

What to look for in CATTLE SALES CONTRACTS

Agricultural Extension Service
College of Agriculture ☆ University of Idaho

Ed Duren and R. Wayne Robinson*

Contracting to sell feeder cattle for fall delivery is a popular method of marketing cattle in Idaho. A contract guarantees the producer a specific price in advance of actual delivery date if the buyer meets the terms of the document. The buyer is assured of cattle purchases in advance for a specified price. A sales contract can be termed price insurance for both the buyer and seller.

Many types of livestock contracts are available. Buyer and seller will usually need to select and revise or adjust a contract to fit each individual sale.

This publication discusses the important points that should be included in cattle sales contracts to prevent misunderstanding and protect the parties involved in the contract. It describes certain legal requirements of these contracts as well as such specific topics as description of animals, payment and delivery conditions and shrinkage calculations.

LEGAL ASPECTS

A cattle sales contract is a written agreement between two or more persons. As a legal contract, it should contain in detail all terms and conditions of the sale to prevent misunderstandings.

Cattle sales contracts are enforceable by law. **It is highly advisable to seek legal counsel in drafting one.**

A fraudulent contract may result from known or willful misrepresentation of material fact by either party. A contract which is fraudulent, or entered into under duress, threat or force is voidable by the in-

nocent party. A breach of contract, or failure to perform the essential obligations imposed by the contract, may result in an assessment of damages.

Parties to a contract should have complete understanding of their rights and obligations. In the event of disagreement, an unbiased individual should be selected by both parties to arbitrate the differences and assure fair execution of the contract provisions. Terms of the arbitration — who pays the cost — how the arbitrator is selected — should be precise.

The names and addresses of the parties involved should be correctly listed in the contract. On completing the agreement these individuals or their representatives should sign the contract before a witness. It is desirable to select a witness who is a notary public. The witness is requested to sign and to seal the contract. The contract must be dated in accordance with the date of sale or agreement, and both buyer and seller should receive a copy.

Essential Contract Items

- Date of contract.
- Names and addresses of both parties to the contract.
- Amount of deposit to bind both parties to the contracts and to insure performance of the provisions included.
- The seller must guarantee a clear title.
- Livestock should be clearly described in terms both parties can understand.
- The contract should clearly indicate: (a) that this is a price per pound, per hundredweight or per head, (b) delivery date or dates, (c) place of delivery and weighing and (d) method of calculating shrinkage.
- Who is to select livestock for shipment (buyer or seller) and who bears the cost of further feeding, if livestock is not accepted on specified delivery dates.
- Causes that seller may use for withholding certain livestock and a limitation on the number or percentage of livestock that may be rejected for all causes by the buyer.
- Balance of purchase money to be paid at time of delivery (The seller should be permitted to hold deposits as liquefied damages if the buyer refuses to accept delivery of livestock as specified in the contract).
- Some provision should be made for arbitration after consultation with counsel.
- The contract must: (a) be signed by both buyer and seller, (b) contain a waiver from the lienholder if there is a mortgage or lien on the livestock. It may indicate a bank from which the funds for the purchase of the livestock are payable.
- Does buyer have authorization to act as agent for the company he claims to represent? Unless the buyer is an authorized agent, the company will probably have no liability for his acts and producer recourse is limited to the buyer's individual financial ability.
- At least two copies should be made of every contract so buyer and seller may have identical copies.

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* Area Extension Livestock Agent serving Caribou, Bear Lake and Franklin Counties and Extension Economist, respectively.

DESCRIPTION OF ANIMALS

A clear and distinct livestock description should be written on the contract forms. In a cattle sale, this would include number, breed, age, sex and identification. The identification may be earcrop, wattle, brand, color pattern or tag. Cattle should be delivered free of contagious disease, unsoundness and injury. Unusual health conditions should be listed in case of unsoundness, or injury.

To prevent outbreak of contagious disease, the cattle must be inspected by a licensed veterinarian prior to shipment.

It is desirable for the contract to specify the number or percentage of cattle which may be rejected or withheld from delivery for all causes by the buyer or the seller. The specific reasons the seller may have for withholding cattle from sale should be included in the contract, for example, the number of breeding heifers retained for brood cows.

PAYMENT CONDITIONS

The seller must furnish a clear title on the livestock delivered. If there is a mortgage or lien on the cattle, the contract must contain a waiver signed by the lienholder, thus providing the buyer with clear title. Good contracts usually contain a waiver similar to the following:

"The undersigned holder of a mortgage, lien or security interest on the livestock described, in consideration of \$1.00, receipt whereof is hereby acknowledged, and other valuable consideration, here-

by consents to the sale of said cattle to _____

_____ free of such mortgage, lien or security interest."¹

The waiver clause should be signed by both a witness and mortgagee or other secured party.

On the day of agreement, a deposit should be provided the seller by the buyer. A sizeable financial deposit, from a practical point of view, prevents the use of contracts as mere options to purchase for speculative purposes with no intention to accept cattle delivery. Studies of contracts suggest a minimum of 15 percent as down payment. The contract should indicate that the balance is to be paid at the time of delivery and may designate a state or local bank from which payment is to be made. The seller should reserve the right to retain the advance deposit as damages in the event the buyer refuses to accept delivery of the cattle in accordance with contract terms.

¹ Utah Extension Bulletin 211, 1950, **Livestock Purchases and Sales Contracts**, by Morris H. Taylor, Extension Livestock Marketing Specialist, Utah State University.

DELIVERY CONDITIONS

The sale price should be agreed on in terms of a price per pound, per hundredweight or per head for each lot of cattle. This should be listed on the contract in accordance with the number and description for the lot. The delivery date and location is to be agreed on by both the buyer and seller. If delivery is not accepted at the ranch, the transportation responsibility to a given location for weighing should be listed on the contract. The contract should also specify who will assume any additional handling and feeding costs. It is the seller's responsibility to provide a brand and health certificate to the buyer on the day of delivery.

WEIGHING CONDITIONS AND SHRINKAGE

Sale cattle should be weighed on a state-licensed scale by a bonded weighmaster. Shrinkage amount, condition and method of calculation must be determined and listed on the document to avoid misunderstanding. **Further, seller and buyer should agree who will assume the weighing expense.** If the seller pays these expenses, he should allow for them in quoting the price at the ranch. Weighing away from the ranch involves certain incidental expenses — transportation, yardage and commissions.

If cattle are moved and weighed at a scale away from the ranch, the amount of cattle shrinkage increases. If cattle are sold with a "pencil shrink" and are weighed early in the morning after an overnight stand, the buyer will get the benefit of two shrinkages in the weight. The seller should know how much this will be and allow for it.

The highest price per pound doesn't necessarily mean the highest return per animal. It depends on how many pounds are counted. A lower price per pound for cattle as they stand at the seller's ranch can be more profitable than a higher price when the buyer is allowed to subtract too many pounds for shrinkage. For example, suppose the seller has two offers — one for \$24 per cwt for 400 pound steer calves without a shrinkage allowance, and another for \$25 with a 4 percent shrink. Which deal is more profitable? Each offer will net the seller \$96 per head. The \$24 per cwt at the ranch is the same as \$25 per cwt delivered with a 4 percent pencil shrink, other sale conditions remaining equal.

SUMMARY

Many types of livestock contracts are available. In most cases, the individual buyer or seller will need to revise or adjust a common contract to fit his individual needs and situation. No standard contract will fit all cases. For this reason, it is to the interest of both the buyers and sellers to seek legal counsel in drafting a sales document.

Example of a Cattle Sales and Purchase Contract

This Contract made on _____ day of _____, 196____, by and between _____, of _____ hereinafter known as SELLER, and _____, of _____ hereinafter known as BUYER: seller agrees to sell and buyer agrees to buy the following described cattle, for the consideration of the sum of \$_____, partial payment, the receipt of which is hereby acknowledged by the SELLER, balance of purchase price to be paid upon completion of contract on delivery day.

NUMBER	DESCRIPTION	BRANDED	PRICE PER

These _____ are now located on _____ and are to remain on _____ until delivered. Delivery to be made on _____ day of _____, 196____ to _____ yards in _____. All cattle are to be delivered free of contagious disease, injury and unsoundness. Crippled, lame, blind-eyed, loosed, lumpjawed or otherwise deformed animals may be rejected by the buyer.

It is further agreed by both parties, _____ percent of the cattle is the maximum number which may be rejected or withheld by the buyer or seller.

Federal and state health and brand certificates are to be furnished by the SELLER to the BUYER free of charge on delivery. All cattle to be delivered free of all encumbrances and with a clear title.

It is further agreed by both parties that, should the parties to this contract fail to agree upon the classification of above livestock, they are each to select a man and the two, if they fail to agree, to select a third man, all of whom are to be practical cowmen, and their decision is to be final. Costs of arbitration to be shared equally by buyer and seller.

REMARKS: _____

Buyer

Witness

Seller

Example of an Open Heifer Guarantee

I, _____, on this _____ day of _____, 19____, do hereby guarantee _____ head of heifers open. If any of said heifers are found to be with calf I will refund _____ dollars per hundred on the purchase price of the individual heifers found with calf, and will pay this refund on the average weight of said heifers at the time of purchase.

Proof that heifers were with calf at time of sale must be in the form of a notarized certificate by a licensed veterinarian, and must be brought to my attention in writing and with appropriate brand identification within a period of 90 days from delivery. Heifers must be held by the buyer ten days after notice to permit inspection by seller.


Signed _____

This contract is for guarantee of open heifers. The same sample form can be revised slightly by changing the word "open" to "bred" and the word "with" to "without" in the contract form so that it will fit the sales of bred heifers.

The use of a **heifer guarantee** will encourage buyers to purchase with confidence in the seller. Heifers may be purchased either open or bred. In either case, the seller assures the buyer the lot is uniform in this condition. In the event bred heifers are sold, a signed affidavit from the veterinarian should be attached to the guarantee. Heifers should be pregnancy-examined several days prior to the delivery date.

The contracts and contract suggestions in this publication are provided as guidance for livestock farmers who are contracting cattle alone or with the assistance of competent legal advice. The information contained herein is not intended to be a substitute for legal service.

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JAMES E. KRAUS, *Director*