

Winter Pool sign-up Producer cars

This document forms part of the 2014-15 CWB Winter Pool contract terms and conditions for Producer cars. CWB will notify you if they accept or reject your application no later than 14 days following the contract sign-up deadline. Your administrator will call for delivery when the producer car is authorized by the Canadian Grain Commission (CGC) for loading.

CWB reserves the right to extend or withdraw the offer at any time and without prior notice. The deadline to apply for the Winter Pool is February 13, 2015.

Note: Once CWB has accepted your contract, please work with your producer car administrator to complete and submit the *Canadian Grain Commission (CGC) application for producers to obtain railway cars to CGC.*

Producer information

Name		Customer No. (12345678)
Home phone No.	Cell phone No.	Fax No.
E-mail	Producer car administrator	Loading site

Sign-up - Please indicate the reference grade and the tonnes you want to commit

- | | |
|--|---|
| <input type="checkbox"/> No. 1 Canada Western Red Spring (CWRS) wheat 12.5 | <input type="checkbox"/> No. 1 Canada Western Amber Durum (CWAD) 13.0 |
| <input type="checkbox"/> No. 1 CWRS 13.0 | <input type="checkbox"/> No. 1 CWAD under 13.0 |
| <input type="checkbox"/> No. 1 CWRS 13.5 | <input type="checkbox"/> No. 2 CWAD 13.0 |
| <input type="checkbox"/> No. 1 CWRS 14.0 | <input type="checkbox"/> No. 2 CWAD under 13.0 |
| <input type="checkbox"/> No. 2 CWRS 12.5 | <input type="checkbox"/> No. 3 CWAD |
| <input type="checkbox"/> No. 2 CWRS 13.0 | |
| <input type="checkbox"/> No. 2 CWRS 13.5 | |
| <input type="checkbox"/> No. 2 CWRS 14.0 | |
| <input type="checkbox"/> Nos. 1 and 2 CWRS under 12.5 | |
| <input type="checkbox"/> No. 3 CWRS 13.0 | |
| <input type="checkbox"/> No. 3 CWRS under 13.0 | |

Net tonnes (Multiples of 90 to 100 tonnes per car for wheat and durum)

_____ . _____

Are splits by percentage required? Yes No If Yes, please specify below (if splits are known)

Producer name _____ Customer No. _____ Splits by percentage _____

Producer name _____ Customer No. _____ Splits by percentage _____

Important

I (the *Producer*) have read the 2014-15 CWB Winter Pool contract terms and conditions Producer cars related to this application. By completing this document and sending it to CWB, I agree that all of the said terms and conditions will apply to the contract I have selected herein.

Producer signature

Date (month/day/year)

Please keep the original for your records.

Fax to: 1-204-983-8031

Scan and E-mail to: cwb_contracts@cwb.ca

Mail to: CWB, 423 Main St, Winnipeg MB R3B 1B3



Effective September 24, 2014



**2014-15 CWB WINTER POOL (WP) CONTRACT
TERMS AND CONDITIONS
WHEAT AND DURUM
PRODUCER CARS**

1. DEFINITIONS

- a. **“Act”** means, the *Marketing Freedom for Grain Farmers Act*, as amended from time to time.
- b. **“Cash Offer Transfer”** means all or a portion of the tonnes committed under the 2014-15 CWB Winter Pool contract program which can be transferred to a CWB cash offer, if available, up to and including February 13, 2015 at a cost of \$3 per tonne. The *Cash Offer Transfer* does not supersede any previous agreements the producer may have under the 2014-15 CWB Pool Cashout.
- c. **“Contract Offer Deadline”** means the earlier of the date on which CWB withdraws the 2014-15 CWB Winter Pool contract program and February 13, 2015.
- d. **“Contracted Commodity”** means the specific commodity and quality specifications (for example, grain, grade and protein) indicated by the producer in the offer. CWB will only accept straight grain. No damp grain will be accepted. Tough grain shipped by producer car is exempt, and may be subject to a \$17 per tonne discount. All dockage is fully deductible.
- e. **“CWB Administrator Service Fee”** means \$1.00 per tonne that will be deducted from the initial payment at time of delivery for CWB administration costs for CWB administered producer cars only.
- f. **“Designated Delivery Point”** means the producer car loading site where *Contracted Commodity* that is the subject of this *Offer* will be delivered and/or loaded.
- g. **“Farmer Equity Plan”** is a plan intended to allow farmers to have an equity interest in CWB after privatization, and to allow farmers to profit from CWB’s business activities.
- h. **“Force Majeure Event”** means, for the purposes of this Agreement, the following events that are beyond the control of the producer and which limit the tonnes produced of the *Contracted Commodity at all locations where the producer planted the commodity*: severe flooding, hail, fire, drought, excess moisture, wind, hurricane, tornado, excess heat, insect damage, plant disease, wildlife damage, frost, or snow.
- i. **“Producer Car Administration Fee”** means \$2.50 per tonne that will be deducted from the initial payment at time of delivery for CWB administration costs.
- j. **“Settlement Date”** is the date on which a Producer Certificate, as defined in the *Act*, is issued in respect of *Contracted Commodity* delivered against a 2014-15 CWB Winter Pool contract program.
- k. **“Total Contracted Net Tonnes”** is the number of net tonnes of *Contracted Commodity* that the producer has committed to deliver and CWB has accepted under this Agreement.

2. OFFER

- a. In accordance with these terms and conditions, the producer offers, for purchase by CWB (the *“Offer”*), such quantity and quality of *Contracted Commodity* as specified in the *Offer*.
- b. The 2014-15 CWB Winter Pool contract program is open for offers until February 13, 2015 or until the tonnage limit is reached, whichever is earlier. CWB reserves the right to extend or withdraw the 2014-15 CWB Winter Pool contract program at any time and without prior notice.
- c. The producer’s *Offer* will not be valid unless it is made in strict compliance with one of the approved methods of making an *Offer* and unless it is received at CWB head office before the *Contract Offer Deadline*.
- d. The approved methods of making an *Offer* are:
 - i. telephone CWB at 1-800-275-4292 or contact the producer’s local Farm Business Representative (FBR) and provide the producer’s 8-digit CWB Customer number, confidential Personal Identification Number (PIN) and indicate the number of net tonnes offered by the producer. CWB’s record of such telephone call, including any written confirmation, is conclusive and binding on the producer; or
 - ii. fax or email a scanned, completed and signed 2014-15 Producer car Winter Pool sign-up form to CWB at 1-204-983-8031 or CWB_contracts@CWB.ca. In the event of any uncertainty as to the information provided by the producer in the 2014-15 Producer car Winter Pool sign-up form, CWB may, in its sole discretion, declare the *Offer* invalid.
- e. CWB will accept or reject the producer’s *Offer* as soon as reasonably practicable but no later than 14 days following the *Contract Offer Deadline*.

3. CWB’S OBLIGATIONS

CWB agrees as follows:

- a. To accept delivery of the *Contracted Commodity* from the producer, in accordance with the *Act* and the terms and conditions of this Agreement. If CWB cannot accept delivery within the pooling period due to logistical constraints or other reasons, CWB may extend the pooling period by up to sixty (60) days (the *“Extended Delivery Period”*).



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The *Extended Delivery Period* will commence on August 1, 2015 or the date the CGC authorizes the producer car, whichever is later. In the event that the *Contracted Commodity* is delivered beyond the *Extended Delivery Period*, CWB shall pay the producer a late delivery fee of \$0.033 per tonne per day, in accordance with Part 4.1 of the *Canada Grain Regulations*. The late delivery fee will be calculated beginning the day following the *Extended Delivery Period* until the *Settlement Date*.

- b. In accordance with the *Act*, to pay to the producer:
 - i. the initial payment for the *Contracted Commodity* delivered that is in effect at the time of delivery, less the *Producer Car Administration Fee*, the *CWB Administrator Service Fee* if the producer car is CWB administered, and any other amounts owing to CWB; and
 - ii. in the event that the *Contracted Commodity* has been priced under a 2014-15 CWB Pool Cashout, to pay the producer the cashout value as sum certain.
- c. Allow the producer to exercise the *Cash Offer Transfer* option, if available, until February 13, 2015. The *Cash Offer Transfer* may not be used if the producer already has a previous agreement for the same tonnes under the 2014-15 CWB Pool Cashout.

4. PRODUCER'S OBLIGATIONS

- a. The producer agrees to:
 - i. sell the *Contracted Commodity* to CWB;
 - ii. notify CWB if the producer does not have or cannot deliver the *Contracted Commodity*. If the producer does not have or cannot deliver the *Contracted Commodity* due to a *Force Majeure Event*, the producer must notify CWB within 15 days of such event and no later than November 30, 2014. The producer must prove to CWB'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 CWB is willing to accept. If these conditions are met to CWB's satisfaction, CWB will cancel the contract at no cost to the producer.
 - iii. ensure the railcar and *Contracted Commodity* are free of fumigants prior to loading. The producer will be subject to all costs associated with handling treated cars if it is determined that a fumigant is present in the railcar at time of unload.
 - iv. deliver the *Contracted Commodity*, or any portion thereof, to the *Designated Delivery Point* as required by notice provided by CWB, the producer car administrator or the Canadian Grain Commission (CGC). Such delivery will in any event be no later than July 31, 2015;
 - v. submit a completed *Canadian Grain Commission (CGC) application for producers to obtain railway cars* application to CGC upon CWB acceptance of the *Contracted Commodity* offered;
 - vi. if the producer chooses, to exercise the *Cash Offer Transfer* option by February 13, 2015, if available and
 - vii. comply in all respects with this Agreement.

5. DELIVERY

- a. The producer shall make arrangements to deliver the *Contracted Commodity* to the *Designated Delivery Point*. Costs to be deducted from CWB initial payment shall be negotiated between the producer and CWB.
- b. CWB, or the producer car administrator or the CGC shall call grain for delivery by the producer with a minimum of ten (10) days notice.
- c. CWB has the discretion to move the *Contracted Commodity* to the destination of CWB's choice. The producer shall not deliver any tonnes in excess of the *Total Contracted Net Tonnes* unless authorized by CWB. Tolerance will be allowed to ensure the producer car railcar can be loaded to full capacity. Any additional costs associated with the shipment to the destination will be deducted from the CWB initial payment.
- d. If the producer cannot deliver the quality specifications of the *Contracted Commodity*, the producer should notify CWB as soon as possible to discuss options. CWB may in its sole discretion:
 - i. accept delivery of the actual quality and pay the initial payment for the actual quality in effect at time of delivery; or
 - ii. amend the contract and pay a premium or charge a fee based on current market spreads and costs incurred due to non-delivery of the originally-contracted quality; or
 - iii. approve a request from the producer to assign the contract to another producer.
- e. The producer will ensure that the *Contracted Commodity* shipped in a producer car is in marketable condition. The producer will be charged additional costs if the *Contracted Commodity* is not in marketable condition.



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6. CONTRACT ADJUSTMENT

If the quality (for example, grade and/or protein) being shipped is not the same as the *Contracted Commodity* originally specified in the contract, the producer may, before the railcar is authorized for shipment by the Canadian Grain Commission (CGC), request a change to the quality specifications of the *Contracted Commodity*. The producer must make the request to CWB before the CGC authorizes the railcar, and the total grain to be delivered must equal the original *Total Contracted Net Tonnes*.

7. PASSAGE OF TITLE

All right, title, and interest to the *Contracted Commodity* shall remain with the producer until the *Contracted Commodity* has been delivered to CWB and the quality has been determined and a cash ticket has been issued. The producer must deliver the *Contracted Commodity* and settlement must be made on or before July 31, 2015.

8. DEFAULT

- a. The producer shall be in *Default* under this Agreement for the *Contracted Commodity* ("in Default") if:
 - i. the producer fails, or CWB receives information that the producer is or will be unable, to deliver 100 per cent of the *Total Contracted Net Tonnes* of the *Contracted Commodity* within the notice period provided by CWB, the producer car administrator or the CGC; or
 - ii. the producer delivers grain that has quality specifications inferior to the *Contracted Commodity*; or
 - iii. any portion of the *Contracted Commodity* delivered by the producer to CWB contains a variety that is ineligible for that class of *Contracted Commodity* and is represented by the producer as being eligible; or
 - iv. the producer files for bankruptcy or makes a proposal under the *Bankruptcy and Insolvency Act* or a receiving order is made against the producer; or
 - v. the *Contracted Commodity* shipped in a producer car is not in marketable condition.
- b. The producer shall pay damages to CWB to compensate CWB for its loss, costs and/or damages incurred or suffered as a result of the producer's *Default*. The producer shall pay a \$50 per transaction fee plus:
 - i. the difference between the price for the *Contracted Commodity* and the cost to CWB, if higher, of buying replacement grain of equivalent quality and
 - ii. all other losses, damages, costs and expenses suffered or incurred by CWB as a result of or in any way resulting from the producer's *Default*.
- c. The producer and CWB agree that liquidated damages determined in this manner are reasonable and are a genuine pre-estimate of the actual damages CWB will incur as a result of the *Default* by the producer and that such damages are not a penalty.
- d. Liquidated damages will be assessed upon *Default* where the producer has failed to deliver 100 per cent of the *Total Contracted Net Tonnes*.
- e. Liquidated damages may be off-set by CWB against any and all amounts that may become payable by CWB to the producer.
- f. In the event that the producer ceases to make deliveries to CWB, CWB may, in its sole discretion, engage a collection agency to assist with the collection of the outstanding liquidated damages and fees. CWB will charge interest of one (1) per cent compounded monthly, on amounts outstanding greater than thirty (30) days.

9. FARMER EQUITY PLAN

By executing this agreement, the producer agrees and acknowledges as follows:

- a. as a result of the uncertainties regarding whether a privatization transaction will occur and, even if one does occur, whether Eligible Producers will derive any benefit from the *Farmer Equity Plan*, a producer should not deliver grain to CWB unless it is satisfied that the consideration that the producer receives and/or will receive for the grain is fair and acceptable, without regard to any potential benefit under the *Farmer Equity Plan*. **The producer is satisfied that the consideration to be received by the producer for the grain is fair and acceptable, without regard to any potential benefit under the *Farmer Equity Plan*;**
- b. except as disclosed herein, neither CWB nor any other person has made any representations or warranties to the producer regarding the *Farmer Equity Plan*, the likelihood of CWB's privatization or the future value of any potential interest in CWB;



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- c. information regarding the *Farmer Equity Plan* is provided solely for the information of producers regarding the current intentions of CWB and there is no legally binding obligation of CWB with respect to the *Farmer Equity Plan*; and
- d. nothing in this agreement or in any other document or communication constitutes an offering of securities in CWB or any other entity. An offering and issuance of securities will only be made in compliance with applicable securities laws or exemptions therefrom.

10. GENERAL

- a. This Agreement constitutes the entire Agreement between CWB and the producer with respect to the delivery and sale of the *Contracted Commodity*. There are no representations, warranties, terms or conditions, whether express or implied, beyond those contained herein. There shall be no changes or modifications to the delivery contract unless they are made in writing, and signed by both the producer and CWB.
- b. If any provision, or part thereof, of the delivery contract is determined to be void, invalid, or unenforceable, it will be severed and will not void, invalidate, or make unenforceable any other provision of the delivery contract.
- c. The delivery contract shall be governed and construed in accordance with the laws of the Province of Manitoba and the courts of the Province of Manitoba shall have exclusive jurisdiction in the case of any dispute.
- d. This Agreement shall be binding upon, and enure to the benefit of, the heirs, administrators, executors, legal representatives, successors and permitted assigns of the producer and CWB. However, no assignment by the producer of the delivery contract will bind CWB without its prior written consent, which consent may be withheld.
- e. If the producer is a corporation, partnership, cooperative or other business entity, the delivery contract must be signed in the entity's name and the authorized officer, agent or partner(s) who sign(s) on behalf of the entity must state their position and authority.
- f. The producer acknowledges and agrees that the producer is the age of majority in the Province of Manitoba or where the producer is a corporation, partnership, cooperative or other business entity, the producer and the person signing on behalf of the producer is of the age of majority in the Province of Manitoba, and is duly authorized to sign on behalf of the corporation, partnership, cooperative or such other business entity.
- g. The producer shall fully indemnify CWB for any and all legal expenses associated with the enforcement of the delivery contract.
- h. Time shall be of the essence.
- i. The exercise by CWB of any right or remedy provided herein shall not affect any other right or remedy that CWB may have under this Agreement. Nor shall the failure or delay of CWB to exercise any right or remedy be considered a waiver of any right or remedy it may have.