

**CWB IDENTITY PRESERVED CONTRACT PROGRAM
2006-07 TERMS AND CONDITIONS
AC Commander**

1. DEFINITIONS

- a. “**CWB**” is the Canadian Wheat Board.
- b. “**Producer**” includes, as well as a producer actually engaged in the production of Grain (as defined in the CWB Act), any person entitled, as landlord, vendor, or mortgagee, to the Grain grown by an actual producer, or to any share therein.
- c. “**AC Commander**” is Canada Western Extra Strong Amber Durum wheat.
- d. “**Eligible Variety**” is AC Commander Durum wheat that is of qualifying grades of Nos. 1, 2, 3 and 4 (derived from pedigreed AC Commander seed).
- e. “**Net Tonnes**” is the number of net tonnes of the Eligible Variety that the Producer has committed under this Contract and will deliver to the CWB.
- f. “**Contract**” is the Identity Preserved Contract Program AC Commander Durum delivery contract completed by the Producer and submitted to the CWB by the contract deadline date and the terms and conditions herein.
- g. “**CWB Delivery Contract**” is the delivery contract offered by the CWB for the commitment by the Producer for the delivery of grain under Series A.
- h. “**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.

2. OFFER AND ACCEPTANCE:

- a. In accordance with these Terms and Conditions, the CWB shall send a letter to the Producer acknowledging receipt of the Producer’s application for the applicable CWB Identity Preserved Contract Program and offer to pay the Producer in accordance with Section 3 below (the “Offer”).
- b. The Producer shall have until the close of business of the applicable Contract Expiry Date to make and/or amend the Offer.
- c. The CWB reserves the right to reject an individual’s acceptance of the Offer in its sole discretion for any reason including where the Producer has outstanding *Pricing Damages* on a previous payment options contract. The CWB may declare a Producer ineligible to participate in this contract and may refuse to enter into a contract with such Producer.
- d. The Producer shall accept the Offer by completing the Contract and submitting it to the CWB electronically, via the telephone at 1-800-275-4292 and following the instructions of the CWB operator when asked to provide the Producer’s 10 digit CWB identification number and confidential Personal Identification Number (PIN).
- 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.

3. CWB’S OBLIGATIONS:

The CWB agrees as follows:

- a. To guarantee that it will accept delivery from the Producer of all of the Net Tonnes of the Eligible Variety contracted for pursuant to this Contract.
- b. To pay the Producer the initial payment in effect for the crop year in which settlement is made, less all authorized deductions including those under the Agricultural Marketing Programs Act, the Prairie Grain Advance Payments Act and the Spring Credit Advance Program.
- c. Subject to the Canadian Wheat Board Act, to pay to the Producer storage payments for the Eligible Variety at the following rates:
\$0.03 per tonne per day, for the first 120 days;
\$0.05 per tonne per day, for the next 121 days,
calculated from the date the Contract is signed by the Producer up and until the date of delivery in accordance with Section 4.
- d. The CWB may issue a deferred delivery permit to the Producer in accordance with the Canadian Wheat Board Act if the Producer is authorized but unable to deliver and sell the Net Tonnes to the CWB before the end of the crop year in which the Producer entered into the Contract for the Net Tonnes.

4. PRODUCER’S OBLIGATIONS:

- a. The Producer undertakes to deliver the Net Tonnes committed pursuant to this Contract to the grain handling company within twenty-one (21) days of being directed to do so. The Producer shall deliver to the grain handling company at the delivery point or to the CWB at the Producer car loading site indicated on the Contract, unless an alternative point or site is mutually agreed upon by the CWB and the Producer.
- b. The Producer undertakes to use his best efforts to deliver to the CWB the class of durum specified in this Agreement.

5. MISGRADES:

If the CWB deems the Producer to be acting in good faith, the CWB may, in its sole discretion, choose to allow delivery of Net Tonnes that does not match the Eligible Variety originally specified in the Contract. This process shall be termed a misgrade and may be accepted by the CWB, without the written authorization of the Producer provided that the grain delivered does not exceed the total Net Tonnes contracted for pursuant to this Contract.

6. DEFAULT:

- a. The Producer shall be in default under the Contract (“in default”) if:
 - (i) the Producer fails to deliver a minimum of ninety per cent (90%) of the Net Tonnes called for by the CWB, or the grain handling company on behalf of the CWB for all or any portion of the Eligible Variety committed to be delivered by the Producer;
 - (ii) any portion of the Net Tonnes delivered by the Producer to the CWB contains an ineligible variety which is represented by the Producer as being an Eligible Variety;
 - (iii) 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 Eligible Variety by reason of it not meeting the required grade or protein levels or primary grade specifications for feed grade; or

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- (iv) what is delivered by the Producer is not an Eligible Variety as defined in Section 1 (d).
- b. If the Producer is in default, the CWB may cancel the Contract for the Eligible Variety. The CWB may also withhold or refuse to pay, in accordance with the *Canadian Wheat Board Act*, the storage payment referred to in Section 3(c) herine. The Producer shall also pay to the CWB the damages suffered by the CWB as a result of the default. Damages will reflect the CWB's costs of administration, demurrage charges, 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 for durum ("Liquidated Damages").
- 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 suffer as a result of the default and are not a penalty. The Liquidated Damages may be set-off by the CWB against any amounts that may become payable by the CWB to the Producer pursuant to the *Canadian Wheat Board Act*, and/or against the proceeds of any deliveries made by the Producer under the Producer's delivery permit, or any delivery permit in which the Producer has an interest. Any such delivery permit book may be so endorsed.

7. GENERAL

- a. The Producer can only increase or decrease the quantity of the Net Tonnes to be delivered under the Contract for the Eligible Variety before the deadline date of October 31, 2006.
The CWB may authorize delivery at any time during the crop year. The CWB reserves the right to authorize delivery for only a portion of, or a particular grade or quality of, the Net Tonnes to be delivered pursuant to the Contract. The CWB will only pay for the quantity of Net Tonnes authorized for delivery.
- b. The CWB reserves the right to exclude tough and damp Net Tonnes as well as any Net Tonnes of a grade different than that stated in the Contract from any delivery call issued with respect to the contract for the Eligible Variety.
- c. Notwithstanding that a Producer is in default, cancellation of the Contract for the Net Tonnes or a decrease in the Net Tonnes contracted for, other than in accordance with 6(a)(i), (ii) or (iii) above, may agreed to by the CWB in its sole discretion if the Producer is in default pursuant to Section 6(a)(iii). In such cases, the CWB may authorize the Producer to enter into a delivery contract with the CWB for Grain of such class, variety and quality as the Producer has.
- d. All right, title, and interest to the Eligible Variety shall remain with the Producer until the Net Tonnes have been delivered to the CWB and the grade has been established.
- e. The Contract and the applicable terms and conditions of the CWB Delivery Contract, to the extent they are not inconsistent with this Contract for the Eligible Variety constitutes the entire agreement between the CWB and the Producer. Except as provided herein there shall be no changes or modifications unless in writing and signed by both the CWB and the Producer.
- f. If the Producer is a corporation, partnership, cooperative or business entity, the Contract must be signed in the company's name and the authorized officer, agent or partner(s) who signs on behalf of the company must state their position and authority.
- g. If any term, condition or provision of the Contract for the Eligible Variety is determined void, invalid, or unenforceable, it will be severed and will not invalidate, make void or unenforceable any other term, condition or provision of the Contract for the Eligible Variety. No assignment of the Contract for the Eligible Variety by the Producer will bind the CWB without its prior written consent.
- h. The Contract for the Eligible Variety shall be governed and construed in accordance with the laws of Manitoba. The courts of the Province of Manitoba shall have exclusive jurisdiction in the case of any dispute.
- i. The Contract for the Eligible Variety shall be binding upon and for the benefit of the successors, assigns, heirs, administrators and executors of the Producer and the CWB.