

**CWB IDENTITY PRESERVED CONTRACT PROGRAM  
2005-06 TERMS AND CONDITIONS  
AC Navigator Durum**

**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. "CWAD" is Canada Western Amber Durum wheat.
- d. "Eligible Variety" is AC Navigator Durum wheat that is of the qualifying grades of Nos. 1, and 2 CWAD 12.5 per cent and higher (derived from pedigreed AC Navigator seed), and Nos. 1, and 2 CWAD 12.4 per cent and lower (derived from pedigreed AC Navigator 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 Navigator 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, B and C.

**2. ADMINISTRATION:**

- a. *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.*

**3. THE CWB AGREES AS FOLLOWS:**

- a. To accept delivery from the Producer of all of the Net Tonnes of the Eligible Variety offered in accordance with the Contract, the CWB Delivery Contract and the Canadian Wheat Board Act.
- b. In accordance with the Canadian Wheat Board Act, to pay to 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. In accordance with the Contract, to pay to the Producer a \$2.50 per tonne premium for each Net Tonne of the Eligible Variety delivered to the CWB.
- 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. THE PRODUCER AGREES AS FOLLOWS:**

- a. (i) to commit Net Tonnes of the Eligible Variety to the CWB as indicated on the Contract; and  
(ii) to, within twenty-one days of being directed to do so by the grain handling company, deliver the portion of Net Tonnes specified and a sample, when requested, 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.

**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 written authorization of the producer, based on the following condition:

- (i) Grain delivered cannot exceed the total Net Tonnes accepted by the CWB;

**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 of the Net Tonnes called for by the CWB, or the 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
  - (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 the premium referred to in section 3(c). 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/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 for wheat.

- c. 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 CWB 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 September 24, 2005.
- b. 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 for the Grain. The CWB will only pay for the quantity of Net Tonnes authorized for delivery
- c. 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

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Contract from any delivery call issued with respect to the contract for the Eligible Variety.

and will not invalidate, make void or unenforceable any other term, condition or provision of the Contract for the Eligible Variety.

- d. 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 7(a), 7(b) or 7(c) above, may agreed to by the CWB in its sole discretion if the Producer is in default pursuant to section 6(c). 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.
- e. 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.
- f. 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.
- g. If any term, condition or provision of the Contract for the Eligible Variety is determined void, invalid, or unenforceable, it will be severed
- h. No assignment of the Contract for the Eligible Variety by the Producer will bind the CWB without its prior written consent.
- i. 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.
- j. 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.