



**CWB 2006-07 GUARANTEED DELIVERY CONTRACT for Feed Barley  
(Offer No. 2): TERMS AND CONDITIONS for Pool Period A**

**1. DEFINITIONS**

- a. "Actual Grade" is the grade of Barley 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. "Barley" means No. 1 or No. 2 Canada Western Barley as the case may be.
- d. "GDC" is the *Guaranteed Delivery Contract for Feed Barley*.
- e. "GDC Delivery Opportunities" are the delivery calls issued by the CWB from time to time and in respect of GDCs.
- f. "Liquidated Damages" is the amount calculated by the CWB that represents the amount that the CWB estimates it will lose 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.
- g. "Fax Form" is the CWB 2006-07 Guaranteed Delivery Contract Sign-up Application for Feed Barley.
- h. "Net Tonnes" is the number of net tonnes of *Barley* that the producer has signed up under the GDC and has agreed to deliver to the CWB.
- i. "Reference Grade" is No. 1 Canada Western Barley.
- j. "Settlement Date" is the day on which a producer's Certificate is issued in respect of *Barley* 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 *barley* from the producer (the "Offer").
- b. GDC Offer No. 2 is open for acceptance by the producer from Thursday, October 5, 2006 at 9:30 am until Friday, December 15, 2006 at 4:30 pm CT. 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, 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 *Barley* 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, at 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.
  - iii. Entering the GDC on the E-services, if the producer has an E-services password.

**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 the *Barley* that the producer delivers pursuant to the GDC.
- b. Payments shall be subject to all deductions authorized under the *Canadian Wheat Board Act* or otherwise authorized by law, including without limitation, deductions 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)* and any amounts owing to the CWB in respect of this or any other contract or agreement between the parties.

**3.2 Call for Delivery**

The CWB guarantees that it will call for delivery of the *Net Tonnes* committed to GDC No. 2 under *Pool Period A* on or before Friday, December 15, 2006. The producer shall deliver the *Net Tonnes* and any portion thereof, to the CWB within 30 days of the *Net Tonnes* being called for delivery by the CWB.

**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. Accept payment prior to the expiry of the Pool Period A or transfer the tonnes to another producer,



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- iii. To comply in all respects with this Agreement.
- iv. Should the Producer wish to cancel the *GDC* and complete a Selected Barley Storage and Delivery Contract, do so on or before the end of the 30-day call period. After this time, producers are committed to delivering on the *GDC*.

**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:
  - i. 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 *Barley* delivered or to be delivered by the producer is determined by the CWB to be ineligible for delivery; and/or
  - iii. the producer delivers *Barley* in excess of the *Net Tonnes* committed.
- b. In the event that the producer is in default, the CWB may void the contract for *Barley* 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 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 a 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. 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.