



**CWB 2006-07 GUARANTEED DELIVERY CONTRACT FOR DURUM (NO. 4 AND NO. 5 CWAD) Offer No. 3
TERMS AND CONDITIONS**

1. DEFINITIONS

- a. "Actual Grade" is the grade of Canada Western Amber 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.d. below.
- c. "Fax Form" is the "CWB 2006-07 Guaranteed Delivery Contract sign-up application for Durum (No. 4 and No. 5 CWAD)".
- d. "Durum" means durum grading No. 4 or No. 5 Canada Western Amber Durum (CWAD).
- e. "Initial, Adjustment, Interim, and Final Payments" are those payments made by the CWB for Durum of the Actual Grade during the crop year and in accordance with the CWB Act.
- f. "GDC" is the *Guaranteed Delivery Contract for Durum (No. 4 and No. 5 CWAD)*.
- g. "GDC Delivery Opportunities" are the delivery calls issued by the CWB from time to time in respect of GDCs.
- h. "Liquidated Damages" is the amount calculated by the CWB as its damages in the event of a 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.
- i. "Net Tonnes" is the number of net tonnes of Durum that the producer has signed up under the GDC and will deliver to the CWB.
- j. "Settlement Date" is the day on which a producer's certificate is issued in respect of Durum priced under the GDC.
- k. "Sign-up Date" is the date on which the producer commits tonnes to the program.
- l. "Transfer" is the process whereby a producer may transfer tonnes previously contracted to another producer.

2. OFFER AND ACCEPTANCE

- a. In accordance with these Terms and Conditions, the CWB offers to purchase the Durum from the producer (the "Offer").
- b. GDC Offer No. 3 is open for acceptance by the producer from Wednesday, November 1, 2006 until Friday, December 29, 2006. However, the CWB reserves the right to extend or withdraw the Offer at any time and without prior notice.
- c. The producer's acceptance of the Offer will not be valid unless it is made in strict compliance with one of the *Approved Methods of Acceptance* and unless it is actually received at the Head Office of the CWB prior to the withdrawal of the Offer or the expiration of the time for acceptance of the Offer, whichever comes first.
- d. The *Approved Methods of Acceptance* 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 and confidential PIN number and the number of tonnes of 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.
 - ii. 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, in its sole discretion, reject the application as being invalid. The Fax Form will be deemed to have been received at the time printed on the fax by the CWB's fax machine.

3. CWB's OBLIGATIONS

3.1 The CWB agrees as follows:

To accept delivery of the Net Tonnes from the producer, in accordance with the *Canadian Wheat Board Act (CWB Act)* and the terms and conditions of the contract for the Net Tonnes.

3.2 In accordance with the CWB Act, to pay to the producer:

- a. 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)*, the *Spring Credit Advance Program (SCAP)* and the *Enhanced Spring Credit Advance Program (ESCAP)*; or
- b. In the event that the Net Tonnes have been priced under a CWB payment options contract, pay the producer in accordance with that contract.

3.3 Call for Delivery

The CWB guarantees that it will call for delivery of the Net Tonnes committed to GDC No. 3 on or before Friday, December 29, 2006.

4. PRODUCER'S OBLIGATIONS

4.1 Commitment of Tonnes

- a. The producer must commit to deliver the Net Tonnes at the time they submit their acceptance of the Offer.
- b. The producer agrees as follows:
 - i. to sell the Net Tonnes to the CWB; and
 - ii. to deliver the Net Tonnes, and any portion thereof called for by the CWB, to the CWB on or before the termination date specified in any delivery call; or transfer the tonnes to another producer.
 - iii. to otherwise comply in all respects with this Agreement.



**CWB 2006-07 GUARANTEED DELIVERY CONTRACT FOR DURUM (NO. 4 AND NO. 5 CWAD) Offer No. 3
TERMS AND CONDITIONS**

4.2 Delivery

- a. The producer shall deliver the *Net Tonnes* or any portion thereof, to the CWB within 30 days of same being called for delivery by the CWB.
- b. The CWB reserves the right to exclude tough and damp grain from any delivery call issued with respect to the contract for the *Net Tonnes*.

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 and a cash ticket has been issued.

6. DEFAULT

- a. The producer shall be in default under the contract for the *Net Tonnes* ("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 ninety per cent of the *Net Tonnes* called for by the CWB before the termination date specified in any delivery call issued by the CWB to the producer for all or any portion of the *Net Tonnes*; or
 - ii. all or any portion of the *Net Tonnes* delivered or to be delivered by the producer is determined by the CWB to be ineligible for delivery under the contract for the *Net Tonnes*.
- b. In the event that the producer is in default, the CWB may cancel the contract for the *Net Tonnes*, 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 damages assessed by the CWB will be \$6.00 a tonne and the maximum damages will be \$25.00 a tonne for *Durum*.
- d. The liquidated damages assessed hereunder will be paid in addition to any liquidated damages which may be assessed pursuant to any other contract the producer has entered into with 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. 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. 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.
- c. 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.
- d. 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.
- e. 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.
- f. The producer shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of this Agreement.
- g. Time shall be of the essence of this Agreement.
- h. 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.