



CWB 2011-12 SELECTED BARLEY STORAGE AND DELIVERY CONTRACT TERMS AND CONDITIONS

The effective date of this Selected Barley Storage and Delivery Contract (the "*Contract*") will be the date of acceptance by the Selecting Party (the "*Effective Date*").

1. The contractual relationship between the CWB and the Selecting Party (the "Selecting Party") referred to in this *Contract* is governed by the terms herein and by the terms of the Handling Agreement between the CWB and the Selecting Party.

2. OFFER

In accordance with these Terms and Conditions, the producer offers, for purchase by the CWB (the "Offer") the tonnes specified on the *Contract*.

3. THE CWB AGREES:

- a. To purchase the Selected Barley from the producer in accordance with the *Canadian Wheat Board Act (CWB Act)* and the terms and conditions of the *Contract*.
- b. In accordance with the CWB Act, to pay to the producer, after acceptance of the Selected Barley by the Selecting Party, as payment for the Selected Barley:
 - i. the initial payment in effect at the time of delivery less any amounts owing to the CWB and less all authorized deductions including those under the *Prairie Grain Advance Payments Act*, the *Agricultural Marketing Programs Act*, the *Spring Credit Advance Program*, the *Enhanced Spring Credit Advance Program*, tariffs and other charges; or
 - ii. in the event that the Selected Barley has been priced under a CWB Producer Payment Options contract to pay the producer in accordance with that contract; and
 - iii. whether the producer chooses to be paid pursuant to (i) or (ii) above, carrying charges for the storage of Selected Barley on the producer's farm will be paid by the CWB pursuant to the *Contract* at the following rates of \$0.05/tonne/day for the first ninety (90) days, and \$0.09/tonne/day for all subsequent days, from December 1, 2011 or contract acceptance date, whichever is later, to the date of delivery by the producer of the Selected Barley to the Selecting Party, as directed by the Selecting Party.
- c. The CWB may issue a deferred delivery permit to the producer in accordance with the *CWB Act* if the producer is authorized but unable to deliver the Selected Barley before the end of the crop year in which the *Effective Date* of the contract falls.
- d. If the Selecting Party is in default pursuant to 7(a) and the Selected Barley is of a quality equal to or superior, in all respects, to the *Sample* and is pure as to the variety specified, has not been treated with preharvest glyphosates or other desiccants, and meets the maximum moisture content and minimum germination levels agreed to, the CWB agrees to purchase the Selected Barley from the producer.
- e. If the producer is in default, the CWB shall collect liquidated damages as outlined in 6(a) and shall apportion to the Selecting Party its pro rata share.

4. THE PRODUCER AGREES:

- a. To sell the Selected Barley to the CWB and to store the Selected Barley until delivery is called for by the Selecting Party.
- b. To not offer the Selected Barley which are the subject of the Offer to any other Selecting Party for 14 calendar days after the date of the Offer.
- c. That the sample of barley submitted with this offer ("the *Sample*") is representative of the barley the producer offers to sell to the CWB and that it has not been treated with preharvest glyphosates or other desiccants.
- d. That the Selected Barley contracted for pursuant to this agreement, was produced on the land specified in the 2011-12 permit book or has been carried over from the producer's previous permit book.
- e. To deliver the Selected Barley or portion thereof to the designated delivery point on the *Contract*, unless an alternative delivery point is agreed to by the producer and the Selecting Party;
 - i. if a delivery period has been negotiated, within 21 days of being called to deliver within that delivery period, or;
 - ii. if no delivery period has been negotiated and a delivery date for informational purposes has been given, within 21 days of being called for delivery.

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5. THE SELECTING PARTY AGREES:

- a. That it will accept the producer's Offer within fourteen (14) days of receipt.
- b. That it is the Selecting Party's sole responsibility to inspect the *Sample*. The Selecting Party will have no recourse against the CWB or the producer for damages of any manner or kind whatsoever with respect to any defect of the Selected Barley rendering the Selected Barley unmerchantable, if such defect could or should have been discovered by the Selecting Party with reasonable examination of the *Sample*.
- c. To take and retain a *Sample* of the barley upon offer and delivery to the Selecting Party.
- d. To negotiate a delivery period with the producer and indicate the delivery period on the *Contract*.
- e. To all of the other conditions specified by the producer on the *Contract*, as applicable. If the Selecting Party does not accept the other conditions indicated by the producer, as applicable, this Agreement will be of no force and effect unless and until the producer accepts the Other Conditions as per 7(a).
- f. To call for delivery the Selecting Party will:
 - i. if a delivery period has been negotiated, call the grain no later than 21 days prior to the end of that delivery period;
 - ii. if a delivery period for informational purposes has been indicated, the Selecting Party will call the grain on or before July 31st of the crop year in which the *Effective Date* of the *Contract* falls. Notwithstanding the foregoing, the Selecting Party and the producer agree that the Selected Barley must be delivered and settlement must be made on or before July 31st.
- g. To determine whether any sample taken is of a quality equal or superior, in all respects, to the *Sample* and if the maximum moisture content, minimum germination level and varietal purity specifications agreed to have been met.
- h. To provide, upon the request of the producer, information related to the quality characteristics of any sample of the Selected Barley within fourteen days of testing the sample.

6. PRODUCER DEFAULT

- a. The producer shall be in *Default* under the delivery contract for Selected Barley ("in *Default*") if:
 - i. the producer fails, or the Selecting Party advises the CWB that the producer is or will be unable, to deliver a minimum of 95 per cent of the Selected Barley as required by 4(c); or
 - ii. what is delivered by the producer or any portion thereof, is not of a quality equal or superior in all respects to the *Sample*, or is not pure as to the variety specified, has been treated with preharvest glyphosates or other desiccants, or exceeds the maximum moisture content specified, or the minimum germination level agreed to.
- b. In the event that the producer is in *Default*, the CWB may void the *Contract* for the Selected Barley 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 to the CWB the damages suffered by the CWB and the Selecting Party as a result of the *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.
- d. Damages will reflect the replacement costs of the Selected Barley plus costs of administration, demurrage charges/delivery penalties, and lost opportunity as a result of the *Default* (all costs collectively referred to herein as "Administration Costs"), calculated on a per tonne basis. The replacement costs shall be the greater of the difference between the Lethbridge Cash Value reported by ICE Futures Canada for feed barley at the time of sign-up and at the time of *Default*; or 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 most recently published CWB Pool Return Outlook and the CWB domestic "card" price at the time of *Default*; plus Administration Costs which shall not exceed seventy-five (\$75.00) dollars per tonne.
- e. The producer, the CWB, and the Selecting Party agree that liquidated damages determined in this manner are a genuine pre-estimate of the actual damages the CWB and the Selecting Party will suffer as a result of the *Default* and are not a penalty.
- f. 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.



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- g. 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.

7. SELECTING PARTY DEFAULT

- a. The Selecting Party shall be in *Default* under the delivery contract for Selected Barley ("in *Default*") if:
- i. the Selecting Party fails to call for delivery from the producer of the Selected Barley in accordance with 5(e); or
 - ii. the Selecting Party fails to accept the Selected Barley or any portion thereof delivered by the producer, notwithstanding that it is of a quality equal or superior, in all respects, to the *Sample* and maximum moisture content and minimum germination level and varietal purity specifications agreed to have been met and the Selected Barley has not been treated with preharvest glyphosates or other desiccants.
- b. If the Selecting Party is in *Default* pursuant to 7(a), it shall, at the CWB's sole discretion, pay to the CWB charges on account of storage as outlined in 3(b)(iii) for each day from the *Effective Date* to the date of the *Default*.
- c. If the Selecting Party is in *Default* pursuant to 7(a), the Selecting Party shall pay to the CWB the damages suffered by the CWB as a result of the *Default*. At the CWB's sole discretion, the loss to or damages suffered by the CWB shall be deemed to be for each tonne of the Selected Barley of which the Selecting Party fails to take delivery, the difference between the average price, basis in-store Vancouver, for all open contracts for malting barley between the CWB and the Selecting Party as at the date of the Selecting Party's default and the spot cash price, basis in-store Vancouver for feed barley on the date of the Selecting Party's *Default*. Notwithstanding the foregoing, if the Selecting Party does not have any open contracts for malting barley with the CWB, the damages shall be deemed to be, for each tonne of Selected Barley that the Selecting Party fails to take delivery of, the difference between the CWB domestic "card" malting barley price and the in-store Vancouver feed barley price as at the date of the Selecting Party's *Default*.
- d. The Selecting Party and the CWB agree that the amount of liquidated damages determined in this manner is a genuine pre-estimate of the actual damages the CWB will suffer as a result of *Default* by the Selecting Party and is not a penalty.

8. GENERAL

- a. The producer shall be notified within fourteen days, by the Selecting Party or the CWB that the producer's offer has been accepted. If the producer is advised after the fourteen days that the offer has been accepted, or if the specifications/requirements in the *Contract* have been altered by the Selecting Party, the producer will have a further fourteen days within which to notify the Selecting Party, or the CWB that the *Contract* is cancelled in its entirety. If the producer fails to do so, then the producer will be deemed to accept and will be bound by the *Contract*. CWB acceptance of the *Contract* will, in due course, be confirmed to the producer and the Selecting Party.
- b. Subject to Section 1 and the terms and conditions of the sales contract(s) between the *Selecting Party* and the CWB, this Agreement constitutes the entire agreement between the parties pursuant to the subject matter hereof. There shall be no changes or modifications to this Agreement unless in writing and agreed to and signed by all parties.
- c. All right, title and interest to the Selected Barley shall remain with the producer until it has been delivered to and accepted by the Selecting Party.
- d. If any term, condition or provision of this Agreement is determined void, invalid, or unenforceable, it will be severed and will not invalidate, make void or unenforceable any other term, condition or provision of this Agreement.
- e. This Agreement shall be governed by and construed in accordance with the laws of the Province of Manitoba. In the case of any dispute, the courts of the Province of Manitoba shall have exclusive jurisdiction.
- f. This agreement shall be binding upon and for the benefit of the successors, assigns, heirs, administrators and executors of the parties, but no assignment of the *Contract* by the Selecting Party or the producer will bind the CWB without its prior written consent.