

2006-07 CWB DURUM DELIVERY OFFER AND CONTRACT - TERMS AND CONDITIONS

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

1. DEFINITIONS

- a. "Actual Grade" is the grade of durum wheat delivered pursuant to this Delivery Contract.
- b. "Contract Expiry Date" means the date on or before which the Producer must offer tonnes for delivery pursuant to this Offer. Such date is October 31st for a Series A Contract and April 30th for a Series B 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 certain grain be delivered as published on the CWB's Web site at: www.cwb.ca or as provided to a Producer by written notice.
- e. "Durum" means the Durum wheat that is the subject of this Offer and the ensuing Delivery Contract, as applicable.
- f. "Total Contracted Net Tonnes" means the total amount of net tonnes Offered by the Producer and accepted by the CWB under the Delivery Contract.

2. OFFER AND ACCEPTANCE

- a. In accordance with these Terms and Conditions, the Producer shall offer, for purchase by the CWB (the "Offer"), such quantity and quality of Durum as specified in the Offer.
- b. The Producer acknowledges and agrees that the tonnes specified in the Offer represent the actual tonnes that the Producer has produced during the term of this Agreement.
- c. The Producer shall have until the close of business on the applicable Contract Expiry Date to make and/or amend the Offer.
- d. On or before 18 days following the applicable Contract Expiry Date, the CWB will announce the quantity and quality of Durum it is willing to accept (the "Acceptance") which amount may be less than the aggregate amount Offered by the Producer. The quantity to be delivered by each Producer who has made an Offer to the CWB for the class, variety and quality of Durum outlined in the Offer shall be reduced proportionately in the event that the CWB accepts less than the aggregate amount offered by Producers. If the CWB counter offers and requests the Producer deliver a reduced amount of Durum (the "Counter Offer"), the Producer shall have fourteen (14) days within which to notify the CWB that the Producer does not accept the Counter Offer. If the Producer does not so notify the CWB then the Producer will be bound by the Delivery Contract and shall deliver to the CWB the quantity of Durum, as reduced.

3. CWB'S OBLIGATIONS

The CWB agrees as follows:

- a. To accept delivery of the Durum from the Producer, in accordance with the *CWB Act* and the terms and conditions of this Delivery Contract for Durum.
- b. In accordance with the *CWB Act*, to pay to the Producer:
 - i. the initial payment for the class and quality of Durum 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* and the Spring Credit Advance Program; or
 - ii. in the event that the Durum has been priced under a CWB payment options contract, to pay the Producer in accordance with that contract.

4. PRODUCER'S OBLIGATIONS

- a. The Producer agrees to allow the CWB or a party authorized and acting on behalf of the CWB, to undertake a bin audit of the Producer's Durum (the "Bin Audit"). The Bin Audit will allow the CWB to verify that the Producer's Offer represents the **actual Durum stocks** that the Producer has or expects to produce during the course of this Agreement.
- b. The Producer agrees:
 - i. to sell the Durum to the CWB; and
 - ii. to deliver the Durum, and any portion thereof called for by the CWB, to the CWB on or before the termination date specified in any Delivery Call.
- c. The Producer represents that he/she is the age of majority in the Province of Manitoba or where the Producer is a corporation, partnership, cooperative or other business entity, the Producer and the person signing on behalf of the Producer is of the age of majority in the Province of Manitoba, and is duly authorized to sign on behalf of the corporation, partnership, cooperative or such other business entity.
- d. The Producer agrees that Durum that is a non-registered variety, must be represented as such and delivered as feed.

5. MISREPRESENTATION

- a. If as a result of a Bin Audit it is found that the Producer misrepresented his/her Durum stocks in the Offer, the CWB may, in its sole discretion, void the Delivery Contract and the Producer will be liable for the cost of the Bin Audit and any damages that result from the misrepresentation.

6. DEFAULT

- a. The Producer shall be in default under the Delivery Contract for the Durum ("in Default") if:
 - i. the Producer has misrepresented his/her Durum stocks in the Offer; or
 - ii. the Producer fails, or the CWB receives information that the Producer is or will be unable, to deliver a minimum of ninety per cent (90%) of the Durum called for by the CWB on or before the termination date specified in any Delivery Call issued by the CWB for all or any portion of the Durum; or
 - iii. any portion of the Durum 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 Durum; or
 - iv. 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 under the contract for the Durum.

- b. In the event that the Producer is in Default the CWB may void the contract for the Durum 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. 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 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 \$25.00.
- 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.

7. DELIVERY

- a. The CWB may issue Delivery Calls at any time during the crop year. The CWB reserves the right to issue Delivery Calls for only a portion of, or a particular grade or quality of, Durum to be delivered pursuant to the Delivery Contract. The total of all such Delivery Calls, shall not exceed the quantity of and quality of Durum specified under this Delivery Contract.
- b. The CWB reserves the right to exclude tough and damp Durum from any Delivery Call issued with respect to this Delivery Contract.
- c. If the Producer is unable to deliver the Durum before the end of the crop year in which the Producer entered into this Delivery Contract, the CWB may in its sole discretion, issue a deferred delivery permit to the Producer in accordance with the CWB Act.
- d. If the Producer is unable to deliver the quality of Durum specified in the Delivery Contract and the CWB deems, in its sole discretion, the Producer to be acting in good faith, the CWB may permit the delivery of Durum that does not match the grade and/or protein level originally specified in the Delivery Contract. This process shall be termed a "Misgrade" and is subject to the following conditions:
 - i. Durum delivered cannot exceed the Total Contract Net Tonnes; and
 - ii. the documentation required so as to permit the Producer to deliver the Misgrade will not require the Producer's written authorization.

8. PASSAGE OF TITLE

- a. All right, title, and interest to the Durum shall remain with the Producer until the Durum has been delivered to the CWB and the grade has been established and a cash ticket has been issued.

9. GENERAL

- a. The Delivery Contract for the Durum constitutes the entire agreement between the CWB and the Producer with respect to the delivery of the Durum. 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. 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.
- f. The Producer shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of the Delivery Contract.
- g. Time shall be of the essence of the Delivery Contract.
- h. 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.