

Grain Marketing Contracts: Understanding Terms and Conditions

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Introduction

Grain marketing contracts are an important tool for buyers and sellers. The most common types of grain contracts include cash forward, basis, delayed price, minimum price, and hedge-to-arrive (HTA) contracts. Regardless of the grain contract used, it should benefit and protect the interests of the parties involved. Understanding the basic requirements and specifications for a contract to be legally valid and enforceable can help farmers make informed decisions, avoid misunderstandings and protect their farm business. For the benefit of all, a contract should be in writing.

Contract Requirements

In order for a contract to be valid, certain elements must be present. The first requirement is that parties to a contract be legally competent. Neither a minor nor an individual who is mentally incompetent has the legal capacity to enter into a contract. The second requirement needed for a valid contract is that the subject matter be “proper.” The activity must be legal for the contract to be enforceable. The third requirement is that all parties consent to the agreement. Acceptance of an offer made by the buyer to the seller is evidence of such consent. The final requirement needed for a valid contract is consideration. This means something of value must be exchanged.

Cash contracts vary in length and technicality. Preprinted form contracts, which are generally used, provide space for recording sale terms and for defining the responsibility of each party. Non-negotiated terms dealing with the passing of title, breach of contract and warranties are the most common. These terms generally favor the individual supplying the contract, which is almost always the buyer. Although the seller typically has little control over standard contract terms, a clear understanding of their content and meaning is advisable so the seller knows the legal obligations. The contract should be easily understood by both parties. It does not need to be lengthy, just long enough to cover the contract essentials and responsibilities of each party. Although contracts may seem overly long to many sellers, they are not long or complicated when compared with most sales contracts.

Key Components of a Corn or Soybean Contract

Names and addresses of the buyer and seller as well as the date the agreement was signed are important elements of a contract. When property is jointly owned by a seller and his or her spouse or by two sellers, both sellers should sign. The signature of the buying party should be made by the owner, an officer of the operation or an authorized representative.

Quantity specifications should be in the same units as commonly used in trade practices. Corn and soybeans are usually contracted in bushels; however, metric tons may also be the unit of measure. In certain circumstances the unit of measure in the contract (bushels) will be determined by other measures (example: total weight and test weight converted to bushels).

Quality specifications should generally be made in terms of official U.S. Grain Standards. Grain contracted for special end uses may require a different set of quality specifications. White corn, for example, might need certain quality features, which are not required of corn used for other purposes and which might not be provided for in official U.S. Grain Standards for corn.

The time and place of delivery should be specified in a contract. The delivery point is normally the buyer's place of business. The delivery period is generally specified in terms of time range or simply an ending or cutoff date. In certain situations, a buyer may be unable to accept delivery due to such occurrences as labor disturbances or accidents. The contract which contains clarifying provisions can head off disputes in this area.

The contract price per unit and payment method should be stated clearly in a manner which cannot be misunderstood. The price should be stated in terms of the grade, which is used in general trade practices, such as No. 2 yellow corn per bushel.

Under-delivery penalties should be clearly specified. The contract may also contain a liquidated damage clause which specifies a reasonable dollar amount to be paid by either party for breach of the contract. This can include failure to deliver the specified quantity or quality of the grain contracted. If agreed upon, a force majeure clause can release the seller if failure to deliver the specified quantity or quality of the commodity results from forces outside their control.

Most contracts state that the seller warrants grain to be free of any security agreement, lien or encumbrance and is not in violation of Federal Food and Drug Administration regulations. The Uniform Commercial Code provides that every seller warrants grain to be free from lien or encumbrance when offered for sale. If the grain/product has a lien the lien holder's name should be included on the check, especially crop liens.

An arbitration clause may be included in the contract. Although a written contract is used primarily to minimize the likelihood of differences, these possibilities still exist. An arbitration clause can cover differences which cannot be settled by mutual agreement between buyer and seller.

Conclusion

Grain marketing contracts serve as a beneficial tool for both the buyer and seller if the contract clearly outlines the responsibilities and expectations of both parties as described in this publication. Although many terms are typically set by the buyer, it is important to carefully review and fully understand all contract terms before entering into an agreement with a grain elevator or merchandiser. Evaluate the potential benefits as well as the terms and conditions of the contract and consult with appropriate legal, financial or marketing professionals to make informed decisions that support the profitability of the farm.

References and Online Resources

UT Crop Economics website for more information about grain marketing: arec.tennessee.edu/extension/crop-economics/

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