

## Contracting tips by Jody Padgham

A contract will lay out how much product you will be selling, with delivery dates, quality standards and payment terms. Issues such as who pays for trucking and what will happen if you can't meet the contract (including often an Act of God clause for weather-related losses) should be included. GMO contamination issues should be covered, outlining who pays for testing and what happens to the load if contamination occurs beyond the buyer's threshold.

Many grain farmers will forward contract only a portion of their expected crop, and then sell the remainder on the spot market. This allows for fluctuation in the yield and price, as the market shifts throughout the year.

Farmers' Legal Action Group (FLAG) offers a comprehensive resource titled the *Farmers Guide to Organic Contracts*, available as a free online edition or as a purchased paper copy.<sup>i</sup>

FLAG highlights several key points to creating successful farm product contracts.

- Most buyers will offer their own pre-printed contracts. These are created with terms and assumption of risk that favor the buyer. You must read the contract carefully and try to negotiate language that minimizes your risk.
- The contract represents an obligation that you must live up to. If you say you will deliver 100 bushels, you most likely will have to deliver that amount or pay for the value of any shortfall. Be sure that a signed contract represents deliverables that you feel you can reasonably live up to. Many buyers will not pay anything until the full amount has been delivered. Most contracts will stipulate payment within 30 days of delivery, but more buyers are asking for longer terms, as much as 60 or 90 days.
- Do not assume that any portion of the contract, no matter how minor, will be excused. Talk to your buyer as soon as possible if it looks like you will not be able to deliver exactly as promised. If you negotiate any change, be sure to get that in writing.
- All considerations must be represented in the written contract. Anything understood through conversation but not represented in detail in the contract will not be enforceable. (i.e. exact quality standards)
- Pay close attention to "standard language" in a contract, as it may have consequences to you later.
- When exploring a contract for a high-quality, higher priced product, assess what production effort is needed to ensure the higher quality. Balance higher costs with a promised higher price to see if the overall equation makes sense.
- Try to negotiate a standard contract so that it reflects your needs. Don't be pressured into things you'll regret or not be able to deliver on. If the buyer won't accept your

requests, you have the option of turning them down and looking for another buyer. However, a perfect contract may be impossible. Try to understand what the deal-breakers are on both sides, and where compromise is possible.

- A marketing agent, working in your interests, will help you create a contract that reflects and protects your needs. Many farmers work with agents for just this reason.

Regardless of whether you have a signed contract or not, it is a valuable exercise to explore if the vendor you are selling to has the ability to pay for your crop. This may involve looking up the company on the Dun and Broadstreet website.<sup>ii</sup> If you are selling to a small company or a neighbor, you can ask for financial references. Another option is to ask your buyer to call their banker while you are present and allow you to ask if their client has the resources to cover the value you are planning to deliver. While time will likely pass before payment is due, hearing that someone is financially solvent is better than assuming so.

## **Resources**

Farm Commons <https://farmcommons.org/> Legal resource and information for farmers

*Farmers Guide to Organic Contracts*, Farmers' Legal Action Group, (FLAG) 2012  
[www.flaginc.org/publication/farmers-guide-to-organic-contracts/](http://www.flaginc.org/publication/farmers-guide-to-organic-contracts/) Online and print resource

*These pages are a draft from an organic grain marketing fact sheet developed by OGRAIN.*

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<sup>i</sup> <http://www.flaginc.org/publication/farmers-guide-to-organic-contracts/>

<sup>ii</sup> <http://www.dnb.com/>