Using a Vegetable Sales Contract Wisely

John J. VanSickle

Selling produce is a difficult job even for those who do it for a living. Selling produce requires building relationships and maintaining a trust with customers.

The importance of relationships and communication has led the produce industry into an evolution where sellers' agents have become a critical link in marketing to buyers. These agents are critical to the success of vegetable growers. Some growers are large enough and in the market for extended periods of time. Many of these growers are their own brokers or hire employees who service as brokers for their products. They have developed their relationships with buyers into a resource with remarkable value.

Most growers do not have the time to devote to developing these relationships with buyers and therefore rely on agents to sell their vegetables to buyers. These agents provide an important service to both the growers and the buyers of vegetables.

Even though relationships are important in selling fresh fruits and vegetables, the primary responsibility of growers' agents is to sell the product for the greatest benefit of the grower they represent. Most brokers do that job very well and many growers have come to rely on individuals who have sold their fruits and vegetables for many years.

Verbal contracts have been the only agreements that many growers have used in employing agents to sell their products. While verbal contracts are enforceable in a court of law, difficulty arises in understanding the exact responsibilities agreed to by the parties involved. The greatest insurance to avoiding disputes with agents is to develop and use a contract outlining the responsibilities and expectations of the parties involved. Many growers who have worked with the same agent for many years may not feel it necessary to hold a formal written contract, but even the best of relationships can be strained because of a variety of reasons.

These strains can lead to changes in understandings about the responsibilities of the parties involved in a business relationship. Written agreements can help avoid misunderstandings and any resulting legal actions.

Knowing the importance of written contracts between parties who have worked together for several years should highlight the exceptional importance of holding formal written contracts when

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working with agents you know less about. Growers and their agents need to completely understand what each party expects. Growers may be risking their personal fortunes on the integrity of the agent they are working with in selling their produce. It becomes vital that growers have the best possible sales representatives for their products if they expect to receive fair returns from buyers who are professionals purchasing vegetables every week of the year.

The attached sample contract shows provisions that should be strongly considered by the parties involved. It should serve as a model from which to build a contract specific to your operation. Also, it can be used as a tool from which to negotiate written terms with an agent.

This contract was developed for a north Florida vegetable growing operation that used both a packer and seller for marketing products. After discussing with your agent the terms of the contract that you wish to have included, you should take the contract to your attorney to assure it is sufficiently comprehensive and properly executed.

Several points stand out in the attached sample that should be considered in any contract you negotiate. First, it specifies the objectives of the parties and the responsibilities of each (items 1-3). Items 3 and 4 contain liability disclaimers for each party for problems that may arise from the product or how it was handled.

Item 9 specifies preferences for how the product is to be sold. Item 10 outlines reports that are to be given to the grower during the season. Item 11 requires that the agent follow appropriate procedures to protect growers' rights under the Perishable Agricultural Commodities Act (PACA), which gives growers recourse on buyers who do not pay for purchases in a timely manner.

Item 12 outlines procedures for seeking dispute settlements. It is not uncommon for buyers in some markets to seek price adjustments when the market declines and they have problems holding their margins. Quality is commonly claimed to be a problem when the market goes down as some buyers seek adjustments in price. Procedures need to be specified to assure the agent does not give adjustments just to keep a buyer happy in a declining market. The grower should not have to hold all the risk for declining markets, especially when they seldom are rewarded with higher prices in advancing markets.

Many growers risk several thousand dollars growing a crop only to lose much of it when the market system takes advantage of them. While contracts may specify prices or price ranges, a contract that only specifies responsibilities of the grower and agent removes many uncertainties and lowers risk to growers. It is to the advantage of growers and their agents to formalize their relationship so that misunderstandings are avoided; but even more so to protect the investments in resources given to growing and selling these crops.

**Example of a Grower-Agent Agreement Containing Provisions Beneficial to Both Parties**

This Agreement is entered on ______, 20___, by and between ______________ (“GROWER”) and ______________ (“AGENT”).

GROWER desires to have AGENT act as its sales agent for the marketing of all fruit and vegetable crops produced on its farm. AGENT is willing to do so under the following terms and conditions.

Therefore, GROWER and AGENT agree to the following:

1. GROWER represents that it has the right, title, and authority to deliver the product and that the product is free from all liens and encumbrances, other than from AGENT.

2. AGENT is responsible for the handling, cooling, and marketing of all GROWER’s crops delivered to a shipping/cooling facility as designated by AGENT. AGENT reserves the right to return any crops delivered by GROWER which are not marketable, so long as GROWER receives notification within 24 hours after delivery by GROWER that all or a portion of the crops are rejected. AGENT shall account to
GROWER for each individual shipment received by AGENT.

3. AGENT shall package the crop in suitable shipping containers, identified in accordance with all applicable regulations. GROWER shall comply with all applicable regulations governing the growing, harvesting, and including, but limited to, regulations governing the use of agricultural chemicals. GROWER shall bear the burden, financial or otherwise, of such compliance.

4. GROWER and AGENT agree, should GROWER be found responsible in a product liability case, GROWER would be responsible for the cost of litigation. AGENT agrees GROWER is not responsible for any packing or misbranding violation, or product liability suit caused by AGENT.

5. Upon the request of GROWER and mutual consent of both parties, AGENT may, at its option, advance funds to GROWER for the purchase of seed or furnish seed to GROWER. AGENT does not guarantee anything as to the seed it supplies to GROWER with respect to germination, trueness to type, or any other factor.

- A promissory note, signed by GROWER, payable to AGENT, will be required as a guarantee for all advances.

7. AGENT will continue to be the exclusive agent so long as GROWER is indebted to AGENT for balance due to AGENT.

8. AGENT agrees to pay GROWER the gross sales price, less packing and sales charges as follows:

- Item
- Unit
- Packing Charge
- Selling Commission
- AGENT shall receive the selling commission AFTER packing and handling charges have been deducted.

10. AGENT may secure transportation and will invoice for the produce.

11. AGENT shall make all efforts to sell the crop f.o.b. shipping point, provided, however, that, if in its sole opinion, a better price may be obtained by selling through local or destination brokers or by shipping the crop for delivered sales, joint account, or on a consignment basis or reconsignment. Any expense incurred shall be deducted from the proceeds received from the sales of the crop.

12. AGENT will make periodic reports to GROWER concerning the following: sales; adjustments; claim status; and any other valuable and necessary information. Prices quoted by any employee to AGENT, or its representative, are not guaranteed. They are only to be used as approximations of market conditions at that particular time. AGENT will remit with 21-28 days from receipt of product, except for troubled loads. Payment on troubled loads will be made as quickly as possible.

13. AGENT and GROWER agree that on all sales of GROWER's product, AGENT shall file trust notices as required by the Perishable Agricultural Commodities Act (PACA) 7 U.S.C. 499e(c). AGENT understands the following trust provisions, which are necessary to preserve GROWER's claim. Trust Notices must be filed within 39 days of the date payment is due, on all accounts past due. AGENT shall file the trust notice with the debtor, PACA, and GROWER. AGENT further understands if its payment terms are longer than 10 days, it must have a written payment agreement with its customer before it ships or sells GROWER's product to this customer. AGENT further agrees it is responsible for any losses by GROWER, due to its failure to properly file trust notices as required in connection with any transaction, as set forth in Section 46.46(2) of the PACA.

14. GROWER and AGENT agree that AGENT will make its best effort to settle disputed or troubled loads, unpaid accounts, and slow pay accounts. AGENT agrees all adjustments and credits must have a U.S.D.A. inspection before adjustments or credits are granted to its...
customers. In the event an inspection shows product quality defects not caused by the buyer, AGENT agrees to use its best effort to settle the load with a reduction of the sales price, or have the buyer prove damages, rather than entering into a consignment, open, or price after sale contract. In the event U.S.D.A. does not perform inspections at the customer’s location, AGENT agrees to contact GROWER within 24 hours after the product’s arrival with this information.

15. AGENT has the right to settle any and all freight claims in its own name or that of its designee without any further contest.

16. Neither party may assign its interest in this Agreement without the written consent of the other party, and consent may be withheld for any reason.

17. The terms and conditions of this Agreement shall extend to and be binding upon the AGENT and GROWER, their representatives, heirs, executors, administrators, successors, and assignees, and may not be terminated, changed, or amended orally.

18. This Agreement supersedes any and all understandings and agreements between the parties, whether oral or written, and this Agreement represents the entire agreement between the parties. No prior representation or inducement, oral or written, which is not included in the Agreement, shall have any fore or effect.

19. This Agreement may not be changed or terminated orally. It may be amended or modified only in writing, signed by each of the parties.

20. This Agreement shall continue until any balance owed to AGENT is paid in full at which point GROWER is released and discharged from any obligations hereunder.

21. GROWER must provide AGENT with name, address, phone number, and Federal ID or Social Security number upon delivering produce to AGENT. The first remittance of each season will be mailed to GROWER to verify address.

22. It is agreed that a signed page, whether copied or faxed, has the same legal standing as an original.

AGENT's Name
Signed by:

GROWER's Name
Signed by: