CWB

Durum
(No. 5 CWAD)

2011-12 Misgrade to Guaranteed Delivery Contract

Please fax to 1-204-983-8031

The 2011-12 Misgrade to Guaranteed Delivery Contract form is used when you are delivering against a Series A durum delivery contract which, upon arrival at the elevator, is graded No. 5 CWAD. This form should be used regardless of whether an existing Guaranteed Delivery Contract offer is available. This process ensures that you can deliver and that the existing Series A delivery contract is reduced.

You can apply for an Early Payment Option (EPO) contract on the tonnes committed below by completing the "2011-12 Early Payment Option sign-up/lock-in application" for durum (No. 5 CWAD). The EPO sign-up deadline date is July 31, 2012.

Sign-up cannot exceed 45 tonnes. Please call 1-800-275-4292 or contact your Farm Business Representative if you require additional tonnes.

Please complete all information in this area.

Producer's name ("the *Producer*") as shown on the delivery permit		
Producer's ID No.	Producer's telephone No. ( )	Producer's fax No. ( )
Alternative telephone No. (daytime/ ( )	E-mail address	

Delivery point name	Company and station name	Telephone No. ( )
Delivery point fax No. ( )		

Series A contract decrease

Grain & grade

Tonnes

GDC sign-up

Net tonnes - (No. 5 CWAD)
(Sign-up cannot exceed 45 tonnes)

READ THE FOLLOWING PARAGRAPH CAREFULLY.
I (the *Producer*) have read the CWB 2011-12 Misgrade to Guaranteed Delivery Contract for Durum (No. 5 CWAD): Terms and Conditions. By completing this document and sending it to the CWB, I agree that all of the said terms and conditions will apply to the contract I have selected herein.

Producer's signature

Position in company (If applicable)

Date

Important: Please keep the original for your records.

FAX 1-204-983-8031
Phone 1-800-275-4292
(8:30 a.m. to 5:30 p.m. Mon. - Fri.
CT (Winnipeg time)

CWB 2011-12 GUARANTEED DELIVERY CONTRACT PROGRAM
TERMS AND CONDITIONS
Misgrade to Durum (No. 5 CWAD)

1. DEFINITIONS

a. "**Actual Grade**" is the eligible grades of *Durum* that is actually delivered by the producer as reported on the Producer Certificate.

b. "**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 Buy-out 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*.

c. "**Contract Expiry Date**" means the date on or before which the producer must *Offer* tonnes for delivery pursuant to this contract.

d. "**CWB Act**" means *The Canadian Wheat Board Act*, as amended from time to time.

e. "**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.

f. "**Delivery Call**" means a request from the CWB that certain *Durum* bedelivered 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.

g. "**Durum**" means *Durum* grading Nos. 5 Canada Western Amber *Durum* (CWAD).

h. "**GDC**" is the Guaranteed Delivery Contract for *No. 5 CWAD*.

i. "**Total Contracted Net Tonnes**" is the number of net tonnes of the *Durum* 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. *GDC* Misgrade to *No. 5 CWAD* is open to the producer from August 1, 2011 until July 31, 2012. However, the CWB reserves the right to extend or withdraw the *Offer* at any time and without prior notice.

c. 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 permit book or have been carried over from the producer's previous permit book.

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 withdrawal of the *GDC* for *No. 5 CWAD*.

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. fax a Misgrade to *GDC* for *Durum* (No. 5 CWAD) *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, 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.

f. The CWB will immediately accept the producer's *Offer* provided that the *GDC* program has not been withdrawn by the CWB before it receives the producer's *Offer*.

3. CWB'S OBLIGATIONS

The CWB agrees as follows:

a. To accept delivery of *No. 5 CWAD* from the producer, in accordance with the *CWB Act* and the terms and conditions of this *GDC* for *No. 5 CWAD*.

b. In accordance with the *CWB Act*, to pay to the producer:

   i. the initial payment for the *Durum* delivered that is 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. 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.

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.

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. 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 *Total Contracted Net Tonnes* as well as any *Total Contracted Net Tonnes* of a grade different than that stated in the *GDC* from any *Delivery Call* with respect to the *GDC*.
c. 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.

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

7. DEFAULT

a. The producer shall be in default under the *GDC* for *No. 5 CWAD* ("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 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
   ii. 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*
   iii. any portion of the *Durum* delivered by the producer to the CWB that contains a non-registered variety which is represented by the producer as being a registered variety of that class of *Durum*; or
   iv. 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 *GDC* for *No. 5 CWAD* or
   v. the producer files for bankruptcy or a receiving order is made against the producer; or
   vi. 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.
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.
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.

8. GENERAL

a. The *GDC* for *No. 5 CWAD* 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 *GDC* 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 *GDC* 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 *GDC*.
d. The *GDC* 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 *GDC* 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 *GDC* 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. 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 *GDC*.
i. Time shall be of the essence of the *GDC*.
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 Agreement. 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.