

Contracting Considerations

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SOUTHERN
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General Considerations

- Have a contract!
- Be sure that contract is in writing.
- READ the contract!
- Have an attorney representing you review the contract.
- Do some research on the buyer.



Pricing Structures

- Cash contract versus share contract
- Hemp-specific options
 - \$ per % CBD
 - \$ per pound
 - \$ per acre
 - “Market value at the end of the growing season”
- When and how will payment be made?



Crop Insurance/ Government Program Impact

- How you structure the payment provision of a contract can greatly impact your ability to receive crop insurance or government program payments.
- Grower must have an “insurable interest” or “ownership interest” in the crop in order to qualify for crop insurance.
- FSA generally requires some risk of loss to qualify for program payments.



Texas Producer Protection Act (2017)

- Contract must expressly & conspicuously state whether it is an acreage or quantity contract.
 - Acreage: Requires producer to deliver all production of product grown on identified land.
 - Quantity: Requires producer to deliver a set quantity of product, regardless of the total amount actually grown by producer.
- If acreage contract, purchaser may not sue producer unless producer “knowingly fails to deliver” all product grown on the land.
 - “Aware of the nature of his conduct or that the circumstances exist or he is aware that his conduct is reasonably certain to cause the result.”



Hemp-Specific Considerations

- Who pays for the licensing, sampling, and testing?
- What happens if the State revokes the growers license?
- Who bears harvest, transportation, processing costs?



Hemp-Specific Considerations (cont)

- What happens if the crop does not meet required quality specifications (i.e. certain % CBD, moisture content)

Material shall be weighed and inspected upon receipt by [redacted] [redacted] reserves the right to reject any incoming material based upon quality standards, weight discrepancies, or any other reason. [redacted]

[redacted] Buyer has the right to accept or reject the Material, in its sole discretion. Any Material rejected by the Buyer will then become the property of the Grower.



Slide 7

LG1 Please look at slide 8. The middle and end. Should this be in the same font and bullets?
Lacrecia Garza, 1/21/2021

Hemp-Specific Considerations (cont)

- What are “best farming practices” or “commercially reasonable production practices?”

This guarantee will be in effect as long as Farmer plants at least [REDACTED] plants per acre, follows the mutually agreed upon growing plan and Standard Operating Procedures, and uses their **best farming practices** to achieve a harvestable crop with a minimum of three-fourths (3/4) of a pound of dried biomass per plant. [REDACTED]



Slide 8

LG2

Slide 9: same as on slide 8

Lacrecia Garza, 1/21/2021

Signor Beware...

- Who bears the risk of a hot crop? Or a crop that doesn't make?
What may allow for reduced payment?

Section 1 Risk of Loss: Grower shall have the risk of loss for the Hemp [REDACTED] while growing and shall take what steps it deems necessary to protect Grower from the risk of loss or damage, including but not limited to preventing mold, improper harvesting, and unlawful THC content.

■ Crop failure: If the crop fails to grow satisfactorily, as determined at Buyer's sole discretion, or is otherwise deemed unsuitable by the [REDACTED] Department of Agriculture, harvesting and delivery of the Material, and Buyer's obligation to pay for it, will be cancelled, and the Material will become the property of the Grower.



Signor Beware... (cont)

- Assignment of License to Purchaser
- Exclusivity

Section [REDACTED] Exclusivity: During the Term of this Agreement, [REDACTED] will be Grower's exclusive agent for the processing of Grower's Hemp [REDACTED] (i.e., Grower's 2020 industrial hemp [REDACTED]) and the distribution and sale of products processed therefrom.



Standard Legal Terms

- Choice of law
- Venue selection clause
- Alternative dispute resolution
- Attorney's fees
- Confidentiality clause
- Indemnification



Standard Legal Terms (cont)

- Force majeure clause

Force Majeure. Performance of any obligation under this Agreement may be suspended, in whole or in part, by either Party without liability to the other party to the extent that an act of war, terrorism, fire, or any other occurrence beyond the reasonable control of such party or labor trouble, strike or injunction (if such labor event is not caused by the bad faith or unreasonable conduct of such party) delays, prevents, restricts or limits the performance of this Agreement. The affected Party may invoke this provision by promptly notifying the other Party of the nature and estimated duration of this suspension. In addition, if a change in Federal or _____ state law makes any aspect of this Agreement, including the possession, processing, or sale of industrial hemp illegal, the Parties may immediately terminate this Agreement with no further obligations.



Conclusion

- Have a contract.
- Read the contract!
- Have an attorney review the contract.

