

4TH
EDITION



A PRACTICAL GUIDE TO NAVIGATING GRAIN CONTRACTS



Knowing what's in your grain contract
is just as important as knowing what's
not in your grain contract.



ccga.ca

600-1661 Portage Avenue, Winnipeg, MB R3J 3T7
Phone: (204) 788-0090 | Toll-free: 1-866-745-2256

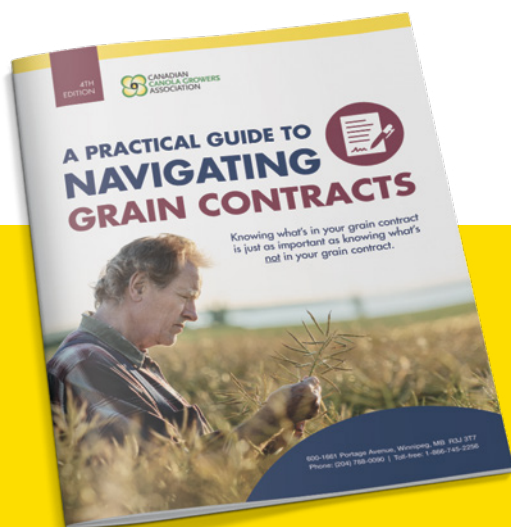
[@ccga_ca](https://twitter.com/ccga_ca) | [in](https://www.linkedin.com/company/ccga-ca) Canadian Canola Growers Association



A PRACTICAL GUIDE TO NAVIGATING GRAIN CONTRACTS



With the goal of assisting farmers in contract negotiation and interpretation, Canadian Canola Growers Association (CCGA) collected contracts from major canola buyers and prepared this summary of common clauses.



**DOWNLOAD OR
ORDER FOR FREE**

Download a free version of this Practical Guide to Navigating Grain Contracts at KnowYourGrade.ca or call 1-866-745-2256 to request a free copy be mailed to you.

This document is intended for general information and is not presented or intended as legal advice. Sample language is for guidance only and is provided as an example of common terms and conditions currently or historically included in contracts.



TABLE OF CONTENTS

- UNDERSTANDING YOUR GRAIN CONTRACT 2**
- Get the whole contract3
- Get it in writing4
- VARIATIONS IN QUANTITY AND QUALITY 5**
- Implications of grade and volume differential5
- Be familiar with the grading process and quality parameters.6
- Delivery declarations8
- DELIVERY TERMS 10**
- Be aware of the delivery terms10
- Prepare for an extended delivery period.11
- FARMER COMPENSATION WHEN DELIVERY TERMS NOT MET 13**
- ACCESS TO LAND 15**
- DEFAULTS AND CONTRACT CANCELLATION 16**
- Notify your grain company16
- Know your options16
- Understand the obligations and risks for not delivering against the contract.17
- Determine the process to cancel a contract.19
- Discuss how Act of God or force majeure events will be treated20
- SET-OFFS AND SECURITY 21**
- Recognize that contract defaults may affect other business transactions.21
- CONTRACT DISPUTES 22**
- TRANSFER OF OWNERSHIP 23**



UNDERSTANDING YOUR GRAIN CONTRACT

Grain contracts are a central part of selling grain. They are essential to your farm's marketing plan and the sale of your grain.

A contract is a **legally enforceable** agreement committing the seller (farmer) to deliver a set product and the buyer (grain buyer) to accept its delivery on or near a certain date for an agreed-upon price and quality, according to the outlined terms and conditions. In short, a contract is *an agreement between two parties that a court can enforce*.

Different contract types offer varying degrees of risk protection, delivery certainty, and cash flow to farmers – each with different advantages and disadvantages. Depending on the type, a farmer can lock in futures or basis, select a target price, or schedule a delivery slot.

The terms and conditions governing the contract are found in the fine print. These vary substantially between grain elevators and processors, sometimes making a direct comparison challenging.

The associated terminology, often legal in origin, can cause confusion when reviewing options and understanding your contractual requirements.

While a standardized contract and common language and terms could streamline the process, it would also eliminate an element of competition in the market. Grain companies compete for grain based on their contract provisions, and farmers currently have the choice of selecting contract terms that work best for their farm and marketing plans.

Important first steps

- **Take the time to read and understand your entire contract before signing.**
- Ask for a complete copy including all terms and conditions before agreeing to the sale.
- Compare contracts from different buyers. Terms differ depending on the type of contract, company, and crop. Contracts exist that contain protections for both farmers and buyers.



ASK YOURSELF

Are there any terms that require clarification?

- Approach your contract as a negotiation. Farmers have successfully renegotiated terms within a contract, especially around price and delivery. Remember, the more farmers request changes, the greater the chance grain buyers will consider it.
- Review each contract you sign, as terms and conditions may change. This is particularly important at the start of a new crop year or when selling to a new buyer.
- Confirm all verbal commitments in writing including by email or having the buyer and you initial any change made to contract language.

Read and understand the entire contract

Faced with the daily challenges of managing a farm, many farmers do not take the time to read the whole contract.

It is vital to read and understand the **entire** contract, including its terms and conditions to fully understand your contractual obligations to prevent any misunderstandings. Grain 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 farmer and strengthens the grain company's legal position should a dispute arise. In a virtual environment, clear language (e.g. in an email) denoting understanding and consent can replace a signature.

Terms and conditions differ depending on contract type, crop, and company. Terms can change without notice; therefore, regular review is recommended.

If you have unresolved concerns, clarify any questions you have or seek a second opinion.

Third-party advice or a legal opinion may be warranted.

Before signing, double-check that the terms of the sale are recorded correctly and contact the grain company immediately should any discrepancies exist. Some contracts stipulate a specific time for review, either 24 or 48 hours. If you have any unresolved concerns, the company representative can further explain the terms.

Get the whole contract

Ensure you have the entire contract for your review. A **two-part contract** can cause confusion if the terms and conditions are signed in advance and applied to subsequent contracts executed during the crop year or in the next crop year. By signing the sales portion of the contract, the farmer may be agreeing to larger terms and conditions.

i

DEAL WITH REPUTABLE BUYERS

Dealing with licensed grain companies minimizes your payment risk. The Canada Grain Act requires primary elevators, processors, and grain dealers to be licensed. [The Safeguard for Grain Farmers Program](#) protects farmers if a licensed buyer cannot and fails to fully compensate for grain delivered. The Act does not cover deliveries to feed, seed cleaning, and some renewable fuel facilities. Farmers should exercise additional due diligence such as researching the company beforehand and ensuring immediate payment.

A complete list of licensees is available at grainscanada.gc.ca.

ASK YOURSELF



Are the elements discussed correctly written into the contract (crop type and class, price, quantity, quality, delivery window, and location)?

Get it in writing

Grain sales are underpinned by written contracts. While verbal contracts are legally enforceable when certain conditions are met, they can be difficult and expensive to prove in court. As a general guideline, any term not included in the written contract or recorded after a verbal discussion, does not form part of the contract.

For consistency, grain buyers use standardized contract terms with little to no regional differences. Grain contracts contain an **Entire Agreement Clause**. This clause exists for the benefit of the grain company and is intended to prevent the buyer from being held liable for any representations or promises, either by the farmer or company representative, made outside the written contract terms. Such a clause should remind farmers that changes to contract terms not written and signed may invite conflict with the company to enforce them.

Prevention is the strongest defence, as are clear records. To ensure that verbal terms have legal force, send a follow-up email or written correspondence, or add to the section for special remarks confirming the discussion and recording the change. Another option is to strike out the term, write in the agreed change, and for both you and the company representative to initial or sign confirming the agreement and common understanding.



RELATIONSHIPS ARE KEY.

Grain marketing is rooted in relationships. Maintain good relationships and open communication with your grain company representative before and throughout the life of the contract. A good relationship is key when negotiating reasonable changes to contract terms or potential alternatives should an issue arise.



SAMPLE CLAUSES

ENTIRE AGREEMENT CLAUSES

“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. A Contract may not be amended unless the parties agree in writing.”

“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.”

ASK THE BUYER



How will any discounts be calculated?
Is the schedule of discounts available?



VARIATIONS IN QUANTITY AND QUALITY

Implications of grade and volume differential

The grain's title and interest typically remain with the farmer until it has been delivered to and accepted by the grain buyer. The farmer is fully responsible for any loss or damage to the grain until this time. The premise behind this is that the person in control of the grain is best positioned to ensure it remains in proper condition. To this end, once ownership is transferred, the farmer no longer has a right to the grain with some contracts specifically noting that any screenings, dockage, or foreign material are owned by the grain company.

Grain buyers are only obliged to accept the grade and quantity written into a contract. Acceptance of a grade not specified in the contract is at their sole discretion and subject to trade discounts and/or other penalties. While not always specified in the contract, the company's schedule of discounts may apply upon delivery. Damages may also be assessed for deliveries of lesser quantities. (See section on defaults and contract cancellation.)

Prior to signing, ask about how differences will be managed, determine potential alternatives, and understand the financial consequences should you not be able to deliver.



HARVEST SAMPLE PROGRAM

Knowing your grain's quality prior to sale and delivery is a core element of your marketing plan. This knowledge helps you in your negotiations, provides confidence when asking for a second opinion, and helps maximize the value of your entire crop, particularly if quality varies by field. The Canadian Grain Commission Harvest Sample Program provides a free, unofficial grade, as well as dockage in canola, falling number in wheat, and oil and protein for oilseeds, pulses, and cereals. Sign up at grainscanada.gc.ca to receive a sampling kit.

ASK YOUR BUYER



In addition to those outlined in the Official Grain Grading Guide, are there quality parameters required to fulfill the contract (i.e., moisture, falling number, mycotoxins)?

Are recommendations in place to uphold Canada's market access relating to crop input products and varieties?

How will a dispute over the grade be handled?

Be familiar with the grading process and quality parameters

Grain grading is based on the Canadian Grain Commission (CGC) [Official Grain Grading Guide](#). In addition to the Guide, additional quality parameters (i.e., falling number, moisture, oil) are increasingly applied and may be stipulated in the contract depending on the end-use requirements and contract type. These fall outside CGC farmer protections and are not subject to Commission oversight.

Contracts may also contain language to ensure that: the grain is safe for consumption and is unadulterated; no moisture has been added; pesticides used are registered under the *Pest Control Products Act* and applied according to label requirements; the variety used is registered in Canada; and the grain does not contain varieties or traits not approved in Canada's key export markets.

Grading is the most common area of disagreement between farmers and grain companies. Farmers should fully understand who will determine the grade

and what implications a grade differential will have on delivery and price. A good understanding of the [Official Grain Grading Guide](#), testing protocols, and your rights as a farmer is beneficial.

If you do not agree with the assessment, ask for a second opinion. In the event of a grading dispute, the CGC provides a binding decision on moisture, grade, or dockage (fees apply). This service, known as [Final Quality Determination](#), is available at licensed primary elevators. Farmers have up to 7 days from the issuance of a primary elevator receipt to request a second opinion. Currently, this service is not available at processing elevators such as crush facilities and for non-Commission grading factors. The grain company may also offer this service through a third-party inspection company.

Farmers should ask how any grading and dockage dispute will be handled at process facilities. The company may agree to submit samples to CGC, agree to use a third party, or have an internal dispute process. Your contract may address such situations.



SAMPLE CLAUSES ACCEPTING GRAIN

"Title to and risk of loss of any or all of the Crop will remain with the Seller until the Crop is delivered and accepted by the Company."

"The Buyer, may at its sole and exclusive option, offer to accept the grain having a Grade, Protein and other Specification outside the requirements specified in this Contract at a price determined by the Buyer in its sole discretion."

"If Buyer accepts any Commodity not meeting contract grade or quality, destination discounts and premiums at time of delivery will apply, unless otherwise specified in writing."

"If the Grain grades lower than the Grade specified in the Contract, then the Producer shall be in default of his obligations under this contract and the provisions respecting liquidated damages shall apply."



KNOW YOUR GRADE

Grade and dockage directly affect a farmer's bottom line. Understanding the processes for representative sampling, cleaning, and assessing dockage, and grading will help you follow along and have confidence in

the outcome. The Canada Grains Act also provides a series of farmer protections aimed at ensuring farmers are treated fairly when delivering into the grain handling system and have access to a second opinion, should a dispute arise.

For more information on canola grading, check out

KnowYourGrade.ca



SAMPLING



DOCKAGE



GRADING



RIGHTS AND RESPONSIBILITIES



GRAIN CONTRACTS



SAMPLE CLAUSES

AVAILABLE RECOURSE AND ADDITIONAL QUALITY REQUIREMENTS

"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."

"The Seller has not misrepresented the Grain, nor the delivery of the Grain to the Buyer in any way, the Seller has not added moisture or other contaminants, and the Seller has not distributed the Grain on delivery in such a way to make sampling of the Grain non-representable."

"The Customer warrants that in growing the commodity sold to the Buyer hereunder, Customer

has only used pesticides that: (i) are lawfully registered under the *Pest Control Products Act*, (ii) are approved for use in Major Export Markets, and (iii) were applied in strict compliance with the procedures recommended by the manufacturer of the pesticide, the Pest Management Regulatory Agency and as permitted by relevant authorities in Major Export Markets."

"Seller represents and warrants to Buyer that the goods(d) are Canadian seeds that were entirely grown in Canada, (e) if canola seed, they are low erucic acid canola seed only"

Delivery declarations

Declarations at delivery are common in Western Canada and form part of your grain contract. They have evolved over the years from declaring wheat varieties to include other grains and specifications such as language stating that a crop protection product was not applied, or Plant Breeders' Rights were respected. By signing, you assert that the specifications and conditions are met, and the grain buyer can hold you liable for any breach intentional or unintentional for any damages that occur. As with contracts, a signed declaration may apply for the duration of the crop year or as updated or replaced by the grain company.

Under the Canada-United States-Mexico Agreement (CUSMA), declaring the variety being delivered is eligible for use in Canada is now a legal requirement for both Canadian and American farmers. The *Canada Grain Regulations* were changed to allow for U.S. grain to receive an official grade

while maintaining our grain quality and safety system. As of August 2021, to protect the variety registration system, all deliveries to licensed grain buyers must be accompanied by a declaration attesting that the variety grown is registered in Canada.

Eligible varieties are registered by the [Canadian Food Inspection Agency](#) as eligible for the crop kind. Wheat, barley, and flaxseed must also be assigned to a class by the Canadian Grain Commission. An unregistered variety is only eligible for the lowest grade in any class and may be in default of your contract obligations.



SAMPLE CLAUSES DELIVERY DECLARATION

“If I, or anyone on my behalf, deliver(s) to the Grain Handling Company and/or the Grain Buyer grain that does not comply with [declarations required by Grain Handling Company], I acknowledge that I will be liable to the Grain Buyer, and agree to indemnify and hold harmless Grain Handling Company and/or Grain Buyer from and against any and all loss, cost, damage, expense (including legal fees) or penalty that it may incur by reason of my non-compliance

with this Declaration. I further acknowledge and agree that the Grain Buyer may consider me to be in default of my contract and may cancel any contracts between myself and the Grain Buyer.”

“This Declaration is made and intended to apply to all deliveries of grain made by me or on my behalf to the Grain Handling Company from and including the date indicated below until the end of the 2022-2023 crop year.”

**YOUR STAKE IN
MAINTAINING**



Canada's Grain Integrity

We all have a role to play in maintaining the integrity of Canadian grain and upholding our reputation as a high-quality global supplier.

Practices on the farm must meet the regulatory requirements of our export markets. Practices on an individual farm can impact and jeopardize market access.

The *Canada Grain Act* prohibits producers from delivering infested or contaminated grain (i.e. treated seeds, insects, excreta) or grain that is suspected to be infested or contaminated.

Other Canadian legislation and regulations govern pesticide use and maximum residue limits, eligible varieties, and grain safety.



FOLLOW THESE ADDITIONAL PRACTICES:

- Only use pesticides registered for use and do not create a market-access risk. Follow label requirements to ensure safe application and compliance with maximum residue limits.
- Use best management practices to address disease pressures.
- Maintain the quality of stored grain.
- Only deliver registered varieties. A declaration of eligibility is legally required at primary and process elevators and a false declaration is considered an offense.

Check out [keepitclean.ca](https://www.KeepItClean.ca)

for advice on how to ensure your canola, cereals, and pulses are market-ready, including safe agronomic and storage practices, pesticides to avoid, and deregistered varieties. The information communicated should align with that on your Western Grain Elevator Association declaration of eligibility and will change as pesticide regulatory approvals are received in key export markets.





DELIVERY TERMS

Be aware of the delivery terms

Each contract outlines delivery terms and sets a delivery period and location. The original delivery period varies by grain buyer and contract but is generally a specific month. The delivery requirements also vary between companies. In some contracts, the company will call for delivery, while in others the farmer must schedule a delivery date within the contract period. Contracts may also provide the grain buyer the option to call for all the contracted grain at once or in parts throughout the delivery period.



DELIVERY EXTENSIONS

Delivery flexibility provides grain buyers the ability to manage market and supply chain risk. Designating an alternative location allows companies that have the facilities to move grain to market faster while upholding their contract delivery commitments.

The ability to change the delivery month is reflective of the larger marketplace and is built into contracts to provide flexibility for moving grain to port and/or to account for barriers along the supply chain.



Farmers should be aware of the terms, understand how they impact delivery, and make contingency plans should they change. **Contracts allow for extended delivery periods, and some allow the grain company to change the delivery location.** Be mindful that a fee may be charged by the buyer if the grain is not delivered when called for during the delivery period or the delivery period may be extended indefinitely.

Prepare for an extended delivery period

The option to extend the delivery period is a common grain contract feature. If a grain buyer cannot accept the contracted grain, for whatever reason, by the end of the original delivery period, contract language provides the option of extension. The terms and length vary by company ranging from 30 to 180 days with an average of 90. However, if the grain is not accepted after the extension, some contracts may further allow the delivery period to be extended (see section on farmer compensation when delivery terms are not met) while others provide the farmer the option to cancel the contract or reschedule.

Depending on the contract, the delivery period may automatically be extended *without* the requirement to provide prior notice to the farmer.



SAMPLE CLAUSES DELIVERY TERMS

“Seller will deliver to Buyer the Product, in the Quantity specified and meeting the other quality parametres set-out in this Contract, upon demand by Buyer at any time during the Delivery Period, and in any event, by no later than the last business day of the Delivery Period.”

“Buyer may schedule deliveries of the Commodity by Seller to suit the availability of appropriate storage and cleaning facilities.”

“The Buyer may call for all 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, in the Delivery Period.”

ASK THE BUYER



What delivery terms apply to the contract?

Will full or partial deliveries be expected?

How far is the alternate location?

As such, farmers should be prepared to deliver within both the original and extended delivery period and be available should an additional extension be required. If your original delivery period is October, can you also deliver in November, December, and January? If you are unable to deliver past the initial period, talk to the grain buyer about making changes, look for contracts with shorter extensions, or arrange for alternate delivery terms.



ASK YOUR BUYER



How will I be notified of a change in delivery location or period?

What compensation exists should the delivery location be changed, or the period be extended?

What, if any, alternatives exist should the delivery period be extended?



SAMPLE CLAUSES

DELIVERY CHANGES – LOCATION AND PERIOD

“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 hauling rates; and if the Buyer gives at least 24-hour notice to the Seller, the Buyer may, at its expense, arrange for pick-up of the Grain on the Seller’s land or at the place where it is stored.”

“If the Buyer is unable to take delivery of the Crop at the Crop Delivery Location before the end of the Delivery Period, the Buyer may, at its option, designate an alternate crop delivery location, or, without notice, extend the Delivery Period by a period but not to exceed 180 days.”

“The Company will have the option, if the Company cannot take delivery of any or all of the Crop within the Delivery Period, to automatically extend the Delivery Period for a period of one month, without

penalty and to designate an alternative location for delivery, as agreed upon by the parties.”

“Except as expressly stated herein, Buyer shall not be liable in any respect for failure or delay in the fulfillment or performance of this contract if hindered or prevented, directly or indirectly, by war, national emergency, inadequate transportation facilities, inability to secure fuel or power, fire, flood, windstorm or other acts of God, strikes, lockouts or other labour disturbances, embargos, orders, or acts of any government or governmental agency or authority, accidents to machinery, or any cause of like or different kind beyond Buyer’s reasonable control. However, notwithstanding this provision, the Buyer shall have an additional 90 days beyond the expiry of the Delivery Period to call for a delivery of the Commodity without penalty.”



FARMER COMPENSATION WHEN DELIVERY TERMS ARE NOT MET

The *Canada Grain Regulations* require all delivery contracts offered by licensed buyers to include a provision to compensate farmers for grain not accepted within the stipulated delivery period. The requirement, stemming from the 2014 *Fair Rail for Grain Farmers Act*, was introduced to address farmers' concerns with grain buyers not accepting their grain according to contract delivery terms. The penalty applies to the crop type and grade indicated in the contract and is to be paid upon delivery of the outstanding amount or on another date as agreed to by the grain company and the farmer. **Compensation needs to only apply after the initial and extended delivery periods have ended.**

It is important to ensure compensation is included in the contract and agreed to prior to signing. Check to make sure the contract includes a provision stating that the farmer is eligible for a penalty payment and outlining the rate.

Compensation varies by grain buyer, 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 available compensation and to negotiate agreeable terms. In certain instances, penalties may not apply. Grain called for, which the farmer fails to deliver within the delivery period, or which does not meet the contracted crop type and grade, may not qualify.



WHEN COMPENSATION IS NOT PROVIDED

Contact the Canadian Grain Commission (CGC) if your contract does not include compensation or your buyer refuses to include the required terms. In the event of a dispute regarding the application or payment of the penalty, try to first resolve the issue directly and, if not successful, contact the Commission. Upon written request, the CGC may arbitrate or refer the dispute to an arbitrator.



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 Storage Penalty shall be \$0.10MT per day, payable for each day during the period beginning on the first day after the day on which the Delivery Period expires and ending on the day on which any undelivered portion of the Crop, remaining outstanding on the Contract, is received by the Company.”

“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 until either: termination of this Contract or delivery of the commodity.”

“The Company and the Producer agree that the Company will pay the Producer a one-time lump sum penalty of \$10.00 (which lump sum shall be payable at the time that the delivery of Crop is completed by the Producer) for the entire remaining undelivered portion of crop not accepted by the Company within the original delivery period.”

“The Seller shall deliver the Grain when called for delivery within the Extended Delivery Period, then in accordance with Part 4.1 of the *Canada Grain Regulations*, the Buyer shall pay the seller, Storage Rates for the Grain delivered, together with interest calculated at the Interest Rate on the Price. The “Storage Rates” shall be the storage rates of the Buyer calculated in accordance with the Canadian Grain Commission Licensed Primary Elevator Tariffs.”



ACCESS TO LAND

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



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."



DEFAULTS AND CONTRACT CANCELLATION

Notify your grain company

Speak to your grain company as soon as you are aware of a shortfall or production failure. In most contracts, the farmer is contractually obligated to notify the grain company if they are unable to deliver or believe they will fall short in meeting the quantity or quality agreed to in the contract.

Open proactive communication is key to your relationship with the grain company and an important component of effectively fulfilling the contract obligations. Beyond that, there are likely other farmers 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.

Know your options

When facing a default, here are some solutions to consider and discuss with the grain company:

- Negotiate a reduction in the administration fee and/or liquidated damages.
- Buy grain from a neighbour to deliver against the contract.
- Assign, with permission, the contract to another farmer.
- Assess how contract buyouts impact AgriStability and/or crop insurance payments.
- Roll delivery to the next crop year when you expect to have more available production.
- Buy a call option to manage price risk.



SAMPLE CLAUSES PRODUCTION SHORTFALLS

“The Seller is absolutely and unconditionally required to sell and deliver the Grain of the Grade and Specifications as specified in the Contract, whether or not the Grain is grown. 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.”

“Any notice given under this Contract must be in writing and may be given by personal delivery, prepaid registered mail or facsimile transmission.”



ASK YOUR BUYER



How will liquidated damages be calculated?

Understand the obligations and risks for not delivering against the contract

It is important to understand your obligations and risks for not delivering against the contract, because the liquidated damages and interest can be significant. The 2021 production year was a 'perfect storm' where drought and limited supplies for all grains across the Prairies drove significant increases in price, amplifying the price differential leaving farmers with costly buyouts. Grain buyers needed grain to fulfill existing sales commitments.

Contracts possess a **liquidated damage** clause if the farmer is found in default (i.e., grain not delivered or of lesser grade and quantity). The terms and conditions lay out what the damages will be and how they will be calculated. The amount must be a "genuine pre-estimate" of the cost to the company to terminate the contract. They **vary substantially** between contract types and by company. Depending on the contract, the formula is **normally the difference between the contract price and the replacement cost, plus an administration fee and any additional losses the company may incur**. Additionally, most companies charge interest (similar to credit card interest) on the amount owing. If your contract doesn't stipulate the process for collecting damages, ask the company in advance how damage will be assessed. Remember any communication should be in writing.

Review terms from the various grain buyers to determine which is best for you. A conversation may be warranted on how the company calculates the price portion of the formula and what steps can be taken to mitigate the damages. Additionally, a default may adversely affect future business relationships

with the grain buyer or any dealings with their crop inputs business if that affiliation exists.

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. **If applicable, the administration fees charged vary by company and can range between \$10 to \$30 per tonne or be charged per transaction.**

In rare cases, the contract may contain language that requires the grain buyer to pay liquidated damages to the farmer should the company default. These are linked to the price differential between the contracted and replacement price, so depending on the market may not make sense to exercise.



USING THE FUTURES MARKET FOR PRICE RISK

When you sign a 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 partly designed to cover this cost. Alternatively, a farmer can also participate in the futures market to manage price and contract risk.



SAMPLE CLAUSES

LIQUIDATED DAMAGES

“If Seller fails to deliver any or all of the Product, or perform any of its other obligations in this Contract, Buyer will give notice to Seller and Seller will pay to Buyer on demand damages to compensate Buyer for its loss, equal to: (a) the difference between the Price for the Product and the cost to Buyer (based on current market price), if higher, of buying replacement grain of equivalent quality; and (b) all other losses, damages, costs and expenses (including without limitation legal fees) suffered or incurred by Buyer as a result of or in any way resulting from Seller’s default. Seller and Buyer agree that liquidated damages determined in this manner are reasonable, and are a genuine pre-estimate of the actual damages Buyer will incur as a result of the default by Seller, and that such damages are not a penalty.”

“Buyer, when so notified or upon such determination, shall by the close of the next business day elect either to: (a) agree with Seller to extend the time for delivery, or (b) after having given notice to Seller to complete the contract buy-in for Seller’s account the defaulted portion of the contract, or (c) after having given notice to Seller to complete the contract, cancel the defaulted portion of the contract at the difference between the contracted price and the replacement cost, plus an administration fee of \$10 per metric tonne.”

“The Defaulting Party shall pay to the other party without delay: (i) liquidated damages (which damages are agreed to be a genuine pre-estimate of actual damages and not a penalty) equal to the excess of loss of cost or value under s. 7 (c) [buy or sell its hedged position, buy grain similar to the undelivered Grain or sell the Grain in the marketplace, or value the undelivered Grain at the bid price reported by the Buyer] compared to the price for the undelivered grain; (ii) legal fees incurred as a result of the Default; (iii) where the Seller is the Defaulting Party, an administration fee equal to \$15 per net metric tonnes of undelivered Grain; and (iv) simple interest on all amounts

calculated at a rate of 3% (the “Interest Rate” from the date of the Default to the date of payment unless otherwise agreed to by the Parties).”

“The Company will give notice to the Seller and the Seller will pay to the Company on demand: (a) liquidated damages (which are agreed to be a genuine pre-estimate of actual damages and not a penalty) 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; (b) all other losses, damages, costs and expenses (including legal fees on a solicitor and client basis) suffered or incurred by the Company as a result of or in any way arising from the Seller’s failure; and (c) if the Seller does not pay the foregoing charges by the last business day of the month following the date of the Company’s notice/invoice to the Seller, interest on the outstanding balance calculated at the rate of 1.75% per month, compounded monthly (23.15% per annum), to the date of payment.”

“In the event of a default, The Buyer at its options may: (1) terminate the agreement without further obligation; (2) purchase a substitution for the goods on the open market for Seller’s Account, and Seller will pay Buyer any loss and incidental expenses resulting there from; (3) require seller to pay the difference between the agreement price and the market price on the date of termination; and/or (4) terminate any or all other contracts in existence between Buyer and Seller whether or not seller may otherwise be in default thereunder. Notwithstanding the foregoing, Buyer may pursue any remedy allowed by law, and buyer will be entitled to collect from Seller reasonable attorney’s fees and costs incurred by Buyer in connection with the enforcement of this contract.”



ASK YOUR BUYER

What is the process to terminate a contract?

Will a contract default impact other business dealings or open contracts?

Determine the process to cancel a contract

Once signed, the outlined terms are binding and, in most cases, the contract cannot be cancelled without buying it out. Delivery contracts can be terminated at any time providing you are willing to pay the damages. It is important to note that the ability to do so applies to both parties, and common law governs how both parties are treated.

Some contracts contain terms specific to cancellation. Their use is limited to specific circumstances, such as the company's inability to accept delivery within the initial and extended delivery periods or related to locking in price. Familiarize yourself with any cancellation clauses in the contract to understand when either party is considered at default and the grain company's process to terminate a contract.

Before deciding to cancel a contract, it is important to fully and realistically assess your production situation and make the decisions that best work for your farm. Be careful in cancelling a contract as cancellation may impact other open contracts that exist with the company or its affiliates.

A contract should be cancelled in writing. The notice should be clear, detailed, and unambiguous, creating a record and date for which damages are to be calculated. Care should be taken to ensure that any notification procedures set forth in a contract are followed (should they exist). Once the grain buyer is duly notified, the company's requirement to mitigate their damages begins (i.e., source other grain or wind down a hedge). Note this generally means that they can't make or allow the situation to become worse.



SAMPLE CLAUSES CANCELLATION

"If Buyer has not demanded delivery of the commodity and the Buyer is unable to receive the commodity at the end of the 90 Day Extended Delivery, the Seller shall have the option of (i) terminating the contract and paying (receiving) any increase (decrease) between the contract price and Buyer's current bid, or (ii) delivering at a later

time at the contract price at a date to be agreed upon by the Seller and the Buyer."

"In the event of a default, The Buyer at its options may ... terminate any or all other contracts in existence between Buyer and Seller or the seller may otherwise be in default thereunder."

ASK YOUR BUYER

How are Act of God or instances of Force Majeure treated?



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 delivery contracts. The farmer is primarily responsible to deliver against the contract or to pay damages regardless of weather-related circumstances. When language is included it generally benefits the grain buyer and allows them to suspend or cancel the contract in the event of circumstances outside their control.

Shop around to determine your options. Act of God or force majeure clauses may be available at a premium, upon consent of the grain buyer, or with specialty crops and production contracts. When included, pay special attention to the circumstances and process to invoke such a clause and who ultimately decides if a catastrophic event has occurred.



SAMPLE CLAUSES

CROP FAILURE

“The Seller shall be fully liable for any failure to deliver the Grain or any other default or failure to perform its obligations under a Contract due to any cause whatsoever, whether beyond the Seller’s control or not.”

“It is understood that the Company will permit cancellations or other 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.”

“Neither party shall be liable for delay in performance or failure to perform when such delay or failure is due to unforeseen cause beyond its reasonable control and without its fault or negligence, including but not limited to acts of god or the public enemy, governmental action or whatever variety, fires, floods, earthquakes, epidemics, quarantine restrictions, riots, insurrections, freight embargoes, plant breakdown, rail car shortages, and unusually severe weather.”



SET-OFFS AND SECURITY

Recognize that contract defaults may affect other business transactions

Contracts typically contain “set-off” clauses to authorize the grain buyer to deduct from any money which the company may owe the seller at any point in the future. This could also apply to any affiliated businesses. A set-off allows the 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 any damages owing. Language may also extend to crop insurance payments.

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



SAMPLE CLAUSES SET-OFFS

“Seller authorizes Buyer to set-off and deduct, from amounts owed to Seller under this Contract, any amounts owed by Seller to (a) Buyer, and/or (b) any of Buyer’s subsidiaries or affiliates, including without limitation any amounts owned by Seller due to Seller’s failure to deliver the Product pursuant to this Contract.”

“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, and/or (b) any of the Company’s subsidiaries and affiliates. All amounts to be paid now or later be the Seller to the company must be paid by the Seller in full without set-off, counterclaim or deduction of any kind.”

“Without limiting any other remedies available to the Buyer, this Contract is subject to Buyer’s right to set off against any amount payable to Seller, all amounts owing by the Seller to Buyer, including, without limitation, all amounts owing in respect of any crop inputs provided by the Buyer and interest at 1.5% per month.”





CONTRACT DISPUTES

There is no one system for recourse. Some contracts reference the arbitration rules established under the National Grain and Feed Association. If there is a dispute over a delivery contract, farmers can raise the issue directly with the Canadian Grain Commission who may appoint an arbitrator. Legal recourse through a contract lawyer is also an option. In such case, the provincial law where the contract is

signed would likely govern the resolution of legal issues.

The best defense is to establish a positive business relationship with the grain company and fully understand the buyer and seller obligations to avoid any dispute.



Understanding your contract is time profitably spent.

It will help determine your available marketing options and assist in negotiating the sale of your canola.



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 farmer 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 will be binding on and enure to the benefit of the parties and their respective successors and permitted assigns.”

“If the Seller is more than one person, the obligations and liabilities of those persons under each Contract shall be joint and several. ... The Contract shall be binding on the parties and their executors, administrators, successors or permitted assigns.”



WANT TO LEARN MORE ABOUT GRAIN CONTRACTS?

CCGA works to ensure farmers receive the best value for their canola.



Visit KnowYourGrade.ca for information on what to expect when delivering grain, and helpful information on:

- Sampling
- Dockage
- Grading
- Rights and Responsibilities
- Grain Contracts



600-1661 Portage Avenue | Winnipeg, MB R3J 3T7

Phone: 204-788-0090

Toll-free: 1-866-745-2256 | Fax: 204-788-0039

Email: policy@ccga.ca

ccga.ca

 [@ccga_ca](https://twitter.com/ccga_ca) |  [Canadian Canola Growers Association](https://www.linkedin.com/company/canadian-canola-growers-association/)

Revised August 2022

