



Contracting Specialty Crops

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Why Contract

- No organized public markets or future delivery market systems for some crops
- Link local markets to world markets
- Can lock in a price for a crop not yet produced to manage price risk



Four Types of Production Contracts

- Market Specification Contract
 - sets price, quantity and quality
- Production-Management Contract
 - directs control of production management practices
- Resource-Providing Contract
 - processor provides inputs
- Vertical Integration Contract
 - processor controls all aspects of production: inputs, production, price, quantity, quality



Production by Contract

- Risk management for both the producer and buyer
 - supply
 - quality
 - price
 - market accessibility
 - reduce transaction costs
 - liability risk



Contracting Implications to Buyers

- Advantages
 - volume
 - transportation efficiency
 - stocks management
 - contractor profits
- Disadvantages
 - quality loss if crop is stored
 - possibility of producer default



Advantages of a contract to the grower

- Delivery guarantee
- Price guarantee
- Decide before delivery if conditions of sale are fair
 - grading
 - dockage
 - method of payment



Disadvantages of a contract to a grower

- Gives up freedom to choose alternative markets
- Penalties or restrictions may be imposed if obligations cannot be met



Contract Elements

- Identification section
- Production requirements
- Delivery terms
- Grading, dockage, weights and moisture
- Responsibility for costs
- Price terms and guarantees
- Payment terms and discounts
- Penalties and grower's obligations



Basic Rules of Contracting

- Read and understand the contract
- Contract must be in writing (including any changes)
- Contract probably favors party who wrote it
- Failure to perform likely will not be excused
- Negotiate terms before signing
- Keep detailed records
- Stay in touch with other party
- Know other party's financial situation



Basics of Contracts

- Legal identification
 - title of contract
 - identification of parties
 - date and place of contract formation
 - legal description of land of which production is to take place



Basics of Contracts

- State of Contract Purpose
 - description of the crop
 - production practices and deadlines
 - duration of the contract



Basics of Contracts

- General Terms
 - relationship of parties
 - title to the crop
 - encumbrances
 - crop failure/nonperformance
 - required notices
 - field or facility inspections



Basics of Contracts

- Sale or payment terms
 - terms
 - quantity
 - quality
 - price
 - payment time and method



Basics of Contracts

- Delivery
 - date and location
 - responsibility for delivery costs
 - risk of loss



Basics of Contracts

- Acceptance
 - grading and test results
 - what happens to rejected products
 - what about over-run, shortage



Potential Penalties

- Buyers option to declare the contract null
- Buyer's option to replace undelivered crop by purchase from a third party of claim liquidated damages
- Avoid giving buyer the right to interfere with production management decisions or giving a security interest in the crop
- Act-of-God clauses



Example Contract #1

CONTRACT TERMS AND CONDITIONS

1. Except where inconsistent with the terms and conditions herein, the rules of the Minneapolis Grain Exchange apply to the commodities sold hereunder ("Commodities"), apply to the performance of this contract, and determine the rights and obligations of the parties. Seller acknowledges familiarity with the text of such rules and Buyer and Seller agree to be bound by the terms and conditions thereof.
2. These contract terms and conditions (hereinafter "Contract") and said rules constitute the complete agreement between the parties, and cannot be changed in any manner except in writing and signed by Buyer's duly authorized representative. This Contract shall supersede all prior representations, understandings, and any terms, conditions, or provisions in any forms or documents heretofore or hereafter sent to Buyer by Seller and becomes a binding Contract on the terms set forth herein when accepted by Seller, either by written acceptance by Seller's authorized representative, or if Seller does not object to the terms hereof within ten (10) days after receipt of this Contract, or by partial or complete performance.
3. This Contract is not valid unless signed by an authorized representative of Buyer.
4. Seller warrants that the fulfilling of this Contract, including all phases of the growing and/or manufacturing process of the Commodities, does not constitute a violation of any federal, state, or local law, rule, or regulation, or of any trademark, copyright, or patent right in the manufacture, production, or sale of the Commodities. Seller further warrants that the Commodities are:
(a) Unencumbered; (b) To be delivered during the Contract delivery period unless Buyer agrees to change time of delivery; (c) Free from defects in workmanship and material and will be wholesome and fit for human and animal consumption and in compliance with the applicable provisions of every federal, state, and local law, and rule, and regulation thereof, foreign and domestic, and are in merchantable condition until they arrive at the specified destination, and are fit and sufficient for the use intended; (d) In conformity with the specifications, sample, or other descriptions furnished by Seller to Buyer or designated by Buyer; (e) Consistent with any implied warranties mandated by law. Seller agrees to defend and hold the Buyer completely harmless from any claims made against the Buyer arising out of any breach of these warranties.
5. Shipments of Commodities or other deliveries hereafter made by Seller to, or on the order of Buyer, are hereby guaranteed by Seller, as of the date of such shipments, or deliveries, to be, on such date, not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetics Act, as amended, or any practically similar state or municipal law, and not a product which may not, under the provisions of Section 404 or 505 of such Act of Law, be introduced into interstate or intrastate commerce. This is a general and continuing guarantee and shall remain in full force and effect until revoked in writing by the mutual agreement of the parties.
6. Time of delivery is of the essence of this Contract. If delivery has not been made within the specified time, Buyer may, after making written demand for delivery, if delivery is not made by one (1) hour before the close of the market on the next business day, fill such sale by buying commodities in the open market for the account of Seller, or Buyer may require settlement at the closing market price on such next business day, or Buyer may declare the undelivered portion of the Contract cancelled. If Buyer has not made such written demand for delivery, this Contract shall remain in force and effect from day to day until such demand is made. Commodities must be shipped as instructed on the face hereof, or additional shipping costs will be backcharged.
7. Legal and equitable title to the Commodities shall not pass to Buyer until the Commodities are physically delivered pursuant to this Contract and accepted by Buyer's authorized representative as being in compliance with this Contract. Until Buyer's acceptance of the Commodities, Seller shall continue to have title and bear the risk of any loss of or damage to the Commodities.
8. Seller shall be an independent contractor and agrees to indemnify and hold harmless Buyer, its agents and employees, and shall maintain product liability insurance sufficient to indemnify and hold harmless Buyer from any loss, damage, expense, attorney fees, or liability by reason of properly damage or personal injury of whatsoever nature or kind, arising out of or resulting from the fulfillment of this Contract.
9. Seller shall be responsible for loss or destruction or damage to property of Buyer caused by the negligence or wrongful acts or omissions of Seller, its employees, agents, and subcontractors.
10. This Contract may not be assigned by Seller without the written consent of Buyer.
11. Buyer shall have the right, at its option, to reject and to be held harmless for such rejection, any part or all of the Commodities delivered to Buyer and to return same at Seller's expense in any of the following instances: (a) Should delivery be made before or after date specified in this Contract; (b) Should the Commodities or the conditions of the manufacturing or producing facility not be as represented or warranted; or (c) Should Seller violate any term or condition of the Contract, including nonconformity in any lot or installment delivered hereunder (in which case Buyer may reject all or a portion). Seller shall make application until this Contract is filled, or until the estimated under-delivery is less than five hundred (500) bushels. Buyer may refuse any application that would produce an estimated over-delivery of more than five hundred (500) bushels; but if Buyer does so, it must make settlement with Seller on the basis of the then under-delivery. If there is an estimated under-delivery of more than five hundred (500) bushels, Buyer may require Seller to apply another application, even if such application would result in an estimated over-delivery of more than five hundred (500) bushels, and in such cases Buyer must accept whatever over-delivery if thereby produced. All over-deliveries and under-deliveries (unless otherwise agreed by the parties) shall be settled at the closing market price on the next business day following the day on which the last deliveries were unloaded. Buyer reserves the right to reject any shipment of Commodities with heating, sour, musty, garlicky, or COFO (commercially objectionable foreign odor) notations or otherwise of distinctly low quality. Buyer also has the right to (i) require Seller to repair or replace, at Seller's expense, including the cost of transportation for reshipment, any and all rejected Commodities; (ii) require Seller to refund the price of any or all rejected Commodities; (iii) a combination of (i) and (ii); or (iv) itself repair or correct any rejected Commodities at Seller's expense. In addition, Buyer has the right to impose a reasonable service charge for handling, storing, and returning any Commodities overshipped, rejected, or not included in this Contract.
12. If Seller fails to perform or comply with any provision of this Contract, including a breach of any of the warranties set forth in paragraph 4 hereof, or the occurrence of any of the grounds for rejection listed in paragraph 10 hereof, Buyer may cancel this Contract in whole or in part, and any or all other contracts between Seller and Buyer, and Buyer may consider such failure or noncompliance as a breach of this Contract. Buyer expressly retains all its rights and remedies provided by law and equity in the case of such breach. The waiver by Buyer of any breach of any provision of this Contract by Seller shall not be deemed to be a waiver of the breach of any other provision or provisions hereof or of any subsequent or continuing breach of such provision or provisions.
13. If Seller shall be adjudged bankrupt, become insolvent, make a voluntary assignment for the benefit of creditors, or if its business or affairs shall pass into the hands of a receiver, then Buyer shall have the option of cancelling all or any portion of this Contract.
14. If the performance of this Contract by either party is delayed or hindered by strikes, labor disputes of any nature, unusual delay in transportation, embargoes, accidents, plant closings, war, sabotage, riot, lockout, acts of God or of the public enemy, government regulations or restrictions, or any cause or causes unavoidable or beyond the reasonable control of the party unable to perform, then the time of performance shall be extended until the cause of the delay or hindrance is removed and all other terms shall not be affected thereby.
15. The invalidity, in whole or in part, of any provision of this Contract shall not affect the validity or enforceability of any other of its provisions.
16. An unexpired Buyer Form EOA-9-Contract Clauses Covering Equal Employment Opportunity, Certification of Nonsegregated Facilities, Written Affirmative Action Compliance Program, EEO-1-1 Report, Employment of the Handicapped, Employment of Veterans and Utilization of Minority Business Enterprises signed by Seller is on file with Buyer's Purchasing Department and is an integral part of this Contract. Seller agrees to obtain a similar form from each subcontractor prior to award of a nonexempt subcontract.
17. Buyer hereby certifies that the Commodities are exempt from sales and use tax as a purchase for resale, or for use as an ingredient or component part of or for incorporation into a product manufactured for resale.
18. The undersigned states each and every article contained in and comprising each shipment or other delivery heretofore and hereafter made by Seller, and all information and ingredient lists furnished by Seller for use by Buyer in labeling such articles for re-sale, is hereby guaranteed, as of the date of each shipment or delivery, to be (a) Not adulterated or misbranded (or, in the case of labeling information and ingredient lists not a cause of misbranding when applied to such articles) within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, and not an article which may not, under the provisions of Section 404, 505, or 512 of such act, be introduced into interstate commerce; (b) In compliance with the requirements of the Poultry Products Inspection Act, the Meat Inspection Act and the Federal Food, Drug and Cosmetic Act, as amended, to the extent that said Acts are then effective and applicable; (c) Registered, if required, and not adulterated or misbranded within the meaning of the terms of the Federal Insecticide, Fungicide and Rodenticide Act, the State Pure Food Act, or any other applicable Federal, State or local law; (d) Not banned or misbranded within the meaning of the terms of the Federal Hazardous Substances Act; (e) Not an article which cannot be legally transported or sold under the provisions of any Federal, State or local law; and, (f) If an article which is or which contains a color additive, such color additive is or will be from a batch certified by the Seller, its subsidiaries, if any, or its suppliers, in accordance with the Federal Food, Drug and Cosmetic Act, as amended, and all regulations issued under the Act. In the event of complaints, claims or legal actions, alleging damage, death, illness, or injuries, in any way resulting from any of such articles, Seller hereby agrees to indemnify and save Buyer harmless from any and all loss and liability in connection therewith, and Seller assumes full responsibility and expense of investigations, litigation, judgment, and/or settlement of any such complaint, claim or legal action, upon the condition that the Seller be notified promptly of any such complaints, claims, or legal actions. The Seller will maintain adequate insurance covering the liabilities assumed in this paragraph, including products liability insurance (and if the article is to be resold without further processing by Buyer, including Vendor's Coverage). This Guarantee is in addition to, and not in lieu of, any and all other representations and warranties provided to Buyer by agreement of the parties or otherwise.



Example Contract #2

CONTRACT GROWING AGREEMENT

BUYER

With _____ LLC. Hereafter known as "**Buyer**"

Grower Name
Grower Address
Grower City
Grower Phone

Hereafter know as "**Grower**"

Description	Conventional _____ Soybeans – 2003 Crop Year
Quantity	10 bu / acre of _____ acres of production Buyer has the first option to purchase the balance of bushels at the established market price.
Price	Option price CBOT for all clean bushels over 11/64 slot screen. Pricing is done on Nov 2003 futures or the nearby futures month thereafter. Can be priced any time after contract signing until April 30, 2004. Pricing to be done during normal market hours of CBOT trading.
Screenings	Cleanout sold day after cleaning at established price (Local market price - \$0.20 / bu)
Quality	Acceptable for Food Grade Consumption (see Exhibit A)
Screen Size	11/64 th Slotted Screen
Delivery Basis	BUYER ADDRESS

Shipment Period Nov 2003 – June 2004 – Buyers Call

Certification IP Grower Handling Certificate

Seed Must be purchased from *BUYER*

Samples Must be submitted 14 days after harvest

Terms Net 30 days after shipment of bushels

All orders and agreements are entered subject to the understanding that we shall not be liable for a breach of any of the terms thereof occasioned by any act of God, war, insurrection, embargo or priority restrictions, the elements (nature), strikes, lockouts, riots, accidents, carrier delays, delay or failure to receive raw materials deliveries, by reason of other case cause whether of like or different nature beyond our control.

Date: _____

BUYER

Date: _____

Grower

EXHIBIT A – CONTRACT ADDENDUM

1. The Buyer agrees and Grower agrees to supply 100% of the soybeans grown on the contracted acreage or bushel amount specified on the front of this contract, provided the quality standards are met.
2. Grower agrees that the contracted soybeans will not be saved, sold to any other parties or used for seed purposes without written permission and consent of the buyer.
3. Grower warrants the planting of NON-GMO variety seed to produce these soybeans. Grower further warrants that the soybeans will be free of contamination from any other genetically modified crops or soybean varieties.
4. Grower must keep field reasonably free from weeds and or exercise proper weed control methods. The buyer may make field inspections during the growing season.
5. Quality must be acceptable for intended food grade applications.
6. All in-coming truckloads will be tested for GMO using SDI strip test. Loads testing positive for GMO will be rejected.
7. The following conditions are unacceptable:
 - a) Weed seed of excessive quantity or of a size and density similar to soybeans.
 - b) Presence of Black Nightshade or other noxious weeds.
 - c) Contamination of the soybeans with corn or other crops.
 - d) Immature or frozen soybeans that are green or discolored, not entirely yellow in color.
 - e) Excessive Mechanical damage, splits, chips, and or severely broken kernels.
 - f) Heat damage, mold, downy mildew, sclerotinia or moisture levels over 13.0%
 - g) Excessive foreign material, dirty seed coats, purple seed stain, and /or other visual deterrents.
8. Representative samples will be submitted to BUYER immediately after harvest completion for review and analysis.
9. The buyer will establish proper screen sizes to be utilized by the cleaning plant for quality control purposes.
10. Upon cleaning of harvested soybeans, there will be some shrinkage or loss of the screenings due to dirt, stems, pods etc.
11. Soybeans must be stored in dry, weather proof, well ventilated, rodent free storage facility, which is uncontaminated with other crops, to ensure seed quality and food grade standards are maintained.
12. Transport to the cleaning facility must be in clean and dry trucks or hopper bottom trailers, to ensure seed quality and food grade standards are maintained.
13. Grower warrants that this contracted crop is free of any security interest and / or other liens or encumbrances.



Example Contract #3

EXAMPLE ONLY

CONTRACT DATE: [REDACTED]

I. Identification of Parties

CONTRACT PURCHASE AGREEMENT FOR:
CROP PRODUCTION YEAR:

Yellow Mustard
2000

CONTRACT NUMBER:

3098

CONTRACT DATE:

31-Mar-03

I. Identification of Parties

BUYER authorized to do business in the states of North Dakota, South Dakota, and Minnesota, party of the first part and hereinafter referred to as "Buyer", and:

0
0
0
0
0

Business type: 0
Social Security Number: 0
I = Individual/Sole Proprietorship
P = Partnership
C = Corporation
NS = Not Specified

whose name and post office address appears as above is party of the Second Part, and hereinafter referred to as "Grower", for and in consideration of the mutual covenants herein contained, the parties hereto covenant and agree as follows.

II. Crop to Be Produced

The parties hereto acknowledge the First Party is buyer, and Second Party is a grower of the crop listed below.

Grower agrees to produce for buyer the following crop in accordance with the following provisions:

Crop: Yellow Mustard Variety: \$0.00
Acres: 0 Price: \$0.00 /cwt. (net grade 1 seed delivered to Buyer's plant)
Basis: 0 PRODUCTION

VOID

Premiums, discounts, and other production conditions: See addendum A (attached)

III. Commitment to Purchase

Grower agrees to deliver the crop grown on said acreage to the processing plant designated by Buyer, and in consideration thereof, buyer agrees to pay grower the price stated in section II above, subject to the premiums and discounts outlined in addendum A for the Crop.

IV. Delivery and Storage

The storage responsibility for the harvested crop will be borne by the grower. Storage must be such as to maintain acceptable seed quality until called for by the buyer. Buyer agrees to pay storage to grower for the Crop stored on the farm of the grower in accordance to the following conditions:

Commencing date for storage: March 1, 2001 Storage payment: \$0.10 /cwt./month (on net seed)

The total amount of contracted seed must be delivered to the designated processing plant before July 30, 2001. No storage will be paid after that date. Arrangements for delivery must be made in advance with the processing plant. Grower will promptly inform buyer of the total amount of seed grower has stored, and will do so at the request of the buyer.

V. Crop Condition and Information

Grower shall notify the office of buyer directly in the event of crop failure or any abandoned acres. Any abandoned acres must be reported to the buyer before being destroyed. In the event of Acts of God, inclement weather, fire, strikes, labor troubles, actions of governmental authorities, or other causes beyond the control of either party, neither party shall be liable for failure to perform. Grower further agrees to follow good cultural practices including appropriate crop rotation. Grower agrees to complete initial and final crop acreage and condition reports, and return them promptly to buyer.

VI. Additional (Excess) Production

Grower may sell additional seed from his contracted acreage at any time to the buyer in the quantity grower thinks the production will be in excess of the amount stated in this contract. Grower must sell on a firm basis only and is solely responsible for delivery of any excess production sold. Buyer shall have first and last refusal, but not obligation, to purchase the excess production over the contracted production. Grower shall not sell excess production or production not meeting contract standards to a third party until buyer has exercised his option to purchase or declined to do so in writing.

VII. Determination of Grade

The seed test weight, grade, and dockage of said crop shall be determined at the time of delivery at the authorized elevator of buyer, and these determinations made at time of delivery shall be final. All crop delivered shall not be contaminated in any way and shall meet the requirements of the International, Federal, State, and local food and drug laws.

VIII. Payment Provision

Prompt payment will be made to the grower for delivered crop basis the standards set forth in section II and addendum A. The buyer may deduct the purchase price of the planting seed, plus accrued interest from the due date until the date payment is received from any monies due to the grower under this contract. The grower grants the buyer a statutory crop lien on crops grown and contracted to Minn-Dak Growers Ltd. and agrees to execute any documentation required to maintain a valid lien.

It is agreed that this agreement and that all covenants and agreements herein contained shall extend to be obligatory upon the heirs, executives, administrators, and assigns to the respective parties hereto. Having first read and fully understanding this contract, the parties hereby set forth their signatures to acknowledge acceptance of this contract. GROWER MUST SIGN AND RETURN WITHIN 10 DAYS OF THE DATE OF THIS CONTRACT IN ORDER FOR THE CONTRACT TO BE VALIDATED BY BUYER.

GROWER: _____
DATE: _____

BUYER: _____
DATE: _____

X. Purchase of Seed By Grower

White copy: retained by grower.
Yellow copy: return to BUYER

Grower agrees to purchase from buyer the following planting seed for the crop:

Variety: _____ Quantity: _____ Price: _____ \$/cwt.