

# British Columbia Certified Organic Program

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## Conditions for Consent to Use Official Marks

1. **Definitions** - In these Consent Conditions, the following words have the following meanings:

**“Act”** means the British Columbia Agri-Food Choice and Quality Act, as amended from time to time.

**“Advertising Material”** means information reproduced in print, electronic, or other media, the only function of which is to communicate advertising or promotional information, and does not include merchandise that has any additional function even if it also bears advertising or promotional information.

**“BCMAL”** means the Province of British Columbia as represented by the Ministry of Agriculture and Lands.

**“Certificate”** means a certificate, as defined in the Program Regulation, that is issued to a Certificate Holder by a Certifying Agency.

**“Certificate Holder”** means a person engaged in the farming, gathering, processing, packaging, selling or handling of organic Food Products to whom a Certificate has been issued .

**“Certified Products”** means organic Food Products that meet the Prescribed Standards are produced by a Certificate Holder.

**“Certifying Agency”** means an accredited producer certifying agency or trade certifying agency, as those terms are defined by the Program Regulation.

**“COABC”** means the Certified Organic Associations of British Columbia.

**“Consent”** means the authorization to use the Official Marks conferred on a Certificate Holder pursuant to Consent Conditions.

**“Consent Conditions”** means the conditions governing a Certificate Holder’s permitted Use of the Official Marks set out in this instrument or in another instrument prescribed or otherwise established by BCMAL from time to time.

**“Food Product”** has the meaning defined by the Act and Regulations from time to time.

**“Granting Agency”** when used in relation to a Certificate Holder, means the Certifying Agency that has issued a Certificate to the Certificate Holder.

**“Official Marks”** means the Phrase and the Program Symbol.

**“Packaging”** means bags, cartons, boxes, containers, wrapping, labels, tags and packing slips that hold or accompany a Food Product when it is sold or distributed.

**“Phrase”** means the words BRITISH COLUMBIA CERTIFIED ORGANIC.

**“Prescribed Standards”** means the standards for organic Food Products established under the Regulations.

**“Program”** means the British Columbia Certified Organic Program established under the Act and the Program Regulation.

**“Program Policies and Standards”** means all policies, standards, conditions and guidelines attached to Certificates or otherwise issued from time to time by BCMAL, COABC or a Certifying Agency to implement the Program, while they are in effect, including but not limited to the British Columbia Certified Organic Production Policies and Farm Management Standards and the User’s Guide.

**“Program Regulation”** means the British Columbia Organic Agricultural Products Certification Regulation, B.C. Reg. 200/93, as amended from time to time.

**“Program Symbol”** means the official Program Symbol prescribed or otherwise established by BCMAL as illustrated in the User’s Guide.

**“Promotional Merchandise”** means merchandise that is neither a Food Product nor Advertising Material and is sold or given away for the purpose of promoting or advertising another product, service or program.

**“Regulations”** means regulations passed pursuant to the Act, including but not limited to the Program Regulation, as amended from time to time.

**“Use”** of Official Marks means either or both:

- (a) reproducing Official Marks on Food Products, Packaging, Advertising Material or Promotional Merchandise; and
- (b) selling or distributing Food Products, Packaging, Advertising Material or Promotional Merchandise that bear the Official Marks or otherwise in association with Official Marks.

**“User’s Guide”** means the British Columbia Certified Organic Program Symbol User’s Guide published by BCMAL.

**2. Consent** - On and subject to these Consent Conditions, a Certificate Holder may Use either or both of the Official Marks in the following ways:

- (a) reproducing them on:
  - (i) Certified Products that are farmed, gathered, processed, packaged, sold or handled by the Certificate Holder;
  - (ii) Packaging and Advertising Material for those Certified Product; and
  - (iii) Promotional Merchandise promoting those Certified Products;

- (b) selling or distributing those Certified Products in association with the Phrase or the Seal; and
- (c) publishing or distributing Packaging, Advertising Material, or Promotional Merchandise that bears the Official Marks in connection with the sale, distribution, advertising or promotion of Certified Products;

only for the purpose of indicating that Certified Products meet the Prescribed Standards and are covered by a subsisting Certificate issued to the Certificate Holder, and for the purpose of advertising and promoting the sale of such Certified Products. From time to time, Certificate Holders may be permitted to use the Official Marks in other ways, but only as may be expressly authorized in writing by BCMAL, COABC or a Certificate Holder's Granting Agency.

- 3. Duration** - A Certificate Holder may Use the Official Marks only while the Certificate Holder is a member of a Certifying Agency and the Certified Products are covered by a subsisting Certificate issued to the Certificate Holder by that Certifying Agency. BCMAL, COABC, and the Certificate Holder's Granting Agency may terminate the Consent as it applies to a particular Certificate Holder:
  - (a) by giving the Certificate Holder written notice, which will be effective 30 days after delivery to the Certificate Holder;
  - (b) on account of a breach of these Consent Conditions by the Certificate Holder that is not corrected within seven days after the Certificate Holder is requested to do so, by giving the Certificate Holder written notice, which will be effective upon delivery to the Certificate Holder.
  
- 4. Regulations, Policies and Standards** - Certificate Holders will comply strictly with the Act and Regulations and all Program Policies and Standards relating to the Official Marks or to the Food Products, Packaging, Advertising Material or Promotional Merchandise on or for which the Official Marks or to Food Products, Packaging, Advertising Material and Promotional Merchandise on or for which the Official Marks may be Used. Certificate Holders will not Use or permit the Use of Official Marks for any Food Products, including Certified Products, unless the Food Products in fact comply with the Prescribed Standards.
  
- 5. Other Laws and Standards** - A Certificate Holder will not Use the Official Marks for any Food Products, including Certified Products, unless the Food Products comply with all applicable laws, including food, health, consumer protection, packaging, and labelling laws, and with generally accepted industry standards.

- 6. Misleading Uses** - Certificate Holders will not Use the Official Marks in any way that might reasonably lead an ordinary consumer to conclude that a Food Product meets the Prescribed Standards or a person holds a Certificate or has received consent when that is not the case.
- 7. Ownership/ Enurement** - All Official Marks are owned exclusively by the Province of British Columbia, and Certificate Holders may Use the Official Marks only by way of the Consent. BCMAL has licensed, or permitted COABC to sublicense, Certifying Agencies to grant Consents subject to these Consent Conditions. The good will associated with Use of the Official Marks by Certificate Holders will enure entirely to the Province.
- 8. Inspection** - Promptly, when requested to do so by any of BCMAL, COABC or the Certificate Holder's Granting Agency, the Certificate Holder will permit and assist inspectors or other representatives of BCMAL, COABC or the Granting Agency to:
- (a) enter premises where the Certificate Holder reproduces or Uses the Official Marks or stores Food Products, Packaging, Advertising Material, Promotional Merchandise or other items bearing the Official Marks;
  - (b) observe the Certificate Holder's activities relating to the Official Marks and all Food Products, Packaging, Advertising Material, Promotional Merchandise and other items on or for which the Certificate Holder Uses or proposes to Use the Official Marks; and
  - (c) inspect all such Food Products, Packaging, Advertising Material, Promotional Merchandise in the possession or control of the Certificate Holder or any representative or contractor of the Certificate Holder.
- 9. Samples** - If requested to do so, each Certificate Holder will provide to BCMAL, COABC or the Certificate Holders Granting Agency samples of any reproductions of the Official Marks that the Certificate Holder is Using or proposes to Use or samples of Food Products for which the Official Marks are being Used or will be Used by the Certificate Holder.
- 10. Good Faith** - Certificate Holders will not do anything that might impair, jeopardize, infringe or misuse the Official Marks or BCMAL's interest in the Official Marks, or claiming, using, or applying to register any trademark, certification mark, appellation of origin, business name, copyright or design that is identical, or confusingly similar to any of the Official Marks or that is derived from or based on the Official Marks.
- 11. No Transfers** - The Consent is personal to a particular Certificate Holder and may not be transferred or sublicensed.

- 12. Compliance** - No Certificate Holder will Use any Official Marks or carry on any other activities involving Official Marks except as expressly permitted by these Consent Conditions or by separate written instrument signed by a representative of the BCMAL.
- 13. Contractual - Effect** - These Consent Conditions form a binding contract between the Certificate Holder and each of BCMAL, COABC and the Certificate Holder's Granting Agency. Each of BCMAL, COABC, and the Certificate Holder's Granting Agency may enforce a violation by a Certificate Holder of any of these Consent Conditions as a breach of contract in addition to all other rights and remedies available to them. None of BCMAL, COABC or the Granting Agency make, and they will not be bound by, any representations or warranties regarding the Official Marks or any other matter, and they will have no liability to the Certificate Holders in connection with Use by the Certificate Holders of the Official Marks or otherwise.
- 14. Changes** - BCMAL may amend, supplement or replace these Consent Conditions from time to time by giving Certifying Agencies and Certificate Holders written notice of same, which will be effective immediately on delivery to those parties or a later date specified in the notice. Certifying Agencies and Certificate Holders will execute and deliver all documents that BCMAL requires to implement fully those amendments, supplements and replacements. Neither Certifying Agencies nor Certificate Holders will amend, supplement, or replace these Consent Conditions unless BCMAL and COABC agree in writing.