

Grain Contracts

A Guide to Taking Out Grain Contracts

This guide aims to provide Australian grain producers a practical 'checklist' for the sale or purchase of grain under contract. It is not a substitute for specific terms and conditions as contained in contracts, but provides general guidelines, developed by growers, traders and marketing representatives, to assist in understanding the grain contracting process.

There are a range of marketing tools designed to meet producer's commercial needs. Different producers have different risk/reward and cash flow requirements; therefore it is important to determine the range and mix of marketing products that best meet your business needs.

Successful contracting of grain is a two-way street – a balance between buyer and seller. The key to a successful contracting relationship is accurate, timely communication between buyer and seller, especially if a problem arises.

BEFORE BEGINNING NEGOTIATIONS

- Be confident with the company you intend to deal with. (see Fact Sheet 003 - Managing Counterparty Risk)
- Record the details of the contract, preferably in a daybook or diary.
- Understand your commitment. From a commercial perspective, a contract is a productive marketing tool that can be used to minimise price fluctuation risk. From a legal perspective, a contract is a legally binding document that must be fulfilled.
- When your crop suffers adverse seasonal conditions such as frost and drought, these are considered production risks and are not covered by "Act of God" or "Force Majeure" clauses. It is important therefore, that caution be taken when committing to supplying grain, because there are likely to be financial consequences of failing to fulfil a contract.
- Understand the process of contracting. At this point it is worth looking at a simple legal definition of a contract;

A contract may be defined as an agreement between two or more persons, which is legally enforceable.

Two or more minds will have come together and agreed upon the doing of prescribed acts by each of them. In its unexecuted form, the contract is known as an executor contract.

If partially or wholly performed, it is defined as being partly or wholly prescribed.

A contract can be made wholly in writing or wholly verbally. It can also be a mixture of oral and written terms, or even made as a gesture. The acceptance of a contract must be communicated to be effective. This communication may be expressed verbally. This is, by agreeing to the contract over the phone, in writing or by the conduct of the parties to the contract.

The role of contract law is to vest legally enforceable rights in each party against the other. Corresponding liabilities are created.

The contract can ultimately impact upon other peoples' legal rights. For example, by



functioning to transfer ownership of property from one party to another so that the latter can assign propriety rights to a third.

NEGOTIATING THE CONTRACT

- Record the time, name and title of the person you are speaking to in your diary or daybook.
- Record the details of the contract so you have a record of what was agreed. The details that should be recorded are;

Price – confirm the price and whether it is GST inclusive or exclusive.

Price basis – confirm if the price is free-on-board (FOB), delivered port, local depot, silo or ex-farm. This confirms whether the buyer or seller is responsible for the transport, storage and handling charges.

Delivery date or period – confirm the delivery date and the delivery point.

Details of grain quality (grade) required – grain type, variety, protein, moisture, screenings and any premiums/discounts applicable. Make sure you check the GTA Grain Trading Standards. (see GTA website)

Tonnage and tolerances – confirm the tonnage required to fill the contract, and any tolerances in place regarding tonnage

Fees and/or charges applicable – i.e. State and Federal research and development levies and End Point

Royalties (EPRs). For details of EPR applicable varieties see the GRDC website www.grdc.com.au

Payment Terms – confirm when payment is due and accepted payment methods.

Delivery period – this is the period in which delivery and/or the contract must be executed (i.e. delivered/transferred from warehousing or washouts negotiated).

Default procedures – clarify the default procedures applicable if you are unable to deliver the grain as per the specifications of the contract (i.e. any damages such as washout fees).

Dispute resolution – you should also clarify dispute resolution mechanisms in place to deal with any contract conflict. This should be stated on your contract confirmation advice.

- Crop Liens - Remember it is your responsibility to advise the buyer of any registered crop lien(s).
- Contracts are open to negotiation. You have the right to negotiate on any points of the contract. For example, you may wish to negotiate payment terms. However, always bear in mind that any alterations to the contract must be agreed to by both parties. Variations are usually noted in a 'Special Conditions' section.
- Ensure that you are conversant with the terms and conditions. If you do not understand something within the terms and conditions of the contract, do not agree to the contract until the point(s) in question is (are) clarified.

RECEIVING THE CONTRACT CONFIRMATION

- Read and check the contract details against the notes you recorded during your conversation with the buyer.
- Ensure the contract confirmation and your diary notes align on the following points:
 - Price
 - Price basis
 - Delivery date or period
 - Details of grain quality (grade) required
 - Tonnage and tolerances
 - Fees and/or charges applicable
 - Payment terms
 - Default procedures
 - Dispute resolution procedure
 - Trade Rules which apply
- If you notice any discrepancies, contact the buyer IMMEDIATELY to resolve these.

Key points

- When negotiating a contract over the phone, record the details in a diary/daybook including the person you are dealing, date, time, price, price basis, delivery details, quantity, payment terms, fees and charges and those other listed
- Read and check the contract confirmation thoroughly when you receive it against your notes. If you notice any discrepancy contact the buyer immediately
- Remember a verbal contract is legally binding. Not signing the contract does not alter the legal status
- If you suspect you may have issues fulfilling any contract condition discuss the issue with the buyer

- If you are unsure about a term or condition, contact the buyer and have it explained.
- If you are still unsure, seek legal advice.
- After receiving and confirming the contract confirmation ensure you document/diarise (in daybook or diary) any changes made in subsequent conversations with the buyer. These, too, should be confirmed in writing as soon as possible.

RETURNING A CONTRACT CONFIRMATION

Even though you are bound without signing the contract confirmation, you are more likely to be able to resolve a dispute if it is signed and returned. When you are satisfied with the contract confirmation, sign it and return it to the buyer. This should be done within 24 hours.

Remember, a verbal contract is legally binding. Not signing the contract confirmation does not alter its legal status. However it is good practice to sign it.

CONTRACT ISSUES

As soon as you suspect that you might have issues fulfilling any contract condition it is imperative that you discuss the issue with the buyer as

soon as possible. Buyers may be more amenable if they are warned as soon as you suspect an issue.

PAYMENT

Confirm payment has been made on previously agreed terms.

RESOLVING DISPUTES

You can minimise disputes if care is taken in reading and understanding the contract details. However, if you have any disputes regarding the contract, it is recommended that you;

- Check dispute resolution terms specified in your contract.
- Seek resolution from the person you originally negotiated with. Failing that;
- Seek a resolution with their superiors. Failing that;
- Use the Dispute Resolution Process of GTA and seek resolution. Failing that;
- Seek legal advice and resolution through the court system.

It's important you understand what your dispute resolution options are before you sign the contract.

FURTHER INFORMATION

For more information about the GTA Dispute Resolution Process review *Fact Sheet 008 – Managing Counterparty Risk* & the GTA website http://www.graintrade.org.au/dispute_resolution