



National Grain and Feed Association

May 2007

Sample Grain Contract Options for Addressing Biotech-Enhanced Commodities

The following options of sample contract clauses are based upon provisions that were developed by the National Grain and Feed Association (NGFA) several years ago to assist grain purchasers who wished to address issues arising from the introduction of new biotech-enhanced commodities.

Given the current challenges posed by the commercialization and anticipated sale of new biotech-enhanced corn that currently is not approved in any U.S. export markets, the NGFA membership is reminded that **one or more** of these contract clause options may be useful and applicable. These sample boilerplate contract language options, presented below in no particular order or preference, should be read and considered carefully before being used. Every contract should be tailored to the particular commodities addressed, your specific business operation, local practice, applicable laws, etc. **Importantly, as with all contractual matters, it is recommended strongly that you consult with competent legal counsel before making changes to your legal documents.**

Option 1:

Seller's Variety Warranty: The Seller agrees and acknowledges that commodities grown from certain transgenically enhanced seed shall not be deliverable under this contract. Specifically, the Seller shall not deliver, and the Buyer has the right to reject delivery of, a commodity containing transgenic genes/traits that are not approved for sale in Japan, Mexico, the European Union, or other U.S. export markets.

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Option 2:

Disclosure of Varieties and Applicable Discounts for Certain Varieties:

The Seller has an affirmative obligation to disclose to the buyer the variety of any commodity delivered under this contract including the specific transgenic event (e.g., MIR 604, Mon 88017, DAS 591227, etc.) as well as the product registrant trade name (e.g., Syngenta Agrisure RW Corn, YieldGard VT Rootworm/RR2, Dow Agro Science Pioneer Hi-Bred Herculex RW, etc.). The Seller acknowledges that the marketability of a commodity delivered under this contract could be impaired because of restrictions on the sale of commodities produced from certain varieties (e.g., crops produced from seeds containing transgenically enhanced genes/traits) from time to time in various domestic and world markets. In such a case, the Seller delivering commodities under this contract is subject to the then-prevailing market discounts at the facility where the commodity is delivered.

Option 3:

Variety-Specific Warranty: Seller and Buyer agree that only the following varieties of transgenically enhanced seed varieties are deliverable under this contract. *[List specific varieties, including the specific transgenic event and the product registrant trade name.]*

Option 4:

Seller's Warranty of Compliance With Seed Licensing Agreements: The Seller represents to the Buyer that any commodity delivered under this contract has been grown and handled in accordance with any and all requirements stipulated by the biotechnology provider/seed dealer and/or variety-specific recommendations for *[insert the transgenic event and product registrant trade name]*. If the Seller is the grower of the commodity being delivered under this contract, the Seller represents that the sale of the commodity is not in violation of any agreement or license the Seller has with any seed company or other party.

Option 5:

Biotech Premiums/Discounts: Seller acknowledges that premiums and/or discounts may apply to certain transgenically enhanced varieties delivered against this contract, even if the commodity meets all other grade and quality specifications set forth in this contract. The Seller acknowledges that the Buyer has the right to apply the Buyer's variety-specific premiums and/or discounts in effect at the time and place of delivery.

Option 6:

Biotech Testing: Seller agrees that Buyer shall have the right to test commodities delivered under this contract for the presence of transgenically enhanced genes/traits using tests selected by the Buyer. These tests shall be in addition to, and do not substitute for or waive, any warranties or representations made by the Seller regarding varieties delivered under this contract.