

## **BY-LAW NUMBER 3**

### **BY-LAW WITH RESPECT TO THE CORPORATION'S BUSINESS WITH ITS SHAREHOLDERS AS CLIENTS**

#### **1. DEFINITIONS**

##### **1.1 Short Title**

This By-law may be referred to as the "Commercial By-law".

##### **1.2 Corporation**

The term "Corporation" means Metro Inc. and/ or any subsidiary thereof, according to the circumstances.

##### **1.3 Subsidiary**

The term "subsidiary" means any corporation controlled by the Corporation, directly or indirectly.

##### **1.4 Shareholder-Retailer**

The term "Shareholder-Retailer" means any holder of Common Shares of the share capital of the Corporation operating a food store under the Metro banner, or any other banner recognized for such purpose by the Board of Directors of the Corporation, and doing business with the Corporation as of January 31, 2012, who has not signed an affiliation agreement with the Corporation or an agreement amending his commercial agreements such that he is considered to be doing business with the Corporation as an Affiliated Merchant, or has not terminated his business relationship with the Corporation on written notice of eight (8) days pursuant to article 2.4 of this By-law, except for shareholders who, as of the date Special By-Law 1996-1 of the Corporation came into effect, were not signatories to the agreement bearing formal date of July 1, 1985 pertaining to the conversion of their advances made to the Corporation into shares of the Corporation.

##### **1.5 Operation of More Than One Food Store**

For the purposes hereof, any Shareholder-Retailer who operates more than one food store doing business with the Corporation shall be considered to be another Shareholder-Retailer with respect to each food store so operated such that, except as otherwise provided in this Commercial By-law, he shall enjoy the same benefits and be subject to the same obligations set out in this Commercial By-law for each such food store, while remaining fully liable toward the Corporation for the obligations incumbent upon him with respect to all such food stores.

##### **1.6 Authorized Supplier**

The term "Authorized Supplier" means any supplier with whom the Corporation has entered into contracts for services or supply of particular goods and who, with the Corporation's authorization, renders or delivers directly to the Shareholder-Retailers the services or goods covered by the contracts entered into with the Corporation even if the price therefor is billed to the Corporation.

##### **1.7 Prime Rate**

The term "prime rate" means the "base rate" of the National Bank of Canada, being the variable annual interest rate advertised by the National Bank of Canada from time to time as the rate used as the basis for determining interest rates on Canadian denominated loans granted in Canada.

##### **1.8 Adjustment Date**

The term "Adjustment Date" means, with reference to any fiscal year of the Corporation, the business day designated for such purpose by the Corporation, which shall fall between the date of the end of the said fiscal year and the 120th day following such date.

## **1.9 Required Investment**

The term "Required Investment" means, with reference to any fiscal year of the Corporation, for each food store operated by a Shareholder-Retailer, the amount obtained by multiplying by two (2) the average of the weekly purchases made in the ordinary course of business by such Shareholder-Retailer from the Corporation and from any Authorized Supplier during the fiscal year of the Corporation completed prior to the Adjustment Date, as reflected in the periodic statements of account; the Required Investment shall be determined by the Corporation, for each food store, on each Adjustment Date and the amount so obtained shall be considered, for purposes of this Commercial By-law, to be the Required Investment for each such food store until the following Adjustment Date.

## **1.10 Total Investment**

The term "Total Investment" means, with reference to any fiscal year of the Corporation, for each food store operated by a Shareholder-Retailer, the amount obtained by multiplying the total number of Common Shares held by such Shareholder-Retailer that are hypothecated to the Corporation on the Adjustment Date by 75% of the Stated Value of a Common Share, as that term is defined hereinafter.

## **1.11 Stated Value**

The term "Stated Value" of a Common Share means, with reference to any fiscal year of the Corporation, the average of the per share closing prices for a board lot of Common Shares traded on The Toronto Stock Exchange for the period of ten (10) trading days immediately preceding the end of the said fiscal year. Should no board lot of Common Shares have been traded on The Toronto Stock Exchange on one (1) or more trading days during such period, the closing price on The Toronto Stock Exchange on the next preceding trading day(s) on which a board lot of Common Shares was traded shall be used.

## **2. BUSINESS RELATIONS**

### **2.1 Principle**

The Corporation shall not, under any circumstances, be required to do business with any person who is a holder of shares of its share capital (a "shareholder") and the mere fact that a person is a shareholder of the Corporation shall not entitle that person to have a business relationship with the Corporation.

### **2.2 Use of Banners**

The Corporation shall have sole discretion to determine with whom it shall do business and under what banner recognized for such purpose by the Board of Directors of the Corporation a shareholder shall be entitled to operate a food store. In order to become and remain a Shareholder-Retailer, a shareholder must comply with the credit policies established by the Board of Directors from time to time and with such banner standards or administrative policies as may be set by the Board of Directors of the Corporation from time to time with respect to the Metro banner or any other banner recognized as such by the Board of Directors of the Corporation, as the case may be, and must duly complete and remit to the Corporation any document that may be required by this Commercial By-law and from time to time by the Board of Directors of the Corporation, in its sole discretion, the whole subject to the Articles and By-Laws of the Corporation.

### **2.3 Transfer**

Except with the consent of the Corporation or as provided hereinafter, no Shareholder-Retailer shall be entitled to assign, transfer or otherwise dispose of his rights as a Shareholder-Retailer, to any person and should any Shareholder-Retailer assign, transfer or otherwise dispose of the food store in respect of which he is a Shareholder-Retailer, the party acquiring such store shall not become a Shareholder-Retailer as a result of such acquisition.

However, the Board of Directors may from time to time establish rules enabling a food store operated by a Shareholder-Retailer to be assigned, transferred or otherwise made over to the spouse or one or more of the descendants in the direct line of such Shareholder-Retailer or of the ultimate owner of the majority of the voting shares of such Shareholder-Retailer.

## **2.4 Termination of Business Relations**

The Corporation and any Shareholder-Retailer may cease doing business together upon eight (8) days' written notice. Any Shareholder-Retailer with whom the Corporation ceases to do business must immediately cease using the Metro banner or any other banner recognized for such purpose by the Board of Directors of the Corporation.

Moreover, where a food store is operated by a Shareholder-Retailer that is a corporation, and where more than 50% of the votes attaching to all the outstanding shares of all classes of shares of such Shareholder-Retailer are acquired by one or more persons other than the person or persons guaranteeing the payment of the indebtedness of such Shareholder-Retailer to the Corporation ("deemed transfer"), the Corporation must be so notified immediately in writing and may, upon eight (8) days' written notice by the Corporation, cease doing business with such Shareholder-Retailer in respect of the food store concerned.

## **3. UNDERTAKINGS OF SHAREHOLDER-RETAILERS**

### **3.1 Purchasing**

Every Shareholder-Retailer must purchase merchandise supplied by the Corporation and the Authorized Suppliers in accordance with the criteria established by the Board of Directors from time to time. Every Shareholder-Retailer must promote the private brand or controlled brand products obtained from the Corporation and the Authorized Suppliers, offer these products to his customers in quantities sufficient to meet demand and place them in a prominent position in his food store.

### **3.2 Statements of Account**

The Corporation shall send regular statements of account to every Shareholder-Retailer for the goods and services supplied by the Corporation and the Authorized Suppliers or for other miscellaneous charges ("periodic statements of account"). All periodic statements of account must be paid by the Shareholder-Retailer, by pre-authorized payment, within such time period as may be determined by the Corporation from time to time in accordance with the credit policies approved by the Board of Directors. Amounts not paid when due shall bear interest from the due date at a rate per annum equal to the prime rate plus 4%. The Corporation shall require each Shareholder-Retailer to sign the necessary banking forms to enable the periodic statements of account to be paid by pre-authorized payment.

### **3.3 Accounting**

Every Shareholder-Retailer must provide the Corporation with such information as the Corporation considers necessary to ensure that its retail accounting system is working properly.

### **3.4 Fees and Contributions**

In addition to paying the periodic statements of account, every Shareholder-Retailer must pay to the Corporation such fees and contributions as may be charged by the Corporation for administration, delivery, advertising or other costs.

### **3.5 Compensation**

No Shareholder-Retailer shall be entitled to claim compensation or set-off between amounts due by such Shareholder-Retailer to the Corporation and amounts due by the Corporation to such Shareholder-Retailer.

### **3.6 Trade-marks**

Any name, trade-mark, certification mark or other mark and any logo identifying the Metro banner or any other banner recognized for such purpose by the Board of Directors of the Corporation (a "Mark") may be used by a Shareholder-Retailer solely for the purposes authorized by the Corporation, including signs, promotional material, packaging material, stationery and delivery vehicles. No Shareholder-Retailer may incorporate a Mark in his corporate or firm name or associate any such Mark with any other trade-mark to suggest an association other than the association with the Corporation, whether on the signs, in the promotional material, on the packaging material, on the stationery or on the delivery vehicles of the

Shareholder-Retailer or otherwise. Every Shareholder-Retailer must sign and remit all documents requested by the Corporation and do all things necessary to ensure the protection of the Marks.

### **3.7 Technical Guide**

Every Shareholder-Retailer must comply with the banner standards and administrative policies contained in any technical guide prepared and distributed by the Corporation with respect to any banner under which he operates a food store.

### **3.8 Indemnification**

Every Shareholder-Retailer must comply with the municipal, provincial and federal laws and regulations applicable to him and with this Commercial By-law and must protect, indemnify and save and hold harmless the Corporation from and against any claim, damages or liability directly or indirectly related to or resulting from the failure to comply with this Commercial By-law or the credit policies of the Corporation, or to the ownership or operation of a food store under the Metro banner or any other banner recognized for such purpose by the Board of Directors of the Corporation and, more particularly, every Shareholder-Retailer must protect, indemnify and save and hold harmless the Corporation from and against any claim relating to or involving the improper use of the Corporation's Marks or the failure to strictly observe the maximum prices for the products advertised by the Corporation. The Corporation reserves the right to impose such penalties on any Shareholder-Retailer who violates the said laws and regulations or this Commercial By-law or the said credit policies as the Corporation, in its sole discretion, may consider appropriate, which penalties may include withdrawal of the right to use a banner recognized by the Board of Directors of the Corporation and the imposition of penalties with respect to any indebtedness to the Corporation not discharged when due. Any Shareholder-Retailer who loses the right to use the Metro banner or any other banner recognized for such purpose by the Board of Directors of the Corporation must immediately cease any use of the Corporation's Marks or any imitation thereof and all material on which any of such Marks appears must be returned to the Corporation in the condition it was in when it was received by the Shareholder-Retailer, and the Shareholder-Retailer shall not be entitled to be compensated by the Corporation in regard thereto. In addition, the Corporation shall be entitled to remove, at the expense of such Shareholder-Retailer, all material that may remain in his possession on which any of the Marks appears.

Should any proceedings be taken against the Corporation as a result of a violation by a Shareholder-Retailer, the Corporation shall be at liberty, once the facts of the case become known to it, to contest such proceedings or agree to a settlement. In all cases, the Shareholder-Retailer shall be liable to the Corporation for the amount of any award, penalty or reasonable settlement, along with all costs, fees and other charges and expenses incurred by the Corporation as a result of such violation, provided, however, that the Corporation shall have notified the Shareholder-Retailer within 20 days after becoming aware of the proceedings and that such payment shall not be prejudicial to any contestation lodged in good faith by the Shareholder-Retailer against the third party claimant. A Shareholder-Retailer shall also be liable for the costs and expenses incurred by the Corporation in case of any proceedings being taken against him in which it was necessary for the Corporation to intervene, directly or indirectly, of its own accord or otherwise, on account of the improper use of a Mark by the Shareholder-Retailer or in order to protect any other right of the Corporation.

## **4. HOLDING OF SHARES, PROCEDURE FOR MAKING UP REQUIRED INVESTMENTS AND RELEASE OF EXCESS SHARES**

### **4.1 Obligation to Hold Shares**

Every Shareholder-Retailer shall be required to hold, for each food store at all times, and on each Adjustment Date, a number of Common Shares of the share capital of the Corporation such that the amount of the Total Investment is at least equal to the amount of the Required Investment for such food store. Notwithstanding the foregoing, where any Shareholder-Retailer, on any Adjustment Date, does not hold, for each food store, a number of Common Shares of the share capital of the Corporation such that the amount of the Total Investment is at least equal to the amount of the Required Investment for such food store, the Corporation may make up the difference in accordance with the mechanisms set out hereinafter and the Shareholder-Retailer shall be required to subscribe for Common Shares upon the terms and conditions specified there under.

### **4.2 Making Up of Required Investments**

For every food store operated by a Shareholder-Retailer, to the extent that the Total Investment is not at least equal to the Required Investment for such food store (the "Shortfall"), the Corporation may, so long as such Shortfall subsists, apply the following provisions:

#### 4.2.1 *Weekly Deductions*

A sum equal to 0.25% of the total of each periodic statement of account of the Shareholder-Retailer shall be added to such periodic statement of account and shall be collected and held by the Corporation for the credit of the Shareholder-Retailer.

The amount of the sums so collected shall not bear interest, shall be attested at the end of the 3rd period, the 6th period, the 9th period and the 13th period of each fiscal year of the Corporation and shall be remitted to the Corporation at the end of each of the said periods in consideration of the issue, on January 1, April 1, July 1 and October 1, respectively, of Common Shares in an amount sufficient to make up the Shortfall, the amount of any excess deductions to be returned to the Shareholder-Retailer, without interest, within 30 days following the end of the period.

The issue price for the Common Shares issued in respect of each of the said periods shall be equal to the market value of the Common Shares at the end of the period in question, that is, the average of the per share closing prices for a board lot of Common Shares traded on The Toronto Stock Exchange for the period of ten (10) trading days immediately preceding the end of the period in question. Should no board lot of Common Shares have been traded on The Toronto Stock Exchange on one or more trading days during such period, the closing price on The Toronto Stock Exchange on the next preceding trading day(s) on which a board lot of Common Shares was traded shall be used.

#### 4.2.2 *Loyalty Program*

The Corporation may withhold, from any loyalty incentive or amount otherwise payable to the Shareholder-Retailer under any loyalty or commercial incentive program in effect within the Corporation ("Program"), an amount of up to but not more than 0.2% of qualifying purchases under such Program, provided that if, as of the Adjustment Date, the Shareholder-Retailer has not fulfilled all the conditions required in order to be entitled to the payment of any loyalty incentive or amount under such Program for any fiscal year, the percentage of the deductions for purposes of making up the Shortfall contemplated in 4.2.1 above shall be increased to 0.45% until the following Adjustment Date, at which time such percentage may be maintained at that level or re-established at 0.25%, as appropriate.

The sums so withheld shall be immediately applied by the Corporation in consideration of the issue, within 120 days following the end of any fiscal year of the Corporation, of Common Shares in an amount sufficient to make up the Shortfall.

The issue price for the said Common Shares shall be equal to the Stated Value of a Common Share. In no event shall the foregoing be construed to modify the terms and conditions of the Program and the Board of Directors of the Corporation may, in its sole discretion, modify, replace or terminate the Program unilaterally.

#### 4.2.3 *Combining*

For any Shareholder-Retailer operating more than one food store, where such Shareholder-Retailer, on any Adjustment Date, holds, in respect of one or more food stores, Common Shares such that the amount of the Total Investment is less than the amount of the Required Investment for one or more of such food stores, while holding, in respect of one or more other food stores, Common Shares such that the amount of the Total Investment is more than the amount of the Required Investment for one or more of such other food stores, the Corporation may combine and consolidate all the Common Shares held by such Shareholder-Retailer so as to make up the Required Investments, that is, transfer Common Shares held in respect of the food store or stores for which an excess exists in favour of the food store or stores for which there is a Shortfall, up to the amount of the Shortfall or the excess, whichever is less, the whole subject to the following conditions:

- 4.2.3.1 that only Common Shares may be combined in order to make up Required Investments;
- 4.2.3.2 that where an excess exists in respect of more than one food store and/or where there is a Shortfall for more than one food store, such procedure for making up Required Investments shall be carried out on the basis of the seniority of the food stores, with the holdings for the oldest food store for which an excess exists being used to make up the Shortfall for the oldest food store for which there is a Shortfall, and so on;
- 4.2.3.3 that the procedure for combining in order to make up Required Investments shall be carried out as soon as possible after the end of any fiscal year of the Corporation.

### **4.3 Release of Excess Shares**

For Shareholder-Retailers operating a single food store and for Shareholder-Retailers operating more than one food store, but, in the case of the latter, only after the procedure for combining in order to make up Required Investments contemplated in 4.2.3 above has been applied, where any such Shareholder-Retailer, on any Adjustment Date, holds, in respect of one or more food stores, Common Shares such that the amount of the Total Investment exceeds the amount of the Required Investment for such food store, the Corporation shall, on an annual basis, release from the hypothec contemplated in 5.1 herein below and return to such Shareholder-Retailer such excess Common Shares in an amount of up to 50%, but not more, of the excess calculated as at each Adjustment Date, the whole subject to the following conditions:

- 4.3.1 that only Common Shares shall be released and returned;
- 4.3.2 that Common Shares shall only be released and returned where the number of shares in question is at least 100;
- 4.3.3 that Common Shares shall only be released and returned at the discretion of the Corporation, having regard for the circumstances, including loyalty of the Shareholder-Retailer, the financial risk and the reasons for the excess.

## **5. SECURITY**

### **5.1 Hypothec on Securities**

Every Shareholder-Retailer shall be responsible for the payment in full of the sums appearing on the periodic statements of account that are sent to him, the whole in accordance with the credit policies of the Corporation approved by the Board of Directors from time to time.

By way of general and continuing collateral security granted to the Corporation for the repayment in full of any and all present and future debts and obligations, wherever and however incurred, of the Shareholder-Retailer toward the Corporation or the Authorized Suppliers, the Shareholder-Retailer shall hypothecate to the Corporation pursuant to a first-ranking movable hypothec, or such other security as the Corporation may consider equivalent, any and all bonds, debentures, notes, acknowledgments of debt and other debt securities issued to the Shareholder-Retailer by the Corporation along with any and all sums withheld or amounts held on the books of the Corporation for the credit of the Shareholder-Retailer.

The Shareholder-Retailer shall also hypothecate to the Corporation pursuant to a first-ranking movable hypothec, or such other security as the Corporation may consider equivalent, the number of shares required to constitute the Required Investment, delivering to the Corporation the certificates representing such shares duly endorsed, and shall designate the Secretary of the Corporation or his appointee as the Shareholder-Retailer's irrevocable agent to dispose of the said shares in accordance with this Commercial By-law.

Should the Shareholder-Retailer fail to discharge when due any debts or obligations toward the Corporation, the Corporation may at its option effect compensation or set-off or sell or otherwise dispose of the said bonds, debentures, notes, acknowledgments of debt, other debt securities and shares at the market value and pay itself out of the proceeds of such sale, in accordance with any deed of hypothec or other security and with the *Civil Code of Québec* or any other applicable law, and apply any sum withheld or amount held for the credit of the Shareholder-Retailer, as the case may be, in payment of such debts or obligations.

The Corporation may impute the amounts realized or held by it as it sees fit, without being obliged to impute them to the most onerous debts and, to this end, the Shareholder-Retailer specifically waives the legal rules for the imputation of payments and further waives any compensation or set-off in respect thereof not agreed to by the Corporation.

Such collateral security shall not in any manner affect the Corporation's right to demand repayment of the amount owed, before or after realization of the aforementioned security, and the Corporation shall not be required to realize or exhaust its security before being entitled to exercise its remedies against the Shareholder-Retailer.

The Secretary of the Corporation or his appointee shall be designated as the Shareholder-Retailer's irrevocable agent to sell and transfer or cause the sale and transfer, if necessary, of the said shares, bonds, debentures, notes, acknowledgments of debt and debt securities on the books of the Corporation, or to give them to the Corporation in payment, as the case may be,

and to this end, to sign in the name of the Shareholder-Retailer any and all forms and documents that may be necessary or advisable in order to give effect to this collateral security.

The property hypothecated or otherwise given as collateral pursuant to the aforementioned security shall at all times be free and clear of any prior claim, hypothec, security, encumbrance or other right whatsoever susceptible of prevailing over or affecting the rights, guarantees and security of the Corporation. The Shareholder-Retailer shall, upon request and at the Shareholder-Retailer's expense, give the Corporation any waiver, cession of rank, acquittance or release which the Corporation may deem necessary in order to preserve the priority of its rights over the hypothecated property.

The Corporation may, on behalf and at the expense of the Shareholder-Retailer, cause the cancellation of any prior claim, hypothecary registration, security, encumbrance or right whatsoever that may charge the hypothecated property or prevail over or affect the rights, guarantees and security granted pursuant to this Commercial By-law, with the exception of those, if any, that the Corporation has agreed to allow to remain uncanceled, and the Shareholder-Retailer shall, upon request, instruct the Corporation to sign any document and do anything necessary or advisable for such purpose.

Notwithstanding the foregoing, the coming into force of this Commercial By-law of the Corporation shall not have the effect of modifying or cancelling any security or hypothec then in effect between the Shareholder-Retailer and the Corporation.

## **5.2 Guarantee**

Every Shareholder-Retailer shall, upon request of the Corporation, provide one or more guarantees satisfactory to the Corporation ensuring the payment by the Shareholder-Retailer of all his debts and obligations toward the Corporation and the Authorized Suppliers.

Where the Shareholder-Retailer is a corporation, a guarantee and subordination must be provided by all persons holding 10% or more of the voting shares of the share capital of such corporation. In addition, upon the acquisition by any person of 10% or more of the voting shares of a Shareholder-Retailer that is a corporation, such Shareholder-Retailer shall be required to so notify the Corporation within ten (10) days.

The Corporation may require the following conditions to be attached to any guarantee required in accordance with this Commercial By-law:

- 5.2.1 that the undertakings by the sureties be solidary;
- 5.2.2 that all the obligations of the Shareholder-Retailer toward any of the sureties be subordinated to and rank after the debts and obligations of the Shareholder-Retailer toward the Corporation;
- 5.2.3 that the guarantee not be connected with any particular position held by the surety;
- 5.2.4 that the obligations of the surety shall be extinguished only in accordance with the provisions of the guarantee or with the written consent of the Corporation.

Every Shareholder-Retailer shall in addition sign and remit to the Corporation, upon request, any other document, agreement, security or guarantee that may be required by the Corporation from time to time in order to secure the obligations of the Shareholder-Retailer toward the Corporation.

## **5.3 Compensation**

The Corporation may deduct from every rebate, discount, loyalty incentive or other amount payable, if any, to a Shareholder-Retailer under any commercial program and from any other sums that may be owed by the Corporation to the Shareholder-Retailer any amount owed by the Shareholder-Retailer to the Corporation provided that compensation or set-off is effected between the debt owed by the Shareholder-Retailer to the Corporation and the amount so deducted.

## **6. NULLITY AND REPEAL**

This Commercial By-Law will be automatically deemed to be null and repealed on the date as of which there is no longer any food store under the Metro banner (or any other banner recognized for such purpose by the Board of Directors of the Corporation) operated for such purpose by a Shareholder-Retailer.