



# FAQ: Building Good Contracts and Sales Agreements

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**DISCLAIMER:** This guide does not provide legal advice or establish an attorney-client relationship between the reader and author. Always consult an attorney regarding your specific situation.

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Written sales contracts are powerful because we can make them say what we want—they can reflect the desires and concerns of all participants in sales transactions, and can reflect your effort, as a sustainable farmer, to preserve your values and priorities in the business arrangements you make.

We also believe farms are more successful when they use clear paperwork to make agreements and solve problems in a cooperative manner. Here are some frequently asked questions about making such agreements.



## What provisions are most helpful to include in my CSA membership agreement?

Customers new to CSAs may expect them to work like supermarkets, with easy access to the foods they've come to expect. Communicating about both the normal practices of CSAs, the nature of shared risk, and your own technological limitations helps educate and shape the expectations of both new and experienced customers. Good communication through a membership agreement can help the farm retain and attract good members.

Every CSA membership agreement ought to include, at a minimum: (1) membership/ share provisions (including but not limited to the size of shares, how much customers can expect, and the start and end dates of seasons), (2) how members will receive their shares, (3) how and when payments will be collected, and (4) whether risk and reward is shared (what happens if harvest comes up short, whether there will be refunds or not, whether products will be replaced, and similar questions).

Other provisions commonly found in CSA agreements include whether visitors to the farm are welcome, how members should communicate with you, and whether you sell to other markets and, if so, how you will prioritize your shares between that market and your CSA members.

When creating these agreements, it's helpful to be aware of the limits of your own resources (e.g., can you accept both cash and credit cards?), and the expectations and experience of your target market (are they new to CSAs? Do they understand shared risk?). Use specific, detailed language throughout your agreement, and ask others to tell you if it's easy to understand.

**FOR MORE INFORMATION:** *Read Farm Commons' CSA Member Agreement Workbook. That resource contains instructions and several examples of good member agreements. Farm Commons' Building a Legally Resilient CSA Program Workbook contains instructions and insights on all aspects of CSA operations, from business formation to drop-off points and more.*



## I have a large buyer who wants me to sign a boilerplate agreement. What should I do?

If you need the sales offered by the large buyer, and are given no choice but to sign the agreement, you may not be able to negotiate its terms. Still, there are things you can do to respond to the long-term issue of dealing with large buyers on undesirable terms. Above all, the more you know, the better off you'll be.

Although you can often work out agreements with smaller wholesale buyers, with larger entities your hands are often tied, and you'll need to make personal decisions about whether their terms are reasonable and what you and your business can live with. Knowing your own boundaries, values, and objectives can help you have appropriate expectations so you don't feel like the buyer is taking advantage of you.

If you don't like the terms and the vendor won't change them, you can also talk to other farmers who do business with the vendor. How do they feel? Would they be open to joining you in negotiating with that vendor or possibly switching to a better one? That might be difficult if there aren't other big vendors to choose from, but it doesn't hurt to communicate with other producers. Knowing about other farmers' experiences is always helpful.

Even if you don't have a lot of power to negotiate with large distributors, you should at least know the terms of the boilerplate agreement, read it carefully and even run it by an attorney if you have questions. It's better to ask an attorney those questions than it is to ask the large distributor, who just wants you to quickly sign the agreement. Start with our resources below to learn more about what boilerplate provisions mean and how they are enforced.

**FOR MORE INFORMATION:** *Read Farm Commons' Solidifying Wholesale Sales with Written Agreements: A Workbook and Farmer's Guide to Negotiating and Drafting an Agreement to learn more about how to form your own expectations and negotiating positions. Farmers' Legal Action Group (FLAG, their website is flaginc.org) also has a resource, Farmers' Guide to Organic Contracts, covering the realities of negotiating with buyers and offering some suggestions on what farmers can do when they must accept provisions they don't like. Also, Farm Commons' 2017 podcast episode "Will Sign for Food! Contracts and Sales" includes a brief discussion with an attorney on boilerplate contracts.*

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## Some of my retail and restaurant customers don't pay on time or have last-minute cancellations. Is there anything I can do about this that isn't costly or drastic?

Communicate clearly and often, and then memorialize your understanding as a written agreement. Sometimes it seems like every small retail and restaurant business has its own unique way of handling payments, scheduling, cancellation policies, and so on. It can be challenging, but building solid relationships starts with a long conversation about these issues. Once the farmer and the buyer are on the same page, it is pretty easy to document that understanding. Writing it down helps both parties remember the details. (It also makes it easier to enforce the agreement, although farmers and their buyers are unlikely to choose such a strategy.)

Clear communication also includes ongoing conversations, which may be in the form of emails, texts, and phone calls, as appropriate to the business and situation. Many farmers regularly review the main points of the agreement and ask if any questions or concerns have arisen. Clear invoicing is also helpful in getting paid in a timely manner. The things on the invoice ought to be "old news" by the time the buyer receives it, which can be helpful as no one likes surprises on an invoice.

**FOR MORE INFORMATION:** *Read Farm Commons' Building Strong, Legally Enforceable Sales Relationships with Availability Sheets and Invoices, which has a checklist you can go through to create a binding and clear agreement that works for you and your customers.*



## Do I need insurance for wholesaling?

Yes, you do. Typically, wholesale distributors and grocery stores require farmers to carry commercial liability insurance covering anywhere from \$1 million to \$5 million dollars. You will want to talk to your insurance agent to confirm what your policy provides.

Most sales agreements also include what's called a "Risk of Loss" provision. This specifies when each party bears the risk if the product is damaged or lost. It's important for both parties to know—and for your agreement to specify—when the risk shifts from the farmer to the buyer. For example, who is responsible for the product between the time it leaves the farm and the time it arrives at the buyer's door? Does the third-party delivery service (if you use one) have its own insurance to cover loss while in transit?

Additionally, most sales agreements include an "indemnification" clause, a promise by the other party to cover losses if they do something that causes you harm or causes a third party to sue you. A commercial liability policy may cover you for incidents arising under indemnification clauses, but be sure to review your policy or ask your agent to confirm that such coverage exists.

**FOR MORE INFORMATION:** Read pages 19–20 of *Farm Commons' Solidifying Wholesale Sales with Written Agreements: A Workbook*. Talk to other farmers who distribute to wholesalers and to an insurance agent.



## I've heard contracting ahead of production is a good idea. How can I be sure my customer understands and shares the risks?

Use clear communication when constructing a production contract—and throughout your entire relationship with your customer. Production contracts can work well for some farmers. But if the risks of something going wrong, from failed crops to liability for foodborne illnesses, fall entirely on the farmer, it's not a good or profitable venture.

Discussing and agreeing on shared risks means both you and the customer understand the "what ifs" and the possibilities that things could go wrong and the harvest may not be what everyone wants it to be. Communication happens at many points along the process of coming to an agreement and going forward with providing a service. Each point of contact is an opportunity for farmers to build a strong relationship that never encounters legal trouble.

Your production agreement will have a lot of details. You'll need to agree on methods of planting and production, quality standards, harvest, transportation, and payment, plus a few other things. In each instance, you need to be aware of your own expectations and those of your customer, and discuss whether each provision fulfills everyone's expectations—or where compromises need to be made.

You can also take additional risk-mitigation measures, like obtaining crop insurance for bad weather or infestations, or liability insurance for foodborne illnesses. When working with large buyers, be aware of the Perishable Agricultural Commodities Act (PACA), a law designed to protect farmers from unfair business practices. There may be PACA provisions that protect you if you feel like your large buyer customer isn't living up to their end of the deal.

**FOR MORE INFORMATION:** *Read Farm Commons' Building Strong, Legally Enforceable Sales Agreements for Production Services, which includes a model production agreement.*

## About Farm Commons

Farm Commons is a nonprofit organization dedicated to empowering sustainable farmers with the legal resources they need. We create practical, user-friendly educational resources. We also support sustainable farmers in proactively implementing legal best practices, collaborating on innovative legal solutions, and encouraging each other as leaders creating the change they seek.



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