



# Grain contracts guide

Grain Farmers of Ontario



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.

Your contract may include additional clauses, or a requirement for declarations, not noted within this guide. This may include, but not limited to, buyer provisions for sustainability requirements, quality specifications, and end-user specifications (such as specific production practices). Please make note of these additional clauses and discuss any requirements with the buyer before time of signing.

**ADDITIONAL RESOURCES**

Grain Farmers of Ontario	<a href="http://www.gfo.ca/marketing">www.gfo.ca/marketing</a>
Ontario Agri Business Association	<a href="http://www.oaba.on.ca">www.oaba.on.ca</a>
Agricorp	<a href="http://www.agricorp.com">www.agricorp.com</a>
Canada Grains Commission, Grain Grading Guide	<a href="http://www.grainscanada.gc.ca/en/grain-quality/official-grain-grading-guide/">www.grainscanada.gc.ca/en/grain-quality/official-grain-grading-guide/</a>

**ACKNOWLEDGEMENT**

This Grain contracts guide is adapted, with permission, from *A Practical Guide to Navigating Grain Contracts*, fourth edition, published by the Canadian Canola Growers Association (CCGA).

Grain Farmers of Ontario gratefully acknowledges the extensive effort involved in the original development of this guide by the CCGA. The summary of common clauses contained within this guide are based on contracts from Western Canada; however, similar clauses exist within Ontario grain contracts.

This guide has been modified to reflect regional differences in grain marketing practices and the provincial regulations that provide safeguards and oversight to the Ontario grain industry.

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## Understanding your grain contract

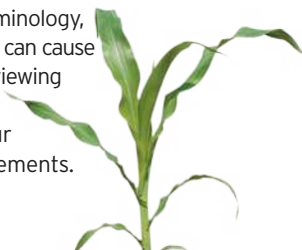
**GRAIN CONTRACTS ARE** essential to your farm's marketing plan and the sale of your grain.

A contract is a **legally enforceable** agreement committing the seller (e.g., farmer) to deliver a set product and the buyer (e.g., grain buyer such as an elevator) 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 deferred delivery.

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.

### VERBAL CONTRACTS

It is strongly encouraged that all contracts be made in writing. However, in practice, verbal agreements are often the basis for the essential terms of a grain sale in Ontario. The elevator may consider this verbal agreement a contract.

### WHAT IS A VALID CONTRACT?



A valid contract is a binding and enforceable agreement between two or more parties. To be a valid contract, there must be 1) offer and acceptance; 2) an intention to enter into the contract; 3) "consensus ad idem" or a "meeting of the minds" on the essential terms of the contract; 4) the essential terms of the contract; 5) certainty on the terms of the contract; and 6) consideration (monetary payment or a promise to do something). ●

While a verbal agreement can be valid and binding, it may be difficult for either party to remember exactly what was said, the terms that were agreed to, and whether a contract was even entered into in the first place.

There is a chance that a party could try to argue that there is no contract if it works to their financial advantage (i.e., if there is a dramatic change in the market overnight). The farmer and/or grain buyer could try to take the position that no contract was ever formed in the first place.

Should a dispute arise, lawyers have to review correspondence and gather witness statements to determine what was ultimately agreed to. If the dispute goes to litigation, it could take years to resolve and the parties will end up spending an exorbitant amount of money on legal fees.

Documents (e.g., written grain contract and terms and conditions) are confirmation of what you have verbally agreed to deliver. It is important to review these documents and raise any questions or concerns within an established timeframe (typically 24 or 48 hours) if the written terms do not align with what you thought you were agreeing to verbally. Your contract will state that the terms are deemed accepted if not disputed within the noted timeframe. **Farmers should put any disagreement with the terms in writing.**

A contract will also outline the other terms and conditions (non-essential terms) that both parties are agreeing to. These terms may help you mitigate your risk if things do not go as planned (i.e., force majeure - a drought impacts quality and yield).

If the grain buyer fails to provide a written agreement after the verbal agreement is made on the essential terms, this could put the grain buyer at risk. The farmer may attempt to argue

that the parties have not agreed on the terms (both essential and non-essential). Generally speaking, and dependent on the factual circumstance in each case, a court could find that only the essential terms form the basis of the agreement and the non-essential terms do not apply.

To illustrate how this could be problematic, if a grain company has a liquidated damages provision in its standard form contract (non-essential terms) and this was not discussed in the verbal agreement and no written contract was signed, the farmer could argue that the farmer could argue they are not required to pay liquidated damages when they fail to deliver the required grain. The argument is that there was no “meeting of the minds” on this non-essential term.

Once you have a written agreement, make sure you have a copy that is signed by all parties and you have a copy of the fully executed agreement.

## DIGITAL CONFIRMATION

Farmers and grain buyers are now using technology such as email and text messages to make grain sales more efficient. It is important to note that confirmation with text or email is the digital equivalent of a signature on a paper contract. Farmers should use caution in their digital replies and ensure that their meaning

### PRACTICE GOOD CONTRACT MANAGEMENT



- Know where you keep your signed agreements.
- Do not lose your signed contracts.
- Keep both a physical and digital copy if possible. ●

and intent is clear. Do not send any ambiguous statements or responses – including emojis – that could be left to interpretation.

## CONTRACT AGREEMENT IN THE DIGITAL AGE



In June 2023, a Saskatchewan court released a decision stating that a thumbs up emoji “👍” in a text response was an acceptable means of confirmation to form a binding contract. The case deals with a dispute between Southwest Terminal Ltd. who was intending to purchase flax from Achter Land and Cattle Ltd.. In March 2021, a representative for Southwest sent out a general text to their producer contacts offering to buy flax at a set price. After that text message, Achter and a representative from Southwest had a call to further discuss the purchase, a representative for Southwest printed out the contract, signed it, took a photo, and texted it to Achter along with the message: “please confirm flax contract”. Achter then texted back “👍”. Achter failed to deliver the flax and Southwest sued Achter for damages.

In this circumstance, Southwest and Achter had established a pattern of offer and acceptance in their previous dealings. Southwest would send a picture of an agreement by text and ask Achter to confirm the terms and Achter provided short responses such as “looks good”, “yup” or “ok”. The parties would then treat this as a contract and the grain would be delivered and paid for each time. The Court applied the reasonable bystander test and found that a reasonable person would have found that Achter’s emoji response was a proper acceptance to form a valid contract. ●

## IMPORTANT FIRST STEPS

While grain companies use standard form agreements, the farmer still has a right to negotiate the terms. Before every contracting season, ask for a copy of the grain company’s standard form agreement, which includes all terms and conditions. Compare grain companies’ standard form agreements to determine which company offers the best terms. Farmers should become familiar with the terms and understand what they mean. If this is confusing or causes uncertainty, ask the grain company to clarify or consider obtaining your own independent advice. If there is an issue with any of the terms (including the non-essential terms, such as default or force majeure provisions), you should discuss these terms in more detail with the grain buyer.

### Take the time to read and understand your entire contract before signing.

- Ask for a complete copy of the contract including all terms and conditions before agreeing to the sale.
- It can be a good idea to ask for Terms and Conditions even prior to contracting, especially if you have not worked with the grain buyer before. This can be a good question to ask prior to selling in a new crop year as well.
- If you are conducting a sale with an elevator but delivering your grain elsewhere (i.e., an oilseed crusher), be aware that the delivery point may have different quality specifications than the elevator. Asking about this beforehand can be helpful especially if you have not delivered to the third-party location before.
- 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.
- Standard terms within a contract will include tonnage price, grade, and commercial specifications (to meet end use requirements). **Commercial specifications are often quality determinants required in addition to Canadian Grain Commission standards for grading and will be noted in a separate clause within your grain contract.**
- 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.

- Have 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

## DEAL WITH REPUTABLE BUYERS



Dealing with licensed grain companies minimizes your payment risk. In Ontario, Agricorn's **Grain Financial Protection Program** protects producers who sell grains and oilseeds to licensed dealers and producers or owners who store grains and oilseeds at licensed elevators. The program has both a licensing and inspection component and a financial protection component. Farmers should exercise additional due diligence such as researching the company beforehand and ensuring immediate payment.

A complete list of licensees is available at [www.agricorp.com/en-ca/Programs/GFPP/Pages/CheckLicence.aspx](http://www.agricorp.com/en-ca/Programs/GFPP/Pages/CheckLicence.aspx). ●

## ASK YOURSELF

Are there any terms that require clarification? ●



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.

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

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.

**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.

Grain Farmers of Ontario does not provide legal advice or interpretation of grain contracts. ●

## ASK YOURSELF

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



### Sample Clause: 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."

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## 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**, as specific penalties for grading can change based on market conditions.

Damages may also be assessed for deliveries of lesser quantities. (See section on defaults and contract cancellation.)

Prior to making an agreement, it is important to ask about how differences will be managed,

#### ASK THE BUYER

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



determine potential alternatives, and understand the financial consequences should you not be able to deliver or meet the specified quality parameters. Farmers should confirm if these details have changed prior to making their delivery. ●

### UNDERSTANDING YOUR GRAIN QUALITY



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, falling number in wheat, and oil and protein for oilseeds, pulses, and cereals. Sign up at [www.grainscanada.gc.ca](http://www.grainscanada.gc.ca) to receive a sampling kit. Private testing labs can also be an option for farmers seeking a quick assessment of their grain quality.

Grain Farmers of Ontario's wheat harvest survey also posts weekly insights into regional quality results throughout the harvest so you can compare your wheat quality to regional averages. Reports can be found at [www.gfo.ca/market-development/exporters/ontario-wheat-quality/](http://www.gfo.ca/market-development/exporters/ontario-wheat-quality/). ●



## 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 Health Canada's 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

### ASK THE BUYER



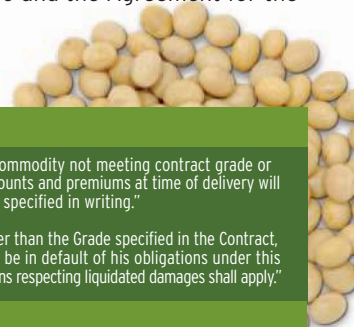
In addition to those outlined in the Official Grain Grading Guide, are there quality parameters required to fulfill the contract (i.e., moisture, falling number, mycotoxins)?

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

How will a dispute over grade be handled? ●

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, farmers can refer to the Code of Practice for trade in barley, canola, corn, oats and wheat in Ontario and the Agreement for the



#### Sample Clause: 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."

#### Sample Clause: 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."

"If the Seller does not accept the Company's determination of grade, the Company will submit a representative sample of the crop to (named) third party lab for independent assessment, 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 as 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."

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## 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.

Farmers should ask beforehand how any grading and dockage dispute will be handled and your contract may address such situations. ●

Marketing of the Ontario Soybean Crop (see Appendix 3 and Appendix 4). These documents provide a framework for farmers and customers to resolve the dispute and access a second opinion. ●

## DELIVERY DECLARATIONS

Declarations at delivery are common 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 crop protection products were used according to the registered label, 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), for crops subject to variety registration, declaring the variety being delivered is eligible for use in Canada is now a legal requirement. 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 of grains subject to variety registration to licensed grain buyers must be accompanied by a declaration attesting that the variety grown is registered in Canada (see Appendix 1). In Ontario, this includes barley, oats, and wheat. Corn and soybeans do not require this declaration.

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. For crops subject to variety registration, an unregistered variety is only eligible for the lowest grade in any class and may be in default of your contract obligations. ●



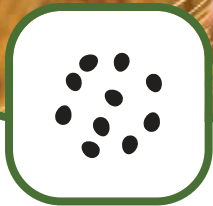
### Sample Clause: Delivery declaration

"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."

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## 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.

Under the Canada Grains Act, Canadian Grain Commission (CGC) licensed elevators (including terminal elevators) are prohibited from receiving or discharging grains that contain any injurious, noxious or troublesome insect or animal pest. This may be a particular concern with old crop carryover that has been stored. To ensure grain deliveries are not subject to rejection, it is important bins are clean and grain protectants are employed at harvest. If you suspect an infestation in your grain and on-farm fumigation is required, members can contact a pest management service.

The CGC regularly inspects terminal elevator facilities to ensure proper sanitation standards.

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 for crops subject to variety registration (barley, oats, and wheat). A declaration of eligibility is legally required at primary and process elevators and a false declaration is considered an offense.

Visit [www.gfo.ca/marketing/](http://www.gfo.ca/marketing/) for advice on how to ensure your grains are market ready. ●



## 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.

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. ●



### 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. ●



# 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 while others provide the farmer the option to cancel the contract or reschedule.

ASK THE BUYER

?

What delivery terms apply to the contract?

Will full or partial deliveries be expected?

How far is the alternate location? ●

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

**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 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. ●



Sample Clause: Delivery terms

"Seller will deliver to Buyer the Product, in the Quantity specified and meeting the other quality parameters 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."

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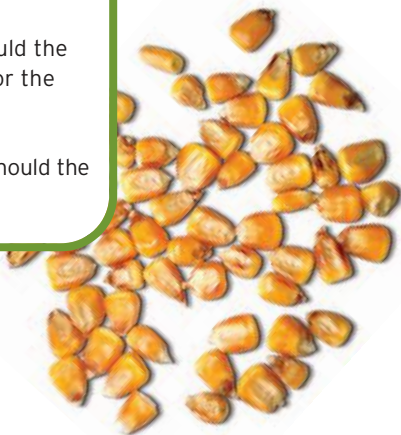
## ASK THE BUYER

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 Clause: 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."

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## 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 Clause: 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."

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# Defaults and contract cancellations

## 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. ●



### Sample Clause: 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 the Grain is grown or not. The Seller shall notify the Buyer immediately if the Seller knows or believes that the Seller will be unable to deliver 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."

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## 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.

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 does not 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

### ASK THE BUYER

How will liquidated damages be calculated? ●



grain at the bid price reported by the buyer. **If applicable, an administration fee may be charged.**

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 Clause: 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."

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.

## 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 and the buyer agrees to the termination. 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 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

### ASK THE BUYER

What is the process to terminate a contract?



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

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 not make or allow the situation to become worse. ●



### 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 Clause: 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."

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## ASK THE BUYER

How are Acts of God or instances of Force Majeure treated? ●



## DISCUSS HOW ACTS 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 Clause: 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."

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## 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 Clause: 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 by 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.”

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## 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 Clause: 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."

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## Farmer compensation

### CANADIAN GRAIN COMMISSION LICENSED FACILITIES

There are specific clauses for compensation for facilities (e.g., terminals) licensed by the Canadian Grain Commission (CGC).

For CGC-licensed facilities, Canada Grain Regulations require all delivery contracts offered by buyers licensed by the Canada Grain Commission 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.

If your contract with a CGC-licensed buyer does not include compensation, or your buyer refuses to include the required terms, contact the Canadian Grain Commission. 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.

**Producer compensation is not a standard clause included in Ontario grain contracts at non-CGC licensed facilities. ●**

### LICENSED GRAIN BUYERS

A list of Ontario grain buyers licensed by the CGC can be found at [www.grainscanada.gc.ca/en/licences/licensed-grain-companies/](http://www.grainscanada.gc.ca/en/licences/licensed-grain-companies/). ●





## Financial protection for farmers

**THE GRAIN FINANCIAL** Protection Program (GFPP), administered by Agricorp, protects producers who sell grains and oilseeds to licensed dealers, and producers or owners who store grains and oilseeds at licensed elevators in Ontario. Producers who sell canola, grain corn, soybeans, or wheat are assessed a GFPP premium as part of the check-off fee paid at delivery. There is currently no GFPP available for the sale of barley and oats.

Producer responsibilities:

- Sell crops only to licensed dealers. Licenses can be checked on Agricorp's website at [www.agricorp.com/en-ca/Programs/GFPP/Pages/CheckLicence.aspx](http://www.agricorp.com/en-ca/Programs/GFPP/Pages/CheckLicence.aspx)
- Cash your cheques within five banking days of the date the cheque is made payable or accept electronic payment if auto deposit is not enabled on your account.
- Notify the chief inspector immediately by calling Agricorp at 1-888-247-4999 if your dealer fails to meet the required payment timelines.

All dealers and elevator operators must make payments to farmers and owners within specified timelines:

- Sales upon delivery issued within 10 trading days or by the date specified in a deferred payment arrangement.
- Sales out of storage issued by 2 p.m. on the fifth trading day after the sale or by

the date specified in a deferred payment.

- For basis contracts: Issue a minimum of 60 per cent of the market price within required timelines, as per payment arrangement (e.g., deferred, upon delivery, or out of storage).
- For deferred payment arrangements: Provide farmer or owner with written confirmation of any deferred payment arrangements within five trading days of the arrangement date.

For stored crops, farmers should only store at licensed elevator operators, ensure a weigh ticket is received for each delivery, ensure a grain storage receipt signed by the elevator operator showing expiry date, charges and other arrangements is received within 45 trading days of delivery, or within five trading days of a request.

If a licensed dealer or elevator does not meet their payment or storage obligations, farmers or owners may submit a claim to the Grain Financial Protection Board to cover a portion of their loss.

Maximum coverage levels vary according to the length of the deferred payment arrangement. See Appendix 2 for details.

Agricorp appoints a chief inspector to issue grain licences in Ontario and perform dealer and elevator inspections. This is to ensure



that dealers and elevator operators are in compliance with legislation, that farmers receive payments for sold crops in a timely manner, and that farmers and owners receive their stored crops when requested.

**Complaints of non-payment/non-compliance must be made to the Chief Inspector by the farmer within 30 days of the infraction. You can reach the Chief Inspector at 1-888-247-4999. ●**





## Contract disputes

**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.

Grain Farmers of Ontario has developed a Code of Practice with the Ontario Agri Business Association and the Ontario Canola Growers Association as a recommendation of best

practice for dispute resolution for producer deliveries to country or terminal elevators. This Code applies to trade in barley, canola, corn, oats, and wheat in Ontario. See Appendix 3 for the complete wording of the Code of Practice.

Soybeans are covered under the 2022 Agreement for the Marketing of the Ontario Soybean Crop (see Appendix 4). ●





# Appendix 1

## DECLARATION OF ELIGIBILITY FOR DELIVERY OF GRAIN



Commission canadienne  
des grains      Canadian Grain  
Commission



### DECLARATION OF ELIGIBILITY FOR DELIVERY OF GRAIN

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**I AM THE UNDERSIGNED PRODUCER AND/OR SELLER, AND DO SOLEMNLY DECLARE THAT,** unless otherwise specified by me, the grain to be delivered, or sold by me, or on my behalf is of a variety eligible for the kind of grain and class (if applicable) declared by me in my dealings with the recipient of this declaration.

This Declaration is made and intended to apply to all deliveries of grain made by me or on my behalf from and including the date indicated below until the end of the 2021-2022 crop year, or until this Declaration is replaced or withdrawn by my written notice to the recipient of the grain delivery.

**NOTES:**

1. This declaration applies to the following grains prescribed under the *Canada Grain Act*: barley, beans, buckwheat, canary seed, canola, chick peas, corn, fababeans, flaxseed, lentils, mixed grain, mustard seed, oats, peas, rapeseed, rye, safflower seed, soybeans, sunflower seed, triticale and wheat. ([https://laws-lois.justice.gc.ca/eng/regulations/C.R.C., c. 889/](https://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._889/)).
2. Varieties of grain not registered under the *Seeds Act* for sale in or importation into Canada are only eligible for the lowest grade in any class ([http://www.inspection.gc.ca/active/netapp/regvar/regvar\\_lookupe.aspx](http://www.inspection.gc.ca/active/netapp/regvar/regvar_lookupe.aspx)), unless exempted by Commission Order (<https://grainscanada.gc.ca/en/industry/orders/index.html>).
3. Varieties of grain not designated to a class under the *Canada Grain Act* are only eligible for the lowest grade in any class (<https://www.grainscanada.gc.ca/en/grain-quality/variety-lists/>), unless exempted by Commission Order (<https://grainscanada.gc.ca/en/industry/orders/index.html>).

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
*Signature of Declarant*

\_\_\_\_\_  
*Signature of Witness*

\_\_\_\_\_  
*Declarant Name Printed*

\_\_\_\_\_  
*Witness Name Printed*

\_\_\_\_\_  
*Witness Address Printed*

# Appendix 2

## GRAIN FINANCIAL PROTECTION PROGRAM PRODUCER GUIDE



An agency of the Government of Ontario

### Grain Financial Protection Program

#### PRODUCER GUIDE

#### Program overview

The Grain Financial Protection Program protects producers who sell grains and oilseeds to licensed dealers, and producers or owners who store grains and oilseeds at licensed elevators.

All dealers and elevator operators must be licensed and make payments to producers and owners within specified timelines.

#### Licensing and inspections for dealers and elevators

Anyone who purchases canola, grain corn, soybeans or wheat from a producer, for any purpose other than personal use, must have a grain dealer licence. Any person who operates an elevator and stores grain other than their own must have a grain elevator operator licence.

Agricorp appoints a chief inspector to issue these licences. Agricorp also performs dealer and elevator inspections. These inspections ensure that dealers and elevator operators are in compliance with legislation, that producers receive payments for sold crops in a timely manner and that producers and owners receive their stored crops when requested.

This licensing and inspection process is funded by the Ontario Ministry of Agriculture, Food and Rural Affairs, by producers through their checkoff fees, and by dealers and elevator operators through their licensing fees.

#### Financial protection for producers and owners

Producers or owners who sell canola, grain corn, soybeans or wheat to licensed dealers, or who store these crops with licensed elevators, are financially protected if a licensed dealer or elevator does not meet their payment or storage obligations. A share of the checkoff fees that producers pay when they sell their crops to licensed dealers is put into a fund managed by the Grain Financial Protection Board. Producers or owners may submit a claim to the board to cover a portion of their loss.

Effective July 1, 2015, dealers and elevator operators will begin collecting check off fees for oats and barley. These are collected on behalf of the Grain Farmers of Ontario only. There are no financial protection funds available to oat and barley growers.

#### How it works

The following charts outline your responsibilities and those of your dealer or elevator operator.

##### Producers selling crops

###### Your responsibilities:

- Sell crops only to licensed dealers.
- Cash your cheques within five banking days of the date the cheque is made payable.
- Notify the chief inspector immediately by calling Agricorp at 1-888-247-4999 if the dealer fails to meet the required payment timelines (see below).

###### You can expect your dealer to:

- Hold and post a valid grain dealer licence in their establishment.
- Deduct your checkoff fees and remit them to the appropriate commodity organizations each month.
- Make payments to you within required payment timelines (see below).

##### Payment timelines

###### Sales upon delivery

Issued within 10 trading days or by the date specified in a deferred payment arrangement.

###### Sales out of storage

Issued by 2 p.m. on the fifth trading day after the sale or by the date specified in a deferred payment arrangement.

###### Basis contracts

A minimum of 60 per cent of the market price issued within required timelines, as per payment arrangement (e.g., deferred, upon delivery or out of storage).

###### Deferred payment arrangements

Written confirmation of any deferred payment arrangement received from the dealer within five trading days of the arrangement date.

## Producers and owners storing crops

### Your responsibilities:

- Store crops only at licensed elevator operators.
- Ensure that you receive weigh tickets for each delivery.
- Ensure that you receive a grain storage receipt within 45 trading days of delivery, or within five trading days of request.
- Ensure that your grain storage receipt is signed by the elevator operator and that it shows the expiry date, charges and any other arrangements you made with the elevator operator.
- Notify the chief inspector immediately by calling Agricorp at 1-888-247-4999 if the elevator operator fails to meet storage obligations.

### You can expect your elevator operator to:

- Hold and post a valid grain elevator operator licence in their establishment.
- Issue a weigh ticket for each load of grain when you deliver the crop.
- Issue grain storage receipts within 45 trading days of first delivery, or within five trading days of request. Receipts must be signed by an authorized representative and show the expiry date, charges and any other arrangements you made.
- Release the grain to you upon request.

Always deal with licensed dealers and elevator operators. All licences must be posted. A list of licensed grain dealers and elevators is available on [agricorp.com](http://agricorp.com), or you can contact Agricorp at 1-888-247-4999.

## Making a claim

If your dealer or elevator operator does not meet their payment or storage obligations, notify the chief inspector immediately by calling Agricorp at 1-888-247-4999. Failure to notify Agricorp promptly could affect your claim eligibility.

The following chart shows the maximum coverage for producers or owners of canola, grain corn, soybeans or wheat, according to the length of a deferred payment arrangement, if applicable.

### Coverage levels by length of deferred payment arrangement

Length of deferral*	Maximum coverage on approved claims
No deferral	95%
1 to 45 calendar days	50%
46 to 90 calendar days	40%
91 to 135 calendar days	30%
136 to 180 calendar days	20%
Over 180 calendar days	0

\* Refers to length of deferral after the tenth trading day following sales on delivery, or after 2 p.m. on the fifth trading day following sales from storage.

## Contact us

1-888-247-4999

Fax: 519-826-4118

TTY: 1-877-275-1380

Accessible formats available

[agricorp.com](http://agricorp.com)

[contact@agricorp.com](mailto:contact@agricorp.com)

(Monday to Friday, 7 a.m. to 5 p.m.)

Version française disponible

The Grain Financial Protection Program is created under the legislative authority of the *Grains Act*, R.S.O. 1990, c. G.10, as amended and the *Farm Products Payments Act*, R.S.O. 1990, c. F.10, as amended, as well as the regulations made thereunder. These can be found on [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca). Where there is any conflict between this document and the provisions specifically set out in the legislation, the legislation takes precedence. Errors and omissions excepted.



# Appendix 3

## CODE OF PRACTICE FOR TRADE IN BARLEY, CANOLA, CORN, OATS, AND WHEAT IN ONTARIO.



### Code of Practice

#### for trade in barley, canola, corn, oats, and wheat in Ontario

##### Producer deliveries to country or terminal elevators

This code was developed by Grain Farmers of Ontario, the Ontario Agri Business Association, and the Ontario Canola Growers Association as a recommendation of best practice for dispute resolution.

- 1 The holder of a license as an elevator operator and/or dealer agrees to abide by the Code of Practice for trade in barley, canola, corn, oats, and wheat (the “identified commodities”) in Ontario;
- 2 The Code of Practice must be posted at each licensed operation in such a location that a producer or producer’s agent will be able to read the Code of Practice prior to unloading of the identified commodities. Additionally, it is recommended that the operation publishes this document online where relevant.

All of the identified commodities shall be inspected on the basis of the grades established under the Canada Grain Act.

Every elevator and operator shall have the necessary equipment, calibration charts and trained personnel to ensure results are consistent with the standards set by the Canadian Grain Commission (CGC). Such equipment must be calibrated/checked at least annually.

Any person delivering the identified commodities on behalf of a producer is deemed to be the agent of that producer and is authorized to act on their behalf.

Upon request, the producer or agent shall be advised of the grade, dockage, condition, and moisture assigned to the load prior to unloading. All grade disputes shall be initiated within 24 hours of delivery.

A sample shall be taken at the time of delivery and retained for a period of 24 hours. When a sample is taken, all parties shall accept the sample as fair and representative of the load from which it is taken. If a dispute is initiated, the sample shall be sent to an agreed upon third-party independent lab or the CGC for analysis. The sample submitted to the inspection service shall be no less than 1 kilogram in weight.

All testing and inspection results for the purposes of assessing/assigning grade, dockage, condition, and/or moisture shall be accepted as final. In accordance with the agreement (Grain Farmers of Ontario; Ontario Agri Business Association; Ontario Canola Growers), costs for forwarding representative samples to the third-party assessor shall be shared equally between the producer and elevator operator. However, fees associated with the testing and inspection of samples shall be the responsibility of the party found to be in error.

#### NOTE

For other quality commercial specifications outside of CGC grade standards (e.g. falling number and DON), agreed contract terms will prevail. If testing is conducted by the elevator operator at the time of delivery and the delivery agent wishes to initiate a dispute, a sample can be sent to a third party for assessment and the dispute resolution process followed.

The parties should utilize all reasonable efforts to resolve the dispute promptly and in good faith. Failing any of the above, the parties may agree to submit the dispute to mediation and if that is unsuccessful within a prescribed time, the parties may agree to proceed further to arbitration.

Soybeans are covered under the 2022 Agreement for the Marketing of the Ontario Soybean Crop.

# Appendix 4

## AGREEMENT FOR THE MARKETING OF THE ONTARIO SOYBEAN CROP



### 2022 Agreement

#### for the marketing of the Ontario soybean crop

In 2016, OABA, Grain Farmers of Ontario and the two major soybean processors negotiated a new Soybean Marketing Agreement which allows for market forces to dictate costs associated with drying and handling of soybeans. The Agreement reads as follows:

1. (1) Under the terms of this agreement, cleaning and handling charges, as well as soybean drying charges/moisture discounts will be agreed upon by the dealer and the producer through competitive market forces, similar to the corn and wheat markets.  
(2) These terms and conditions should be confirmed prior to producer delivery.  
(3) Settlements and payment protocol shall follow in accordance to the Grains Act (Ontario Regulation 260/97) and the Farm Products Payments Act (Ontario Regulation 70/12).
2. (1) Where there is an agreement between a soybean producer and a licensed buyer, terms may be established which differ from those stated within this agreement.  
(2) In order to meet the specialized needs of a diverse and demanding marketplace for Ontario soybeans, all parties recognize and agree that the specifications in such producer/buyer agreements will take precedence over the Ontario Soybean Marketing Agreement except as otherwise required by the Regulations under the Grains Act or the Farm Products Payments Act
3. (1) In the event there is a dispute as to the grade or moisture content of any load of soybeans, the matters in dispute shall be referred to an inspector for the Canadian Grain Commission or to such other person as is mutually agreed between the parties in dispute.  
(2) The decision of the inspector under subsection (1) shall be binding on the parties in dispute.  
(3) The inspector in making a test shall examine a minimum 1 kg. sample agreed upon by the parties involved and taken from the load of soybeans delivered and retained in a moisture-proof container bearing a label on which is stated the name and address of the party delivering the soybeans.  
(4) A further sample of the load of soybeans in dispute shall also be kept in a moisture-proof sealed container pending the inspector's decision.  
(5) Costs for forwarding representative samples to the inspector under subsection (1) shall be shared equally between the parties to the dispute.  
(6) Fees assessed by the inspector under subsection (1) for testing and inspecting such samples for the purpose of assessing and assigning grade, dockage, condition and/or moisture shall be the responsibility of the party in error.
4. When soybeans are delivered to a dealer's elevator or place of business, a receipt for each load of soybeans shall be given by the dealer to the grower, or the party delivering the load of soybeans in the absence of the grower in accordance with Ontario Regulation 260/97 made under the Grains Act.
5. This agreement comes into effect on September 1, 2016 with an initial term that will expire on the 31st day of August, 2017. Prior to expiry, this Agreement shall automatically renew for successive additional terms of one year, unless any of the local board, the processors of soybeans or the Grain Section Committee of the Ontario Agri Business Association provide written notice to the other parties and to the Commission not later than the 31st day of January in the year of expiry and request that the Agreement to be opened for negotiation, in which case the provisions of O.Reg 485/09 shall apply.





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