farmers are subject to all local, national, and international laws.

**1.3. Enforcement**

**1.3.1. Responsibility for payment of court costs**

- a. Any certified buyer or certified farmer found to be in violation of the law will be responsible for court costs and attorney fees. [NOTE: This provision is essential to helping farmers with a valid complaint engage a lawyer, while also protecting the buyer from unwarranted claims.]
- b. *Buyers are encouraged to develop mechanisms by which farmers of limited resources are able to afford the costs of contract dispute resolution.*<sup>9</sup>

**1.4. Fair Trade Relationships**

**1.4.1. Fair trade relationship**

- a. Buyer will have an overall fair trade sourcing policy that favors family-scale, local producers.
- b. Buyer will allow verification of overall buying policies and practices with all farmers.
- c. *The buyer may support the certified farmers by providing information, help with marketing, attending trade fairs, providing advanced training.*
- d. *Buyers are encouraged to develop a plan to share the risk with the farms that supply them.*
- e. *Buyers may pay for the certification fee for farmers. If the buyer pays for the AJP certificate of the farm, the farm is permitted to sell product that the AJP buyer does not buy to other markets: If the farmer chooses to sell farm products to other buyers the*

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<sup>9</sup> At least 30 states in the US have Centers for Dispute Settlement that offer low cost or even free mediation services for agricultural conflict resolution.

*farmer and buyer must negotiate a fair arrangement regarding payment or reimbursement of the costs of certification.*

**1.4.2. Sourcing**

- a. *Buyers may increase the percentage of their purchases from certified farms.*

**1.4.3. Labor contractors**

- a. *In regions where the use of labor contractors is prevalent, buyers are encouraged to work with farmers and farm employee associations and other community partners to develop AJP compliant farm labor services to meet their specific market needs.*

**1.5. Continual Improvement**

- a. Food businesses are required to continually improve their negotiating and contracting practices as they relate to the principles of the AJP standards. Food businesses must select a point to work on and make progress on continuing improvement on an annual basis. Food businesses may select from one of the suggested/encouraged standards outlined by AJP in this section or develop a specific practice that aligns with the principles that is not outlined in the standards in this section.
- b. The food business must document the area of specific selected improvement and progress towards this annually. If progress was not achieved the business must submit:
- The efforts they engaged in during the year,
  - The reasons it did not work, and
  - The revised plan for improvement for the next year.

**1.6. Community Relations**

- a. *AJP certified food businesses are encouraged to cooperate with neighbors and to invest in their community for more sustainable and just community relations. Suggestions include (but are not limited to):*
- i. *Developing a policy of hiring and training local people*
  - ii. *Purchasing from local and regional suppliers of products and services*
  - iii. *Providing resources to promote fair labor practices and living wages throughout the community.*
  - iv. *Supporting local schools, health and social services, cultural events and language classes and translation services.*