



FARM COMMONS

Writing a Basic Sales Agreement for the Direct Market Farm

LAST UPDATED:

January 29, 2015

FIRST PUBLISHED:

February 10, 2014

By: Rachel Armstrong

Executive Director and Attorney, Farm Commons

rachel@farmcommons.org

www.farmcommons.org

This resource is provided by Farm Commons for educational and informational purposes only and does not constitute the rendering of legal counseling or other professional services. No attorney–client relationship is created, nor is there any offer to provide legal services by the distribution of this publication. Always consult an attorney regarding your specific situation.

TABLE OF CONTENTS

Setting the scene	3
Think through potential issues	5
Come to a consensus with the buyer	5
Draft terms	6
Assemble terms into the agreement	9
Follow through on the agreement	12
Conclusion	13
Model Basic Sales Contract	14
Model Availability Sheet	17
Model Invoice	19



Setting the scene

Smooth sales relationships set the foundation for long-term success for the direct-to-consumer farm.

Good sales relationships are essential to a successful direct-to-consumer farm. With all the work there is to do in the barns and fields, however, it can be tempting to spend as little time as possible on sales. It's important for farmers to consider that careful cultivation of buyers lays the foundation for long-term success. When sales relationships are smooth, the farmer can devote more time to producing food, educating customers, and connecting with the community.

What can a farmer do to set a good foundation for profitable, strong sales over the long-term? It may not be intuitive, but laying out the terms of the sale is a key step. Getting a sales contract or sales agreement before the purchase is very important to set procedures and standards. It's understandable that contracts can seem a bit formal, and asking customers to sign on the dotted line often isn't the way business is done. In order to protect the farm, however, a little formalism may be necessary. There is ample opportunity to craft commitments using approachable, standard sales documents like availability sheets and invoices.

A sales agreement is simply a set of procedures and standards that a buyer and

seller agree to follow when working with each other. These procedures create predictability and accurate expectations for everyone, which goes a long way to preventing problems. Rather than putting distance between two parties, a good sales agreement can merge the space between them by creating understanding where it may not exist. This guide will help farmers understand how to craft a comprehensive sales procedure and how to record it for later reference.

How to use this guide

This guide is designed to help direct-to-consumer farmers think through procedures that will strengthen their sales relationships. It is important, however, to point out that this guide does not emphasize creating a sales contract that is enforceable in a court of law. This guide takes a preventative approach because we feel that avoiding problems is as important as enforceability. Direct-to-consumer farmers and their buyers will rarely, if ever, go to court to enforce an agreement. The value of a sale generally isn't large enough when considering the time, energy, and financial costs of legal enforcement. **Farmers with significant high-volume sales who need a contract with the highest probability of enforcement in court should seek the help of an agricultural attorney.** Contract enforceability is an issue of state law and the contract must be carefully drafted to meet state rules and regulations for the specific product being sold.

This guide does not emphasize creating a sales contract that is enforceable in a court of law.

This guide takes you through a proactive approach to managing sales risks by:

1. Identifying areas of conflict that need detailed preventative strategies.
2. Turning these strategies into the sales agreement.
3. Demonstrating how to incorporate the terms into the farm's sales strategy.
4. Concluding with some notes on getting paid and enforcing contracts.

This resource should be used along with Farm Common's webinar: "Sales Contracts for Farm Produce: Why and How." The webinar recording is available at FarmCommons.org/webinars.

Think through potential issues

As the local food movement expands, new buyers are entering the market. Many things motivate these buyers: desire to market local foods, concern for the environment, and dedication to the best-tasting items. We can't necessarily predict the experience and knowledge of any specific buyer, so it is a good practice to assume that the buyer knows very little about your product. Start by laying out all the basic details, even if they seem obvious. For example, although farmers grow green beans of many varieties, a chef may assume all local farmers grow haricots verts and assume that the farmer will deliver the most slender beans. Farmer and buyer may have different expectations about how the product will be packaged or delivered, as well.

The first step is to lay out all the basic details, even if they seem obvious.

The next stage is to anticipate anything that might go wrong with the sale. Might the buyer cancel or change the order? Could the buyer need the product at a different time or location than usual?

Next, anticipate things that might go wrong with the sale.

After brainstorming potential problems, the farmer should create a strategy to minimize the impact if cancellations, changes, and other contingencies occur. Is there a time frame where cancellations are less inconvenient for the farm? Would charging a fee make it more financially feasible to make changes after the order deadline?

Then, create a strategy to deal with contingencies.

Come to a consensus with the buyer

A sales contract covers the basic issues and contingencies of all shapes and sizes. Each farm will deal with changes, cancellations, payment, delivery, and quality issues in a different manner. Before drafting procedures, it's good to understand your buyer's needs as well. A grocer may count backstock on a specific date and a chef may set the new menu at a specific time. Understanding your buyer's limitations and flexibility can help a farmer draft a procedure that will work for both parties. Fundamentally, the contract is simply the way

parties agree to conduct their business -- it should not be the first time that your buyer is learning of your policies and procedures, and vice versa.

Think of a sales agreement like a marriage. You have to work on the relationship before you get the formal commitment.

You might be wondering, “How can we come to a consensus before I’ve put the terms in writing?” A helpful analogy might be to think of a sales contract like a marriage. If you aren’t committed to your partner already, a marriage certificate won’t create a strong union. You have to work on the relationship first, and then back it up with the formal agreement. Certainly a contract is a commitment, but its effectiveness as a preventative strategy relies on the contract being a reflection of an agreement that two folks have already created together. Focus on the style of communication that feels most comfortable to you; make sure that you and your buyer come to a consensus on your respective needs, policies, and expectations ahead of time.

During this process you will start with your preferred type of contract and adapt your procedures as needed to come to an agreement. You might discover that your buyer needs you to compromise on terms that you are unwilling to change. If that’s the case, while disappointing, you may decide not to move forward with that buyer. Recognizing an incompatibility early on can save you a lot of time, money, and mental energy down the road!

Draft terms

The list below is designed to help farmers move forward in drafting an agreement. Farmers drafting their own sales contracts may use this list as a starting point for outlining each element and procedure for the sales relationship. Farmers reviewing a contract given to them by a buyer may use this list as a checklist of issues to identify in the prepared contract.

1. Item information

 Item name/description

////////////////////////////////////
A buyer should understand all the terms of a sale before the sale occurs.
////////////////////////////////////

- Volume/weight/count of each item
- Price
- Packaging

2. Payment details

- Payment procedure (invoice? COD?)
- Payment due date
- Additional fees (minimum orders, fuel charges, etc.)
- Late fees

3. Quality standards

- Choose precise parameters for quality/condition that are objectively measurable.
- What is the time frame for the buyer to inspect for quality?
- What notification procedures does buyer follow if she or he feels quality standards are not met?
- Are there rules for how the buyer must hold the product while the quality dispute is being resolved? (for example, location and temperature standards).
- Is there a specific dispute resolution procedure?
- Is there a set compensation strategy if the parties disagree about quality?

4. Delivery and shipment

- What is the anticipated delivery date and time?
- What are the notification procedures if anticipated date and time are no longer accurate?
- What is the delivery mode? Is the farmer delivering or does the farm use a distributor/shipper?

- Who bears risk of loss during transit? (If the farmer, is it covered by your insurance?)

5. Is the product delicate, frozen, or potentially hazardous?

- Are there specific holding requirements?
- Do you have washing or handling instructions?

6. Cancellation and changes

- What is the order deadline?
- Are order changes allowed after deadline?
- Some buyers will try to change the order even if the deadline has past: Do you have notification procedures for accepting late changes?
- Is there a penalty for changes made after deadline?
- Can the order be cancelled? If so, when?
- What is the procedure for cancelling an order?
- Some buyers may try to cancel an order beyond the stated deadline: Is there a penalty for cancellation beyond deadline?

7. Contracts in advance of production

If the contract is an agreement to provide a specific volume at a specific time in the future:

- When will the product be available? What if the time frame is not accurate? How will the seller notify the buyer of production dates? Can the buyer cancel within a certain time frame?
- If the agreed-upon volume can't be met, what are the

notification procedures and time frame? Can the buyer cancel if the volume will be below a specific amount?

- ☐ If the agreed-upon volume is not provided, is there any penalty or fee?
- ☐ Must you make up shortfall if production is lower than contracted? If so, where may additional product be sourced from? Must the buyer must be notified if product is sourced from other farms?

If the contract is an agreement to sell all the product of a specific time frame or acreage to a single buyer:

Note: If this is the case and the investment is significant, we recommend the farmer seek attorney advice. This is called an “output contract” and state laws affect enforceability.

- ☐ Do you have a record of past output or a reasonable estimate based on similar production systems? If not, you need to consider specifically stating reasonable expectations for volume.
- ☐ Have you agreed to grow a specific varietal/breed?
- ☐ Are there specific production standards/procedures that you are following?
- ☐ Is production occurring on specific acreage or location?
- ☐ Is there a specific type of seed or feed agreed upon for production?

If your contract is an agreement to sell all the product of a specific time frame or acreage to a single buyer, we recommend you seek attorney advice.

Assemble terms into an agreement

After a farmer lists the basic product information and crafts procedures to deal with contingencies, the next step is to incorporate the information and terms into the sales agreement. Before we discuss options for writing terms in the agreement, we should discuss a few guiding principles.

1. **A buyer should understand all the terms of the sale before the sale occurs.** For example, if exchange or refund terms are listed on an invoice only, the buyer can’t read them before deciding to buy. This goes back to our earlier point of coming to a

A buyer should understand all the terms of a sale before the sale occurs.

consensus with your buyer before you've reached this step.

2. **Seek specific confirmation of the terms.** You don't necessarily need a handwritten signature, but you should have something to show that the buyer agrees to the terms before you go forward with the sale.

Farmers have a number of ways to communicate the terms to the buyer.

Option #1: The signed sales agreement

Farmers should first consider the more formal route of a signed contract for purchase, especially when the total value of the sales is high or when it represents a significant percentage of the farmer's total sales. The more vital the sale is, the more important it is to create the most comprehensive, clear contract. As a reminder, this resource is not intended to craft sales contracts that are enforceable in court. This resource will help farmers build strong sales relationships through communication. If a farmer wants the strongest likelihood of enforcing a contract, the farmer should seek the advice of a qualified attorney as each state may have different, specific rules.

Farm Commons has created a simple model sales contract that incorporates product information and contingencies. This model may be useful for farmers working with distributors, grocery stores, institutions, and other buyers with predictable, steady demand for products. The model provides sample language and formatting that incorporates the elements of our agreement.

See our Model Basic Sales Agreement at the end of this guide.

Option #2: The terms confirmation and availability sheet

Many farmers are not interested in seeking a signed contract prior to sales, instead preferring to distribute availability lists to potential buyers. There is plenty of opportunity to incorporate terms into this type of sales structure. At the beginning, when a new potential buyer is added to the distribution list, the farmer can discuss the sales terms upfront.

There is plenty of opportunity to incorporate terms into an availability list.

An example of a quick note that a farmer could write to accomplish these goals is:

"Dear Chef: It was a pleasure to meet you, and I'm thrilled to hear you may be interested in ordering my product. I am adding you to my availability list. I strive to create a convenient and hassle-free ordering experience for my customers. To do that, I have outlined several procedures for making, changing, or cancelling orders, as well as for communicating with me about product or quality issues. I want you to be happy with these procedures, so please let me know if they are acceptable to you."

The farmer could paste in or attach a full description of the procedures and processes developed previously, perhaps by using the checklist in the previous section. A note like that presents the "sales terms" in a friendly, accessible manner while meeting our two principles. First, the terms are presented before the sale. Second, the farmer has explicitly asked for confirmation that the terms are acceptable.

Additional things to include in an availability list:

The terms should be incorporated into the procedure for each individual sale. When a farmer sends out the availability list, she or he should include all the terms clearly within the document. At the end of this guide, please find a model availability list with a reminder that the sale is subject to the agreement. At the bottom, we have stated the terms again.

Accurate and thorough product information. Take the time to carefully articulate the product being sold: type, quality grade, packaging, etc. The product list should have the common name, variety, count or pack size, quality standard, and additional notes as necessary.

Farmers who use a combination of email, availability sheets, and invoices to create their sales contract need to make sure that each stage of the communication is accurate and thorough. The benefit of a single sales contract as described in Option #1 is that all information is easy to put in one place. Availability sheets and invoices are more convenient for the buyer, but

The best practice is to include all the terms on the availability sheet.

they require additional work from the farmer to keep them up to date.

See our Model Availability Sheet at the end of this guide.

Terms relating to changing orders or disputing quality should be added to an order confirmation, if the farmer provides one. Terms for payment should be added to the invoice. This creates a consistent reminder of the terms and reintegrates them into the agreement. We have created a model invoice to help farmers envision how this might look.

See our Model Invoice at the end of this guide.

Follow through on the agreement

● If a farmer does not follow through on each commitment, he or she is breaching the contract.

It should go without saying that both parties need to follow through on the agreement that you have crafted together. Farmers need to make sure they follow notification procedures and deadlines if they cannot deliver the product as promised. While following through is always an important practice to maintain good customer relationships, there is also a legal reason for following through with a written agreement. If a farmer does not follow through on each commitment, he or she is breaching the contract. In addition, if a farmer fails to follow the procedures time after time, the pattern of behavior can modify the written contract and it is as if the contract never existed. This becomes a legal liability and it erodes the predictability we are trying to create with a written agreement.

Dealing with revisions

Even if the buyer is perfectly fine with revisions, farmers should take care to write down any changes to procedure or product. Understandably, circumstances can change. When this happens, the best practice is to send a quick note. This note establishes the written record that the parties have agreed to something differently in the specific instance. For example, the farmer might send a note saying,

"It was great to talk with you today, Chef. I'm glad you can make a Monday at 5pm ordering deadline. I will happily change that section of our agreement until March 30 of next year when we renew our agreement for the next growing season. I will check in again then about the best deadline for you."

Sending a note confirming the change is one way farmers can follow modified procedures while still protecting themselves.

A note like this accomplishes a few objectives:

- 1. It creates a paper trail acknowledging the new agreement.
- 2. It reminds the chef that the new deadline is one change to an agreement that is otherwise still intact.

Sending a note confirming the change is one way farmers can follow modified procedures while still protecting themselves. The primary objective of this resource, though, is to foster clear communication and prevent problems from ending up in court in the first place.

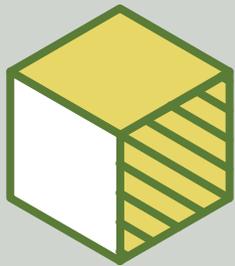
Conclusion

The base of a strong relationship between a farm and a buyer is a clear understanding of exactly how they will work together before the first sale even occurs. Farmers and buyer set themselves up for success by clearly presenting product information and outlining procedures for addressing contingencies. This resource helps farmers understand the issues that should be addressed and how to incorporate them into the sales process. Farmers will be able to navigate sales relationships smoothly and build a stable, resilient farm business.

The author would like to remind you that this guide does not focus on creating a contract with the highest likelihood of enforceability in court. Where court enforcement is possible or desirable, farmers should have their contract reviewed by an attorney. The attorney will verify that the contract is internally consistent and that any relevant state or federal laws affecting the sale are addressed.

^{*}This publication was supported by the Specialty Crop Block Grant Program at the U.S. Department of Agriculture through grant 12-25-B01706. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the USDA.

////////////////////////////////////
This resource helps farmers understand the issues that should be addressed and how to incorporate them into the sales process.
////////////////////////////////////



Model Basic Sales Agreement

This resource may be used as a template for your own

Buyer:

Name

Address

City state zip

Phone

Email

Seller:

Rachel's Green Acres

123 Farm Road

City, State Zip

123 456 7890

farmer@email.com

Product Information

Rachel's Green Acres will sell to Buyer 30 lbs of green beans per week from approximately July 15 to October 1. Seller will contact Buyer one week before production will begin. If product is not available by July 30th, Seller retains the right to cancel the contract without penalty. Buyer acknowledges and agrees that green beans will be received in three 10 pound bags, placed into 3 wax boxes of potentially variable size. Buyer acknowledges and agrees that the green beans will not be of a specific varietal; in addition, the varietal may change over the course of the season. Seller agrees to provide only varieties described as suitable for fresh eating as described in various seed catalogues available to Seller. The product will have no greater than 5% damaged product, stems, or debris. Seller agrees to inspect product within 1 hour of delivery and to notify buyer within two hours of delivery if the product does not meet this agreement for variety or quality. Buyer and seller agree to mutually work towards prompt resolution of any disagreement over product variety or quality.

Delivery and Payment

Rachel's Green Acres will deliver the product weekly on Tuesday between 2 and 4pm. Seller bears the risk of loss during delivery. Seller will invoice Buyer at the time of each weekly delivery. Buyer agrees to pay \$2.50 per pound for the product, and will remit payment within 15 days of receipt of invoice. If Buyer does not remit payment within 15 days, Buyer agrees

that Seller may apply a 2% late fee. If Buyer does not promptly pay two or more invoices due as part of this agreement, Seller retains the right to cancel the contract without penalty.

Modifications

Buyer acknowledges that Seller is investing in seed, acreage, labor, and time to carry out this agreement. If Buyer wishes to modify this agreement, Buyer agrees to notify Seller by 4pm on the Friday prior to the delivery date for which the modification is requested. If Buyer does not notify Seller of the desired modification by the deadline stated, the change may not be accepted by Seller. If Buyer does meet the modification deadline, Buyer and Seller agree to work together to modify the agreement. If the resulting modification decreases the weekly value of this contract (which is \$75) to the Seller by greater than 80% (in other words, a modification that drops the weekly sales total to less than \$60), the Buyer agrees that Seller may impose the greater of 5% or \$20 per week as a convenience fee.

If Rachel's Green Acres is not able to supply the 30 lbs of green beans from its own production, Seller will notify Buyer by 4pm on the Friday prior to the delivery date. Buyer and Seller may agree that Seller should source the shortfall from other local farms or may agree that Seller will provide a reduced amount. Buyer and Seller agree to work together towards a mutually acceptable agreement.

Signature of Buyer:

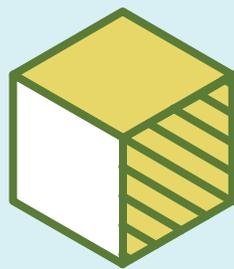
Name: _____ Date: _____

Signature: _____

Signature of Seller:

Name: _____ Date: _____

Signature: _____



Model Availability Sheet

This model is adapted from a standard Microsoft Excel template to illustrate how farmers might include sales terms on an availability sheet.

Your Farm, Inc.

SALES AVAILABILITY

Name
Address

Thursday, August 14 to Monday August 18, 20

We are pleased to make available the following products. By ordering, you agree to our terms below:

ITEM	DESCRIPTION	count	pack	UNIT PRICE	Notes
1	Romaine Lettuce	24 ct	per case	\$28.00	
2	Red Peppers		per pound	4.5	Carmen
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

TERMS See Terms Below
DELIVERY For Tuesday August 19, 2014
NUMBER Week 24

We want to serve your business for years to come. To help us meet that goal, please note the following terms:

Orders are due by 4pm Monday August 18. Orders placed after 4pm Monday will only be filled if you receive specific confirmation by 8am Tuesday

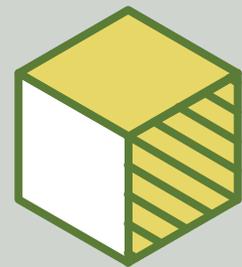
Order changes may be made ONLY before 4pm Tuesday.

If an order change is made after 4pm Tuesday, we may not be able to make the change. If the change order is crucial, a convenience fee of 5% may be added to the order.

A 2% delivery charge is added to each order.

This sales availability is an Estimate, only. Actual availability may change. Although we are confident in our estimate, if a change is unavoidable, we will let you know by 8am Tuesday.

If your order is under \$40, we may not be able to deliver it without an additional charge. We will call you by Tuesday at 8am if we cannot deliver your order without an additional charge.



Model Invoice

This model is adapted from a standard Microsoft Excel template to illustrate how farmers might include sales terms on an invoice.

Do you have questions or thoughts on how to improve this document? Please, follow the link below to fill out our survey online.

<http://farmcommons.org/survey>

CONNECT WITH US!



www.twitter.com/farmcommons



www.facebook.com/farmcommons



info@farmcommons.org



RACHEL
REPONDS

Was this resource not quite what you were looking for? Do you still have more questions? Send them to Farm Commons and we will do our best to feature an answer in our blog. Read the most recent questions and answers in our “Rachel Responds” column.