



What is in a Contract?

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When weather events cause a local or broad-based shortfall in crop yields, farm-to-farm sales activity increases, particularly for livestock feeds. These may or may not include the services of brokers or other intermediaries.

Most transactions go through without a problem. However, from time-to-time disputes arise, generally due to a mis-communication between parties. This discussion lays out the context of contracts and why they should be used, particularly during times of business stress.

Contracts

What is a contract?

A contract is an agreement between two parties that gives rise to obligations that can be legally enforced. It can be oral or written.

What are the essential elements in the formation of a contract?

The Intention

Often referred to as the “meeting of the minds” between two parties, it is the intention that the parties wish to enter into a contract.

The Offer

This is an indication by one of the parties to another the willingness to enter onto a contract on certain terms. The person making the offer decides the terms and conditions and can even determine the form of acceptance the offer can take. Examples include: method of payment, purchase price, delivery period and so on.

Is it an Offer?

It is difficult to determine if an actual offer has been made until you look at the language of the offer, the circumstances of the negotiations, the business customs and prior dealings that may exist.

A good example is a hay listing or a furniture store flyer that shows a price tag offering to sell. This is often referred to as an invitation to treat and the offer (first) is made when the item is taken to the cashier.

When is an Offer communicated?

The form of the offer is not important. What is important is that the person making the offer conveys to the other person they intend to be bound by the offer made.

Has a counter offer been made?

A counter offer occurs when the person receiving the offer proposes changes to the terms: for example, price. This counter offer wipes out the original offer. Only one offer can be on the table at one time. You can inquire and drill into the details on the terms presented and not kill the original offer.

What about time limits?

An offer is open for a reasonable amount of time unless the person making it sets terms.

- Death of either party
- Time limit to accept

What about revoking an Offer?

An offer can be revoked at anytime prior to being accepted by the other party. Revoking the offer means the person no longer wishes to be bound by the terms set forth. It is not in effect until the person receives the revoking notice.

What is Acceptance?

It is simply an indication from the person who got the offer that they accept the terms of the offer.

What about standard forms?

Standard form contracts are used when the terms are not negotiable and save time for the person making the offer.

Consideration

What is Consideration?

Consideration is the glue of a contract. Each party exchanges something of value. Examples might be: Exchange of money, give up rights to something, deliver goods and so on.

What is the difference between consideration and a voluntary promise?

Consideration is the giving of a benefit or a requested detriment, without it you just have a promise.

Certainty

Certainty of Terms

The last thing the contract needs to be complete is that all the terms need to be certain and not open to further negotiation.

What happens if the terms are vague or incomplete?

The court will often refer to statutes for guidance and may imply terms that are reasonable to the circumstances. This gives effect to expectations such that if the terms remain unresolved one or both of the parties may be defeated in aspects of their agreement. Essentially the court will attempt to fill in the blanks and allow the contract to run its course.

A contract term can also agree to agree at some later date. We see this often in the grain industry with sales contracts based on the close of future contracts. If you use a third party to set the price, you have completed this term.

The Written Word

A contract can be oral or written. For some contracts, like a land purchase, they need to be in writing. Alberta's Sale of Goods Act states that contracts for goods sold over \$50.00 must be in writing.

For more information, please refer to, "Management Considerations in Agricultural Contracting" [\(1\)](#) on Alberta Agriculture's "Ropin' the Web" site.

Dale A. Kalief¹

Sr. Economist: Production Economics
Economics & Competitiveness Division

Questions:

Please call the Ag-Info Centre at 310-FARM

¹ This article is an update of an earlier publication, authored in 2002 by Graham Gilchrist, P.Ag., Business Risk Management Specialist, Vegreville