



**CWB 2007-08 IDENTITY PRESERVED CONTRACT PROGRAM  
TERMS AND CONDITIONS  
CANADA WESTERN RED WINTER SELECT**

**1. DEFINITIONS**

- a. **“Contract Expiry Date”** means the date on or before which the producer must offer tonnes for delivery. Such date is September 30, 2007 for a Series A Contract.
- b. **“CWB Act”** means The Canadian Wheat Board Act, as amended from time to time.
- c. **“Delivery Call”** means a request from the CWB that certain grain be delivered as published on the CWB's Web site at: [www.cwb.ca](http://www.cwb.ca) or as provided to a producer by written notice.
- d. **“Designated Delivery Point”** means designated companies and locations/stations where an Canada Western Red Winter Select contract can be delivered.
- e. **“Eligible Variety”** is AC Bellatrix, AC Readymade, AC Tempest, CDC Buteo, CDC Osprey, McClintock, Norstar and Radiant that is of qualifying grades of Nos. 1 and 2 CWRW Select, 11.0 per cent protein and higher.
- f. **“IPCP”** is the Identity Preserved Contract Program.
- g. **“Total Contracted 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.

**2. OFFER AND ACCEPTANCE**

- a. In accordance with these Terms and Conditions, the producer offers, for purchase by the CWB (the “Offer”), such quantity and quality of *Eligible Variety* as specified in the Offer.
- b. The producer acknowledges and agrees that the tonnes specified in the Offer represent the actual tonnes that the producer has produced during the term of this agreement.
- c. The producer shall have until the close of business of the applicable *Contract Expiry Date* to make and/or amend the Offer.
- d. The approved methods of making an offer:
  - i. telephoning the CWB at 1-800-275-4292 and providing the producer's 10-digit CWB producer I.D. number and confidential Personal Identification Number (PIN) and indicating the number of net tonnes offered by the producer. The CWB's record of such telephone call, including any written confirmation, is conclusive and binding on the producer.
  - ii. logging onto e-Services at [www.cwb.ca](http://www.cwb.ca) and offering the net tonnes pursuant to this contract.
  - iii. contacting a CWB Agent who can submit the Offer on-line through the CWB's e-Services.

**3. CWB'S OBLIGATIONS**

The CWB agrees as follows:

- a. To accept delivery of the *Eligible Variety* from the producer, in accordance with the *CWB Act* and the Terms and Conditions of this delivery contract.
- b. In accordance with the *CWB Act*, to pay to the producer:
  - i. the initial payment for the class and quality of *Eligible Variety* delivered to the CWB that is in effect for the pool period in which settlement is made, which includes a \$10.00 per tonne premium, less any amounts owing to the CWB and all authorized deductions including those under the CWB Advance Payments Programs;
  - ii. subject to the *CWB 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 after 120 days.Storage payments are calculated starting September 1, 2007 or when the delivery contract is signed, whichever is later, to the date of delivery or the delivery authorization termination date, whichever is earlier.
- c. The CWB may issue a deferred delivery permit to the producer in accordance with the *CWB Act* if the producer is authorized but unable to deliver and sell the *Total Contracted Net Tonnes* to the CWB before the end of the crop year in which the producer entered into the contract for the *Total Contracted Net Tonnes*.

**4. PRODUCER'S OBLIGATIONS**

- a. The producer agrees:
  - i. to sell the *Eligible Variety* to the CWB; and
  - ii. to deliver the *Eligible Variety*, and any portion thereof called for by the CWB, to the CWB on or before the termination date specified in any *Delivery Call*; and
  - iii. to have a spring sign-up application for this program. The CWB reserves the right to cancel the IPCP contract if the producer does not have a fall sign-up.



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- b. The producer can only increase or decrease the quantity of the *Total Contracted Net Tonnes* to be delivered under the contract for the *Eligible Variety* before the *Contract Expiry Date*.
- c. Producers are expected to deliver grain that is 95 per cent pure to the variety or varieties specified in this contract.
- d. The producer must submit a representative sample of the grain to the CWB. If the CWB does not receive a sample, the CWB reserves the right to cancel the contract.

**5. DELIVERY**

- a. The producer shall deliver the *Total Contracted Net Tonnes* or any portion thereof.
- b. The CWB, or the elevator representative from the *Designated Delivery Point*, 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 *Total Contracted Net Tonnes* to be delivered pursuant to the contract. The CWB will only pay for the quantity of *Total Contracted Net Tonnes* authorized for delivery.
- c. The producer shall deliver to the *Designated Delivery Points* within 21 days of being directed to do so. The producer shall deliver to the *Designated Delivery Point* or the producer car loading site indicated on the contract unless an alternative *Designated Delivery Point* or site is mutually agreed upon by the CWB and the producer.
- d. The CWB reserves the right to exclude tough and damp *Total Contracted Net Tonnes* as well as any *Total Contracted 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*.
- e. The producer will ensure that the grain shipped in a producer car is in marketable condition. If the grain is no longer in marketable condition, the contract is placed into default.

**6. MISGRADES**

If the CWB deems the producer to be acting in good faith, the CWB may, in its sole discretion, choose to allow delivery 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 Contracted Net Tonnes*.

**7. PASSAGE OF TITLE**

All right, title, and interest to the *Eligible Variety* shall remain with the producer until the *Eligible Variety* has been delivered to the CWB and the grade has been established and a cash ticket has been issued.

**8. DEFAULT**

- a. The producer shall be in default under the contract ("in Default") if:
  - i. the producer fails, or the CWB receives information that the producer is or will be unable, to deliver a minimum of 90 per cent of the *Eligible Variety* called for by the CWB on or before the termination date specified in any *Delivery Call* issued by the CWB for all or any portion of the *Eligible Variety*; or
  - ii. any portion of the *Eligible Variety* delivered by the producer to the CWB contains a non-registered variety which is represented by the producer as being a registered variety; or
  - iii. all or any portion of the *Total Contracted 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 levels; or
  - iv. the grain is shipped in a producer car and is unloaded with evidence of infestation.
- b. In the event that the producer is in Default, the CWB may void the contract for the *Eligible Variety* and any other contract between the CWB and the producer and/or the CWB may restrict the producer's delivery opportunities under such contracts. The CWB may also withhold or refuse to pay, in accordance with the *CWB Act*, the storage referred to in Section 3(b)(iii) and the premium payment referred to in Section 3(b)(ii).
- c. Further, the producer shall also pay to the CWB the damages suffered by the CWB as a result of the Default. Liquidated 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 \$15.00 per tonne for 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 entered into by the producer and the CWB.



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- e. The producer and the CWB agree that liquidated damages determined in this manner are reasonable and 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. The liquidated damages may be off-set 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.

**9. GENERAL**

- a. Notwithstanding that a producer is in Default, cancellation of the contract for the *Total Contracted Net Tonnes* or a decrease in the *Total Contracted Net Tonnes*, other than in accordance with 8(a)(i), (ii), (iii) or (iv) above, may be agreed to by the CWB in its sole discretion if the producer is in Default pursuant to Section 8(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.
- b. The delivery contract for the *Eligible Variety* constitutes the entire agreement between the CWB and the producer with respect to the delivery of the *Eligible Variety*. There are no representations, warranties, terms or conditions, whether express or implied, beyond those contained herein. There shall be no changes or modifications to the delivery contract unless they are made in writing, and signed by both the producer and the CWB.
- c. If any provision, or part thereof, of the delivery contract is determined to be void, invalid, or unenforceable, it will be severed and will not void, invalidate, or make unenforceable any other provision of the delivery contract.
- d. The delivery contract 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.
- e. The contract 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 the delivery contract will bind the CWB without its prior written consent, which consent may be withheld.
- f. If the producer is a corporation, partnership, cooperative or other business entity, the delivery contract 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. That the producer is the age of majority in the Province of Manitoba or where the producer is a corporation, partnership, cooperative or other business entity, the producer and the person signing on behalf of the producer is of the age of majority in the Province of Manitoba, and is duly authorized to sign on behalf of the corporation, partnership, cooperative or such other business entity.
- h. The producer shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of the delivery contract.
- i. Time shall be of the essence of the delivery contract.
- j. The exercise by the CWB of any right or remedy provided herein shall not affect any other right or remedy that the CWB may have under this agreement. 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.