CWB

2007-08 CWB FIXED PRICE CONTRACT FOR SELECTED BARLEY: *TERMS AND CONDITIONS*

1. DEFINITIONS

a. *"Actual Grade"* is the grade of the *Selected Barley* actually delivered by the producer as reported on the Producer Certificate, as defined in *The Canadian Wheat Board Act*.
b. *"Adjustment Factor" is one of the price components of the Fixed Price that adjusts the price to reflect the sales position of the pool account with respect to the spot futures value as shown in the Pricing Schedule.*
c. *"Approved Methods of Acceptance"* are as set out in paragraph 2.f. below.
d. *"Basis"* is one of the price components of the *Fixed Price* as shown in the *Pricing Schedule*.
e. *"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 obligations under this Agreement. The formula by which the *Buyout Price* is calculated shall be equal to the greater of:
{(current futures + current basis + current adjustment factor) - (producer's lock in futures + producer's lock in basis + producer's lock in adjustment factor)} if negative equal to zero and
(current futures - producer's lock in futures) if negative equal to zero.
In addition, the producer will be charged an administration fee of $15 per transaction.
f. *"CWB Act"* means *The Canadian Wheat Board Act*, as amended.
g. *"Contract Date"* is the date on which the producer enters into an FPC and commits the *Net Tonnes* to the *FPC.* If the producer elects to have the *Force Majeure* provision included in the Agreement, the producer must do so on the *Contract Date.*
h. *"Delivery Opportunities"* are the opportunities for the delivery of *Selected Barley* through delivery calls made by the selector, named in the *SBSDC,* from time to time during the 2007-08 crop year. Delivery and settlement must occur within the 2007-08 crop year.
i. *"Fax Form"* means the following forms, as applicable: the "2007-08 Fixed Price Contract Sign-up Application", the "2007-08 Fixed Price Contract and Basis Payment Contract Target Pricing Application", "2007-08 Target Pricing Order Cancellation" and the "2007-08 Fixed Price Contract and Basis Payment Contract Quality Transfer".
j. *"Feed Barley"* is No. 1 Canada Western (CW) and No. 2 CW Feed Barley
k. *"Fixed Price"* is the price identified as such in the *Pricing Schedule*.
l. *"FPC"* is the fixed price contract as provided for herein.
m. *"FPC Sign-up Expiry Date"* is 7:30 a.m. Central Time (CT) on November 1, 2007, or such other date as the CWB designates
n. *"Futures Price"* is one of the price components of the *Fixed Price* as shown in the *Pricing Schedule*.
o. *"Incremental Payment*" is an amount identified as such in the *Pricing Schedule*, representing the producer's time value of money for deferred delivery.
p. *"Initial Payment"* is the payment made by the CWB or its agents at the time of delivery for *Selected Barley* of the *Actual Grade* in accordance with the *CWB Act*.
q. *"Net Tonnes"* is the number of net tonnes of *Selected Barley* that the producer has signed-up under the *FPC* and has agreed to deliver to the CWB. The *Net Tonnes* must be a minimum of 20 net tonnes.
r. *"Option Payment"* is the amount that the producer will be paid for the *Net Tonnes* as set out herein in respect of the *FPC* instead of any and all payments that would have been made to the producer in respect of the *Net Tonnes* through participation in the CWB Pool Account.
s. *"Pricing Damages"* means the amount calculated using the *Buyout Price* as of July 31, 2008.
t. *"Pricing Schedule"* is the schedule published by the CWB from time to time that identifies: the *Incremental Payment* being offered at that time; the *Fixed Price* being offered at that time; the *Adjustment Factor* being offered at that time*;and* the *Reference Grade;*.
u. *"Reference Grade"* for two-row barley is Standard Select Two-Row; for six-row barley it is Standard Select Six-Row.
v. *"Selected Barley"* is barley that has been selected and accepted for use as pot barley or in malting or pearling, except sample grades.
w. *"SBSDC"* is the 2007-08 Selected Barley Storage and Delivery Contract.
x. *"Settlement Date"* is the date on which a Producer Certificate, as defined in the *CWB Act*, is issued in respect of *Selected Barley* priced under an *FPC.*
y. *"Target Price"* is the *Fixed Price* at which the producer indicates to the CWB that he/she is willing to accept the offer.
z. *"Transfer Date"* is the date the producer initiates the Quality Transfer option of this Agreement.

2. OFFER AND ACCEPTANCE

a. In accordance with these Terms and Conditions, the CWB offers to pay the producer the *Option Payment* as calculated according to the relevant payment formula set out in paragraph 6 below subject to the conditions outlined in paragraph 2.c. below (the "*Offer*").
b. The *Offer* is open for acceptance by the producer from August 15, 2007, until the earlier of 7:30 a.m. (CT) on November 1, 2007 and such time as the Offer is withdrawn by the CWB in its sole discretion. The CWB reserves the right to withdraw the *Offer* at any time and without prior notice.
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'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 when asked to provide the producer's 10-digit CWB identification number and confidential Personal Identification Number (PIN) and indicating the number of tonnes of *Selected Barley* for sign-up and lock-in or Quality Transfer. 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 of the sign-up and lock-in or Quality Transfer 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.
   iii. The producer may telephone or fax his/her *Target Price* using either of the methods setout in (i) or (ii) above.

3. LOCKING IN THE *FIXED PRICE*

a. The producer will lock in the *Fixed Price* on the *Contract Date* in accordance with the *Pricing Schedule* in effect on that date.
b. The producer must lock in the said value indicated in 3.a. above in accordance with one of the *Approved Methods of Acceptance*.

4. CWB'S OBLIGATIONS

The CWB agrees to pay the producer in accordance with the terms herein contained in respect of the *FPC*.

5. PRODUCER'S OBLIGATIONS

a. The producer undertakes to deliver the *Net Tonnes* in accordance with the CWB's *Delivery Opportunities* and this Agreement.
b. The producer acknowledges that, except to the extent that any provisions may be inconsistent, this Agreement does not alter the producer's obligations under any delivery contract entered into between the producer and the CWB. The producer agrees that this shall be the case regardless of whether such delivery contract is entered into prior to or subsequent to the producer entering into this Agreement. In the event of such an inconsistency, the provisions of this Agreement will prevail.
c. For greater certainty, the producer acknowledges that the only payment they will receive in respect of the *Net Tonnes* is the *Option Payment*.

6. PAYMENT

a. The producer will be paid the *Initial Payment* in effect on the *Settlement Date* for the *Actual Grade* of *Selected Barley* delivered.
b. The *Option Payment* for an *FPC* is calculated as follows in respect of each *Net Tonne* of *Selected Barley*:
   i. Add the *Fixed Price* for *Selected Barley* as indicated in the *Pricing Schedule* that was in effect on the *Contract Date*, or the *Transfer Date* if applicable;
   ii. Add the *Incremental Payment* shown in the *Pricing Schedule* that was in effect on the *Contract Date* that corresponds to the *Settlement Date*;
   iii. Adjust for the CWB's grade spread between the *Reference Grade* and the *Actual Grade* based on the *Initial Payment* effective on the *Settlement Date*;
   iv. Subtract all deductions authorized under the *CWB Act* or under this contract or otherwise required by law, including, without limitation; deductions under the *Agricultural Marketing Programs Act*, the *Prairie Grain Advance Payment Act* and the *Spring Credit Advance Program*.
c. 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.

6.1 Designating the *Net Tonnes*

Deliveries of *Selected Barley* made against a *SBSDC* after the *Contract Date* of the *FPC* will be automatically applied to this Agreement until all of the *Net Tonnes* have been delivered. Settlement must occur within the 2007-08 crop year.

7. QUALITY TRANSFER

a. A producer who has entered into a *Selected Barley FPC* and who subsequently has the *Selected Barley* rejected under an *SBSDC,* may transfer the obligations of the *Selected Barley FPC* to a *Feed Barley FPC.* The producer will be charged an administration fee of $15 per transaction.
b. Quality Transfers may be for all or a portion of the *Net Tonnes* but must be a minimum of 20 tonnes.
c. The Quality Transfer must be completed in the 2007-08 crop year.
d. The producer's exercise of the Quality Transfer clause will not be valid unless it is made in strict compliance with one of the *Approved Methods of Acceptance*.
e. The producer's *FPC* value for each *Net Tonne* transferred to the *Feed Barley FPC* will be adjusted on the *Transfer Date*, for the purpose of calculating the *Option Payment,* as follows:
   i. The *Futures Price* for *Selected Barley* shown in the *Pricing Schedule* on the *Contract Date* will be transferred to the *Feed Barley FPC;*
   ii. The *Basis* for *Feed Barley* shown in the *Pricing Schedule* on the *Transfer Date* will be applied to the *Feed Barley FPC,* to reflect the quality change*;* and
   iii. The *Adjustment Factor* for *Feed Barley* shown in the *Pricing Schedule* on the *Transfer Date* will be applied to the *Feed Barley FPC.*
f. The *Option Payment* will be calculated using the *Incremental Payment* for *Feed Barley* shown in the *Pricing Schedule* on the *Contract Date.*
g. The producer is subject to the Terms and Conditions of the *Selected Barley FPC* upon exercising the Quality Transfer.
h. Any *Net Tonnes* transferred from a *Selected Barley FPC* to a *Feed Barley FPC* are no longer eligible for selection under an *SBSDC* and are subject to immediate delivery.

8. DEFAULT

a. The producer shall be deemed to be in default under the *FPC* if the producer fails, for any reason, to deliver all of the *Net Tonnes* through *Delivery Opportunities*.
b. In the event that the producer is in default under paragraph 8.a. above, the CWB may cancel the *FPC* and any or all other payment option contracts to which the CWB and the producer are party.
c. Further, 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 *FPC* tonnage and any shortfall is subject to *Pricing Damages*.
d. In the event that the producer is in default as a result of their failure to deliver the *Net Tonnes* the *Pricing Damages* assessed in accordance with this paragraph will be paid in addition to any liquidated damages which may be assessed pursuant to any delivery contract entered into with the CWB.
e. The producer and the 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.
f. *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 and is considered as a related producer. Any such delivery permit may be so endorsed.

9. 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, 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 greater certainty, 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 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, 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.
e. This Agreement shall enure to the benefit of 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.
f. 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.
g. 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.
h. 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.
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 failure of the CWB to exercise any right or remedy be considered a waiver of any right or remedy it may have.
j. Any deliveries made against this Agreement may only be made to the benefit of the producer who holds the permit book.
k. Time shall be of the essence of this Agreement.
l. The producer may, at any time after entering into this Agreement, buy out his or her obligations hereunder by paying the CWB the *Buyout Price*.
m. 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.