



## CWB 2007-08 GUARANTEED DELIVERY CONTRACT TERMS AND CONDITIONS

### REJECTED SELECTED BARLEY – POOL PERIOD A AND POOL PERIOD B

#### 1. DEFINITIONS

- a. “**Actual Grade**” is the grade of Barley actually delivered by the producer as reported on the cash ticket.
- b. “**Barley**” means No. 1 or No. 2 Canada Western Barley.
- c. “**CWB Act**” means The Canadian Wheat Board Act, as amended from time to time.
- d. “**GDC Expiry Date**” for Pool Period A is January 31, 2008 and the “GDC Expiry Date” for Pool Period B is July 31, 2008.
- e. “**GDC**” is the Guaranteed Delivery Contract for Feed Barley.
- f. “**GDC Delivery Opportunities**” are the delivery calls issued by the CWB from time to time and in respect of GDCs.
- g. “**Total Contracted Net Tonnes**” means the total amount of net tonnes Offered by the producer and accepted by the CWB under the delivery contract.
- h. “**Pool Period**” is as defined in Section 31 of the *CWB Act*. For the purposes of this contract Pool Period A is from August 1, 2007 to January 31, 2008, both dates inclusive and Pool Period B is February 1, 2008 to July 31, 2008 both dates inclusive.
- i. “**Settlement Date**” is the day on which a cash ticket is issued in respect of *Barley* priced under the *GDC*.

#### 2. OFFER AND ACCEPTANCE

- a. In accordance with these Terms and Conditions, the CWB offers to purchase the *Barley* from the producer (the “*Offer*”).
- b. The producer’s Selected Barley Storage and Delivery Contract must be cancelled prior to issuing this *GDC*.
- c. The approved methods of making an Offer is:
  - i. faxing a *GDC* for Rejected Selected Barley form (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, at its sole discretion, reject the acceptance as 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

- a. The CWB agrees as follows:
- b. To accept delivery of the *Barley* from the producer, in accordance with the *CWB Act* and the Terms and Conditions of this contract for *Barley*.
- c. In accordance with the *CWB Act*, to pay to the producer:
  - i. 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 Prairie Grain Advance Payments Act, the Agricultural Marketing Program Act, Spring Credit Advance Program and Enhanced Spring Credit Program; or,
  - ii. in the event that the *Barley* has been priced under a CWB payment options contract, to pay the producer in accordance with that contract.
- d. The CWB guarantees a 100 per cent call for delivery of the *Barley* committed at time of rejection.

#### 4. PRODUCER’S OBLIGATIONS

- a. The producer must commit the *Total Contracted Net Tonnes* at the time they submit their acceptance of the *Offer*.
- b. The producer agrees:
  - i. to deliver it to the CWB in accordance with this Agreement;
- c. to sell the *Barley* to the CWB and take settlement prior to the expiry of the *Pool Period A* or *Pool Period B* ;
- d. In the event that the producer elects to lock-in an Early Payment Value and Discount, to do so in accordance with this agreement; and,
- e. To otherwise comply in all respects with this agreement.
- f. To deliver to the designated delivery point.



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#### 5. DELIVERY

The producer shall deliver the *Total Contracted Net Tonnes* or any portion thereof, to the CWB prior to the expiry of the *Pool Period* in effect at time of rejection.

#### 6. PASSAGE OF TITLE

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

#### 7. DEFAULT

- a. The producer shall be in default under the *GDC* ("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 *Barley*;
  - ii. all or any portion of the *Barley* delivered or to be delivered by the producer is determined by the CWB to be ineligible for delivery; or
  - iii. the producer delivers *Barley* over and above the *Total Contracted Net Tonnes* committed.
- b. In the event that the producer is in Default, the CWB may void the contract for the *Barley* and any other contract between the CWB and 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. 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.
- f. 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 *Barley* constitutes the entire agreement between the CWB and the producer with respect to the *Barley*. 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, 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 produce 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 officer, agent or partner(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



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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 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.