

Cereal Sellers' Guide

This guide assists cereal sellers avoid the most common problems associated with cereal sales contracts. When negotiating a contract it is recommended that growers complete a Cereal Sellers' Checklist.

Copies of the 'Cereal Sellers' Checklist' can be downloaded at www.hgca.com/supplychain.

The AIC No.1 Contract sets out the rights and obligations of grain buyers and sellers. This 'Top Ten' checklist aims to help sellers avoid some of the most common problems. Grain buyers are obliged to make available the terms and conditions on which the contract is made. Additionally NFU and NFUS members can view the AIC No.1 contract at www.nfonline.com or www.nfus.org.uk

1 Grow for a market. The first step is to know exactly what quality and variety you intend to sell and deliver. Post-harvest, sampling and testing is key to knowing what you have to sell. Do not sell what you cannot deliver. If the quality delivered matches the quality sold, problems will not arise. Consider asking for special clauses to be inserted to suit your own situation (see over) and have them stated in the confirmation note. Also consider the likely receivers' terms. Remember, prior to agreement, all is negotiable but after the deal has been struck, terms can only be altered with the agreement of both parties.

2 Check the price offered or calculation method. When will you be paid? Can you negotiate pre-payment or early payment? What are the penalties for sub-standard delivery? The risk of rejection is best tackled by agreeing discount scales before the contract is concluded (for fallbacks, see over). Be aware, especially if selling pre-harvest, of the potential replacement costs you may be called upon to meet under the contract. Are there any special terms and conditions proposed by the buyer?

3 Check the delivery terms. Is there provision for extension? Can you agree new payment terms if this applies? Specify a clear delivery period. Under the AIC contract terms, delivery/collection is at buyer's call; therefore, are there any days during the period of delivery on which you are unable to move grain? Agree these before making the contract.

4 Discuss with your buyer the possible destinations for your grain before making a deal. If you wish to avoid any specific destinations or excessive distances, you should discuss this before the contract is agreed. Bear in mind that the price obtained will reflect the level of risk accepted. Any destinations excluded, or special terms, should then be specified on the confirmation. **Remember, different final receivers have different charges and delivery terms** (see contract notes overleaf).

5 Ensure that you and your buyer have all possible contact numbers and nominate a specific person to deal with problems in your absence. Ensure you receive the written confirmation promptly, then check that all of the terms (price, quality, variety, quantity, delivery period, payment terms and any special conditions) are as agreed. If they are not, tell the buyer immediately, otherwise your silence will be taken as acceptance. Obtain an amended confirmation before parting with any goods.

6 Check whether supplying assured grain is a contractual requirement. If your buyer plans to resell the grain, are they part of an appropriate assurance scheme? Also, grain in store must be kept in condition according to food safety requirements and sellers' contractual obligations.

7 Keep a sealed, representative sample of each load taken, labelled with lorry details (this may be required for quality assurance schemes). N.B. these samples will not be contractual for the purposes of the determination of quality or condition at the delivery point, but they may help if problems arise. Further information is available in the HGCA's *Grain sampling – a farmer's guide*.

8 Check lorries for cleanliness prior to signing the grain passport. Get a receipt for every load you despatch. It should show the nature of the goods loaded, the approximate weight, the vehicle registration number, trailer number, the name of the haulage company, the date, the time and the contract number. In addition, the driver should print their name clearly and sign.

9 You may insist on being notified of any claims before a load is tipped unless there is a fall-back provision. Claims should be notified as soon as possible and written confirmation posted within two business days of the goods arriving at their ultimate UK destination. If they are not, the buyer will not have complied with the terms of the contract and you will not have to accept them unless the contract already has a sliding scale of price (fallbacks, see over) against quality on delivery.

10 If a claim/rejection is notified and you dispute it, you have the right to request that a sealed sample is sent for independent testing by an agreed analyst. Also ensure you have the contractual right to be represented when that sample is taken. The costs of independent sampling and analysis are for the grower if the claim/rejection is upheld.



Negotiation tips

It is important to realise that a contract is made when both parties agree to a transaction.

It is essential to establish all terms before finalising the deal. Any term can be negotiated, but be aware that introducing more demanding terms may transfer risk and that the changed terms may affect the price to reflect this requirement. Therefore, the negotiation phase is more important than simply agreeing price, quality and delivery period.

Every grower should consider his situation and ask for specific requirements to be considered in 'special clauses' in the contract (e.g. no weekend collections or any access restrictions). See AIC Contract No1/06 clause 4.

The following points cover some of the main areas of potential dispute or contention. These can often be avoided by asking a few questions – for example:

Contract

- What contract is to be used?
- Are there any special terms or conditions in addition to the base contract? (e.g. administration charges for dealing with claims). Are you willing to accept them?

– As a seller, you need to be aware of any separate final receiver's terms. Discuss this issue in detail or obtain a copy of them before you sell.

- Are all the terms clearly stated? Certainty is essential, do not be left in doubt.

Many matters that can lead to dispute often relate to specific issues of delivery terms rather than the basic contract. These need to be clarified before the deal is struck.

Moisture discount scales (fallbacks)

- What is the moisture content (max and min) for the contract price?
- What is the maximum level before rejection?
- What is the scale of moisture discounts applying to the price?
- Under what circumstances might a moisture premium be paid?

Similar fallbacks can be applied to the specific weight, hagberg, screenings, protein content and nitrogen content. Establishing fallbacks in this way can avoid expensive haulage charges resulting from rejection or re-direction and give guidance to a seller in planning deliveries to different receivers depending upon assessment of stocks.

Weighbridge charges

- What are the weighbridge charges?
- Do the charges vary on load size? (lorry v trailer)
- Can they be included in the price?
- Will the receiver accept this?

N.B. It is the seller's responsibility to pay for weighing of unweighed goods.

All items applying to the price of a contract are negotiable. If you feel strongly about them you should ask for changes to the contract terms.

Feedback on delivered goods

- What information will be passed back on quantity and quality from delivery, and when?
- Can this be done by email?
- Can this be done on accepted loads as well as 'problem' loads?

Some receivers are able to assist in this area, while others cannot, so it is important to establish what is possible before sale.

Destinations

- Do you wish to exclude certain destinations?
- Does the receiver have any special terms?
- Is there a distance over which you do not want your grain delivered? (e.g. 50 miles).

Transport is a large part of the marketing cost and wasted journeys can make this even higher. Before selling it is very important to satisfy your needs on distance and risk of rejection.

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