



KNOWING
WHAT'S IN
YOUR GRAIN
CONTRACT
IS JUST AS
IMPORTANT
AS KNOWING
WHAT'S NOT
YOUR GRAIN
CONTRACT.

A PRACTICAL GUIDE TO NAVIGATE GRAIN CONTRACTS

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With the goal of assisting growers in contract negotiation and interpretation, the Canadian Canola Growers Association (CCGA) collected contracts from the major purchasers of grain and prepared this summary of common clauses used in grain marketing contracts.



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This document is intended for general information and is not presented or intended as legal advice.



INTERPRETING YOUR GRAIN CONTRACT

Contracts are important tools in the marketing and selling of grain. They allow growers to reduce price risk and to determine a marketing plan that best works for their farm. Grain companies offer a variety of contract types, each providing a different benefit to growers and varying degrees of risk protection, pricing options and cash flow.

The available contracts and their associated terms can vary substantially between grain companies, sometimes making direct comparison a challenge. The associated terminology, often legal in origin, also varies and can cause confusion.

A contract is a **legally enforceable** document committing the grower to deliver a set product and the buyer to accept its delivery on or near a certain date for an agreed upon price. In short, a contract is *an agreement among two parties which the court can enforce*.

Read and understand the entire contract

A 2013 grain contracting survey conducted by the University of Manitoba showed that growers do take the time to read the contract terms, but not in their entirety. Approximately 47% of respondents indicated that they read “some of it”, and only 17% of respondents indicated that they read “all of it”. A third of respondents read “most of it”.¹

¹ Associate Professor Jared Carlberg, University of Manitoba, Farm Contracts Research Project, 2013



There are more contracting options offered today than ever before. Depending on the contract, a grower can lock in a basis, select a futures price, schedule a delivery slot or set a price floor. Basic contract types:

- **Deferred Delivery Contract**
- **Basis Contract**
- **Futures only Contract**
- **Guaranteed or Minimum Price Contract**
- **Target Price Contract**
- **Deferred Pricing Contract**
- **Pool Contract**
- **Production Contract**
- **Identity Preserved Contract**



It is important to read and understand the *entire* contract, including its terms and conditions, prior to signing to fully understand the legal requirements and prevent any misunderstandings. All contracts require a consenting signature by the seller and the buyer, indicating that both parties agree to their respective contractual requirements. Language indicating that the seller has read and understands the terms and conditions, effectively places responsibility on the grower and strengthens the buyer's legal position should a dispute arise.

Contract terms and conditions will differ depending on the type of contract (i.e. deferred delivery or basis contract) and the grain company. Contract terms can change without notice, therefore, regular review is recommended. If you have any unresolved concerns, third-party advice may be warranted.

Get it in writing

Most grain companies use standard fill-in-the-blank contracts issued from their head office, with little to no regional differences. Most contracts contain language exempting the buyer from any commitment not explicitly expressed in the signed contract. As such, the head office does not have to uphold a verbal commitment from the elevator manager that is not noted in the contract.

While verbal or handshake agreements are legally enforceable, they are risky and difficult to prove in court. Most contracts contain a section for Remarks and Special Terms. Any terms discussed with your local elevator should be inserted in this section or received elsewhere in writing, therefore making it legally binding on the grain company and creating better certainty of the requirements. If it is not included in the terms and conditions, the buyer may not be required to abide by it.

Sample Clauses

VERBAL AGREEMENTS

“Each contract, including these Terms and Conditions, is the entire agreement between the Buyer and the Seller for the delivery of grain specified in the Contract, and replaces all prior discussions, representations, agreements and understandings.”

“The contract contains all of the terms of the contract between the parties hereto and no representations of The Company or any agent of The Company shall be binding upon The Company unless the terms thereof are contained herein.”

“This contract contains the entire agreement between the parties to the Crop. The Company will not be bound by any representation made by it or its representatives that is not expressly contained in this contract.”

“All agreements between the parties hereto must be in writing, and this Contract is a final expression of the agreement between the two parties.”



Get the whole contract

Growers have raised concerns with the confusion caused by **two-part contracts**. This can arise when a copy of the terms and conditions is signed in advance, and the grower receives separate purchase contracts for each sales transaction, or when the two separate parts are not provided to the producer. By signing the purchase contract and special terms, the grower may be agreeing to more general terms and conditions, should they exist.

Ensure that you have the entire contract for your review. While contracts should always be supplied in their entirety, the practice of two-part contracts can create confusion as to the complete contractual requirements.

Sample Clauses

TWO-PART CONTRACTS

“This contract is subject to and incorporates the terms and conditions of the <crop year> purchase contract signed on <date>. An additional copy of the Terms and Conditions will be made available upon your request.”

“Seller acknowledges having read, understood and agreed to the terms of this contract; including those terms listed below and agrees that they are part of this Contract. Seller further acknowledges receipt of the additional terms and conditions and of the off specification adjustment schedule, if any, and agrees that they are part of this Contract and will supersede any provisions of this contract that are contrary.”



QUANTITY AND QUALITY

Implications of grade and volume differential

The title and interest to the grain remains with the seller until the grain has been delivered to the grain company and the grade has been established and accepted. The grower is fully responsible for any loss or damage to the grain until this time. The premiss behind this is the person in control of the commodity is best positioned to ensure that it remains in proper condition.

Grain companies are only obliged to accept the grade and quantity written in the contract. Acceptance of a grade of grain not specified in the contract is at their sole discretion and subject to their trade discounts or penalties. Penalties may also apply for deliveries of lesser quantities. While not always specified in the contract, the company **schedule of discounts** will likely apply upon delivery.

Prior to signing a contract, ask about the schedule of discounts that may apply and determine the financial consequences should you not be able to deliver upon the contract requirements. Understanding your crop's quality throughout the season is important to determine whether you can meet contractual requirements and, if not, find workable solutions with your grain company.

The schedule of discounts refers to the price schedule for the grades of grain other than the grade to be delivered under the contract. Typically, buyers will have a scale of discounts that varies over time, usually on the basis of some connection to price activity in the market. It can also be specified to the prices paid by the buyer on recent purchases in their location.

Sample Clauses

ACCEPTING GRAIN

“Acceptance of grades other than set out in the contract will be at the company’s entire discretion.”

“The seller hereby agrees to sell and the buyer hereby agrees to buy the commodity described in the contract”.

“The seller is absolutely and unconditionally required to sell and deliver the Grain of the Grade and Specifications in the Contract to the Buyer, whether or not the Grain is grown The buyer may, at its option, buy other Grades of the Grain subject to grade discounts in effect on the day the grain is delivered.”

“The Company will (a) accept delivery of and purchase from the producer the crop that, before cleaning, meets or exceeds expectations, (b) have the option to purchase any or all the Crop that, before cleaning, does not meet the crop specifications, subject to deductions.”

Be familiar with the grading process and quality parametres

Generally, grain grading is based on Canadian Grain Commission (CGC) official guidelines. But, additional quality parametres may be included in the terms and conditions or used by the buyer depending on the customer's end-use requirements and the type of contract. Some contracts may also contain language to ensure that: the grain is safe for consumption; any pesticides used are registered under the *Pest Control Products Act* and applied according to the manufacturer recommendations; the variety used is a registered variety; and the grain does not contain varieties or traits not approved in Canada's key export markets including United States, the EU, Japan, Mexico, China and South Korea.

Grading is the most common area of dispute between sellers and buyers of grain. Fully understand who will determine the grade, and what implications a grade differential will have on product deliverability and price. A good understanding of the *Official Grade Grading Guide* and testing protocols, as well as your rights as a producer is beneficial.

If you do not agree with the assessment, ask for a second opinion. The CGC provides a binding decision on grade and dockage in the event of a grading dispute (fee applies). This service, known as **Subject to Inspector's Grade and Dockage**, is available at licensed CGC primary elevators and is often referenced in the grain contract. At this time, "Subject to Inspector's Grade and Dockage" does not apply to processing elevators, such as crush facilities.

A good relationship with your grain company is key when negotiating reasonable changes to grade or contract terms.

To ensure your crop inputs are in compliance with export markets, the *Canola Council of Canada's Keep It Clean* program provides advice on production practices, including which pesticides and varieties are not permitted.

Be aware of and fully understand the implications of the sample clauses beside. Agreeing that a grain delivery is in compliance could transfer responsibility to the seller of the grain should the delivered grain be found in contravention and liability for any financial damages that may occur.

Additionally, *the producer declaration* form signed upon delivery can also contain language stating that a particular crop input was not used and that the seed was legally acquired.

Sample Clauses

GRADE AND DOCKAGE

"The company will determine the weight, grade, moisture content, shrinkage allowance, dockage and any other specifications in respect to the crop. If the Seller does not accept the Company's determination of grade, the Company will submit a representative sample of the crop to the Chief Grain Inspector, Canadian Grain Commission ("CGC"), whose decision will be final and binding."

ADDITIONAL REQUIREMENTS

"The Customer warrants that in growing the commodity sold to The Company hereunder, The Customer has only used those pesticides that are lawfully registered under the Pest Control Act (Canada), in strict compliance with the procedures recommended by the manufacturer of the pesticide and Pest Management Regulatory Agency ... Any economic loss to The Company resulting from non-compliance shall be the responsibility of The Customer."

"The seller represents and warrants that the Grain is the variety specified herein, and is at least 95% pure, or such greater or lesser degree of purity as may be specified as part of the Remarks or Specifications to this contract."

*For more information on grading, read **Boost Your Grading Know-How to Benefit your Bottom Line** available on the CCGA website.*

DELIVERY TERMS

Be aware of the terms for delivery

Each grain contract sets a delivery period and location for when and where grain needs to be delivered. Delivery periods vary by company and contract, but are generally a specific month. The delivery requirements are also not standardized. In some contracts, the buyer has to request delivery, while in others the grower must schedule a delivery date within the contract period. Contracts may also provide the buyer the option to call for all the contracted grain at once or in parts throughout the delivery period.

Some contracts allow the grain company to change the contract delivery location. Some but not all contracts outline compensation for additional costs incurred (i.e. transportation) as a result of the change in delivery location.

Growers should be aware of the delivery factors binding in the contract and understand how they impact delivery plans. If required, further details should be sought from the local elevator. Do you need to be available to deliver all month? Will you be required to make two trips to the elevator? Who will be responsible for additional transportation costs if the delivery point changes? Or, how far will the alternate delivery point be from your farm? How much advance notice will you be given for a change?

Sample Clauses

ALTERNATE LOCATION

“The Company may change the delivery location from the delivery location set out in the contract, by notice to the customer, or pick up the commodity from the customer’s land.”

“If the buyer gives 24 hour notice to the seller, the buyer may change the delivery point and shall then be liable for any resulting increases in applicable delivery charges based on prevailing commercial trucking rates.”

Sample Clauses

DELIVERY TERMS

“The Company’s agent shall call for grain for delivery by the producer from <date> up until <date>, who shall then deliver within 30 days of being called.”

“On demand by The Company, any time within the Delivery Period, The Customer will deliver the commodity to the Delivery Location.... In absence of demand, The Customer will deliver the commodity to the delivery location set out in the contract on the last business day of the delivery period.”

“The Seller shall, at its expense or as may otherwise be agreed by the parties, deliver the Grain to the Buyer at the delivery point within the delivery period..... The Buyer may call for all of the Grain under a contract to be delivered on one delivery date, or any part of the Grain to be delivered on different delivery dates, within the delivery period.”





Prepare for an extended delivery period

Most of the grain companies retain the right **to extend the delivery period**, if they cannot accept the contracted grain, for whatever reason, by the end of the delivery period. However, the terms and length of the extension vary by company. For example, the delivery period can be extended for 90 days in one contract, while in another the extended delivery period is initially 60 days, with additional flexibility in the event of force majeure (beyond the buyer's control). These clauses exist to the benefit of the buyer without any advantage and perhaps substantial inconvenience to the seller.

As previously indicated, it is important to understand all the delivery factors and fully determine their impact on your farm. If your initial delivery period is October, can you also deliver in the extended period? Essentially, the contract requires growers to deliver within both the original and extended delivery period. Ask your grain buyer what storage fees are available (see section on farmer compensation when delivery terms not met).

A good relationship with your local grain elevator and open communication are key in being able to negotiate alternate delivery terms should they be required.

Sample Clauses

EXTENDED DELIVERY PERIOD

"If the Buyer does not call for any or all of the grain in the Delivery Period, the Delivery Period shall be extended for 60 days ("The Extended Delivery Period"), and the Seller shall deliver the Grain when called for delivery within the Extended Delivery Period."

"In the event that The Company is unable to receive the commodity by the end of the Delivery Period, then the Delivery Period shall be deemed to be extended for a period of 90 days."

"If The Company is unable to receive the commodity at the end of the Delivery Period for any reason (including, without limitations, fires, floods, or other acts of God, strikes, lockout or labour disputes, wars, riots, acts of terrorisms, sabotage, embargoes, actions by foreign, federal, state or local governments; transportation shortages or delays; machinery breakdown or lack of storage space or any other circumstance outside the Company's control), then the Delivery Period shall be deemed to be extended for a period of 90 days."

"Buyer may extend delivery time by giving the Seller 48 hour prior notice, excluding Saturdays and Sundays and legal holidays, and such notice shall be effective unless Seller objects to such notice within 48 hours."

"The Company will have the option, if The Company cannot take delivery of any or all of the Crop within the Delivery Period, to designate an alternate location and/or, if an alternative location cannot be arranged, to extend the Delivery Period, in which case The Company may pay the Seller a monthly storage fee, determined by The Company, for every month of storage after the last day of the original Delivery Period to the date of delivery, pro-rated for each day of storage in any partial month."

FARMER COMPENSATION WHEN DELIVERY TERMS NOT MET

As of August 1, 2014 all grain marketing contracts must contain a provision to compensate growers for grain that is not accepted within the defined delivery terms.

The penalty provision only needs to apply after the initial delivery window and the extended delivery terms have ended.

The new requirement, stemming from the *Fair Rail for Grain Farmers Act*, was introduced to address farmers' concerns with grain companies not accepting their contracted grain within the stipulated delivery terms. Compensation varies by company, allowing buyers flexibility to manage their operations and adding a new dimension for farmers when determining which contract to choose.

The onus is on the farmer to fully understand the new requirement and to negotiate agreeable contract delivery terms. It is important to ensure that the penalty is included in the contract and agreed to prior to signing any agreement.

In the event of a dispute regarding the application or payment of the penalty, the Canadian Grain Commission may arbitrate or refer the dispute to an arbitrator upon written request from a producer.

Specifically, contracts must:

- *include a provision stating that the producer is eligible for a penalty payment should the licensee not accept their grain within the delivery period;*
- *calculate the penalty in either a lump sum or daily rate; and*
- *include provisions stating the producer has agreed to the penalty terms.*

Sample Clauses

DELIVERY PENALTIES

"If additional delivery options have not been provided by the Buyer by the end of the 90 day delivery extension period, the Seller will be entitled to a \$3.00 per metric tonne penalty on the undelivered portion of the Contract."

"...the Customer shall receive a storage payment in the amount of \$2.00/Mt/month for undelivered portion of the commodity (prorated in the event of a partial month) calculated at the end of the Extended Delivery Period"

"...the Buyer shall pay a penalty to Seller based on a daily amount of \$0.05 per metric tonne for the portion of the Goods not accepted until the date such Goods are accepted by it (the "Delivery Period"). The Delivery Penalty shall not apply until the Delivery Period has expired and shall apply for each day that Buyer extends the Delivery Period."

"If the Company extends the delivery period, the Company and the producer agree that the Company will pay the producer a one-time lump sum penalty of \$10.00 for the entire remaining undelivered portion of crop not accepted within the original delivery period."



ACCESS TO LAND

Recognize that you may be granting the grain company access to your land. Some contracts grant the grain company the right to access the seller's land. By signing the contract, the grower is granting the grain company the right of access to their land for certain purposes. The reason is stated in the contract, and while it differs by grain company, is largely for testing purposes or picking up grain. While a time frame or notice requirement is not indicated, the use of the term "reasonable" implies that logical behaviour and sound judgement should be exercised by the grain company when accessing a producer's land.

Sample Clauses

ACCESS TO LAND

"If the Customer is unable or otherwise fails to deliver, the Company at its option may take delivery on the Customer's land, in which case the Customer grants rights to ingress, access and egress, and the cost of such delivery shall be based on prevailing commercial hauling rates and will be charged to the Customer".

"The Seller authorizes the Buyer and its representatives to enter the land or place where the Grain is planted or stored at any reasonable times for the purpose of inspecting any seed or the Grain, taking samples of the Grain or picking up the Grain".

"The Seller will provide the Company and its representatives reasonable access to inspect, sample and/or pick up the crop wherever it is located".

SHORT SITUATION

When you sign a grain marketing contract, the company you contract with either sells the futures or the cash commodity. If you come up short on your obligations, so will the company. If the market has risen since you signed the contract, there will be a cost to the grain company to either replace the grain it expected to get from you or buy itself out of its futures position. The liquidated damages incorporated in the contract are designed to cover this cost.

Source: Short Situation, CCGA

DEFAULTS AND CANCELLATIONS

Understand the obligations and risks for not delivering against the contract

Contracts generally possess a **liquidated damage** clause in the event that the seller is found in default (i.e. grain not delivered or lesser grade and quantity). The terms and conditions of the various contracts lay out what the damages will be and how they will be calculated. Under contract law, the party that suffers the loss normally has the legal obligation to mitigate the damages and minimize the effects and losses resulting from the breach. That being said, some contracts contain language that clears the buyer from any obligation to mitigate these damages.

The formula and associated costs for liquidated damages **vary substantially** between contract types and by grain company. Depending on the contract, the formula is **normally an administration fee plus the difference between the contract price and the replacement cost, plus any additional losses the company should incur**. Replacement costs can be based on the cost to replace the commodity at the delivery point or an alternative location, the cost to buy out a hedged position, the cost to replace the grain in the marketplace, the cost of any higher current market price and the value of the undelivered grain at the bid price reported by the buyer. Additionally, some companies charge interest (similar to that on a credit card) on the amount owing.

It is important to understand your obligations and risks for not delivering against the contract, because the liquidated damages and interest can be significant. Review the contract buyout clauses from the various grain companies to determine which is best for you. A conversation may be warranted over how the grain company calculates the current price portion of the formula, and the steps that can be taken to mitigate the damages. Additionally, a default may adversely affect future business relationships with the grain company or any dealings with their crop inputs business if that affiliation exists.

Sample Clauses

LIQUIDATED DAMAGES

“The Seller will be liable to the Company for damages for the difference between the contract price and the price the Company is required to pay in order to replace the commodity at the delivery point or an alternate delivery point at the Company’s discretion...”

“The Company shall be authorized to charge the Customer’s account an amount equal to the cost differential between the contract price less \$20 per metric tonne and less any competitive premium higher current market price, multiplied by the undelivered tonnes.”

“The Company will give notice and the seller will pay on demand: (a) liquidated damages equal to the difference between the Price for the Crop and the amount, if higher, of either of (i) all costs incurred by Company in buying out its hedged position for the Crop on the commodity exchange or (ii) the cost of buying replacement or similar grain in the marketplace.”

If applicable, the administration fees charged vary by company and can range between \$15 to \$30 a tonne or be charged per transaction.

PRODUCTION SHORTFALLS

Know your options

Most contracts require the producer to notify the grain company if they are unable to deliver the quantity or quality stated in the contract. The grain company then has the ability to take steps to reduce its losses and to mitigate the cost of the seller. Notification is important, and in some cases, if the producer does not notify the company in writing, the buyer has no requirements to take steps to reduce their losses (i.e. source other grain or wind down a hedge).

Speak to your grain company as soon as you are aware of a potential shortfall. Most contracts include a clause making it the grower's responsibility to inform the company of possible difficulties in fulfilling contract obligations. Advance notice allows time for the grain company to find workable solutions and to take the necessary steps to mitigate losses. Beyond that, there are likely other growers facing a similar situation. So being the first to come in and discuss your options means there is a better chance of negotiating a workable solution.

If cancelling your contract is your best option, here are a few things to consider:

- *Negotiate a reduction in the administration fee or the cost to buyout the contract.*
- *Buy grain from a neighbour to deliver against the contract.*
- *Check with your accountant to determine whether contract buyouts are eligible expenses under AgriStability.*
- *Roll delivery to the next crop year when you expect to have more available production.*
- *Buy a call option.*

Source: Short Situation, CCGA

Sample Clauses

PRODUCTION SHORTFALLS

“The Company has no obligation to mitigate its damages under this Contract or issue a Contract cancellation to terminate this Contract unless, after the time of delivery of the commodity as required by this Contract, the Customer shall deliver to The Company a written notice stating that the Customer will not deliver the commodity...”

“The Seller shall notify the Buyer immediately if the Seller knows or believes that the Seller will be unable to delivery all or part of the grain.”

“The seller will: (f) notify the Company immediately if the Seller knows or believes that the Seller will or may be unable to delivery any or all of the Crop to the Company.”

“If the producer cannot deliver the quality specifications of the Contracted Commodity, the producer should notify the Designated Company as soon as possible to discuss options.”



CONTRACT TERMINATION

Determine how the contract can be cancelled

Once signed, the outlined conditions are binding and, most often, the contract cannot be broken without buying it out and paying the liquidated damages. If cancellation clauses are present, their use is limited to specific circumstances such as crop failure or the company's inability to accept delivery. In any case, contract cancellation terms are set by the grain company.

Familiarize yourself with cancellation clauses in the contract to understand under what circumstances a contract can be terminated and to ensure the buyout cost is calculated by the company in accordance with the contract terms.

Discuss how act of God or force majeure events will be treated

Act of God or **force majeure** clauses that benefit the farmer are rare in grain contracts, but when included, excuse the seller from their contractual obligations when their inability to perform is the result of circumstances outside their control (i.e. flood, hail, frost). (See sample language for extended delivery period on page 8.) For the most part, a producer is responsible to deliver against the contract or to pay liquidated damages regardless of weather-related circumstances. Act of God contracting may be available either at a premium, or on specialty contracts.

Check with your provincial canola association or government to see whether marketing workshops or extension services are available in your area.

Sample Clauses

CANCELLATION

“Neither the customer nor The Company shall have the right to cancel nor “buyout” the contract ... It is understood that The Company will permit cancellations and amendments to the contract only in exceptional cases such as crop failure and only on such terms as may be agreed to by The Company.”

ACT OF GOD

“If the producer does not have or cannot deliver the Contracted Commodity due to a Force Majeure Event, the producer must notify The Company within X days of such event and no later than <date>. The producer must prove to The Company’s satisfaction that the Force Majeure event limited the tonnes produced or the quality produced such that the producer no longer has or cannot deliver the quantity of tonnes contracted, or a quality that The Company is willing to accept. If these conditions are met to The Company’s satisfaction, The Company will cancel the contract at no cost to the producer.”



SET-OFFS

Recognize that contract defaults may affect other business transactions

Contracts typically contain “set-off” clauses to authorize the grain company to deduct from any money which the company may owe the seller at any point in the future. This would also apply to any affiliated businesses. A set-off allows the grain company to subtract the amount from another business transaction, such as any money owing from a separate grain receipt, cash advance, any credit on the crop input side of their business or Farm Credit Canada Performing Financing accounts (if applicable). Alternatively, a collection agency may be used to recoup liquidated damages.

Ultimately, the grower is responsible for paying the liquidated damages. By signing the contract, you agree to the “Set-off” or alternate collection methods.

Sample Clauses

SET-OFFS

“The Seller assigns to the buyer all amounts that may become due to the Buyer from production contracts, grain settlements, cash purchase tickets, cash advances, revenue, crop or feed insurance proceeds, government payment programs or other sources arising in respect of the Grain. ... The Buyer may enforce its rights by any legal means, including by set-off.”

“The Seller authorizes the Company to set-off and deduct, from amounts owed to the Seller under this Contract, any amounts owed by the Seller under this contract or otherwise to (a) the Company, (b) any of the Company’s subsidiaries and affiliates and/or (c) any financial institution for which the Company and/or any of its subsidiaries and affiliates acts as agent to collect indebtedness owed by the Seller to that financial institution.”

“Notwithstanding any other rights of The Company under this Contract, the Customer authorizes The Company to deduct from any monies otherwise payable by The Company to the Customer, whether now or in the future, any amounts owing by the Customer to The Company, including without limitation any amounts resulting from the Customer’s failure to deliver under this Contract for accounts owing for feed, fertilizer, chemicals or for other purposes. Alternatively, the Customer agrees to endorse any cheque or cash ticket for payment of commodity, in favour of The Company, to the extent of the amount owing. If the option is available, the Customer authorizes The Company to apply all charges and fees arising under the Contract to the Customer’s Performance Financing account with Farm Credit Canada.”

“The seller agrees to settle any outstanding accounts in relation to the commodity delivered to The Company (including, without limitation outstanding accounts of The Company as well as other creditors of the seller.) The seller hereby expressly allows The Company to deduct the amount of any such outstanding accounts from any payments due to the seller under this contract.”



TRANSFER OF OWNERSHIP

It is common for contracts to contain a clause that extends the contract obligations to any partners, farming corporations, administrators, heirs, executives or legal representatives. Essentially, if a farm is sold or goes bankrupt or the seller passes away, the contract requirements live on. Furthermore, if the contract is signed by a partnership, all partners are liable for any amount owing under a breach of contract.



Sample Clauses

EXTENSION OF OBLIGATION

“This Contract shall be binding on and enure to the benefit of the parties and their heirs, executors, administrators, representatives, successors and permitted assigns.”

Understanding your contract is time profitably spent. It will help determine your available marketing options and assist in negotiating the sale of your canola.





ADDITIONAL SOURCES OF INFORMATION

There are many great online references that cover navigating the canola market and understanding when and how to use which grain contract.

- **Alberta Canola Producers Commission – Marketing factsheets**
- **SaskCanola – Marketing**
- **Manitoba Canola Growers Association – Marketing**
- **Canadian Canola Growers Association – Boost your Grading Know-How**
- **Canola Council of Canada – Grower’s Manual: Chapter 14 Marketing**
- **Canadian Grain Commission – Official Grain Grading Guide**
- **Canadian Grain Commission – Subject to Grade and Dockage**
- **Canadian Grain Commission – Declaration of eligibility for delivery of grains and oilseeds**
- **Canola Council of Canada – Keep It Clean**
- **Alberta Agriculture and Forestry – Crop Contracts**
- **Alberta Agriculture and Forestry – What about Contracts?**
- **Government of Saskatchewan – Commodity Marketing Strategy**
- **Manitoba Agriculture, Food and Rural Development – Marketing Management**



LEGAL GLOSSARY **

ARBITRATION: Alternative to formal litigation which allows a disagreement between two or more parties to be resolved by an impartial, third-party individual. The National Grain and Feed Association (NGFA) members reference NGFA Trade and Arbitration rules in their contract with firms located in Canada and Mexico.

CONTRACT: Legally enforceable document that commits a grower to deliver a set product and the buyer to accept its delivery on or near a certain date for an agreed upon price

DEFAULT: Failure to perform the contractual obligation.

ENCUMBRANCES: A burden, obstruction, or impediment on property that lessens its value or makes it less marketable. An encumbrance is any right or interest that exists in someone other than the owner of the grain and that restricts or impairs the transfer of the grain or lowers its value.

ENURE (INURE): To result; to take effect; to be of use, benefit, or advantage to an individual.

FORCE MAJEURE: An event that is a result of the elements of nature, as opposed to one caused by human behaviour. French translation: Superior or irresistible power. Also referred to as an act of God.

INDEMNIFICATION: To compensate for loss or damage; to provide security for financial reimbursement to an individual in case of a specified loss incurred by the person.

INJURY: A comprehensive term for any wrong or harm done by one individual to another individual's body, rights, reputation, or property. Any interference with an individual's legally protected interest.

LIEN: A legal claim of one person upon the property of another person to secure the payment of a debt or the satisfaction of an obligation.

LIQUIDATED DAMAGES: Compensation agreed upon by the parties entering into a contract, to be paid by a party who breaches the contract to a non-breaching party.

SCHEDULE OF DISCOUNT: List of price discounts applicable to lesser quality of grain than that specified in the contract or the established grade requirements. Also referred to as an Off-Specification Adjustment Schedule.

SET-OFF: Common feature in contract law that authorises the grain company to recover any money owing by deduction from any money which the company may owe the grower at any point in the future.

TIME IS OF THE ESSENCE: A contractual term requiring performance in the specified period of time.

** The main source for the legal definitions is West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc.



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