



QC (US) Marketing

1005 15TH Street
Lubbock, Texas 79401

Telephone 806-745-2846
Facsimile 806-745-2696

740 E. Campbell Rd, Suite 470
Richardson, TX 75081

Telephone 214-965-0070
Facsimile 214-965-0082

CASH PURCHASE (BASIS) FIXED BALE CONTRACT Texas 2011/2012 Crop

First Harvested, successive gin run, un-culled

SELLER:	DATE:
GROWER ACCOUNT NO:	CONTRACT NO:
GIN:	

This contract is made and entered into on contract date at Lubbock, Texas, between seller name ("Seller") and **QC (US) Marketing Inc.** ("Buyer") (the "Contract").

In CONSIDERATION of the mutual promises and obligations contained herein, the sufficiency of which is acknowledged, the parties agree as follows:

- Bale Commitment. Seller is the owner of the cotton bales to be produced in the 2011/2012 crop year and to be delivered to this contract. The cotton bales subject to this Contract (the "Cotton") shall be:

Total Bales Contracted _____, FSA Farm Number _____ Crop Year 2011/2012, County _____, State _____.

- Price. Buyer will pay Seller the following price FOB Cars based on official USDA Class:

BASE PRICE SHALL BE _____ CENTS PER POUND. QUALITY BASED ON GRADE OF 31-3-36, G5 (3.5-4.9) MICRONAIRE, 25.5 GPT min; 79.5 UNIFORMITY min, NO REMARKS

QUALITY DEDUCTIONS

2011 Govt. Loan Discounts Apply Below Base Grade 31-3-36
2011 Govt. Loan differences to apply on other qualities of Micronaire, strength, Uniformity, Bark and other Discounts
Bales with Micronaire 3.4 or lower and 5.0 or Higher and bales containing Bark and other Extraneous Matter Receive an additional 200pt discount (Either/Or, but not cumulative)
Government loan premiums will not apply
Below grade cotton is not deliverable on this contract. An offer to purchase this grade cotton will be made to seller at prevailing market price at time of delivery.

- Guaranteed Delivery
 - Seller guarantees to deliver the full number of bales contracted above as listed in 1. Bale Commitment.
 - In the case of a full or partial crop failure, the buyer will grant the seller permission to substitute Bales from other farms or sources equivalent to that of the contracted bales.
 - In the event of and upon notification by seller of insufficient production to fully satisfy the contracted the bale commitment, buyer, will assess its option to execute one of the following options:
 - Cancel the balance of the undelivered portion of the contract.
 - If bales are on call – Allow the seller to roll the bales due to the 2012/2013 crop at the same basis
 - If bales are fixed price – Allow the seller to roll the balance of the fixed price bales to the 2012/2013 crop at market differences but with no fee or penalty.
 - In the event that the Buyer allows the seller to roll either on-call or fixed price bales, the sellers inability to deliver the full number of bales contracted and not satisfied by the delivery of the following crop year will entitle buyer to recover damages based on market losses or cost of cover along with all other remedies provided herein and under applicable law.
- Terms and Specifications. The parties agree that the following terms and specifications shall apply:
 - Grower certifies they have power of attorney to commit landlord acres (if applicable) to contract
 - The American Cotton Shippers Association ("ACSA") trade rules, including arbitration, shall apply to this Contract;
 - F.O.B. Cars, Trucks
 - Bales weighing less than 380 lbs. or more than 575 lbs. will be penalized \$10 per bale.
 - Cotton shall be delivered no later than 30 days after date of USDA Class. A Two-cent penalty will apply to cotton after this date.

This contract incorporates all terms printed overleaf.

Please return the enclosed duplicate duly signed and stamped.

Witness our signatures as of the day and year first above written. Parties have executed the instrument in duplicate.

Seller:

Buyer: QC (US) Marketing Inc.

By: _____

By: _____

1. Additional Terms and Conditions.

- a. **Other General Terms.** In the event of breach of this Contract by any party, the party in breach agrees to pay all court or arbitration fees and costs, together with reasonable attorney's fees and expenses, to the other party. Any party may enforce specific performance of this Contract, with all fees and costs thereof to be paid by the party in breach.
- b. **Governing Law / Jurisdiction.** It is acknowledged that this Contract is accepted by Buyer in the State of Texas, and shall be governed by and interpreted in accordance with the laws of said State. Should any litigation arise out of or occur because of the breach of this contract, both parties agree to submit to the jurisdiction of any State or Federal court in Lubbock, Texas, empowered to hear and determine such dispute.
- c. **Successors and Assigns.** This Contract shall be binding upon, and inure to the benefit of, the heirs, executors, administrators, successors, and assigns of the parties hereto; provided, however, that Seller shall not assign this contract or any of the rights, duties, or obligations under this Contract without the prior written consent of Buyer. Seller hereby consents to Buyer's assignment of this Contract or any of the rights, duties, or obligations under this Contract to any third party.
- d. **Performance Excused.** Either party shall be excused from performing their respective obligations, either in part or in total, under this Agreement so long as and to the extent that, the performance shall be made impossible, impracticable, or unlawful by war, organized labor disputes, any act or orders of governmental authorities.
- e. **Severability.** If any portion of this Contract is challenged by any person not a party hereto, then the parties to this Contract shall defend the Contract. If any portion of this Contract is found to be unlawful, then all portions that are not declared to be unlawful shall remain in full force and effect to the fullest extent permitted by law.
- f. **Entire Contract.** This Contract and The Purchase Confirmation constitutes the entire agreement between the parties concerning the subject matter herein described and replaces and supersedes any and all oral statements, prior negotiations, and proposed agreements, written or otherwise. All words, phrases, sentences, and paragraphs, are material to the execution of the Contract. Each of the signatories hereto acknowledges that no other party, nor any agent or attorney of any other party, has made any promise, representation, or warranty whatsoever, expressed or implied, not contained herein concerning the subject matter hereof in an effort to induce them to execute this Contract, and acknowledge that each of them has not executed this Contract in reliance on any such promise, representation, or warranty not expressly contained herein.
- g. **Modifications.** No provision of this Contract may be amended, modified, supplemented, or terminated unless all of the parties hereto consent in writing.
- h. **Further Assurances.** The parties agree to execute any additional documents that may be required to effectuate the intent and purpose of this Contract.
- i. **Counterparts.** This Contract may be executed in counterparts, each of which when taken together shall be deemed the original document for all purposes.
- j. **Waiver.** No waiver or any breach of any term, condition, or provision of this Contract shall constitute a waiver of any other breach of any other term, condition, or provision, and no consent of one party to any breach by the other shall be effective unless such waiver shall be in writing and shall be signed by both the waiving and non-waiving party or a duly authorized agent thereof, and same shall be effective only for a period, on the condition, and for the specific instances and purposes specified in such writing. No notice to or demand on the non-waiving party in any case shall entitle the non-waiving party to any other or further notice or demand in similar of other circumstances.
- k. **Authority to Execute.** The person executing this Contract on behalf of a party that is a corporation, partnership, or limited liability company respectfully represents and warrants that: (a) they are authorized by their respective undersigned entities to execute this Contract; and, (b) they are acting within the scope of their authority as officers, members, or duly authorized representative of their respective entities which are party signatories of this Contract. These representations and warranties are in addition to, and not in derogation of, all representations and warranties implied by law.
- l. **Seller Warranties.** Seller warrants and represents: (1) Seller is the legal owner of, and is entitled to dispose of, the Cotton, and on the date on which title is to pass under this Contract, the Cotton is not subject to any liens, charges, or encumbrances; and (2) Seller shall plant, grow, produce, and harvest the Cotton in a good, proper, and husbandry-like manner, and shall use Seller's best efforts to grow and produce good and merchantable quality cotton.
- m. **Attorneys' Fees.** Should any action or proceeding be commenced between the parties concerning any provision of this Contract, or the rights and duties of any party in relation thereto, the prevailing party shall be entitled, in addition to such other relief as may be granted, to recover from the losing party all costs and expenses, including reasonable attorneys', paralegals', and other professionals' fees and costs, incurred by such prevailing party in such action or proceeding and in any appeal there from
- n. **SUBSIDY PAYMENTS:** As Between the parties, Seller, not Buyer is entitled to Loan Deficiency Payment, if any. Buyer, not Seller, is entitled to First Handler Payment, if any. This contract is not conditioned on Seller's entitlement to any U.S.D.A. loan deficiency payment, cotton allotment or subsidy payment, whether in cash or in kind. Seller's obligations to plant, cultivate, harvest and deliver, together with all other obligations under this contract, shall not be decreased or increased on account of any transfer, loss, decrease or increase of any cotton allotment or any entitlement to any subsidy payment.

2. Condition of Title. Seller acknowledges that the following, and only the following liens, encumbrances or prior interests, are currently in effect against the Cotton:

Unless stated above, Seller represents and warrants there are no liens, encumbrances, or prior interests currently in effect against the Cotton. Seller shall advise Buyer immediately should any changes occur with liens, encumbrances, or prior interests against the Cotton.

3. Delivery/Risk of Loss. For purposes of this Contract, title, control, and risk of loss shall pass to Buyer upon Seller's delivery of warehouse receipts to Buyer.