

Oilseed Sellers' Checklist 2009/10

This guide provides a checklist to assist oilseed sellers to maximise market opportunities and to avoid the most common contractual problems, which frequently lead to price claims and problems.

The FOSFA 26a Contract sets out the rights and obligations of buyers and sellers. This checklist aims to help sellers avoid some of the most common problems. Buyers are obliged to make available the terms and conditions on which the contract is made. Additionally NFU and NFUS members can view the FOSFA 26a contract at www.nfuonline.com or www.nfus.org.uk

- 1 Grow for a market.** These are currently: Commercial for Edible Markets; Industrial for Non-Food Markets; for Energy – under the Energy Aid Scheme. The contract type may affect the value and movement requirements. There are also a number of different types of oilseed required in the UK e.g. double low, high oleic/low lin, and high erucic. This may have an impact on the movement period and delivery destination. Mixing these types will dilute or contaminate the produce which the end receiver may require.
- 2 Market tonnage or area.** Some buyers may consider trading the produce of a given area rather than risking a commitment to a fixed quantity. In this case the field OS number/s should be specified, otherwise a seller will be contractually liable to a minimum tonnage even if the crop fails or the quantity is badly reduced.
- 3 Pricing.** Oilseeds prices are volatile. The need to effectively protect against shifts in marketing patterns and price swings is advisable. Sellers might consider using marketing pools or trading their seeds periodically, or to a plan, to minimise market risk. Options can provide a means of good insurance against market volatility.
- 4 Know what the buyer wants.** Moisture, admixture and oil content are the key components of contractual requirements. The FOSFA 26a contract specification is clear and unequivocal: providing the seed falls within the contractual specifications on delivery it will be accepted without reference to the seller.
- 5 Check whether assured grain is a contractual requirement.** If the buyer plans to resell the product, are they part of an appropriate assurance scheme? Most end users accept only assured crops and assurance membership numbers are checked at intake.
- 6 Keep a sealed representative sample** of each load taken, labeled with lorry details (this may be required for quality assurance schemes). Note that these samples will not be contractual for the purposes of the determination of quality or condition at the delivery point, but they may help if problems arise. Further information is available in the HGCA's *Grain sampling – a farmer's guide*.
- 7 Check lorries for cleanliness** prior to signing the grain passport. Get a receipt for every load you dispatch. It should show the nature of the goods loaded, the approximate weight, the vehicle registration number, trailer number, the name of the haulage company, the date, the time and the contract number. In addition the driver should print their name clearly and sign.
- 8 If a claim/rejection arises.** As the seller you may dispute the first analysis results and claim the right to request a retest within two months from the date of delivery. The cost of independent sampling and testing are for the seller if the claim/rejection is upheld. Obtaining the results of the retest can take a considerable time and they are binding on both parties.
- 9 Post harvest declarations.** If growing under the Energy or Non-food schemes, the seller is responsible for lodging with DEFRA or SEERAD the appropriate form to confirm the quantity moved under whichever contract applies. Both schemes require the delivery of the entire produce of the area sown – with no home-saving of seed allowed. Failure to present this information within the statutory time may delay receipt of the seller's single farm payment and/or the loss of security which the seller will have to reimburse to the buyer.



Negotiation tips

It is important to realise that a contract is made when both parties agree to a transaction.

It is essential to establish all terms before finalising the deal. Any term can be negotiated, but be aware that introducing more demanding terms may transfer risk and that the changed terms may affect the price to reflect this requirement. Therefore the negotiation phase is more important than simply agreeing price, quality and delivery period.

Every grower should consider their own priorities and ask for specific areas of concern to be considered in 'special clauses' in the contract (eg no week-end collections or any availability restrictions).

The following points cover some of the main areas of potential dispute or contention. These can often be avoided by asking a few questions – for example:

Contracts

Ask what contract is to be used? The standard is the FOSFA 26a contract, but all terms are negotiable. If you wish to trade under amended terms you must say so at the time the deal is struck and any special terms must be included on the written confirmation issued by the buyer. You should also check the details of this confirmation. If it is incorrect, in any way, return it and require a corrected version before unloading goods. Do separate receivers' terms apply over and above the base contract terms? If so, obtain a copy of them before you sell. Any sale agreement is legally binding. The various contracts all contain provision for settlement of disputes by arbitration.

Adjustments

An 'adjustments' scale for oil content, moisture and admixture is included in the contract. The seller should know the details of that scale, and they should be in the confirmation. Such 'adjustments' provisions can be very advantageous in preventing expensive haulage charges if a load would otherwise be rejected. Full details are available in the FOSFA 26a contract.

Destination

A seller may seek to exclude a specific delivery point or to limit the radial distance to which his goods may be delivered, but such provisions may lead to a lower contract price.

Practical Points

Drying

Poor drier operation may lead to hydrocarbon contamination of the seed, and resultant quality claims. For this reason, driers should be well maintained.

Storage

Oilseeds should not be stored on floors treated with bitumen as this may lead to the migration of hydrocarbons into the product. The store should be cleaned and disinfected when empty between harvests to reduce the likelihood of mite

or mould in stored goods. The use of Actellic dressing on stored oilseeds is NOT permitted. Inert Diatomaceous earth may be used to treat mite, but this material can pose a problem to crushing machinery, so it is imperative that you check with the buyer before using it.

Purity

To reduce the chance of rejection on delivery it is important that the crop is grown from certified seed or farm saved seed which has been grown on for only one year in order to maintain purity. Remember, 'volunteer' plants can persist for many years. The variety listed on the SFP form & Grain Passport can be verified. Knowingly providing false information may contravene cross-compliance regulations and lead to substantial price adjustment claims.

There are also useful general points in the CIF **Cereal Sellers' Checklist**.



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