



Selling Grain in Texas

What Every Farmer Should Know

Texas Corn Producers Board and Texas AgriLife Extension Service

Selling and buying grain in Texas is big business. In 2008, farmers in Texas produced 253.7 million bushels of corn, 158.6 million bushels of sorghum, and nearly 99 million bushels of wheat. The value of production for the three combined grain crops was worth over \$2.6 billion to the Texas agricultural economy. In a time when grain markets and the economy are volatile, farmers need to know their rights and responsibilities when selling their grain.

Legal Considerations

A contract is a written or oral agreement between two or more parties to result in commitment to do or refrain from doing something. In the case of selling grain, the most common form of marketing contract is forward sale of a growing crop where the contract provides for later delivery of a specified quantity at an established price.

Forward contracts fall under the jurisdiction of commercial law known as the Uniform Commercial Code, or UCC. The UCC requires that contracts in excess of \$500 must be in writing. By law, in the event of a dispute, a contract for the sale of goods of \$500 or more is not enforce-

able unless it is in writing and signed by the party against whom enforcement is sought.

However, contracts between “merchants” are often made orally. In the case of a grain contract, two merchants agree to price, quantity and delivery details, and then one merchant sends the other merchant a letter of confirmation or preprinted form contract. This confirmation is signed by the merchant who sent it and gives the other merchant 10 days to object in writing. If the merchant who receives the confirmation fails to object within 10 days, the “merchant’s confirmatory rule” allows the writing between merchants to be an enforceable contract.

Of particular importance to the enforceability of a writing from a grain merchant is whether a farmer is a merchant. Factors used to determine whether a particular farmer is a merchant include the length of time the farmer has been engaged in marketing products on the farm, the degree of business skill demonstrated in previous transactions with other parties, awareness of the operation and existence of farm markets, and past experience with or knowledge of the custom and practices unique to the marketing of the product sold.

The Texas Supreme Court has ruled that a 1,200 acre wheat and cotton farmer was a merchant. The farmer sold all the production for each of the previous five years and daily kept abreast of current market prices and conditions by talking to grain dealers and listening to the radio.

Grain Licensing and Bond Protection

The Texas Department of Agriculture’s Grain Warehouse Program helps protect Texas grain producers by licensing grain elevators and conducting audits and inspections of warehouse facilities. The program requires that any entity that stores grain for the public be licensed. Each warehouse must be





insured for loss of grain stocks for its full market value. A licensed state warehouse is bonded for only 6 cents per bushel with a minimum of \$20,000. The operator of a public warehouse must maintain current records of all agricultural commodities stored, conditioned, handled or shipped by the facility.

However, the State of Texas does not require grain buyers to be licensed. The aforementioned licensing and bonding requirement is for the warehousing of grain, not for the buying of grain. When a public warehouse acts as a grain buyer, they do have a bond, but this bond protects grain depositors for storage. Bond protection does not apply to forward contracts or other grain purchasing activities.

Additionally, grain manufacturers and livestock feeders are not regulated by TDA's Warehouse Program and are not subject to its rules and requirements and the customers of these businesses are not under its protection. If grain is sold to an unlicensed buyer, and if the buyer does not pay for the grain, there is no bond coverage available to help pay the seller. Disputes in this area are handled in civil courts and only civil penalties apply.

Counter party risk, the risk the other party in an agreement will default, must be recognized when entering a grain marketing contract. This is especially important for credit-sale contracts for grain, in which the title to the grain has been transferred to the buyer but payment has not yet been made. In Texas, credit-sale contracts do not have the same financial safeguards available for storage under

warehouse receipts. Even in cases where the buyer is licensed and bonded, there is no guarantee farmers will be fully reimbursed if a buyer becomes insolvent.

To find out if a warehouse or grain buyer is licensed, contact the Texas Department of Agriculture at (512) 936-2430 or regulatory@TexasAgriculture.gov.

Storage Rates and Handling Fees

While storage and handling fees are not regulated by state law, all public grain warehouse license holders must post a copy of all storage rates charged by the warehouse at their main office. Farmers should not confuse storage or in-and-out fees with other contract or marketing fees associated with grain contracts or price risk management tools. Be sure you understand all costs and obligations of your marketing contract. Also, discuss any questions you might have with your elevator manager, other grain buyer, or an attorney (if necessary).

Contract Performance

A sales contract imposes obligations on both the buyer and the seller. If a farmer fails to deliver a crop because drought, hail or other weather has destroyed it, he or she generally is not excused from performance unless the contract called for the crop to be grown in a specified geographic area (often called an acre contract).

Grading Disputes

Grain grading is the starting point for describing quality and assigning value. Minimal standards are often specified in grain forward contracts with corresponding premiums and discounts to apply. In the event that a farmer disputes the in-house grade assigned by the elevator, there are a number of remedial steps that may be taken. The first step is to have the elevator re-grade the sample or draw another sample for grading. If the result is still not satisfactory, the farmer may ask that the sample be sent to a Federal Grain Inspection Service (FGIS) field office

for official grading. This would allow for an ‘official’ grade to be given for that sample, but for that sample alone. There is no implied certification that the sample submitted is representative of the entire truck or load from which the sample was drawn. Grading charges for this process are minimal. For an official grade to be given for an entire load, an FGIS employee would be required to personally draw the sample on sight, or the load of grain would need to be taken to an official grain inspection office - both being a cost prohibitive process in most cases.

Rules of Thumb for Contracting Grain

Grain contracts can be an important tool in price risk management. The effectiveness of this tool and overall success of this price risk management strategy can be enhanced by following a few basic rules:

1. Have a complete understanding of how the contract works and get it in writing. Know the kind of risk the contract is designed to control and the areas of risk that remain after the contract is signed. **If in doubt, do not sign.**

2. Know your customer. Counter party risk can never be eliminated, but knowledge of your customer’s business reputation and ability to perform obligations may reduce this risk. Be sure the other party can explain to your satisfaction how the contract works under all market situations. Be comfortable, after reasonable inquiry and assessment, with the risk of doing business with that entity.

3. Maintain open communication with the other party before signing, as well as throughout the life of the contract.

Selling Grain in Texas: Q & A

Q: What is the difference between a scale ticket and a warehouse receipt?

A: A scale ticket is a document that shows the grain was delivered to a warehouse. It is a document of title (evidence of ownership), but it is non-negotiable. A warehouse receipt is a negotiable document that



shows the owner has clear title to the grain in storage. When endorsed, it can be transferred to someone else.

Q: Are grain dealers licensed in the State of Texas?

A: No, not even a public grain warehouse is licensed as a grain dealer. They are only licensed for the storage of grain.

Q: Do feed manufacturers have to be licensed?

A: No, feed manufacturers are exempt from public grain warehouse licensing. Feed manufacturers, like feedlots, dairies or feed mills who are often referred to as turn row buyers, do not have to have a public warehouse license, but may be required to have other licensing from other agencies.

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Resources

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