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QUESTIONS TO ASK BEFORE ENTERING INTO CONTRACT VEGETABLE PRODUCTION

August 2013
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Farming is a risky business. One of the risks is in selling what you grow, and as the old adage goes, "Don't plant a seed until you have a market." Contracting with a buyer before the crop is produced is one way to potentially reduce some of the risk, as your market will already be in place. Vegetable production contracts are common; yet more and more involve unique aspects of specialty crop production such as organic production and season extension techniques, as well as food safety considerations. A contract is a business transaction and a legally binding document. Consider having a lawyer familiar with agricultural production review the contract. Before entering into any contract, it is important to read the contract carefully and make sure you understand all of the terms within it. If you do not understand something, continue to ask questions until you understand all terms and expectations. Below are questions to ask before entering into any vegetable production agreement, with special attention to alternative production techniques.

General Questions

1. If you are required to make an investment to enter into the agreement, ask for detailed written information on what the buyer will provide to you in exchange for your investment. For example: How long will the agreement last (one year, multiple years)? Will the contract last long enough to allow you to recover any investments?

2. Is there a specific production protocol to be followed or does the contract bind you to undefined "best management practices"?

3. Who is liable if the vegetable seed/transplants I buy or receive turn out to be defective?

4. Who determines which (organic or conventional) chemicals you can use on the crop and when you can use them?

5. What happens if weather delays or prevents the harvest? Who bears the risk of loss?

6. Does the contract allow the buyer to inspect the farm?

7. Does the buyer have any food safety requirements?

8. Does a “passed-acres” clause allow the buyer to decide not to harvest some of the crop, or are they obligated to take all you produce?

9. Are there packaging requirements? If so, will the buyer supply the packaging?

10. Will the crop be stored? If so, where and how? Can you visit/inspect their handling/packaging/shipping facilities?

11. Who is responsible for sorting and grading the produce? To which quality standards will the produce be held (U.S. Department of Agriculture or direct market standards or other)? Who determines the quality of the crop received, and can you appeal any determinations that reduce its value under the contract? After pick-up/delivery (and inspection), how soon must the buyer accept or reject deliveries?

12. If the company refuses to take my crop or releases it, what can I do with it? Are there alternative local markets?

13. How much will you be paid? Are you guaranteed a minimum price per unit? If a potential income range is suggested, ask for a detailed description of how was this range of income derived? When will you be paid? Who will be paying you?

14. If a legal dispute develops, what state will have jurisdiction?

15. When possible, ask other farmers in your area who have worked with the contracting company if they have been happy with services received. Also, will the buyer provide you with a list of growers they have worked with during the past growing season that you can make site visits to and discuss interactions with the buyer? Is the contracting company responsive to the farmer’s questions, providing quick and clear answers?

Many of the questions in this section were taken from “A Farmers Legal Guide to Production Contracts” with permission from Neil Hamilton.

Certified Organic Production

Organic certification provides customers assurance that a product has been grown using organic production methods. For the grower, organic certification can provide access to price premiums and specialty markets. However, organic certification will be an added farm expense and the cost of certification will vary depending on the certifying agency’s fee schedule, farm size, gross farm sales and distance traveled by the inspector. Producers must recertify each year and pay annual inspection fees to maintain the certification. To be eligible for certification, prohibited substances, such as synthetic fertilizers and pesticides, must not have been applied to the land for a period of three years immediately before crop harvest. During the three-year transition period, yields may be lower than those of conventionally produced crops, however, the price premiums obtained may offset the reduced yield. Additionally, organic production can be more labor and management intensive than conventional cropping systems, and growers must follow the USDA

National Organic Program Standards, which provide specific crop production requirements beyond the scope of this publication, but more information can be found at http://organics.tennessee.edu. Here are additional questions to ask if you are considering an organic vegetable production contract:

1. How does the contract address organic certification and enforcement? Does the buyer require a particular organic certifying agency?

2. Does the contract provide support for an organic transition?

3. How does the contract address pesticide residues and other prohibited substances?

4. Does the contract have specific isolation, buffer, or other anti-contamination requirements?

5. Does the contract address "split operations" or the presence of nonorganic crops or animals?

6. Does the contract require you to go beyond the National Organic Program standards?

7. Does the buyer require a set rotation plan to comply with the organic standards?

8. Does the contract give the buyer access to your organic records (or to your certifier's records)?

9. What happens if the buyer damages or contaminates the organic products during delivery, subsequent handling, and/or processing?

These questions were used with permission from Amanda Heyman from "Farmers' Guide to Organic Contracts."

Greenhouse or High Tunnel Production

Greenhouses and high tunnels offer the opportunity for season extension, increased yield and increased quality of vegetable crops. Both greenhouses and high tunnels require additional expenses and management over field production. However, these two structures are very different from both a production and taxation standpoint. Production specifics for each of these systems are beyond the scope of this publication, but more information can be found at http://vegetables.tennessee.edu under "Helpful Links." Here are a few basic questions to ask about these structures:

1. Is your property zoned for an agricultural structure?

2. Is the structure exempt from property taxation?

3. If the buyer will build the structure on your farm, who will choose the site/orientation for the structure (you or the buyer)? How will the site be prepared before construction?

Write it down!

From the start of the partnership, be sure to get everything in writing. If the terms of the contract change, do not accept verbal changes. Make sure all changes to the contract are written. Keep good records of your production practices as well as records of all communication with the buyer, as you may need to refer back to them later should a problem arise.

References

Hamilton, Neil, 1995. *A Farmers Legal Guide to Production Contracts*, Farm Journal Publishing, 145 p.
http://www.nationalaglawcenter.org/assets/articles/hamilton_productioncontracts.pdf

Heyman, Amanda N., 2012. *Farmers' Guide to Organic Contracts*, Farmer's Legal Action Group, St. Paul, MN. 300 p.
http://www.flaginc.org/wp-content/uploads/2013/03/FGOC2012.pdf

The questions provided here are intended for general educational information only. For legal advice about your particular situation, consult an attorney who is licensed to practice law in your state.