



CWB 2006-07 DELIVERY EXCHANGE CONTRACT (DEC) TERMS AND CONDITIONS

1. DEFINITIONS

- a. "Approved Methods of Acceptance" are as set out in Paragraph 2.d. below.
- b. "Delivery Exchange Contract (DEC)" is a delivery contract that provides producers with delivery in four pre-defined delivery periods. Producers can trade their delivery opportunity with other producers.
- c. "Delivery Period Expiry Date" means the date on or before the Producer must deliver.
- d. "Grade and Protein categories" are the eligible grade and protein categories of Canada Western Red Spring wheat (CWRS), consisting of No 1 CWRS, 13.5 and higher; No 1 CWRS, 13.4 and lower; No. 2 CWRS 13.5 and higher, No 2 CWRS, 13.4 and lower; No 3 CWRS and No 4 CWRS.
- e. "Liquidated Damages" is the amount calculated by the CWB as its damages in the event of a default on a DEC. Liquidated Damages are a genuine pre-estimate of damages and 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 \$15.00 per tonne. Producers are expected to deliver 100 per cent of their Delivery Exchange Contract.
- f. "Net Tonnes" is the number of net tonnes of CWRS that the producer has signed up under the DEC and will deliver to the CWB.
- g. "Offer to Trade" is the form used by producers to communicate their interest to trade.
- h. "Pre-Defined Delivery Period" is a three-month period of time allotted for deliveries. The delivery periods are:
 - Period 1 August 1 to October 31
 - Period 2 November 1 to January 31
 - Period 3 February 1 to April 30
 - Period 4 May 1 to July 31
- i. "Settlement Date" is the day on which a Producer's Certificate is issued in respect of CWRS under the DEC.
- j. "Sign-up Application" is the form used by producers to sign up tonnes for a Delivery Exchange Contract.
- k. "Sign-up Date" is the date on which the producer commits tonnes to the program.
- l. "Trade Agreement" is the form used by producers to complete an exchange.

2. OFFER AND ACCEPTANCE

- a. In accordance with these Terms and Conditions, the producer offers to the CWB tonnes of CWRS by *Grade and Protein category* by completing a *Sign-up Application* (the "Offer"). Sign-up is in increments of 80 tonnes.
- b. The Delivery Exchange Contract is open for acceptance by the producer from Tuesday, August 1, 2006 until Tuesday, October 31, 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, the number of tonnes and grade and protein category of CWRS wheat 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 to the CWB at 1-204-983-8031. The application 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 on the application, the CWB may, in its sole discretion, reject the acceptance as being invalid. The application will be deemed to have been received at the time printed on the fax by the CWB's fax machine.
 - iii. When the CWB has accepted the sign-up application, a confirmation statement will be mailed to the producer.

3. CWB'S OBLIGATIONS

3.1 The CWB agrees as follows:

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

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 Cash Advance (ESCAP)*;
- b. 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.

3.3 Call for Delivery

Delivery starts the first day of the delivery period and must be completed by the last day of the delivery period.

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;
 - ii. to deliver within each of the four *Pre-Defined Delivery Periods* unless the producer trades delivery opportunity; and
 - iii. to otherwise comply in all respects with this Agreement.



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4.2 Delivery Exchange Opportunity

The producer can exchange delivery opportunities with another producer within the *Pre-Defined Delivery Period* or across Delivery Periods. Trades shall be made in 20 tonne increments. A producer who wants to trade delivery opportunity shall complete an *Offer to Trade* form. By signing the form, the producer consents to the release of their name, telephone number and e-mail address. *Offers to Trade* will be posted on the CWB Web site at www.cwb.ca, and will be made available to producers and elevator agents. Producers are required to communicate the details of the trade between themselves and come to an agreement. If a trade is agreed upon by two producers, the producers must complete a *Trade Agreement* form and fax the form to the CWB, signed by both producers. The Trade Agreement may be signed in counterparts. The CWB will send a confirmation statement to both producers showing their new contract position.

4.3 Delivery

- a. The producer shall deliver the tonnes assigned to each Delivery Period prior to the *Delivery Period Expiry Date* unless a trade is transacted.
- b. The CWB reserves the right to exclude tough and damp grain 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 grade and protein has been established and a producer's certificate 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 the applicable portion of the *Net Tonnes* in each Delivery Period by the last day of the Delivery Period unless a trade is transacted.
 - ii. The producer fails, or the CWB receives information that the producer is or will be unable, to deliver one hundred per cent (100%) of the *Net Tonnes* before the termination date specified by the CWB; or
 - iii. All or any portion of the *Net Tonnes* delivered or to be delivered by the producer is determined by the CWB to be something other than the Grade and Protein category indicated in the contract.
- 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 \$15.00 a tonne for CWRS wheat.
- 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 Sign-up Application.
- 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 CWB or their agents has no responsibility concerning any financial consideration negotiated between producers.
- 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.