



2007-08 CWB Daily Price Contract for Wheat: **TERMS AND CONDITIONS**

1. DEFINITIONS

- a. "Actual Grade" is the grade and/or protein of the *Wheat* actually delivered by the producer as reported on the Producer Certificate as defined in the Canadian Wheat Board Act.
- b. "Approved Methods of Acceptance" are as set out in paragraph 2.f. below.
- c. "Buyout Price" is the price available from the CWB from time to time at which the CWB will allow the producer to buy out their pricing option obligations under this Agreement. The formula by which the *Buyout Price* is calculated shall be equal to the greater of the current *FPC* price less the contracted *Daily Price* (if negative equal to zero), and the current futures less the contracted futures (if negative equal to zero) if the *Daily Price* has been locked in. If the *Daily Price* has not been locked in, the *Buyout Price* shall be equal to the current *FPC* price less the current *Daily Price*. In addition, the producer will be charged an administration fee of \$15 per transaction.
- d. "CWB Act" means *The Canadian Wheat Board Act*, as amended.
- e. "Cash Spread" is the premium or discount applied to the *Daily Price*, published by the CWB, that the producer locks in on the *Settlement Date* for the *Actual Grade* delivered.
- f. "Contract Date" is the date on which the producer communicates his/her acceptance of the *DPC* under this Agreement and communicates the acceptance to the CWB in accordance with section 2 below.
- g. "Daily Price" is the price for the reference grade, published by the CWB, that the producer can apply to all or a portion of the *Net Tonnes* by locking that price in pursuant to this Agreement.
- h. "Delivery Opportunities" are the opportunities for the delivery of *Wheat* through CWB delivery calls made by the CWB from time to time during the 2007-08 crop year for which the *DPC* is chosen. Settlement must occur within the 2007-08 crop year.
- i. "DPC" is the daily price contract for each class of *Wheat*.
- j. "DPC Price" is the *Daily Price* plus the *Cash Spread*.
- k. "Fax Form" is the "2007-08 Daily Price Contract Sign-up and 2007-08 Daily Price Contract Lock in Application" forms.
- l. "FPC" is the fixed price contract for each class of *Wheat*. The *FPC* price is the basis plus the futures based on the nearest traded futures contract for the determination of the *DPC Buyout Price*.
- m. "Initial Payment" is the payment made by the CWB or its agents at the time of delivery for the *Wheat* of the *Actual Grade* in accordance with the *CWB Act*.
- j. "Net Tonnes" is the number of net tonnes of *Wheat* that the producer has committed under the *DPC* and will deliver to the CWB pursuant to a *CWB Delivery Contract*. The *Net Tonnes* must be a minimum of 20 net tonnes.
- k. "Option Payment" is the amount that the producer will be paid for the *Net Tonnes* instead of any and all payments that would have been paid to the producer in respect of the *Net Tonnes* through participation in the *CWB Pool Account*.
- n. "Pricing Damages" means the amount calculated using the *Buyout Price* as of July 31, 2008.
- o. "Pricing Schedule" is the schedule published by the CWB from time to time that identifies: the *Reference Grade*; the *Daily Price and Cash Spread* being offered at that time.
- p. "Reference Grade" is the grade and protein of *Wheat* used to establish the *Daily Price* and *Cash Spreads* for each class of *Wheat*. The *Reference Grades* as applicable: No. 1 CWRS 13.5; No. 1 CWHWS 13.5; No. 1 CWES; No. 1 CPSR; No. 1 CPSW; No. 1 CWRW Select 11.5 and No. 1 CWSWS.
- q. "Settlement Date" is the date on which a *Producer Certificate* is issued in respect of *Wheat* priced under the *DPC*.
- r. "Wheat" is all grades and classes of wheat except *Durum*.

2. OFFER AND ACCEPTANCE

- a. In accordance with these Terms and Conditions, the CWB offers to pay the producer the *Option Payment* for the *DPC* as calculated according to the relevant payment formula set out in paragraph 6.2 a. below (the "Offer").
- b. The *Offer* is open for acceptance by the producer from June 18, 2007, until 7:30 a.m. Central Time (CT) on July 20, 2007. However, the CWB reserves the right to withdraw the *Offer* at any time and without prior notice.
- c. At the discretion of the CWB and in situations where the producer has outstanding *Pricing Damages* on a previous payment options contract and/or outstanding liquidated damages on a previous delivery contract, the CWB reserves the right to declare a producer ineligible to participate in this contract and may refuse to enter into a contract with such producer.
- d. 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*.
- e. The producer's acceptance of the *Offer* will not be valid 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.
- f. 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 Personal Identification Number (PIN); the number of tonnes of *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 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 acceptance as 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. LOCKING IN THE DPC VALUE

- a. The producer must lock in the *Daily Price* as per the *Pricing Schedule* in effect on that date in accordance with the *Approved Methods of Acceptance* on or before 7:30 a.m. (CT) on August 1, 2008; and
- b. The *Cash Spread* is automatically locked in on the *Settlement Date*.

4. CWB's OBLIGATIONS

The CWB agrees as follows:

- a. To guarantee that it will accept delivery of the *Net Tonnes* contracted for pursuant to this Agreement. If sufficient *Delivery Opportunity* is not provided during the 2007-08 crop year, the CWB will provide additional delivery opportunities. However, the CWB is not obliged to accept delivery of the *Net Tonnes* unless it is satisfied, in its sole discretion, that the producer took full advantage of all *Delivery Opportunities* for *Wheat* that were available to the producer from time to time during the 2007-08 crop year for which the *DPC* was chosen.
- b. To pay the producer in accordance with the terms herein contained in respect of the *Option Payment*.



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5. PRODUCER'S OBLIGATIONS: GENERAL PROVISIONS

- a. The producer will enter into a CWB Delivery Contract for at a minimum, the full amount of the *Net Tonnes*.
- b. The producer undertakes to deliver the *Net Tonnes* in accordance with the CWB Delivery Contract(s), as applicable and this Agreement.
- c. The producer acknowledges that all of the terms and conditions of the delivery contract apply to this Agreement regardless of whether such delivery contract is entered into prior to or subsequent to the producer entering into this Agreement. In the event of an inconsistency between the provisions of this Agreement and the delivery contract, the provisions of this Agreement will prevail.
- d. For the sake of clarity, the producer acknowledges that the only payment they will receive for the *Net Tonnes* is the *Option Payment*.
- e. The producer represents that they are of the age of majority in the province in which the producer resides. Where the producer is a corporation, partnership, cooperative 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 and has the authority to sign on behalf of the corporation, partnership, cooperative or such other entity.

6. PRICING

- a. The producer may lock in the *Daily Price* for all or a portion of the *Net Tonnes* to which the price available at the time is to apply at the value indicated on the *Pricing Schedule* on such date.

7. Payment

- a. The *Option Payment* for a *DPC* is the amount calculated as follows for each net tonne of *Wheat*:
 - i. The *Daily Price* for the class of *Wheat* shown in the *Pricing Schedule*, that was in effect on the date locked in; plus or minus (depending on whether the *Cash Spread* is positive or negative)
 - ii. The *Cash Spread* for the *Actual Grade* delivered and reported to the CWB on the *Settlement Date*; (Note: If the producer has locked in multiple deliveries, with respect to each delivery, the *Daily Price* and *Cash Spread* will be applied on a first in, first applied basis);
 - iii. Adjust by the CWB's grade and/or protein spread between initial payments for any difference between the *Reference Grade* and *Actual Grade*; and
 - iv. Subtract all deductions authorized under the *Canadian Wheat Board Act* or otherwise required by law, including, without limitation, deductions under the *Agricultural Marketing Programs Act*, the *Prairie Grain Advance Payment Act*, *Spring Credit Advance Program*, the *Enhanced Spring Credit Advance Program* and the *Advance Payments Program*.
- b. If the *Option Payment* less the *Initial Payment* results in a positive number, the CWB agrees to forthwith pay same to the producer. If the *Option Payment* less the *Initial Payment* results in a negative number, such amount will be deducted from future payments owing to the producer.
- c. The final settlement of the *Option Payment* for a *DPC* is subject to verification of the grade and/or protein by an independent third party analysis. The *Option Payment* will be adjusted for any differences between the third party analysis result and the *Actual Grade* reported.

8. DESIGNATING THE NET TONNES

- a. The producer undertakes to designate as the *Net Tonnes* any *Wheat* to be priced under the *DPC*. Such designation must be made on or before the *Settlement Date* and shall be made by providing the contract number of the *DPC* to the CWB's agent at the location where the *Wheat* is delivered.
- b. Settlement must occur within the 2007-08 crop year.
- c. The *Settlement Date* locks in the *Cash Spread* and all adjustments to spreads will be based on the original *Settlement Date*.

9. DEFAULT ON A DPC

The producer shall be deemed to be in default under the *DPC* if the producer fails, for any reason, to deliver all of the *Net Tonnes* through *Delivery Opportunities*.

- a. In the event that the producer is in default:
 - i. The CWB may cancel the *DPC* and any or all other *Selected Options* to which the CWB and the producer are party;
 - ii. The producer shall pay pricing damages to the CWB to compensate the CWB for its actual losses incurred as a result of the producer's default. Such *Pricing Damages* shall be equal to the *Buyout Price* in effect at the time of such default. The producer is responsible to deliver 100 per cent of the contracted *DPC* tonnage and any shortfall is subject to *Pricing Damages*;
 - iii. The *Pricing Damages* assessed in accordance with this section shall be paid in addition to any liquidated damages which may be assessed pursuant to any to any delivery contract entered into with the CWB; and
 - iv. The producer and CWB agree that *Pricing 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.
- b. *Pricing Damages* may be set-off by the CWB against any and all amounts that may become payable to the producer by the CWB, 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 may be so endorsed.

10. GENERAL PROVISIONS

- a. This Agreement constitutes the entire agreement between the CWB and the producer with respect to the pricing of the *Net Tonnes*. There are no representations, warranties, terms or conditions, whether express or implied with respect to pricing, 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" as used herein shall include the *Fax Form* and the *Pricing Schedule*.
- 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 and the laws of Canada applicable herein. The parties agree that the courts of the Province of Manitoba shall have exclusive jurisdiction in the case of any dispute.
- d. This Agreement shall enure to the benefit of and be binding upon the heirs, administrators, executors, legal representatives, successors and permitted assigns of the producer and the CWB. However, no assignment of this Agreement by the producer will bind the CWB without its prior written consent.
- e. If the producer is a corporation, partnership, cooperative 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 on a solicitor client basis.



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- g. If the payment received by the producer in respect of deliveries made against this Agreement exceeds the *Option Payment*, the CWB has the right to set-off against any and all amounts that may become payable to the producer by the CWB, and/or against the proceeds of any and all deliveries made by the producer under the producer's delivery permit. Any such delivery permit may be so endorsed.
- 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.
- i. Any deliveries made against this Agreement may be made to the benefit of any producer listed under the producer's permit book. All deliveries are subject to the terms and conditions established for the 2007-08 crop year.
- j. Time shall be of the essence of this Agreement.
- k. The producer may, at any time after entering into this Agreement, buy out his or her obligations hereunder by paying the CWB the *Buy-out Price*.
- l. The producer (assignor) may assign all of the rights and obligations of the producer under this Agreement to another producer (assignee) upon the receipt of written consent from the CWB. The producer will be charged an administration fee of \$15 per transaction.