Grain Contracts: What happens when yields don't meet contract terms?

Grain contracts provide growers with certainty around pricing and delivery, but unexpected production shortfalls, quality issues and logistical delays can create significant contractual and financial risks. Understanding contract terms, maintaining accurate records and addressing potential disputes early can help growers protect their commercial interests and manage their obligations when harvest conditions do not go to plan.

INTRODUCTION

Grain contracts provide certainty for growers around price, delivery and market access, but what happens when the quality, grade or quantity of a crop means that a grower can't deliver in full? The terms of the contract are key. Knowing and understanding the key provisions and available resolution options is essential for protecting farm profitability and maintaining good commercial relationships.

KEY ISSUES IN GRAIN CONTRACTS

Production Shortfalls

Grain contracts are forward contracts; the exact yield is not known at the time of signing the contract. Drought, frost, flood, other adverse seasonal conditions and pest infestations can impact quantities. Know what the contract says, do not assume that shortfalls in production will be accepted as a contract adjustment, the requirement may be to deliver an agreed quantity regardless of production on a particular property.

Quality Issues

A delivery may be rejected or priced differently where grain does not meet agreed specifications. Contracts may include specifications for a variety of factors including protein levels or moisture content. Growers should retain sampling results and test certificates as evidence of quality and to mitigate any disputes or challenges arising as to the quality of grain.

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Delivery And Logistic Issues

Events such as adverse weather, harvest delays or transport shortages can lead to missed delivery periods. Contracts may have mechanisms for damages or price adjustments favorable to a buyer in these circumstances. Understand what the financial penalty may be for a missed delivery.

Force Majeure Clauses

Each contract will address force majeure differently and some contracts may not contain any force majeure clause. Where a clause exists, the terms of the specific clause will determine what events are covered and what connection is required to be shown between the event and the non-performance.

RISK MANAGEMENT

A comprehensive understanding of the terms of any particular grain contract is a critical step in risk mitigation. Before entering into a contract:

- Be mindful of overcommitting production
- Review force majeure clauses
- Be clear on sampling methodology and testing procedures

During the term of a contract keeping good records can assist in the resolution of a dispute if it arises. Records kept should include, but are not limited to:

- On-farm or pre-delivery sampling and testing records
- Updated crop forecasts
- Storage and handling records
- Documentation relating to circumstances causing delay

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RESOLUTION OPTIONS

Contracts should have comprehensive dispute resolution provisions. The options available will depend on the contract but the most common methods of dispute resolution are:

1. Negotiation – direct commercial discussions between the parties can often lead to satisfactory outcomes for all and maintain good relationships for future years
2. Mediation – with the assistance of an independent facilitator parties work through the issues and reach a suitable outcome
3. Expert Determination – where the dispute is of a technical nature, it may be appropriate for an independent expert to provide a determination. It is critical that parties agree to accept the determination of the expert before engagement.
4. Arbitration – often the next step after a mediation, arbitration can provide a binding outcome while maintaining confidentiality
5. Litigation – as a last resort a party may turn to court proceedings. Litigation is useful in resolving complex legal issues but comes at a cost.

Five practical steps when a problem arises

1. Collate relevant documents including the contracts and any variations
2. Review contract terms including delivery requirements, quantities and quality requirements
3. Preserve applicable records such as testing certificates, sample results, deliver records
4. Get advice on notice and dispute resolution requirements
5. Having regard to any advice obtained initiate conversations with buyers

CONCLUSION

Grain contracts provide growers with pricing and marketing certainty. However, production yields, quality and delivery issues not foreseen when entering into the contracts creates an opportunity for dispute. Early review of each contract givers growers the best opportunity to assess their exposure and make informed commercial decisions.

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HOW HHG LEGAL GROUP CAN HELP

HHG Legal Group advises farming families on succession planning, estate planning and family law issues that can affect family businesses. We can help you clarify your objectives, identify the matters that need to be documented and work with your other advisers to develop arrangements suited to your circumstances.

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