



CWB 2007-08 PRE-DELIVERY TOP-UP TERMS AND CONDITIONS

1. DEFINITIONS

- a. **“Actual Grade”** is the grade of wheat delivered pursuant to this delivery contract.
- b. **“Advance”** is the 2007-08 after harvest cash advance issued to the producer pursuant to the Agricultural Marketing Programs Act (AMPA) and which is identified in the producer’s Offer to the CWB under this contract.
- c. **“Contract Expiry Date”** for Canada Western Red Winter and Canada Western Red Winter Select is September 30, 2007. For all other *Eligible Grains* the deadline date is October 31, 2007.
- a. **“CWB Act”** means The Canadian Wheat Board Act, as amended from time to time.
- d. **“Delivery Call”** means a request from the CWB that certain *Eligible Grain* be delivered as published on the CWB’s Web site at: www.cwb.ca or as provided to a producer by written notice.
- e. **“Discount Rate”** is the cost applied to the amount of the Pre-delivery Top-up (*PDT*) payment, which is calculated daily and compounded monthly at the prime lending rate. The prime lending rate is the average of the prime lending rate set by the five major Chartered Banks in Canada.
- f. **“Eligible Grain”** is Canada Western Red Spring (CWRS), Canada Western Red Winter (CWRW); Canada Western Soft White Spring (CWSWS); Canada Prairie Spring Red (CPSR); Canada Prairie Spring White (CPSW); Canada Western Extra Strong (CWES); Canada Western Hard White Spring (CWHWS) and Canada Western Amber Durum (CWAD). Excluded grain is: No. 4 CWRS, No. 4 CWHWS, No. 3 CWSWS, Canada Western Feed, AC Commander, sample grades and mixed grain.
- g. **“Grain”** is any grade of wheat, barley and selected barley.
- h. **“Total Contracted Net Tonnes”** is the number of net tonnes of *Eligible Grain* that the producer offers to the CWB under this contract. The *Total Contracted Net Tonnes* must be a minimum of 20 net tonnes and cannot exceed the maximum tonnes upon which the *Advance* was issued.
- i. **“PDT”** is the Pre-delivery Top-up as provided for herein.
- j. **“PDT Payment”** is the payment issued to the producer in respect of this contract calculated on the basis of the *PDT Tonnes* multiplied by \$30.00 per tonne.
- k. **“PDT Tonnes”** is the portion of the *Total Contracted Net Tonnes* that the CWB bases the *PDT Payment* upon and which is identified on the confirmation sent to the producer.
- l. **“PPO”** are the Producer Payments Options programs offered by the CWB, including but not limited to the Early Payment Option (EPO), Fixed Price Contract (FPC), Daily Price Contract (DPC) and Basis Payment Contract (BPC).
- m. **“Wheat”** is all grades and classes of wheat and durum.

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 Grain* as specified in the Offer. The producer’s Offer will not be valid unless the producer complies with one of the *Approved Methods of Offer* and unless such Offer is submitted to the Head Office of the CWB prior to the *Contract Expiry Date*.
- b. The CWB reserves the right, in its sole discretion, to determine the portion of the *Total Contracted Net Tonnes* that is eligible for the *PDT Payment*.
- c. The producer acknowledges and agrees that the tonnes specified in the Offer represent the actual tonnes that the producer has produced.
- d. The *Approved Methods of Offer* are:
 - i. telephoning the CWB at 1-800-275-4292 and providing the producer’s 10-digit CWB producer ID number and confidential Personal Identification Number (PIN) and indicating the number of net tonnes offered by the producer and the *Advance* number. The CWB’s record of such telephone call including any written confirmation is conclusive and binding on the producer.
 - ii. faxing a 2007-08 *PDT* application to the CWB at 1-204-983-8031. The application 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 on the application, the CWB may, in its sole discretion, reject the Offer as being invalid. The application will be deemed to have been received at the time printed on the fax by the CWB’s fax machine.
- e. Within 18 days of the *Contract Expiry Date* the CWB will announce the percentage of *PDT Tonnes* that will be accepted for delivery.



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3. CWB's OBLIGATIONS

The CWB agrees as follows:

- a. To accept for delivery all or a portion of the *PDT Tonnes*, as determined by the CWB, in accordance with the *CWB Act* and the Terms and Conditions contained herein.
 - b. In accordance with the *CWB Act*, to pay the producer by means of the following installments:
 - i. upon delivery of the *PDT Tonnes* or portion thereof, the initial payment 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 Agricultural Marketing Programs Act (AMPA), Spring Credit Advance Program (SCAP) and the Enhanced Spring Credit Program (ESCAP)/After Harvest; plus
 - ii. the *PDT Payment*; plus
 - iii. in the event the *PDT Tonnes* have been priced under a *PPO*, the payment in effect in accordance with that contract.
- Less:
- iv. all authorized deductions including those under the Agricultural Marketing Programs Act (AMPA), Spring Credit Advance Program (SCAP) and the Enhanced Spring Credit Program (ESCAP)/After Harvest;
 - v. the *Discount Rate*;
 - vi. any amounts owing to the CWB pursuant to this contract; and
 - vii. any other amounts owing to the CWB.

4. PRODUCER'S OBLIGATIONS

The producer agrees as follows:

- a. To have completed an application for an *Advance*;
- b. That all statements, facts and declarations made in the *Advance* application shall be true to the best of the producer's knowledge and belief and same are made as representations to the CWB for the purposes of this contract.
- c. To sell and deliver to the CWB the *PDT Tonnes* or any portion thereof called for by the CWB prior to the termination date specified in any delivery call. Where the producer fails to deliver *PDT Tonnes* called for delivery by the CWB before the termination date specified in any delivery call, the CWB may deduct up to the full amount of the *PDT* amount, plus the *Discount Rate*, against the proceeds of any and all deliveries made by the producer under the delivery permit.
- d. To reimburse the CWB for the full amount of the *PDT Payment*, plus the *Discount Rate*, in accordance with paragraphs 4.e. and 4.f. below.
- e. To authorize the CWB to deduct up to the full amount of the *PDT Payment* amount, plus the *Discount Rate* as follows:
 - i. against any adjustment payments payable to the producer for wheat in respect of the 2007-2008 crop year;
 - ii. against any interim, or final payment payable to the producer for *Grain* in respect of the 2007-2008 crop year;
 - iii. against any payment made by the CWB to the producer for *Grain* that has been priced under a 2007-08 *PPO*.
- f. To repay the *PDT Payment* plus the *Discount Rate* by way of cash payment at any time upon demand of the CWB or, if the CWB does not accept 100 per cent of the *PDT Tonnes*.
- g. If the producer has not fully repaid the *PDT Payment* including the *Discount Rate* regardless of whether or not the producer has received settlement for this *Eligible Grain* in the 2008-09 crop year, in accordance with paragraphs 4.e. and 4.f. above, the CWB will send a letter requiring full repayment within 20 days of the date of the letter of the outstanding balance of the *PDT Payment* plus the *Discount Rate*.
- h. In the event the producer does not repay in accordance with the CWB letter, and without limiting any other legal options available to the CWB, the producer agrees and authorizes the CWB to deduct any amounts outstanding under this contract 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 in the 2007-08 crop year and subsequent years. Any such delivery permit book may be so endorsed.
- i. To grant access to the CWB or its agents, at any time, to storage bins or other facilities where the producer's *Grain* is stored and provide assistance as required by the CWB or its agents in facilitating the inspection of such storage facilities as requested.

5. DELIVERY

- a. The CWB may issue *Delivery Calls* at any time during the crop year. The CWB reserves the right to issue *Delivery Calls* for only a portion of, or a particular grade or quality of, the *PDT Tonnes* to be delivered pursuant to



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this contract. The total of all such *Delivery Calls* shall not exceed the quantity of and quality of *PDT Tonnes* for which delivery is agreed to under this *PDT* contract.

- b. The CWB reserves the right to exclude tough and damp *PDT Tonnes* from any *Delivery Call* issued with respect to this *PDT* contract.
- c. If the producer is unable to deliver the *PDT Tonnes* before the end of the crop year in which the producer entered into this delivery contract, the CWB may issue, in its sole discretion, a deferred delivery permit to the producer in accordance with the *CWB Act*.

6. MISGRADE

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 Grain* 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 *PDT Tonnes* shall remain with the producer until the *Eligible Grain* has been delivered to the CWB, the grade has been established and a cash ticket has been issued.

8. DEFAULT

- a. The producer shall be in default under this 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 *PDT Tonnes* called for delivery by the CWB before the termination date specified in any delivery call;
 - ii. any portion of the *PDT Tonnes* 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 *Grain*;
 - iii. all or any portion of the *PDT Tonnes* delivered or to be delivered by the producer is determined by the CWB to be ineligible for delivery under this contract;
 - iv. the producer provides false or misleading information in this contract or the AMPA advance application or avoids repayment;
 - v. the producer fails or refuses a bin inspection after receiving the *PDT Payment* pursuant to this contract (failure will be deemed to occur if shortfall of stocks is more than 10 per cent of the *PDT Tonnes*);
 - vi. the producer is in default under AMPA, SCAP and ESCAP;
 - vii. the producer shall be in default under this contract if the producer defaults under a previous crop year *PDT* contract that has not been repaid;
 - viii. the producer files for bankruptcy or a receiving order is made against the producer;
 - ix. the CWB determines in its sole discretion that the producer is unable or unwilling to repay the *PDT Payment* plus the *Discount Rate*;
 - x. the producer fails to meet or comply with any or all of the Terms and Conditions of this contract, or any combination of the above.
- b. In the event the producer is in Default, the CWB may void the contract for the *Eligible Grain* 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. 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 per tonne and the maximum damages will be \$15.00 per tonne for wheat and \$25.00 per tonne for durum.
- d. 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.
- e. In addition, a Default rate equal to the prime lending rate plus three per cent will apply to the outstanding balance of the *PDT Payment* and *Discount Rate* from the date of issuance of the *PDT Payment* to the date of full and final payment. The Default rate is calculated daily and compounded monthly. Collection of costs, including legal fees on a solicitor and client basis may also be charged.



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- f. Liquidated damages and the Default rate may be off-set by the CWB against any and all amounts that are or 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.

9. GENERAL

- a. Subject to Paragraph 9.b. of this contract and the Terms and Conditions contained herein constitute the entire contract between the CWB and the producer with respect to the *PDT* and delivery of the *Eligible Grain* under this contract. There are no representations, warranties, terms or conditions, whether express or implied, beyond those contained herein or in the *Advance*.
- b. Where a producer has entered into an Identity Preserved Contract Program, the Terms and Conditions of this contract and of that contract are binding upon the CWB and the producer and in the event of an inconsistency between the two contracts, that cannot be reasonably resolved, the Terms and Conditions of this contract will apply.
- c. There shall be no changes or modifications to this contract unless they are made in writing, and signed by both the producer and the CWB.
- d. If any provision, or part thereof, of this 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 this contract.
- e. The 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.
- f. 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 this contract will bind the CWB without its prior written consent, which consent may be withheld.
- g. If the producer is a corporation, partnership, cooperative or other business entity, the 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.
- h. 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 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.
- i. The producer shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of this contract.
- j. Time shall be of the essence of this contract.
- k. The exercise by the CWB of any right or remedy provided herein shall not affect any other 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.
- l. The CWB may register financing statement(s) at such provincial personal property security registries as the CWB determines advisable. The producer hereby waives all rights to receive from the CWB a copy of any financing statement or confirmation statement issued at any time respecting the security interests contained in this contract.