



## CWB 2007-08 MISGRADE TO GUARANTEED DELIVERY CONTRACT TERMS AND CONDITIONS DURUM (No. 4 and No. 5 CWAD)

### 1. DEFINITIONS

- a. “**Actual Grade**” is the grades of No. 4 and No. 5 Durum actually delivered by the producer as reported on the cash ticket.
- b. “**CWB Act**” means The Canadian Wheat Board Act, as amended from time to time.
- c. “**Durum**” means Durum grading No. 4 or No. 5 Canada Western Amber Durum (CWAD).
- d. “**Delivery Call**” means a request from the CWB that certain Durum 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.
- e. “**GDC**” is the Guaranteed Delivery Contract for No. 4 and No. 5 CWAD.
- f. “**Total Contracted Net Tonnes**” means the total amount of net tonnes offered by the producer and accepted by the CWB under the delivery contract.
- g. “**Transfer**” means the producer can transfer all or a portion of the tonnes committed to another producer.

### 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 *Durum* 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.
- c. 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 making an Offer and unless it is actually received at the Head Office of the CWB prior to the withdrawal of the Offer.
- d. The approved method of making an offer are:
  - i. telephoning the CWB at 1-800-275-4292 and providing the producer’s 10-digit CWB producer I.D. number and confidential Person 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. faxing a Misgrade to GDC for Durum (No.4 and No. 5 CWAD) (the “Form”) to the CWB at 1-204-983-8031. The *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 *Form*, the CWB may, in its sole discretion, reject the application as being invalid. The *Form* will be deemed to have been received at the time printed on the fax by the CWB’s fax machine.

### 3. CWB’S OBLIGATIONS

The CWB agrees as follows:

- a. To accept delivery of the *Durum* from the producer, in accordance with the *CWB Act* and the Terms and Conditions of this *GDC* for *Durum*.
- b. In accordance with the *CWB Act*, to pay to the producer:
  - i. the initial payment for the class and quality of *Durum* delivered that is in effect for the pool period in which settlement is made, less any amounts owing to the CWB and all authorized deductions including those under the Prairie Grain Advance Payments Act, the Agricultural Marketing Programs Act, the Enhanced Spring Credit Advance Program and the Spring Credit Advance Program; or
  - ii. in the event that the *Durum* has been priced under a CWB payment options contract, to pay the producer in accordance with that contract.

### 4. PRODUCER’S OBLIGATIONS

- a. The producer must commit to deliver the *Total Contracted Net Tonnes* at the time they submit their acceptance of the *Offer*.
- b. The producer agrees:
  - i) to sell the *Durum* to the CWB; and
  - ii) To deliver the *Durum*, and any portion thereof called for by the CWB, to the CWB on or before the termination date specified in any *Delivery Call* or *Transfer* the tonnes to another producer.

### 5. DELIVERY

- a. The producer shall deliver the *Total Contracted Net Tonnes* or any portion thereof, to the CWB within 30 days of same being called for delivery by the CWB.
- b. The CWB reserves the right to exclude tough and damp *Durum* from any delivery call issued with respect to this delivery contract.



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**6. PASSAGE OF TITLE**

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

**7. DEFAULT**

- a. The producer shall be in default under the delivery contract for the *Durum* ("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 *Durum* 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 *Durum*; or
  - ii. any portion of the *Durum* delivered by the producer to the CWB contains a non-registered variety which is represented by the producer as being a registered variety of that class of *Durum*; or
  - iii. All or any portion of the *Durum* delivered or to be delivered by the producer is determined by the CWB to be ineligible for delivery under the contract for the *Durum*.
- b. In the event that the producer is in Default, the CWB may void the contract for the *Durum* and any other contract between the CWB and the producer and/or the CWB may restrict the producer's delivery opportunities under such contracts.
- c. Further, the producer shall pay liquidated damages to the CWB to compensate the CWB for its actual losses incurred as a result of the producer's Default under the delivery contract. Liquidated damages will reflect the CWB's costs of administration, demurrage charges/delivery penalties, and lost opportunity as a result of the Default and shall be calculated on a per tonne basis. The minimum damages assessed by the CWB will be \$6.00 a tonne and the maximum damages will be \$25.00 a tonne.
- 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. The CWB can forward the outstanding balance for collection.
- e. 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 incur as a result of the Default by the producer and that such damages are not a penalty.
- f. Liquidated damages may be off-set by the CWB against any and all amounts that may become payable by the CWB to the producer, pursuant to the *CWB Act* 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. Any such delivery permit book may be so endorsed.
- g. Upon Default, the CWB can withhold any CWB payments payable to the producer and apply them to the outstanding liquidated damages with respect to this contract, and that this will constitute a discharge of the liability under the *CWB Act* to pay the recipient.

**8. GENERAL**

- a. The delivery contract for the *Durum* constitutes the entire agreement between the CWB and the producer with respect to the delivery of the *Durum*. 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.
- b. 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.
- c. 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.
- d. The contract shall be binding upon, and ensure 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.
- e. 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 office, agent or partner(s) who sign(s) on behalf of the entity must state their position and authority.
- f. 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.
- g. The producer shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of the



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delivery contract.

- h. Time shall be of the essence of the delivery contract.
- i. 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.