



## CWB ORGANIC WHEAT DELIVERY CONTRACT TERMS AND CONDITIONS FOR OFFER AND CONTRACT

### I. THE CANADIAN WHEAT BOARD (the "CWB") DELIVERY CONTRACT

#### 1. DEFINITIONS

- a. "*Eligible Grade*" means Canada Western Red Spring Wheat No. 1, 13.5 per cent and higher and No. 2, 13.5 per cent and higher.
- b. "*Sign-up Expiry Date*" means October 2, 2006, which is the date on or before which the producer must offer tonnes for delivery pursuant to this Delivery Contract.
- c. "*CWB Act*" means *The Canadian Wheat Board Act*, as amended from time to time.
- d. "*Delivery Call*" means a request from the CWB that a certain Actual Grade be delivered as communicated to a producer by verbal or written notice from the CWB or an Organization, as hereinafter defined.
- e. "*Initial Organic Premium*" means ninety-two dollars per metric tonne (\$92/mt) (approximately two dollars and fifty-cents (\$2.50) per bushel) that will be paid to the producer at the time of delivery together with the Initial Payment.
- f. "*Final Organic Premium*" means the premium that will be paid to the producer at the end of the crop year which will be calculated in accordance with subsection 3(d) below.
- g. "*Organic*" means certified organic by a certification body accredited by the Standards Council of Canada, the U.S. National Organic Program, and/or an EU accrediting body.
- h. "*Organization*" means either the Northwest Organic Community Mills Co-op Ltd. or Canadian Organic Certification Cooperative.
- i. "*Total Contracted Net Tonnes*" means the total amount of net tonnes Offered by the producer and accepted by the CWB under this Delivery Contract.
- j. "*Wheat*" means organic wheat that is the subject of this Offer and the ensuing Delivery Contract.

#### 2. OFFER AND ACCEPTANCE

- a. The producer shall offer for purchase the quantity and quality of *Wheat* as specified in the *Organic* Delivery Contract application (the "Offer"),
- b. Together with the Offer the producer shall send to the CWB at its head office in Winnipeg, Manitoba, the following:
  - i. representative harvest samples using approved CGC sampling methods so that such samples (s) may be tested for grade, protein, dockage and falling number;
  - ii. a copy of 2006 organic certificate certifying that the *Wheat* specified in the Offer is *Organic*. If a 2006 certificate is not available at the time the Offer is made a 2005 certificate may be sent followed by the 2006 certificate when available.
- c. The CWB will determine acceptance on or before November 15, 2006 according to grade, protein and falling number requirements for the program.

#### 3. CWB'S OBLIGATIONS

The CWB agrees as follows:

- a. To accept delivery of the *Wheat* from the producer, in accordance with the terms and conditions of this Delivery Contract for *Organic Wheat*.
- b. In accordance with the *CWB Act*, to pay to the producer:
  - i. the initial payment for the class and quality of *Wheat* delivered that is 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*, the *Agricultural Marketing Programs Act*, the Spring Credit Advance Program and the *Enhanced Spring Cash Advance (ESCAP)*; or
  - ii. in the event that the *Wheat* has been priced under a CWB payment options contract, to pay the producer in accordance with that contract; plus
  - iii. the *Initial Organic Premium*; plus
  - iv. the *Final Organic Premium* as more specifically set out in subsection 3 d. below.
- c. Subject to the Canadian Wheat Board Act, to pay to the producer storage payments for the *Wheat* at the following rates:  
\$0.03 per tonne per day, for the first 120 days;  
\$0.05 per tonne per day, for the next 121 days,  
calculated starting October 2, 2006, or the date the delivery contract is signed (whichever is later), to the date of delivery or the delivery termination date (whichever is earlier) signed by the producer up and until the date of delivery in accordance with Section 4.
- d. For the purposes of this section, the *Final Organic Premium* shall be determined by the CWB following the close of the 2006-07 crop year and shall be distributed on a pooled basis. Such premium shall represent the producer's per tonne share in the equitable distribution of the premium, if any, that the CWB achieves, net of costs, during the crop year for sales of *Organic Wheat* over and above sales values for comparable non-*Organic Wheat*. It is acknowledged that the *Organic* premium paid for specific grades and/or qualities of *Wheat* shall reflect the proper market price relationship between those grades and proteins of *Organic Wheat*.

#### 4. PRODUCER'S OBLIGATIONS

The producer agrees as follows:

- a. To deliver the *Wheat*, and any portion thereof called for by the CWB or an *Organization* within the specified time frame as provided in Section 6 below.



## CWB ORGANIC WHEAT DELIVERY CONTRACT TERMS AND CONDITIONS FOR OFFER AND CONTRACT

- b. To sell the *Wheat* to the CWB.
- c. To deliver only registered varieties of *Organic Wheat*.

### 5. DEFAULT

- a. The producer shall be in default under the Delivery Contract for the *Wheat* ("in Default") if:
  - i. the producer fails, or the CWB receives information that the producer is or will be unable, to deliver 100 per cent of the *Wheat* called for by the CWB or an *Organization* on or before seven days following the *Delivery Call*;
  - ii. any portion of the *Wheat* 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 *Wheat*; or
  - iii. the *Wheat* delivered by the producer is generally not of the quality of the submitted harvest sample.
- b. In the event that the producer is in Default, the CWB may void the contract for the *Wheat* and any other contract between the CWB and the producer and/or the CWB may restrict the producer's delivery opportunities under such contracts.
- c. 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 under the Delivery Contract. Damages will reflect the CWB's costs of administration, demurrage charges/delivery penalties, and lost opportunity as a result of the Default and shall be 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 \$50.00 per tonne.
- d. The liquidated damages assessed hereunder will be paid in addition to any liquidated damages which may be assessed pursuant to any other contract entered into by the producer and the CWB.
- e. 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.
- f. Liquidated damages may be set-off by the CWB against any and all amounts that 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. The CWB reserves the right to issue *Delivery Calls* for only a portion of, or a particular grade or quality of, *Wheat* to be delivered pursuant to the producer's Delivery Contract. The total of all such *Delivery Calls*, shall not exceed the quantity of and quality of *Wheat* for which delivery is agreed to under this Delivery Contract. The producer will have seven (7) days to deliver the *Wheat* after it has been called by the CWB.
- b. The producer will deliver to the Saskatchewan Wheat Pool elevator at Rowatt, Saskatchewan and/or the Northwest Organic Community Mills Co-op Ltd. cleaning facility at Maymont, Saskatchewan as directed by the CWB. The producer acknowledges that the foregoing are the only two facilities where delivery can be made under this Delivery Contract.

### 7. PASSAGE OF TITLE

All right, title, and interest to the *Wheat* shall remain with the producer until the *Wheat* has been delivered to the CWB and the grade has been established and a cash ticket has been issued.

### 8. GENERAL

- a. The Delivery Contract for the *Wheat* constitutes the entire agreement between the CWB and the producer with respect to the delivery of the *Wheat*. There are no representations, warranties, terms or conditions, whether express or implied, beyond those contained herein. There shall be no changes or modifications to the Delivery Contract unless they are made in writing, and signed by both the producer and the CWB.
- b. If any provision, or part thereof, of the Delivery 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 the Delivery Contract.
- c. The Delivery Contract shall be governed and construed in accordance with the laws of the Province of Manitoba and the courts of the Province of Manitoba shall have exclusive jurisdiction in the case of any dispute.
- d. The 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 the Delivery Contract will bind the CWB without its prior written consent, which consent may be withheld.
- e. The producer is of the age of majority.
- f. If the producer is a corporation, partnership, cooperative or other business entity, the Delivery 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.
- g. The producer shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of the Delivery Contract.
- h. Time shall be of the essence of the Delivery Contract.
- i. The exercise by the CWB of any right or remedy provided herein shall not affect any other right or remedy that the CWB may have under this Agreement. 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.