



CWB 2007-08 SELECTED BARLEY STORAGE AND DELIVERY CONTRACT TERMS AND CONDITIONS

The effective date of this Selected Barley Storage and Delivery Contract (the "Contract") will be the date of acceptance by the Selecting Party (the "Effective Date").

1. The contractual relationship between the CWB and the Selecting Party (the "Selecting Party") or the Company (the "Company") referred to in this Contract is governed by the terms herein and by the terms of the Handling Agreement between the CWB and the Selecting Party or the Company.

2. THE CWB AGREES:

- a. To purchase the Selected Barley from the Producer in accordance with the Canadian Wheat Board Act (CWB Act) and the terms and conditions of the Contract.
- b. In accordance with the CWB Act, to pay to the Producer, after acceptance of the Selected Barley by the Selecting Party, as payment for the Selected Barley:
 - i. the initial payment in effect for the pool period in which the Contract was entered into, or the pool period in which settlement is made, less any amounts owing to the CWB and less all authorized deductions including those under the Prairie Grain Advance Payments Act, the Agricultural Marketing Programs Act, the Spring Credit Advance Program, the Enhanced Spring Credit Advance Program, tariffs and other charges; or
 - ii. in the event that the Selected Barley has been priced under a CWB payment options contract to pay the Producer in accordance with that contract, and,

Whether the Producer chooses to be paid pursuant to (i) or (ii) above, carrying charges for the storage of Selected Barley on the Producer's farm pursuant to the Contract, of \$0.03/tonne/day for the first one hundred and twenty days, \$0.05/tonne/day for the next sixty days (day 121 to day 180), and \$0.09/tonne/day for all subsequent days, from the Effective Date to the date of delivery by the Producer of the Selected Barley to either the Company or the Selecting Party, as directed by the Selecting Party. Producers whose barley has been rejected at delivery or unload on account of germination may be eligible for storage payments. A representative recheck sample submitted prior to January 1 must clearly show that all quality criteria including minimum germination level were met. The storage payments are available only on rejected barley settled as CWB feed after January 1 of the crop year in which the Effective Date of the Contract falls.

- 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 the Selected Barley before the end of the crop year in which the Effective Date of the contract falls.
- d. If the Selecting Party is in default pursuant to 4(h) and the Selected Barley is of a quality equal to or superior, in all respects, to the Sample and is pure as to the variety specified, has not been treated with preharvest glyphosates or other desiccants, and meets the maximum moisture content and minimum germination levels agreed to, the CWB agrees to purchase the Selected Barley from the Producer.
- e. If the Producer is in default, the CWB shall collect liquidated damages as assessed in 3(f) and shall apportion to the Selecting Party its share.

3. THE PRODUCER AGREES:

- a. To sell the Selected Barley to the CWB and to store the Selected Barley until delivery is called for by the Selecting Party.
- b. That the sample of barley submitted with this offer ("the Sample") is representative of the barley the Producer offers to sell to the CWB and that it has not been treated with preharvest glyphosates or other desiccants.
- c. To deliver the Selected Barley or portion thereof to the designated delivery point in Part A, unless an alternative delivery point is agreed to by the Producer;
 - i. if a delivery period has been negotiated per Part B, within 21 days of being called to deliver within that delivery period, or;
 - ii. if no delivery period has been negotiated and a delivery date for informational purposes has been given, per Part B, within 21 days of being called for delivery.
- d. The Producer shall be in default under the Contract:
 - i. if the Producer fails, or the Selecting Party advises the CWB that the Producer is or will be unable, to deliver a minimum of 90 per cent of the Selected Barley as required by 3(c); or
 - ii. if what is delivered by the Producer or any portion thereof, is not of a quality equal or superior in all respects to the Sample, or is not pure as to the variety specified, has been treated with preharvest glyphosates or other desiccants, or exceeds the maximum moisture content specified, or the minimum germination level agreed to.



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- e. If the Producer is in default, the CWB may cancel the Contract and any other delivery contract between the CWB and the Producer. The Producer shall pay to the CWB the damages suffered by the CWB and the Selecting Party as a result of the default. Damages will reflect the CWB's and the Selecting Party'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 and the Selecting Party will be \$15.00 a tonne and the maximum damages will be \$75.00 a tonne. The Producer, the CWB, and the Selecting Party agree that liquidated damages determined in this manner are a genuine pre-estimate of the actual damages the CWB and the Selecting Party 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.
- f. If the Producer is in default pursuant to 3(d)(ii), the CWB may, at its sole discretion, agree to purchase the barley, or any portion thereof, from the Producer, and the barley will then be deemed conclusively to be, feed barley. The CWB may at its sole discretion, set-off the amount payable by the CWB against the amount to be paid by the Producer to the CWB for liquidated damages, pursuant to 3(e).

4. THE SELECTING PARTY AGREES:

- a. That it is the Selecting Party's sole responsibility to inspect the Sample. The Selecting Party will have no recourse against the CWB for damages of any manner or kind whatsoever with respect to any defect of the Selected Barley rendering the Selected Barley unmerchantable, if such defect could or should have been discovered by the Selecting Party with reasonable examination of the Sample.
- b. To take and retain a Sample of the barley upon offer and delivery to the Selecting Party.
- c. To either negotiate a delivery period or advise the Producer of an informational delivery period and indicate the delivery period option in Part B of the Contract.
- d. By signing this Acceptance the Selector hereby agrees to all of the Other Conditions specified by the Producer on the contract, as applicable. If the Selector does not accept the Other Conditions indicated by the Producer, as applicable, this Agreement will be of no force and effect unless and until the Producer accepts the Other Conditions as per 5(a).
- e. To call for delivery the Selector will:
 - i. if a delivery period has been negotiated as per Part B, no later than 21 days prior to the end of that delivery period;
 - ii. if a delivery period for informational purposes has been indicated per Part B, by July 31st of the crop year in which the Effective Date of the Contract falls.
- f. To determine whether any sample taken is of a quality equal or superior, in all respects, to the Sample and if the maximum moisture content, minimum germination level and varietal purity specifications agreed to have been met.
- g. To provide, upon the request of the Producer, information related to the quality characteristics of any sample of the Selected Barley within fourteen days of testing the sample.
- h. The Selecting Party shall be in default under the Contract if the Selecting Party:
 - i. fails to call for delivery from the Producer of the Selected Barley in accordance with 4(e); or
 - ii. fails to accept the Selected Barley or any portion thereof delivered by the Producer, notwithstanding that it is of a quality equal or superior, in all respects, to the Sample and maximum moisture content and minimum germination level and varietal purity specifications agreed to have been met and the Selected Barley has not been treated with preharvest glyphosates or other desiccants.
- i. If the Selecting Party is in default pursuant to 4(h), it shall, at the CWB's sole discretion, pay to the CWB charges on account of storage as outlined in 2(b)(ii) for each day from the Effective Date to the date of the default.
- j. If the Selecting Party is in default pursuant to 4(h), the Selecting Party shall pay to the CWB the damages suffered by the CWB as a result of the default. At the CWB's sole discretion, the loss to or damages suffered by the CWB shall be deemed to be for each tonne of the Selected Barley of which the Selecting Party fails to take delivery, the difference between the average price, basis in storage lower St. Lawrence, for all open contracts for malting barley between the CWB and the Selecting Party as at the date of the Selecting Party's default and the spot cash price, basis in storage lower St. Lawrence for feed barley on the date of the Selecting Party's Default.



CWB 2007-08 SELECTED BARLEY STORAGE AND DELIVERY CONTRACT TERMS AND CONDITIONS

The Selecting Party and the CWB agree that the amount of liquidated damages determined in this manner is a genuine pre-estimate of the actual damages the CWB will suffer as a result of default by the Selecting Party and does not represent a penalty.

5. GENERAL

- a. The Contract, once signed by the Producer and the Selecting Party, shall be forwarded to the CWB for the CWB's acceptance and will not constitute a binding contract until CWB acceptance has been obtained. The Producer shall be notified within fourteen days, by the Selecting Party, the Company, or the CWB that the Producer's offer has been accepted. If the Producer is advised after the fourteen days that the offer has been accepted, or if the Specifications/Requirements in Part B of the Contract have been altered by the Selecting Party, the Producer will have a further fourteen days within which to notify the Company, the Selecting Party, or the CWB that the Contract is cancelled in its entirety. If the Producer fails to do so, then the Producer will be bound by the Contract. CWB acceptance of the Contract will, in due course, be confirmed to the Producer, the Selecting Party, and the Company.
- b. Subject to Section 1 and the terms and conditions of the sales contract(s) between the Selecting Party and the CWB, this Agreement constitutes the entire agreement between the parties pursuant to the subject matter hereof. There shall be no changes or modifications to this Agreement unless in writing and agreed to and signed by all parties.
- c. All right, title and interest to the Selected Barley shall remain with the Producer until it has been delivered to and accepted by the Selecting Party.
- d. If any term, condition or provision of this Agreement 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 this Agreement.
- e. This Agreement shall be governed by and construed in accordance with the laws of the Province of Manitoba. In the case of any dispute, the courts of the Province of Manitoba shall have exclusive jurisdiction.
- f. This agreement shall be binding upon and for the benefit of the successors, assigns, heirs, administrators and executors of the parties, but no assignment of the Contract by the Selecting Party or the Producer will bind the CWB without its prior written consent.