



**CWB 2011-12 DURUM DELIVERY CONTRACT PROGRAM
TERMS AND CONDITIONS
No. 4 Canada Western Amber Durum wheat**

1. DEFINITIONS

- a. **"Actual Grade"** is the eligible grades of *Durum wheat* that is actually delivered by the producer as reported on the producer's certificate.
- b. **"Bin Audit"** will allow the CWB to verify that the producer's *Offer* represents the actual *Durum* stocks that the producer has or expects to produce during the course of this contract.
- c. **"Buy-out Price"** means the price at which the CWB will allow the producer to buy-out their obligations under this delivery contract prior to delivery. The formula by which the per-tonne Buyout-Price is calculated shall be equal to: [(expected price - average price) x (percentage of pool sold) x number of tonnes] plus a \$25 administration fee. The *Buy-out Price* is only applicable for undelivered *Total Contracted Net Tonnes*.
- d. **"Contract Expiry Date"** means the date on or before which the producer must offer tonnes for delivery pursuant to this contract. Such date is October 31, 2011 for a Series A contract and March 31, 2012 for a Series B contract (if offered).
- e. **"CWB Act"** means *The Canadian Wheat Board Act*, as amended from time to time.
- f. **"CWB e-Services"** means the information system available via the internet at 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.
- g. **"Delivery Call"** means a request from the CWB that certain *Durum* wheat be delivered as published on the CWB's Web site at www.cwb.ca or as provided to a producer by written notice or verbally by a grain company representative.
- h. **"Durum"** for the purpose of this contract means the *Durum wheat* grading No. 4 Canada Western Amber Durum (CWAD) wheat that is the subject of this *Offer* and the ensuing delivery contract, as applicable.
- i. **"Total Contracted Net Tonnes"** is the number of net tonnes of the *Durum wheat* that the producer has committed and the CWB has accepted under this contract and will deliver to the CWB.
- j. **"Transfer"** means the producer can transfer all or a portion of the tonnes committed to another producer at a cost of \$25 per transaction.

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 on the lands described in the producer's 2011-12 delivery permit book or have been carried over from the producer's previous delivery permit book.
- c. The producer shall have until the close of business of the applicable *Contract Expiry Date* to make and/or amend the *Offer*. However, the CWB reserves the right to extend or withdraw the durum delivery contract program at any time and without prior notice.
- d. The producer's *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 CWB head office prior to the *Contract Expiry Date*.
- e. The approved methods of making an *Offer* are:
 - i. telephone the CWB at 1-800-275-4292 and provide the producer's CWB 10-digit producer ID number, confidential Personal Identification Number (PIN) and indicate 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; or
 - ii. log into CWB e-Services at www.cwb.ca/eservices and offer the net tonnes pursuant to this contract; or
 - iii. contact a CWB agent who can submit the *Offer* online through the CWB's e-Services.
- f. On or before 18 days following the applicable *Contract Expiry Date*, the CWB will announce the quantity and quality of *Durum* it is willing to accept (the "*Acceptance*") which amount may be less than the aggregate amount offered by the producer. The quantity to be delivered by each producer who has made an *Offer* to the CWB for the class, variety and quality of *Durum* outlined in the *Offer* shall be reduced proportionately in the event that the CWB accepts less than the aggregate amount offered by producers. If the CWB counter offers and requests the producer deliver a reduced amount of *Durum* (the "*Counter Offer*"), the producer shall have fourteen (14) days within which to notify the CWB that the producer does *not* accept the *Counter Offer*. If the producer does not so notify the CWB then the producer will be deemed to accept and will be bound by the delivery contract and shall deliver to the CWB the quantity of the *Durum*, as reduced.



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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 delivery contract for the *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 in effect at the time of delivery, 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*; and
 - ii. storage payments for the *Durum* at the rate of \$0.033 per tonne per day, calculated starting January 1, 2012 or the contract sign-up date, whichever is later, until:
 - for Series A contracts, April 30, 2012 or the date of delivery, whichever is earlier; or
 - for Series B contracts (if offered), June 30, 2012 or the date of delivery, whichever is earlier; and
 - iii. in the event that the *Durum* has been priced under a 2011-12 CWB Producer Payment Options contract, to pay the producer in accordance with that contract.
- c. The CWB in its sole discretion may conduct a *Bin Audit* of the producer's *Durum* whether stored on or off the producer's farm.
- d. The CWB agent responsible for performing the *Bin Audit* is authorized to perform *Bin Audits* on related producers' delivery permit books if the grain is co-mingled.

4. PRODUCER'S OBLIGATIONS

- a. The producer agrees to:
 - i. sell the *Durum* to the CWB; and
 - ii. 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
 - iii. *transfer* to another producer; or
 - iv. *buy-out* undeliverable tonnes; and
 - v. comply in all respects with this Agreement.
- b. The producer acknowledges and agrees to allow the CWB or a party authorized and acting on behalf of the CWB, to undertake a *Bin Audit* of the producer's *Durum*. The producer acknowledges and agrees that the *Durum* was produced on the lands described in the producer's 2011-12 delivery permit book or has been carried over from a previous delivery permit book.
- c. To grant access to the CWB or its agents, at any time, to storage bins or other facilities in which the producer's grain is stored. Provide as required assistance in facilitating the inspection of storage facilities when requested by the CWB or its agents. The producer acknowledges and agrees the CWB will provide to one of its agents the information necessary to conduct a *Bin Audit*.
- d. The producer agrees that *Durum* that is a non-registered variety must be represented as such and delivered as No. 5 Canada Western Amber Durum wheat.

5. MISREPRESENTATION

If as a result of a *Bin Audit* it is found that the producer misrepresented the *Durum* stocks in the *Offer* the CWB may, in its sole discretion, void the delivery contract and the producer will be liable for the cost of the *Bin Audit* and any damages that result from the misrepresentation.

6. 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 *Durum* to be delivered pursuant to the delivery contract. The total of all such *Delivery Calls* shall not exceed the quantity of and quality of *Durum* specified under this delivery contract. The producer shall not deliver any tonnes in excess of the *Total Contracted Net Tonnes* or any tonnes in excess of the current *Delivery Call*.
- 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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- c. If the producer is unable to deliver the *Durum* before the end of the crop year in which the producer entered into this delivery contract, the CWB may in its sole discretion, issue a deferred delivery permit to the producer in accordance with the *CWB Act*.
- d. The producer will ensure that the grain shipped in a producer car is in marketable condition. The producer will be charged additional costs if the grain is not in marketable condition.

7. 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 *Durum* 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*.

8. 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. The producer must deliver the *Durum* and settlement must be made on or before July 31, 2012.

9. DEFAULT

- a. The producer shall be in default under the delivery contract for the *Durum* ("in *Default*") if:
 - i. the producer has misrepresented the *Durum* stocks in the *Offer*; or
 - ii. the producer fails, or the CWB receives information that the producer is or will be unable, to deliver a minimum of ninety (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
 - iii. the producer delivers tonnes in excess of the *Total Contracted Net Tonnes* or delivers tonnes in excess of those permissible under a *Delivery Call*; or
 - iv. 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
 - v. 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*; or
 - vi. the producer files for bankruptcy or a receiving order is made against the producer; or
 - vii. the producer refuses to allow the CWB or an agent acting on its behalf to conduct a *Bin Audit*; or
 - viii. the grain is shipped in a producer car and is not in marketable condition.
- 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. The CWB may also withhold, collect or refuse to pay, in accordance with the *CWB Act*, the storage payment referred to in Section 3(b).
- c. The producer shall pay damages to the CWB to compensate the CWB for its losses, costs and/or damage incurred or suffered as a result of the producer's *Default*. Any *Default* will require the producer to pay damages to the CWB within 30 days of any such *Default* or make a suitable repayment agreement. The producer shall pay a \$25 per transaction fee plus the greater of:
 - i. the liquidated damages amount posted on the CWB Web site (www.cwb.ca) or provided by calling the CWB at 1-800-275-4292. The specific liquidated damages amount may vary from day-to-day depending on market conditions but will fairly reflect the difference between the price for which the CWB could reasonably have expected to sell the *Total Contracted Net Tonnes* and the average per tonne value at which the CWB has sold comparable grain during the pool year to date; multiplied by the percentage of the pool (by class) sold; or
 - ii. in the event that the producer's *Default* leads to the CWB defaulting or risking *Default* under the terms of a sale of the contracted grain to a third party, the producer shall pay the full amount of the CWB's actual losses, costs and/or damages incurred or suffered by the CWB as a result of its *Default* or its efforts to avoid *Default*, as the case may be.
- 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.



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- e. The producer and the CWB agree that liquidated damages determined in this manner are reasonable and 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 will be assessed using the *Buy-out Price* in effect on July 31, 2012.
- g. 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.
- h. In the event that the producer ceases to make deliveries to the CWB, the CWB may, in its sole discretion, engage a collection agency to assist with the collection of the outstanding liquidated damages.

10. 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. The producer may, at any time after entering into this Agreement, buy-out his or her obligations hereunder by paying the CWB the *Buy-out Price*.
- c. 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.
- d. 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.
- e. 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 the delivery contract will bind the CWB without its prior written consent, which consent may be withheld.
- f. 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) who sign(s) on behalf of the entity must state their position and authority.
- g. The producer acknowledges and agrees 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.
- h. The producer shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of the delivery contract.
- i. Time shall be of the essence of the delivery contract.
- j. 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 contract. Nor shall the failure or delay of the CWB to exercise any right or remedy be considered a waiver of any right or remedy it may have.