



## CWB 2006-07 MISGRADE TO GUARANTEED DELIVERY CONTRACT for Durum (No. 4 and No. 5 CWAD): TERMS AND CONDITIONS

### 1. DEFINITIONS

- a. "Actual Grade" is the grades of No. 4 and No. 5 Durum actually delivered by the producer as reported on the producer's certificate.
- b. "Approved Methods of Acceptance" are as set out in Paragraph 2.b. below.
- c. "Durum" means No. 4 or No. 5 Canada Western Amber Durum as the case may be.
- d. "Fax Form" is the CWB 2006-07 Misgrade to Guaranteed Delivery Contract for No. 4 and No. 5 Durum.
- e. "GDC" is the Guaranteed Delivery Contract for No. 4 and No. 5 Durum.
- f. "GDC Delivery Opportunities" are the delivery calls issued by the CWB from time to time and in respect of GDCs.
- g. "Liquidated Damages" is the amount calculated by the CWB as its loss in the event of default on a GDC. Liquidated 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 damages assessed by the CWB will be \$6.00 per tonne and the maximum damages will be \$25.00 per tonne.
- h. "Net Tonnes" is the number of net tonnes of No. 4 and No. 5 Durum that the producer has signed up under the GDC and will deliver to the CWB.
- i. "Settlement Date" is the day on which a producer's certificate is issued in respect of No. 4 and No. 5 Durum priced under the GDC.
- j. "Sign-up Date" is the date on which the producer commits tonnes to the program.

### 2. OFFER AND ACCEPTANCE

- a. In accordance with these Terms and Conditions, the CWB offers to purchase the No. 4 and No. 5 Durum from the producer (the "Offer").
- b. The Approved Method of Acceptance is:
  - i. Faxing a Fax Form to the CWB at 1-204-983-8031. The Fax 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 Fax Form, the CWB may, at its sole discretion, reject the application as invalid. The Fax Form will be deemed to have been received at the time printed on the fax by the CWB's fax machine.
  - ii. 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 and confidential PIN number and the number of tones of No. 4 and No. 5 Durum signed-up as the Net Tonnes. The CWB's records of such telephone call, including any written confirmation; are conclusive and binding on the producer.

### 3. CWB'S OBLIGATIONS

#### 3.1 Payment

- a. The CWB shall pay the producer in accordance with the CWB Act and these terms and conditions for each Net Tonne of the Actual Grade of No. 4 and No. 5 Durum that the producer delivers pursuant to the GDC.
- b. Payments shall be subject to all deductions authorized under the CWB Act or otherwise authorized by law, including without limitation, deductions authorized under Prairie Grain Advance Payments Act (PGAPA), the Agricultural Marketing Programs Act (AMPA), the Spring Credit Advance Program (SCAP) and the Enhanced Spring Cash Advance (ESCAP); or
- c. In the event that the Net Tonnes have been priced under a CWB payment options contract, to pay the producer in accordance with that contract and make any adjustments to that payment as necessary.

#### 3.3 Call for Delivery

The CWB guarantees a 100 per cent acceptance and immediate delivery upon submission of acceptance of the Offer.

### 4. PRODUCER'S OBLIGATIONS

#### 4.1 Commitment of Tonnes

- a. The producer must commit the Net Tonnes at the time they submit their acceptance of the Offer.
- b. By committing the Net Tonnes the producer agrees as follows:
  - i. To deliver the Net Tonnes to the CWB in accordance with this Agreement;
  - ii. To sell the Net Tonnes to the CWB;
  - iii. In the event that the Durum has been priced under a CWB payment options contract to accept payment in accordance with the particular option and the terms of this Agreement and,
  - iv. To otherwise comply in all respects with this Agreement.

immediately upon submission of acceptance of the Offer I would put this delivery provision back in as I have revised here to keep the obligation clear. I have removed or portion thereof because we are saying we will take 100%.

### 5. PASSAGE OF TITLE

All right, title and interest to any grain delivered under this contract shall remain with the producer until it has been delivered to the CWB and the Actual Grade has been established.

### 6. DEFAULT

- a. The producer shall be in default under the GDC ("in default") if:



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- i. The producer fails or the CWB receives information that the producer is or will be unable to deliver a minimum of ninety per cent of the *Net Tonnes*;
  - ii. All or any portion of the Durum delivered or to be delivered by the producer is determined by the CWB to be ineligible for delivery; and or
  - iii. The producer delivers *Durum* and above the *Net Tonnes* committed.
- b. In the event that the producer is in default as a result of Paragraph 6.a. above, the CWB may cancel the *GDC* or any contracts.
  - c. The producer will be assessed and obligated to pay *Liquidated Damages* for every *Net Tonne* in accordance with this Agreement. The producer may be prohibited from entering into any future *GDCs*, any delivery contracts and any Producer Payment Option agreements until such time as the *Liquidated Damages* are paid.
  - d. 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.
  - e. The producer shall pay *Liquidated Damages* on any shortfall below 90 per cent of the *Net Tonnes*.
  - f. 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.
  - g. For each net tonne of *Durum* over the *GDC Net Tonnes* committed, the damages shall be equal to the *Liquidated Damages* in effect at the time of such default.
  - h. *Liquidated Damages* may be set-off by the CWB against any and all amounts that may become payable to the producer by the CWB, 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 may be so endorsed.

### 7 GENERAL PROVISIONS

- a. This Agreement constitutes the entire agreement between the CWB and the producer with respect to the *Net Tonnes*. There are no representations, warranties, terms or conditions, whether express or implied, beyond those contained herein. There shall be no changes or modifications to this Agreement unless they are made in writing, and signed by both the producer and the CWB. For the sake of clarity, the term "this Agreement" shall include the *Fax Form*.
- b. If any provision, or part thereof, of this Agreement 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 Agreement.
- c. This Agreement shall be governed and construed in accordance with the laws of the Province of Manitoba. The courts of the Province of Manitoba shall have exclusive jurisdiction in the case of any dispute.
- d. The producer represents that they are of the age of majority in the Province in which they reside. Where the producer is a corporation, partnership, co-operative 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 in the Province in which the producer resides.
- e. This Agreement 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 Agreement will bind the CWB without its prior written consent, which consent may be arbitrarily withheld.
- f. If the producer is a corporation, partnership, co-operative or other business entity, this Agreement 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.
- g. The producer shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of this Agreement.
- h. Time shall be of the essence of this Agreement.
- i. 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 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.