



Guide to taking out contracts to supply fodder

Introduction

The following is a guide to aid the fodder primary production sector in taking out contracts for the sale of fodder. The purpose of this document is to suggest best practice procedures that should be followed when entering into a contract. It is not a legally binding document and legal advice should always be sought for specific situations/clarification.

The purpose of this guide is to provide Australian fodder producers with a practical 'checklist' for the purpose of selling fodder under contract. It is not a substitute for specific terms and conditions contained within contracts.

Successful contracting of fodder should be based on mutuality and balance between the seller and the buyer. There is no substitute for successful contracting than a relationship that is based on accurate, timely and transparent communication and a mutual understanding and agreement of requirements.

Before Commencing Contract Negotiations

1. Be confident with the party you intend to have the contract dealings with.
2. Have a pen and paper ready and record all details of the contract discussion, preferably in a daybook or diary. Ensure you record the date, time and name of the person with whom you are having the discussion. Make sure all commitments and requirements are clearly recorded and with which party (i.e. seller or buyer) these commitments/requirements are attributed to.
3. Understand your commitment completely. From a commercial perspective, a contract is a tool to minimise risk. From a legal perspective, a contract is a legally binding document that must be fulfilled.
4. Understand the process of contracting. A simple legal definition of a contract is:

*A **contract** is a voluntary arrangement between two or more parties that is enforceable by law as a binding legal agreement. A **contract** arises when the parties agree that there is an agreement. The law in **Australia** does allow a **contract** to be **legally binding** if it is written or **verbal**. Generally speaking a **verbal agreement** can be just as enforceable as a written one so long as there is an offer and acceptance of an offer for which money will be exchanged.*

A contract can be made wholly in writing or wholly verbally. It can also be a mixture of oral and written terms, or even made as a gesture. The acceptance of a contract must be communicated to be effective. This communication may be expressed verbally. This is, by agreeing to the contract over the phone, in writing or by the conduct of the parties to the contract.

The role of contract law is to vest legally enforceable rights in each party against the other and as a result, corresponding liabilities are created.

Contract Negotiations

1. Record the date, time and name of the person with whom you are speaking to in your daybook or diary.
2. Carefully record the details of the contract so that you have a record of what was agreed and by whom. The details that should be recorded should include:
 - Volume** – confirm the volume and the unit of volume (i.e. tonnes, number of bales).
 - Price** – confirm the price and whether this is GST inclusive or exclusive and the unit of volume for the price (\$ per tonne or \$ per bale).
 - Price basis** – confirm if this is a delivered price or an on-farm (pickup) price. This should also confirm whether the seller or the buyer is responsible for any transport, storage and handling charges.
 - Deliver/Pickup date** – confirm the delivery/pickup date(s) and the location/address for that and the period of time within which the delivery/pickup is to be completed by.
 - Quality** – what are the quality parameters of the fodder for sale (if any); this may include variety, moisture, CP, ADF, NDF. Are the conditions of sale stipulating the supply of a feed test and if so, has this been undertaken and have the results been provided by the laboratory? Is there a preferred laboratory for the conduct of any feed tests?
 - Levies, Fees and/or charges** – are there any fees (State or Federal) applicable as part of the contract of sale and if so, who is liable for the payment of these fees?
 - Vendor Declaration** – does the buyer require a vendor declaration for the product to be purchased? If so, an AFIA Vendor Declaration form is available from the AFIA website at: [https://www.afia.org.au/files/2017Vendor_Declaration_Form\(1\).pdf](https://www.afia.org.au/files/2017Vendor_Declaration_Form(1).pdf)
 - Payment terms** – confirm when payment is due and how that payment should be made.
 - Default procedures** – clarify any default procedures applicable if delivery/pickup of the fodder is unable to be completed on the date/time specified within the contract (e.g. weather, break-down, demurrage).
 - Dispute resolution** – you should also clarify the dispute resolution mechanisms in place to deal with any contract conflict. This should also be stated on your contract.
3. Contracts are open to negotiation. You have the right to negotiate on any points of the contract. For example, you may wish to negotiate payment terms. However, always bear in mind that any alterations to the contract must be agreed to by both parties. Variations are usually noted in a 'Special Conditions' section.
4. Ensure that you are conversant with the terms and conditions. If you do not understand something within the terms and conditions of the contract, do not agree to the contract until the point(s) in question is/are clarified.

Receiving and confirming the Contract

1. Thoroughly read and check the contract details against the notes you recorded during any previous conversations with the buyer.
2. Ensure the contract details and your diary notes align on the following points:
 - Volume
 - Price
 - Price basis
 - Deliver/Pickup date(s)
 - Quality
 - Levies, Fees and/or charges
 - Vendor Declaration form
 - Payment terms
 - Default procedures
 - Dispute resolution.
3. If you notice any discrepancies, contact the buyer immediately to resolve these.
4. If you are unsure about a term or condition, contact the buyer and have it explained/clarified. If you are still unsure, seek advice.
5. After receiving and confirming the contract, ensure you document/diarise (in your daybook or diary) any changes made in subsequent conversations with the buyer. These too should be confirmed in writing as soon as possible.

Returning the Contract

Even though you are bound without signing the contract, you are more likely to be able to resolve a dispute if it is signed and returned. When you are satisfied with the contract, sign it, keep a copy and return it to the buyer. This should be done within 24 hours of receiving the contract.

Remember, a verbal contract is legally binding. Not signing the contract does not alter its legal status. However it is good practice to sign it.

Contract issues

As soon as you suspect that you might have issues fulfilling any condition within the contract, it is imperative that you discuss the issue with the buyer as soon as you are aware of that possibility.

Payment

Confirm payment has been made on previously agreed terms.

Resolving disputes

You can minimise disputes if care is taken in reading and understanding the contract details. However, if you have any disputes regarding the contract, it is recommended that you:

- Check internal and external dispute resolution terms specified in your contract.
- Seek resolution from the person you originally negotiated with. Failing that;
- Seek legal advice and resolution through the court system.

It is important you understand what your dispute resolution options are before you sign the contract.

Your Obligation

Remember, a verbal agreement is confirmation of a contract. Never-the-less, as party to a contract, it is your responsibility, and in your best interests, to confirm the details of the contract are correct.

AFIA Disclaimer

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AFIA does not accept any liability for contracts entered into for the sale or purchase of fodder/fodder products or for any disputation arising from a contract to sell/buy fodder.

Acknowledgement

AFIA acknowledges that significant sections of this guide have been taken from the Grain Trade Australia (GTA) "A Guide to Taking out Grain Contracts" and we thank GTA for the opportunity to use this material.

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