



**CWB 2011-12 GUARANTEED PRICE PRODUCTION CONTRACT PROGRAM  
TERMS AND CONDITIONS  
Selected Barley  
Company CashPlus Offer 110##**

**1. DEFINITIONS**

- a. **"Actual Grade"** is the eligible grades of *Selected Barley* that is actually delivered by the producer as reported on the Producer Certificate.
- b. **"CWB Act"** means *The Canadian Wheat Board Act*, as amended from time to time.
- c. **"CWB e-Services"** means the information system available via the internet at [www.cwb.ca/eservices](http://www.cwb.ca/eservices). Producers can sign-up, view and edit delivery contracts, conduct Producer Payment Options transactions, view CWB payments, renew their delivery permit and monitor cash advances.
- d. **"CWB Guaranteed Price"** means the guaranteed price offered by the CWB and stipulated as "Price" in *CWB e-Services*.
- e. **"Delivery Period"** means on or before July 31, 2012 or such period as negotiated between the producer and the *Selecting Party* and indicated in *CWB e-Services* during which the producer agrees to deliver and the *Selecting Party* agrees to accept the *Net Tonnes* pursuant to this Agreement.
- f. **"GPC"** means this Guaranteed Price Contract for *Selected Barley*.
- g. **"Initial Payment"** is the payment made by the CWB or its agents at the time of delivery for *Selected Barley* in accordance with the *CWB Act*.
- h. **"Minimum Quality Specifications"** are maximum 12.5% protein, minimum 95% germination, maximum moisture 13.5%, minimum 85% plump, minimum 95% varietal purity for CGC Select grade and/or any other specifications as agreed to between the *Selecting Party* and the producer and outlined in *CWB e-Services*. If the *Selecting Party* and producer agree to quality specifications different than the minimum specifications defined above, those specifications will apply to the contract.
- i. **"Net Price"** means the price that is negotiated between the producer and the *Selecting Party* which encompasses the *CWB Guaranteed Price* plus or minus any premiums or discounts negotiated by the producer and the *Selecting Party* and is the price that the producer will be paid in respect of the *Net Tonnes*, subject to potential price adjustments at delivery for actual quality delivered.
- j. **"Net Tonnes"** is the number of tonnes of *Selected Barley* that the producer has signed up under this *CWB Guaranteed Price Contract* and has agreed to deliver to the CWB in accordance with the terms and conditions contained herein as indicated as "Contracted tonnes" in *CWB e-Services*.
- k. **"Selected Barley"** is barley that has been selected and accepted for use by the *Selecting Party* as pot barley or in malting or pearling, except sample grades.
- l. **"Selecting Party"** means the contractual relationship between the CWB and the *Selecting Party* (the "*Selecting Party*") referred to in this *GPC* is governed by the terms herein and by the terms of the Handling Agreement between the CWB and the *Selecting Party*.

**2. PRODUCTION**

The producer agrees, during the 2011-12 growing season, to grow and subsequently harvest and sell to the *Selecting Party*, acting as an agent of the CWB the *Net Tonnes*.

**3. PRICE**

- a. The producer shall be paid the *CWB Guaranteed Price* as follows:
  - i. the *Initial Payment* in effect at the time of delivery will be paid to the producer by the *Selecting Party* on behalf of the CWB when the *Selected Barley* is delivered; and
  - ii. if the difference between the *Initial Payment* and the *CWB Guaranteed Price* is a positive number, such amount will be paid to the producer by the CWB forthwith after the delivery has been reported less all deductions authorized under the *CWB Act* or under this Contract or otherwise required by law, including, without limitation deductions under the *Agricultural Marketing Programs Act*, the *Prairie Grain Advance Payment Act*, the *Enhanced Spring Credit Advance Program* and the *Spring Credit Advance Program*; and
  - iii. if the difference between the *Initial Payment* and the *CWB Guaranteed Price* is a negative number, such amount together with all deductions authorized under the *CWB Act* or under this Contract or otherwise required by law, including, without limitation deductions under the *Agricultural Marketing Programs Act*, the *Prairie Grain Advance Payment Act*, the *Enhanced Spring Credit Advance Program* and the *Spring Credit Advance Program* will be deducted by the CWB from future payments owing to the producer.
- b. In addition to the *CWB Guaranteed Price*, the producer is eligible to receive a per tonne additional payment from the CWB derived from the net revenue, if any, generated from its *CWB Guaranteed Price* program.



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**4. QUALITY**

The producer agrees that the *Net Tonnes* to which this Contract refers, shall meet the *Minimum Quality Specifications* as outlined in *CWB e-Services*, or such other quality specifications as is acceptable to the *Selecting Party* at the time of delivery and the *Net Tonnes* shall be in all respects suitable for malting and meet all other *Minimum Quality Specifications* outlined by the *Selecting Party* and all specifications outlined by the Canadian Grain Commission for Select CW Two-row or Select CW Six-row, unless otherwise agreed to by the *Selecting Party* and the producer.

**5. SAMPLING**

- a. The producer shall submit representative samples of the contracted barley as soon as possible after harvesting and conditioning are complete, but in any event, on or before October 31, 2011. Delivery of the *Net Tonnes* cannot commence until the submitted samples are tested and it is determined by the *Selecting Party* that the quality is acceptable.
- b. The producer authorizes the *Selecting Party* and their representatives to enter the land or place where the contracted barley is planted or stored at any reasonable time or times for the purpose of inspecting any seed or the barley, or for taking samples of the barley and/or confirming that the submitted samples are representative of the barley produced under this Contract, or for picking up the contracted barley.
- c. The producer shall, after acceptance of the submitted harvest representative sample, periodically submit recheck samples of the accepted stored barley.

**6. SELECTION, DELIVERY and REJECTIONS**

The producer acknowledges and agrees that the *Net Tonnes* that are subject to this Agreement were produced on the land specified in the 2011-12 delivery permit book. The producer agrees to offer for selection and to deliver the *Net Tonnes* to the delivery point during the *Delivery Period* as negotiated between the producer and the *Selecting Party* as set out in *CWB e-Services*. Any change to the *Delivery Period* requires the mutual agreement of the producer and the *Selecting Party*. If the *Delivery Period* is changed, the producer shall be entitled to the appropriate rate of storage for the delivery period in which the *Net Tonnes* were delivered. If the representative sample provided by the producer at the time of selection does not meet the *Minimum Quality Specifications* or the tonnes delivered at time of delivery do not meet the agreed *Net Tonnes*, the *Net Tonnes* may be accepted first at the option of the *Selecting Party* and if the *Selecting Party* declines, then at the option of the CWB at the *Net Price* or at a mutually agreed upon market discount to the *Net Price*.

**7. PRODUCER OBLIGATIONS**

- a. Except in the circumstances defined in Clause 6 and 10, the producer shall be in default under the Contract ("in *Default*") if:
  - i. the producer fails, or the *Selecting Party* advises the CWB that the producer is or will be unable to deliver the *Net Tonnes*; or
  - ii. the producer fails to deliver the *Net Tonnes* or if settlement is not made on or before July 31, 2012; or
  - iii. what is delivered by the producer or any portion thereof, is not of a quality equal or superior in all respects to the quality as selected by the *Selecting Party* and/or the CWB; or
  - iv. the producer is in breach of any other section of this Agreement and such breach is not rectified within five (5) days following notice by the *Selecting Party* of the breach.
- b. 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*. The liquidated damages are intended to compensate the *Selecting Party* for the costs associated with replacing the *Net Tonnes* that were defaulted on. The liquidated damages will reflect the replacement costs of the *Net Tonnes* plus costs of administration, demurrage charges/delivery penalties, sourcing costs, and lost opportunity as a result of the *Default*, calculated on a per tonne basis (the "Liquidated Damages"). The replacement costs shall be the greater of the difference between the daily published CWB domestic "card" malting barley price at the time of sign-up and at the time of *Default*; or the difference between the Lethbridge Cash Value for feed barley reported by ICE Futures Canada at the time of sign-up and at the time of *Default*; plus "Administration Costs" (which comprise of costs of administration, demurrage charges, delivery penalties,



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sourcing costs and lost opportunity as a result of the *Default*) which will not exceed seventy-five (\$75.00) dollars per tonne. 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. Upon collection of the liquidated damages, CWB will pay to the *Selecting Party* its portion of the damages.

**8. SELECTING PARTY ACCEPTANCE OBLIGATION**

The *Selecting Party* agrees to accept the *Net Tonnes* contracted pursuant to this Agreement within the *Delivery Period* specified in *CWB e-Services* provided that the *Minimum Quality Specifications* have been met. The *Selecting Party* acknowledges and agrees that settlement must be on or before July 31, 2012. If the *Selecting Party* refuses, for whatever reason, to accept all of the *Net Tonnes* offered pursuant to this Agreement within the *Delivery Period* agreed upon with the producer, provided that the grain meets the *Minimum Quality Specifications* or such other quality specifications as is acceptable to the *Selecting Party*, the *Selecting Party* shall be in *Default* and shall pay to the producer the *Net Price* per tonne on the total defaulted quantity

**9. SCREENINGS**

The *Selecting Party* will own all screenings and foreign material that may be removed from the barley by the *Selecting Party*.

**10. PRODUCTION RISK**

If the quantity of the *Net Tonnes* contracted for pursuant to this Agreement is lessened by any act beyond the control of the producer, the producer will not be in *Default* and will not incur damages as it relates to those tonnes. Such acts may include hail, floods, excessively dry or excessively wet growing and/or harvesting conditions, and the producer may be asked to prove the occurrence of same to the *Selecting Party's* satisfaction. Furthermore, if such an act occurs that is likely to lessen the quantity of the grain produced and contracted for pursuant to this Agreement, the producer must notify the *Selecting Party* within three (3) weeks of said act. If the producer fails to notify the *Selecting Party* within such three (3) week period the producer shall be in *Default*.

**11. OWNERSHIP AND RISK**

Ownership and Risk shall remain with the producer until such time as the goods have been delivered to the *Selecting Party* and an elevator receipt or cash ticket has been issued.

**12. DISPUTE RESOLUTION**

If the *Selecting Party* rejects the *Net Tonnes* on account of the grain not meeting the *Minimum Quality Specifications* or such other quality specifications as are acceptable to the *Selecting Party*, the producer shall have the right to engage an independent third party, as agreed to between the producer and the *Selecting Party*, to take a representative sample and test the grain against the *Minimum Quality Specifications* or such other quality specifications as are acceptable to the *Selecting Party*. If the third party determines that the grain meets the *Minimum Quality Specifications* or such other quality specifications as are acceptable to the *Selecting Party*, the *Selecting Party* shall accept the *Net Tonnes* or shall be in *Default* pursuant to Section 8 above. The producer shall pay for the costs associated with the third party testing but shall be reimbursed by the *Selecting Party* should the third party determine that the grain tested meets or exceeds the *Minimum Quality Specifications*.

**13. FORCE MAJEURE**

Each of the parties hereto shall be excused from performing such acts required hereunder which are prevented by, or whose purpose is frustrated by, Force Majeure. "Force Majeure" shall mean any occurrences which prevents or interferes with the performance by the producer, the *Selecting Party* or the CWB of any of such party's obligations hereunder, if such event occurs by reason of any act of God, flood, fire, explosion, breakdown of plant, strike, lockout, labour dispute, casualty or accident, war, terrorism, civil commotion, or any injunction, law, ordinance or demand or requirement imposed or enacted subsequent to the date of this Agreement of any government or any subdivision, authority or representative of such government, or any other cause whatsoever, whether similar or dissimilar to those enumerated, beyond the reasonable control of such party (but excluding general economic



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decline, unfavourable changes in prices or prevailing interest rates, and the inability to obtain money), if and only if the party affected can demonstrate that they have used reasonable efforts to remedy any such occurrence after it has occurred.

**14. GENERAL**

- a. This Agreement constitutes the entire Agreement between the parties with respect to the *Net Tonnes*. There are no representations, warranties, terms or conditions, whether expressed or implied, other than those contained herein. No part of this Agreement may be changed or added to without written and signed agreement of the producer, the *Selecting Party* and the *CWB*.
- b. If any provision, or part thereof, of this Agreement 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 Agreement.
- c. This Agreement 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 producer represents that they are of the age of majority in the province in which they reside. Where the producer is a corporation, partnership, cooperative or other business entity, the producer and the person signing on behalf of the producer represent that the person signing on behalf of the producer are of the age of majority in the province in which the producer resides.
- e. This Agreement shall enure to the benefit of the heirs, administrators, executors, legal representatives, successors and permitted assigns of the producer, the *Selecting Party*, and the *CWB*. For greater certainty, this Agreement shall continue to be of full force and effect in the event that the Federal Government introduces legislation to remove the *CWB*'s single desk for designated barley. No assignment of this Agreement by the producer will bind the *Selecting Party* or the *CWB* without their prior written consent.
- f. The producer (assignor) may assign all of the rights and obligations of the producer under this Agreement to another producer (assignee) upon receipt of written consent from the *Selecting Party*. The producer will be charged an administration fee of \$25 per transaction. This agreement may not be assigned unless the producer obtains prior written consent of the *CWB* and *Selecting Party*.
- g. If the producer is a corporation, partnership, cooperative or other business entity, this Agreement 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. The producer shall pay their own legal expenses associated with the enforcement of this Agreement, unless the *Selecting Party* or the *CWB* are found to be in *Default*, in which case the *Selecting Party* or *CWB* (whichever is found to be in *Default*, or proportionately if both are found in *Default*) will pay the producer's legal expenses.
- i. The exercise by the *Selecting Party*, the *CWB*, or the producer of any right or remedy provided herein shall not affect any other remedy that the *Selecting Party*, the *CWB*, or the producer may have for the same default. Nor shall the failure of the *Selecting Party*, the *CWB*, or the producer to exercise any right or remedy be considered a waiver of any right or remedy it may have.
- j. Time shall be of the essence of this Agreement.
- k. This contract shall be fulfilled and the producer shall have delivered and the *Selecting Party* shall have accepted the *Net Tonnes* on or before July 31, 2012.
- l. If, during the term hereof, the Federal Government introduces legislation to remove the *CWB*'s single desk for designated barley and the *CWB* either opts not to perform under this Contract or is unable to do so, the Grower agrees to sell the *Net Tonnes* to the *Selecting Party* at the *Net Price* with no further payment or consideration from the *CWB*. To the extent permitted by law, the *Selecting Party* will be entitled, from and after notice from the date the *CWB* provides notice to the Grower and *Selecting Party* that it will not perform under this Contract under this Paragraph 14(l), to hold and enforce all the rights and privileges of the *CWB* in purchasing the *Net Tonnes* as outlined in paragraphs 1-2 and 4 through 14 hereof.