



CWB 2006-07 PRE-DELIVERY TOP-UP TERMS AND CONDITIONS

1. DEFINITIONS

- a. "Advance" is the 2006-07 cash advance issued to the producer pursuant to the Agricultural Marketing Programs Act (AMPA) or the Enhanced Spring Credit Advance Program (ESCAP)/After Harvest and which is identified in the producer's Offer to the CWB under this contract.
- b. "Contract Deadline Date" for Canada Western Red Winter and Canada Western Red Winter Select is September 22, 2006. For all other *Eligible Grains* the deadline date is October 31, 2006.
- c. "Discount Rate" is the cost applied to the amount of the Pre-delivery Top-up (*PDT*) payment, which is calculated daily and compounded monthly at the prime lending rate. The prime lending rate is the average of the prime lending rate set by the five major Chartered Banks in Canada.
- d. "Eligible Grain" is Canada Western Red Spring (CWRS), Canada Western Red Winter (CWRW); Canada Western Soft White Spring (CWSWS); Canada Prairie Spring Red (CPSR); Canada Prairie Spring White (CPSW); Canada Western Extra Strong (CWES); Canada Western Hard White Spring (CWHWS) and Canada Western Amber Durum (CWAD). Excluded grain is: No. 4 CWRS, No. 4 CWHWS, No. 3 CWSWS, Canada Western Feed, AC Commander, sample grades and mixed grain.
- e. "Grain" is as defined in the *Canadian Wheat Board Act (CWB Act)*.
- f. "Initial, Adjustment, Interim and Final Payments" are as defined in the *CWB Act*.
- g. "Offered Net Tonnes" is the number of net tonnes of *Eligible Grain* that the producer offers to the CWB under this contract. The *Offered Net Tonnes* must be a minimum of 20 net tonnes and cannot exceed the maximum tonnes upon which the *Advance* was issued.
- h. "PDT" is the Pre-delivery Top-up as provided for herein.
- i. "PDT Payment" is the payment issued to the producer in respect of this contract calculated on the basis of the *PDT Tonnes* multiplied by \$30.00 per tonne.
- j. "PDT Tonnes" is the portion of the *Offered Net Tonnes* that the CWB bases the *PDT Payment* upon and which is identified on the confirmation sent to the producer.
- k. "PPO" are the Producer Payments Options programs offered by the CWB, including but not limited to the Early Payment Option (EPO), Fixed Price Contract (FPC) and Basis Payment Contract (BPC).
- l. "Wheat" is all grades and classes of wheat and durum.

2. OFFER AND ACCEPTANCE

- a. In accordance with these Terms and Conditions, the producer offers to sell the *Offered Net Tonnes* to the CWB.
- b. The CWB reserves the right, in its sole discretion, to determine the portion of the *Offered Net Tonnes* that is eligible for the *PDT Payment*.
- c. The producer's Offer will not be valid unless the producer complies with one of the *Approved Methods of Offer* and unless such Offer is submitted to the Head Office of the CWB prior to the *Contract Deadline Date*.
- d. "Approved Methods of Offer" are:
 - i. Telephoning the CWB at 1-800-275-4292 and following the instructions of the CWB operator to provide the operator with the producer's 10-digit CWB identification number, confidential PIN number, the *Offered Net Tonnes*, the class and grade and the *Advance* number. The CWB's records of such telephone call including any written confirmation are conclusive and binding on the producer.
 - ii. Faxing a 2006-07 *PDT* form to the CWB at 1-204-983-8031. The form must be completed fully and accurately and the producer must sign it. In the event of any uncertainty as to the information provided by the producer in the form, the CWB may, in its sole discretion, reject the form, and the producer's Offer.

3. CWB'S OBLIGATIONS

The CWB agrees as follows:

- a. To accept for delivery all or a portion of the *PDT Tonnes*, as determined by the CWB, in accordance with the *CWB Act* and the Terms and Conditions contained herein.
- b. **To pay the producer by means of the following installments:**
 - i. in accordance with the *CWB Act* and upon delivery of the *PDT Tonnes* or portion thereof, the initial payment in effect for the pool period in which settlement is made, less any amounts owing to the CWB and all authorized deductions including those under the Prairie Grain Advance Payments Act (PGAPA), the Agricultural Marketing Programs Act (AMPA), Spring Credit Advance Program (SCAP) and the Enhanced Spring Credit Program (ESCAP)/After Harvest; plus
 - ii. the *PDT Payment*; plus
 - iii. any applicable Adjustment, Interim or Final Payments due to the producer; or
 - iv. in the event the *PDT Tonnes* have been priced under a *PPO*, the payment in effect in accordance with that contract.

Less:

 - v. all authorized deductions including those under the Prairie Grain Advance Payments Act (PGAPA), the Agricultural Marketing Programs Act (AMPA), Spring Credit Advance Program (SCAP) and the Enhanced Spring Credit Program (ESCAP)/After Harvest;
 - vi. the *Discount Rate*;
 - vii. any amounts owing to the CWB pursuant to this contract; and
 - viii. any other amounts owing to the CWB.



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4. PRODUCER'S OBLIGATIONS

The producer agrees as follows:

- a. To complete an application for an *Advance*;
- b. That all statements, facts and declarations made in the *Advance* application shall be true to the best of the producer's knowledge and belief and same are made as representations to the CWB for the purposes of this contract.
- c. To sell and deliver to the CWB the *PDT Tonnes* or any portion thereof called for by the CWB prior to the termination date specified in any delivery call. Where the producer fails to deliver *PDT Tonnes* called for delivery by the CWB before the termination date specified in any delivery call, the CWB may deduct up to the full amount of the *PDT* amount, plus the *Discount Rate*, against the proceeds of any and all deliveries made by the producer under the delivery permit.
- d. To reimburse the CWB for the full amount of the *PDT Payment*, plus the *Discount Rate* in accordance with Paragraphs 4.e. and 4.f. below.
- e. To authorize the CWB to deduct up to the full amount of the *PDT Payment* amount, plus the *Discount Rate* as follows:
 - i. against any Adjustment Payments payable to the producer for *Wheat* in respect of the 2006-2007 crop year;
 - ii. against any Interim, or Final Payment payable to the producer for *Wheat* and/or barley in respect of the 2006-2007 crop year;
 - iii. against any payment made by the CWB to the producer for *Wheat* that has been priced under a 2006-07 EPO and for *Grain* that has been priced under a 2006-07 PPO (excluding the EPO).
- f. In addition or as an alternative to payment as set out in Paragraph 4.e. above, to repay the *PDT Payment* plus the *Discount Rate* by way of cash payment at any time upon demand of the CWB or, if the CWB does not accept 100 per cent of the *PDT Tonnes*, upon demand by the CWB.
- g. If the producer has not fully repaid the *PDT Payment* including the *Discount Rate* in accordance with Paragraph 4.e and 4.f. above, the CWB will send a letter requiring full repayment within 20 days of the date of the letter of the outstanding balance of the *PDT Payment* plus the *Discount Rate*.
- h. In the event the producer does not repay in accordance with the CWB letter, and without limiting any other legal options available to the CWB, the producer agrees and authorizes the CWB to deduct any amounts outstanding under this contract against the proceeds of any and all deliveries made by the producer under the producer's delivery permit, or under any and all delivery permits in which the producer has an interest in the 2006-07 crop year and subsequent years. Any such delivery permit book may be so endorsed.
- i. To grant access to the CWB or its agents, at any time, to storage bins or other facilities where the producer's *Grain* is stored and provide assistance as required by the CWB or its agents in facilitating the inspection of such storage facilities as requested.

5. DEFAULT

- a. The producer shall be in default under this contract ("in Default") if:
 - i. the producer fails, or the CWB receives information that the producer is or will be unable, to deliver a minimum of 90 per cent of the *PDT Tonnes* called for delivery by the CWB before the termination date specified in any delivery call;
 - ii. any portion of the *PDT Tonnes* delivered by the producer to the CWB contains a non-registered variety which is represented by the producer as being a registered variety of that class of *Grain*;
 - iii. all or any portion of the *PDT Tonnes* delivered or to be delivered by the producer is determined by the CWB to be ineligible for delivery under this contract;
 - iv. the producer provides false or misleading information in this contract or the AMPA or ESCAP advance application or avoids repayment;
 - v. the producer fails or refuses a bin inspection after receiving the *PDT Payment* pursuant to this contract (failure will be deemed to occur if shortfall of stocks is more than 10 per cent of the *PDT Tonnes*);
 - vi. the producer is in default under AMPA, SCAP, PGAPA and ESCAP;
 - vii. the producer shall be in default under this contract if the producer defaults under a previous crop year *PDT* contract that has not been repaid.
 - viii. the producer files for bankruptcy or a receiving order is made against the producer;
 - ix. the CWB determines in its sole discretion that the producer is unable or unwilling to repay the *PDT Payment* plus the *Discount Rate*;
 - x. the producer fails to meet or comply with any or all of the terms and conditions of this contract, or any combination of the above.
- b. In the event the producer is in Default, the CWB may cancel this contract and any other contract between the CWB and the producer.
- c. Further the producer shall pay Liquidated Damages to the CWB to compensate the CWB for its actual losses incurred as a result of the producer's Default. Damages will reflect the CWB's costs of administration, demurrage charges/delivery penalties, and lost opportunity as a result of the Default, calculated on a per tonne basis. The minimum Liquidated Damages assessed by the CWB will be \$6.00 per tonne and the maximum damages will be \$15.00 per tonne for *Wheat* and \$25.00 per tonne for durum.
- d. The producer and the CWB agree that liquidated damages determined in this manner are a genuine pre-estimate of the actual damages the CWB will incur as a result of the default by the producer and that such damages are not a penalty.



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- e. In addition, a Default Rate equal to the prime lending rate plus three per cent will apply to the outstanding balance of the *PDT Payment* and *Discount Rate* from the date of issuance of the *PDT Payment* to the date of full and final payment. The Default Rate is calculated daily and compounded monthly. Collection of costs, including legal fees on a solicitor and client basis may also be charged.
- f. Liquidated damages and the Default Rate may be set-off by the CWB against any and all amounts that are or may become payable by the CWB to the producer pursuant to the CWB Act and/or against the proceeds of any and all deliveries made by the producer under the producer's delivery permit, or under any and all delivery permits in which the producer has an interest. Any such delivery permit book may be so endorsed.

6. DELIVERY

- a. Within 18 days of the *Contract Deadline Date* the CWB will announce the percentage of *PDT Tonnes* that will be accepted for delivery.
- b. The CWB may issue delivery calls at any time during the 2006-07 crop year. The CWB reserves the right to issue delivery calls for only a portion of, or a particular grade or quality of, the *PDT Tonnes* to be delivered pursuant to this contract.
- c. The CWB reserves the right to exclude tough and damp *Eligible Grain* from any delivery call issued with respect to this contract.

7. PASSAGE OF TITLE

All right, title, and interest in the *PDT Tonnes* shall remain with the producer until such *Grain* has been delivered to the CWB and the grade has been established.

8. GENERAL PROVISIONS

- a. Subject to Paragraph 8.b. of this contract and the Terms and Conditions contained herein constitute the entire contract between the CWB and the producer with respect to the *PDT* and delivery of the *Grain* under this contract. There are no representations, warranties, terms or conditions, whether express or implied, beyond those contained herein or in the *Advance*.
- b. Where a producer has entered into an Identity Preserved Contract Program, the Terms and Conditions of this contract and of that contract are binding upon the CWB and the producer and in the event of an inconsistency between the two contracts, that cannot be reasonably resolved, the Terms and Conditions of this contract will apply.
- c. There shall be no changes or modifications to this contract unless they are made in writing, and signed by both the producer and the CWB.
- d. If any provision, or part thereof, of this contract is determined to be void, invalid, or unenforceable, it will be severed and will not void, invalidate, or make unenforceable any other provision of this contract.
- e. This contract shall be governed and construed in accordance with the laws of Manitoba and the courts of the Province of Manitoba shall have exclusive jurisdiction in the case of any dispute.
- f. This contract shall be binding upon, and enure to the benefit of, the heirs, administrators, executors, legal representatives, successors and permitted assigns of the producer and the CWB. However, no assignment by the producer of this contract will bind the CWB without its prior written consent, which consent may be withheld.
- g. If the producer is a corporation, partnership, cooperative or other business entity, this contract must be signed in the entity's name and the authorized officer, agent or partner(s) who sign(s) on behalf of the entity must state their position and authority.
- h. The producer represents that they are of the age of majority in the Province of Manitoba. Where the producer is a corporation, partnership, cooperative or other business entity, the producer and the person signing on behalf of the producer represent that the person signing on behalf of the producer are of the age of majority.
- i. The producer shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of this contract.
- j. Time shall be of the essence of this contract.
- k. The exercise by the CWB of any right or remedy provided herein shall not affect any other remedy that the CWB may have for the same or any other default. Nor shall the forbearance of the CWB to exercise any right or remedy be considered a waiver of any right or remedy it may have.
- l. The CWB may register financing statement(s) at such provincial personal property security registries as the CWB determines advisable. The producer hereby waives all rights to receive from the CWB a copy of any financing statement or confirmation statement issued at any time respecting the security interests contained in this contract.
- m. This contract shall be governed and construed in accordance with the laws of the Province of Manitoba and the parties agree that the courts of the Province of Manitoba shall have exclusive jurisdiction in the event of a dispute.