



FARM COMMONS

# Sales Module:

## Legal Curricula for Beginning Sustainable Farmer Education

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# Objectives for the Sales Module

## **Beginning farmers should know the following:**

1. The obligation to collect sales tax and how to determine the applicable rate
2. The protection offered by a thorough sales contract that includes the following:
  - Product identification
  - Payment details
  - Quality standards
  - Delivery and shipment
  - Handling instructions
  - Change order and cancellation procedures
3. The importance of a CSA membership agreement. Specifically that:
  - Absent a clear agreement to the contrary, farmers may be responsible for production failure
  - Clear communication about the consequences of missing share pick-ups is essential to allocate responsibility
4. In the unlikely event that clear communication in advance fails to prevent problems, small claims court is available to resolve disputes
5. Farmers who sell to large brokers, distributors, and retailers have the federal PACA office available to resolve disputes

## **Beginning farmers should be able to do the following:**

1. Determine the relevant tax rate; maintain the appropriate sales tax records
2. Draft a basic sales contract
3. Draft a basic CSA membership agreement

## Sales Tax

Sales tax is a familiar concept to anyone who sells products in Illinois. Sales tax is an additional charge on a sale that is calculated as a percentage of the sale price. The tax is collected by the business and remitted to the state. Legally speaking, the details are a bit more complex. The legal source of sales tax is a law called the Illinois Retailers' Occupation Tax, and it is designed as a tax on the business for the privilege of engaging in retail sales in Illinois. Occupation tax is owed by the business. Despite that legal clarification, in practice, Illinois sales tax works just like it does in every other state. The person buying the product pays the tax at the time of purchase. This is because the business owner passes responsibility for the occupation tax through to the buyer. In effect, the business owner reimburses him or herself for the tax. Because the tax is technically applied to the business, the tax is calculated according to the location of the business. Each municipality, village, or other unit of government may charge additional taxes on sales. As a result, each location may have a different total sales tax. Occupation tax and other local taxes are all lumped together in a single tax referred to as the "sales tax."

Food items are subject to sales tax. Different tax rates apply depending on whether the food is sold for immediate or later consumption. Food sold for human consumption off the premises is taxed at a 1% state rate. Grocery items fit this category. All other products, including food sold for immediate consumption, are taxed at a 6.25% state tax rate. For example, if an orchard sells sandwiches at an apple orchard, the sandwiches are sold for immediate consumption and may be subject to the higher rate. Some food products are not sold for consumption at all. Many farms offer colorful corncobs, decorative pumpkins, and small gourds in the fall. Although technically edible, these are not intended to be eaten. Individual ready-to-eat items and decorative items would otherwise be subject to the 6.25% tax rate. This overview of sales tax for farmers does not go into detail on tax issues relative to prepared foods, retailers with seating for diners, candy and soda sales, and other food-based sales tax issues. Farmers considering a business significant prepared food or retail grocery sales should seek further information from the Department of Revenue about the appropriate tax rate. Sales tax can be a complicated subject and this resource provides an overview, only.

Retailers, including farmers, are required to keep records of all sales and to remit the appropriate tax rate for each item sold. If farmers find it difficult to keep detailed records of the differing tax rates for food items, they may request permission to use a formula for calculating tax instead. Farmers should contact the Illinois Department of Revenue for more information.

In addition to the state tax percentages listed above, local governments may impose additional local taxes. Using Urbana, Illinois as an example, the general tax rate in July of 2014 totals 9% and is comprised of the state 6.25% rate plus additional county taxes. To find the tax rate for any locality, farmers should search online for the Illinois Tax Rate Finder tool. Users enter a zip code or select from a list of local governments to display local tax rates.

Sales tax applies to tangible items only. As such, sales tax does not apply to services. For example, if a farmer charges guests for a farm tour or a fall festival, sales tax is not added to the sale. This isn't to say all services are tax-free, however. Local governments have the authority to impose additional taxes. For example, the City of Chicago charges an "amusement tax" on fees for recreational activities, which could potentially apply to ticketed farm events. Whether or not the amusement tax would apply depends on whether the specific farm event fits the law's definition of an amusement. The Illinois Tax Rate Finder will identify the total tax rate as for taxes administered by the Illinois Department of Revenue, which includes additional taxes relating to transportation, utilities, home rule units of government and others. Local taxes not administered by the state must be investigated by calling the local municipality.

## Farm Product Sales Agreements

### **The agreement controls**

When it comes to sales of farm product between buyer and seller, "the law" is generally the agreement of the two parties. If one party wants to go to court to enforce the sale (either to get product or get paid), the court will try to determine if the parties came to an agreement and what that agreement was. Only after taking

those steps will the court decide if one party breached the agreement and owes compensation. As a result, clear agreements between buyer and seller are essential.

For most attorneys, a good contract is an enforceable contract. In Farm Commons' experience, most farmers do not share the attorney's perspective. The wide majority of farmers have no intention of enforcing a contract in court. When a farmer's buyer fails to hold up the buyer's end of the bargain, most farmers simply walk away from the sale. Trying to enforce the agreement simply isn't worth the time, money, or damage to the farmer's reputation. Although contracts for the sale of goods worth over \$500 must be written to be enforceable, the point is moot if a farmer will never enforce it anyways. (That being said, farmers should know that the federal Perishable Agricultural Commodities Act is available to facilitate enforcement as discussed later in this section.)

Instead, the objective of the beginning farmer is generally to create profitable, sustaining relationships with buyers. Even without a focus on enforceability, written agreements are incredibly important to achieve this objective. A sales agreement is simply a set of procedures that a buyer and seller agree to follow when they work with each other. These procedures create predictability and accurate expectations for everyone, which goes a long way to preventing problems. Rather than putting distance between two parties, a sales agreement can create understanding where it may not exist. Memories fail and details get lost. When things are written down, it helps everyone to fulfill their obligations.

Sales agreements and contracts can seem overly formalistic to the beginning farmer who may be eager for any sale at all. Asking customers to sign on the dotted line simply isn't the way business is usually done. That's understandable. At the same time, a little formalism may be positive by setting a tone where all parties acknowledge their commitments to each other in writing. And, there's ample opportunity to craft commitments using approachable, every day sales documents such as availability sheets and invoices.

### **Elements of the sales agreement**

As the local food movement expands, new buyers are entering the market.

Many things motivate these buyers: desire to market local foods, concern for the environment, and dedication to the best tasting items, among many other ideals. Because we can't necessarily predict the experience and knowledge of any specific buyer, it is a good habit to assume that the buyer knows very little about farm-direct products. A thorough sales contract starts by laying out all the basic details. For example, although farmers grow green beans of many varieties, a chef may assume all local farmers grow haricots verts and assume that the farmer will deliver the most slender beans. Farmer and buyer may have different expectations about how the product will be packaged or delivered, as well. Even if they seem obvious, the first stage is to lay out all the little details.

The next step in writing a thorough sales agreement is to anticipate things that may go wrong with the sale. Might the buyer cancel or change the order? Could the buyer need the product at a different time or location than usual? After brainstorming potential problems, the farmer should create a strategy to minimize the impact of cancellations, changes, and other contingencies. Is there a timeframe where cancellations are less inconvenient for the farm? Would charging an additional fee make past-deadline changes more financially feasible?

Each farm will deal with changes, cancellations, payment, delivery and quality issues in a different manner. When drafting procedures, it's good to understand the buyer's needs are as well. A grocer may count back stock on a specific date and a chef may set the new menu at a specific time. Understanding the buyer's limitations and flexibility can help a farmer draft a procedure that will work for both parties. Fundamentally, the contract is simply the way parties agree to conduct their business.

### Draft terms

The list below is designed to help farmers move forward in drafting an agreement. Farmers drafting their own sales contracts may use this list as a starting point for outlining each element and procedure for the sales relationship. The list is also useful for farmers reviewing a contract given to them by a buyer. In that case, may use it as a checklist of issues to identify in the prepared contract.

### 1. Item information

- ❑ Item name/description
- ❑ Volume/weight/count of each item
- ❑ Price
- ❑ Packaging

### 2. Payment Details

- ❑ Payment procedure (is payment expected through an invoice or COD?)
- ❑ Payment due date
- ❑ Additional fees (minimum orders, fuel charges, etc.)
- ❑ Late fees

### 3. Quality Standards

- ❑ Choose precise parameters for quality/condition that are objectively measurable.
- ❑ What is the timeframe for the buyer to inspect for quality?
- ❑ What notification procedures does buyer follow if she or he feels quality standards are not met?
- ❑ Are there rules for how the buyer must hold the product while the quality dispute is being resolved? (for example, location and temperature standards).
- ❑ Is there a specific dispute resolution procedure?
- ❑ Is there a set compensation strategy if the parties disagree about quality?

### 4. Delivery and Shipment

- ❑ Anticipated delivery date and time
- ❑ Notification procedures if anticipated date and time are no longer accurate
- ❑ Delivery mode. Is farmer delivering or does the farm use a distributor/shipper?

- ❑ Who bears risk of loss during transit? (If the farmer, is it covered by your insurance?)

### 5. Is the product delicate, frozen, or potentially hazardous?

- ❑ Specific holding requirements?
- ❑ Washing or handling instructions?

### 6. Cancellation and changes:

- ❑ Order deadline
- ❑ Are order changes allowed after deadline?
- ❑ As some buyers will try to change the order even if the deadline has past:  
Do you have notification procedures for accepting late changes?
- ❑ Is there a penalty for changes made after deadline?
- ❑ Can the order be cancelled? If so, when?
- ❑ What is the procedure for cancelling an order?
- ❑ As some buyers may try to cancel an order beyond the stated deadline, is there a penalty for cancellation beyond deadline?

### 7. Contracts in advance of production:

Is the contract an agreement to provide a specific volume at a specific time in the future? If yes:

- ❑ When will the product be available? What if the timeframe is not accurate? How will the seller notify the buyer of production dates? Can the buyer cancel within a certain timeframe?
- ❑ If the agreed-upon volume can't be met, what are the notification procedures and timeframe? Can the buyer cancel if the volume will be below a specific amount?
- ❑ If the agreed-upon volume is not provided, is there any penalty or fee?
- ❑ Must you make up shortfall if production is lower than contracted? If

so, where may additional product be sourced from? Must the buyer must be notified if product is sourced from other farms?

Is the contract an agreement to sell all the product of a specific timeframe or acreage to a single buyer?

(If so, the farmer should seek attorney advice, especially if the investment is significant. This is called an “output contract” and state laws affect enforceability.)

- ❑ Do we have a record of past output or a reasonable estimate based on similar production systems? If not, we need to consider specifically stating reasonable expectations for volume.
- ❑ Specific varietal/breed?
- ❑ Specific production standards/procedures?
- ❑ Specific acreage or location for production?
- ❑ Type of seed or feed?

## Assemble terms into an agreement

After a farmer lists the basic product information and crafts procedures to deal with contingencies, the next step is to incorporate the information and terms into the sales agreement. Before we discuss options for writing terms in the agreement, we should discuss a few guiding principles. The first principle is that a buyer should understand all the terms of the sale before the sale occurs. For example, if exchange or refund terms are listed on an invoice only, the buyer can't read them before deciding to buy. The second principle is to seek specific confirmation of the terms. We don't necessarily need a handwritten signature, but we should have something to show that the buyer agrees to the terms before we go forward with the sale. That being said, farmers have a number of ways to communicate the terms to the buyer.

### Option #1: The signed sales agreement

Farmers should first consider the more formal route of a signed contract for purchase, especially when the total value of the sales is high or when it represents a significant

percentage of the farmer's total sales. The more vital the sale is, the more important it is to create the most comprehensive, clear contract. (As a reminder, this resource is not intended to craft sales contracts that are enforceable in court. This resource will help farmers build strong sales relationships through communication. If a farmer wants the strongest likelihood of enforcing a contract, the farmer should seek the advice of a qualified attorney as each state may have different and precise rules.)

Farm Commons has created a simple model sales contract that incorporates product information and contingencies. This model may be useful for farmers working with distributors, grocery stores, institutions, and other buyers with predictable, steady demand for products. The model provides sample language and formatting that incorporates the elements of our agreement.

### **Option #2: The written confirmation of a verbal agreement**

Sometimes, it's easiest for farmers and buyers to meet in person to discuss an upcoming sale. Many buyers hold winter meetings to discuss volume and pricing for the upcoming season for fruit and vegetable crops. These conversations are often the best way to come to a friendly, mutually beneficial arrangement. At the same time, farmers easily turn these conversations into written agreements. If a signed agreement isn't produced during the in-person meeting, farmers should write a letter or email to the buyer summarizing each element of their agreement, and send it to the buyer. If the buyer doesn't object within a specific time frame, a court will respect the confirmation email as a written agreement between the two parties.

### **Option #3: The terms confirmation and availability sheet**

Many farmers are not interested in seeking a signed contract prior to sales. Instead, many farmers distribute availability lists to potential buyers. There is plenty of opportunity to incorporate terms into this type of sales structure. At the beginning, when a new potential buyer is added to the distribution list, the farmer can discuss the sales terms upfront. For example, a farmer might write a quick note saying, "Dear Chef: It was a pleasure to meet you and I'm thrilled to hear you may be interested in ordering my product. I am adding you to my availability list." Instead of leaving the introduction at that, a farmer can then say, "I strive to create a convenient and hassle-free ordering experience for my customers. To do that, I

have outlined several procedures for making, changing, or cancelling orders, as well as communicating with me about product or quality issues. I want you to be happy with these procedures so please let me know if they are acceptable to you.” The farmer could paste in or attach a full description of the procedures and processes developed previously, perhaps by using the checklist in the previous section. A note like that presents the “sales terms” in a friendly, accessible manner. And, it meets our two principles. First, the terms are presented before the sale. Second, the farmer has explicitly asked for confirmation that the terms are acceptable.

The terms should also be incorporated into the procedure for each individual sale. When a farmer sends out the availability list, she or he should include the term clearly within the document. At the end of this guide, please find a model availability list with a reminder that the sale is subject to the agreement. At the bottom, we have stated the terms again. The best practice is to include all the terms on the availability sheet.

We began the previous section by discussing the need to carefully articulate the product being sold: type, quality grade, packaging, etc. Accurate and thorough product information needs to make its way onto the availability sheet. The product list should have the common name, variety, count or pack size, quality standard, and additional notes as necessary. Farmers who use a combination of email, availability sheets, and invoices to create their sales contract need to make sure that each stage of the communication is accurate and thorough. The benefit of a single sales contract as described in Option #1 is that all information is easy to put in one place. Availability sheets and invoices are more convenient for the buyer, but they require additional work from the farmer to keep them up to date.

### Buyer-supplied contracts

Many farmers do not have the luxury of drafting a sales agreement that accommodates the farmer’s needs. Especially with large-volume sales, the buyer may have an existing sales contract which the farmer must sign in order to sell products. At a minimum, farmers should take the time to carefully read and understand the contract provided.

If the contract is silent as to specific procedures or terms, farmers should ask

for more information. The checklist above is a useful resource for finding things that may be missing from the contract. Any and all commitments made by the buyer should be put into writing and included in the same form as the rest of the contract terms. A separate communication with additional or different terms may not be valid if it's not all together with the rest of the contract.

Farmers should also feel empowered to negotiate on specific terms if they are not acceptable. Farmers have a few options. Farmers can choose to cross out items and write in more acceptable language. If the buyer receives the changes and does not indicate anything to the contrary, the changes may be binding. In the alternative, farmers might try contacting the buyer to negotiate points. Farmers may also submit an entirely new contract with the farmer's preferred terms as a starting point.

### **Contract legalese**

Understanding a buyer-supplied contract can be difficult as the language used by some attorneys can be cryptic. Farmers should keep an eye out for a few different things. First, farmers might see a clause discussing "indemnification." Indemnification is an agreement to pay for the harm suffered by another person. To use a sales-related example, let's say that a farmer has a contract with a chef that indemnifies the chef for harm the chef suffers because of the farmer's actions. If the farmer sells the chef lettuce with rotten cores and the chef is unable to fulfill a contract because of it, the farmer may owe the chef for her or his losses from not being able to fulfill the contract. Indemnification can be a fair allocation of responsibilities, but it depends on the details. Equitable contracts often have mutual indemnification—each party agrees to pay the other back. In the alternative, parties may restrict the circumstances under which they provide indemnification, such as only when someone is negligent or grossly negligent. Legally, negligence is the failure to adhere to the standards most people in similar circumstances would have followed.

Farmers should also check for integration or merger clauses in buyer-supplied contracts. Integration clauses basically state that the contract signed is the complete and entire agreement of the parties and that there are no other agreements between the parties. On its face, there is nothing wrong with an integration clause. A problem develops if it is not the entire agreement of the parties. If the farmer and the buyer verbally agreed that green leaf lettuce is acceptable if romaine lettuce is not

available, an integration clause in a subsequent written contract renders that verbal agreement unenforceable. If an integration clause is included, farmers should make sure that that the agreement truly does contain the entire agreement of the parties.

In an environment where individuals are constantly asked to agree to contracts (such as software agreements, terms of service, access agreements and more) it can be tempting to assume that these agreements are unenforceable. In reality, courts have chosen to uphold contracts even where parties have no opportunity to fully read the agreement and must sign the contract to use the service. Farmers should assume that each clause in an agreement is binding. Terms obligating farmers to carry specific insurance, follow specific procedures, or maintain specific certifications may all be binding. If a farmer breaches a term of the contract, she or he may be financially responsible for the buyer's losses.

## Options for enforcing sales agreements

The federal Perishable Agricultural Commodities Act (PACA) is designed to assist farmers in working with large buyers and brokers. Produce dealers, brokers, and commission agents who buy or sell fresh fruits and vegetables must be licensed with PACA, as do retailers who handle produce sales of more than \$230,000 in a calendar year. Farmers working with those who are (or should be licensed) may use PACA if they run into trouble. PACA is an alternative to regular courts or small claims courts. PACA also works to resolve unfair trade practices and misbranding issues. PACA can help farmers address disputes over rejected produce, the parties' responsibilities after rejection, damage calculations, transportation or temperature handling, or quality inspection issues. Both informal and formal complaint avenues are available. But, PACA requires that farmers have a written agreement with the buyer involved in the dispute, so it remains important to put agreements in writing. The PACA office of the United States Department of Agriculture, Agricultural Marketing Service, is available to address complaints, handle contract enforcement, and provide mediation services. More information is available by calling 1 800 495 7222.

If farmers wish to enforce a sales agreement and PACA is not available, small claims court is also an option. Details on pursuing compensation through small claims court is available online at the Illinois Attorney General's website.

## CSA Sales

Farmers who agree to provide a share of the farm's production in return for money are forming a sales contract with the buyer. Unfortunately, many Community Supported Agriculture farmers do not treat this commitment as the high-value sales contract that it really is. Farmers may be discouraged from using a formal agreement because it appears to make a friendly relationship more litigious. However, a formal agreement may make a lawsuit less likely. By taking money up front, the farm has an obligation to members even if an agreement is never signed. The farm is on the hook, regardless. This agreement doesn't give the member permission to sue; the member already has that ability. Instead a clearly worded agreement makes sure the farm and members understand their respective commitments to each other, which makes a lawsuit less likely.

A farm is not better off by avoiding stating commitments to members altogether. If a lawsuit is filed and there is no written agreement, then the court will decide what the parties' commitments are. That may be an unpredictable and expensive process, especially considering that CSA is still a very unusual and innovative business model. By setting the terms of the CSA beforehand, the farmer can better control a lawsuit if the unfortunate occurs. Further, this agreement can protect a farm if a lawsuit is filed. By clearly stating the obligations the farm is prepared to fulfill and then following through, this agreement will be there to back the farm up.

Most importantly, if CSA farmers are not writing out the details of their CSA program and asking for an express commitment to member responsibilities from buyers, the farmer is missing an opportunity to convey valuable information. CSA has been growing rapidly and many more people are familiar with the concept. But, if farmers wish for the model to continue to expand, CSA farmers must continually reach new CSA customers. This means CSA farmers must constantly educate new members about how the relationship works.

A thorough CSA membership agreement should address the following subjects:

1. Term of the membership or approximate length of season
2. Growing practices and certifications, if applicable

3. Products expected for the duration of the membership
4. Whether the risk of crop failure is shared
5. Whether the reward of crop surplus is shared
6. When, where, and how to pick up a share
7. The consequences of failing to pick up a share
8. How and when to make payments
9. Any further expectation of members such as reading the farm emails or completing an end-of-year survey, for example.

More detail on a few of these elements is provided below.

The sections on timeframes, production practices, and predicted products are quite straightforward for many producers. If farmers use words such as “estimated” and “approximate,” any worry about not adhering to specific timeframes or quantities is minimized. It may be wise to list some of the more unusual items offered to alert members to the diversity of local farm products.

Many potential CSA members will have a general concept of the “shared risk and reward” that comes with joining a CSA. From a legal perspective, it’s important to spell out what that concept means in practice to each farm, specifically. Many farms choose to buy in some product to fulfill member expectations. By explaining this precisely, you may attract additional members that are otherwise worried about an empty box each week. If your farm more narrowly adheres to the concept of shared risk and reward, your potential members should understand that. No matter how remote the risk, if there is a chance that the season could be a total loss (without a refund of member fees issued), that risk should be clearly stated on the membership agreement.

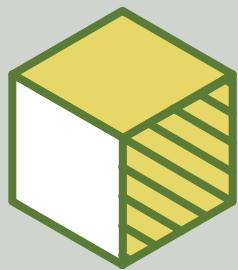
Shared reward should be just as clearly stated as shared risk. Although many members do not actually want an abundance of kale, kohlrabi, or cabbage, there are generally a few members who expect that the abundance will be shared. These members can become upset if they see more crops at farm stands or grocery stores than they find in their box. Clearly stating when and how abundance is

passed on can avoid these difficulties. (Members often appreciate the reminder that more kohlrabi is not always welcome!) Accurately describing shared risk and reward is good business because members with accurate expectations are more likely to be satisfied. It's also good legal protection from disgruntled members.

Picking up member shares can be a confusing experience for many new members, leading to lost or missing boxes, damaged product, and upset site hosts. Clearly outlining precise expectations can help avoid these problems. If CSA members miss their boxes because of inaccurate information, they may hold the farmer responsible. This, again, is bad for business and can become a legal liability if the members were not accurately informed. CSA farmers should think the process through from the perspective of a new member to craft procedures that are as clear as possible.

CSA farmers are developing more innovative and flexible payment arrangements. But, innovation can add confusion to the already-novel system that is CSA. Members may not be certain when payments are due or where to send them. Collecting on CSA payments can be difficult enough and if a farmer isn't completely confident that buyers understand their obligations, asking for past-due payments is awkward.

There are a number of ways to memorialize a CSA agreement. From a legal perspective, it's important to incorporate the terms of the sale into the sale itself. If a member handbook is sent after a member signs up and sends money, the handbook isn't part of the terms of sale. The sale already occurred. Sign-up sheets should include a checkbox indicating that the agreement has been read and that the buyer agrees to the terms, at a minimum. Sign up forms with a full statement of the membership agreement are highly recommended.



# Sales Module Powerpoint Slides

These slides may be used as a template for a presentation  
on sales law issues for beginning farmers

## Sales Tax

- Illinois collects sales tax on food:
  - Food intended for off-site consumption (groceries) is taxed at 1%
  - Food intended for on-site consumption (served hot, served in single portions, or dining area provided) is taxed at least 6.25%
- Local governments may add additional taxes
- See Illinois Tax Rate Finder and call local unit of government

## Sales Contracts

- What is sales contract law? Broadly speaking, the “law” is that buyer and seller have to do whatever they agreed to do.
  - Example:
    - Buyer says he'll pay \$40 for a case of romaine. Farmer agrees.
    - If buyer doesn't give \$40 and farmer doesn't give a case of romaine, both can ask the court to make the other party do so.
  - But parties will rarely go to court because it's not worth it.

## Sales Contracts

- For the farmer, sales contract law basically means preventing problems from happening through:
  - Clear communication about agreement
  - Getting clear commitment from buyer
- A thorough sales contract helps the process of communication/commitment, and should contain:
  - Product descriptions, including quality standards
  - Payment procedures
  - Delivery and shipment responsibilities
  - Change order and cancellation procedures

## Sales Contracts

- How to get commitment from buyers:
  - Written terms and signatures
  - Sending confirmation of a verbal agreement
  - A combination of ordering instructions, availability sheets, and invoices

## Sales Contracts

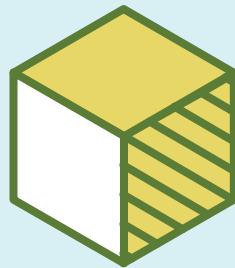
- Keep enforcement options in mind, if things go wrong:
  - Federal PACA for large-volume sales of fresh fruits and vegetables
  - Small claims court for others

## CSA Sales

- With unique sales arrangements, it's especially important to create clarity
- A CSA sales agreement should address:
  - Timeframe and expected harvest
  - Certifications or growing practices
  - Shared risk
  - Shared reward
  - Where, when, and how to pick up shares
  - The consequences of not picking up a share

## CSA Sales

- CSA membership agreements should be exhibited by a written commitment. Some options for creating a written commitment include:
  - A sign-up form with full terms and a signature line  
Or
  - A sign-up form with a checkbox indicating that the person has read and agrees to the terms



# Sales Module Videos

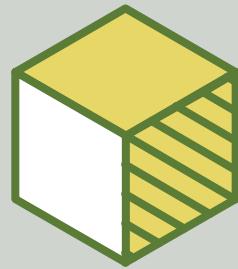
This video discusses important principles  
of farm products sales law

## CSA Law Video:

Follow this link to a 13 minute video explaining why and how to create a CSA membership agreement.

## Sales Law Video:

Follow this link to a 36 minute video discussing the many ways sales between farmers and grocery, hospital, and retail buyers go wrong, and how farmers can prevent these incidences with a clear, thorough sales agreement.



# Sales Module Activity

This homework activity is designed to help beginning farmers think through the realities of selling products to restaurants, grocery stores, and other buyers.

## Activity: Facilitator's Guide

### Objective

This homework activity is designed to help beginning farmers think through the realities of selling products to restaurants, grocery stores, and other buyers. To grow a financially sustainable business, many farmers need to diversify into specialty crops and niche buyers. But, the needs of local farmers are often quite different than the needs of the distributors these buyers currently work with. Farmers need to be prepared to advocate for their preferences and to memorialize agreements on paper.

This activity is also intended to help farmers work through the small details of sales. At the outset, it's easy to assume a basic procedure is good enough. But when problems develop, it is much harder to change those established routines. If farmers can put a more detailed procedure in place from the start, they avoid the inevitable difficulty of any change no matter how much improvement the change promises.

### Ways to use this activity

- Homework: If the class facilitator wants this activity to be homework, the facilitator can assign Farm Commons' "Writing a Basic Sales Agreement." The guide offers valuable background and will stimulate ideas for the assignment.
- In-Class Activity: If the facilitator is looking for an in-class activity, beginning farmers need no more than 10 minutes to read the assignment and sketch a response. If more time is available, longer brainstorming will likely result in better ideas. If the activity is done individually, farmers can report back to the group about their ideas.
- Group Activity: This activity is also well suited for group work. Farmers in groups of 2-3 may be able to think more creatively. Group work also makes reporting back less important to create shared learning.

## Facilitator's Discussion Points

The following are potential responses to the activity questions.

1. Question: Anne would like a more formal ordering process that makes it feel like more of a commitment but without being too stern. What would you suggest for how orders should be structured?

Ideas:

- Anne could ask her buyers to agree to a sales contract with her before she sells to them. The sales contract would state that the buyer agrees that changed orders may not be honored after the deadline.
  - Anne could put a message on her business voicemail that says order changes may not be honored.
  - Anne could start issuing order confirmations by phone or email, and in it she could state that no changes will be honored.
- 
2. Question: Anne would like specific language to include in her communications. Choose one of the ideas brainstormed above and draft specific language. Also indicate where would you include this language: On the order form? The invoice?

Ideas

- “By submitting an order to Anne’s Farm, you specifically acknowledge that orders are considered final as of Monday at 5pm. Any changes requested after Monday at 5pm may not be honored. If a change will be honored, Anne’s Farm will call you back to confirm the change. If no call back is received, the order change cannot be honored. We appreciate your understanding.”
- “Hello. I’m sorry I’m not available. Please leave a message for Anne’s Farm after the beep. If this is an order change, please note that changes made after 5pm on Monday are not honored unless someone from Anne’s Farm calls you back to confirm. Thank you so much for your understanding.”
- “Thank you for your order! We are thrilled to have your business. To help us meet everyone’s needs, we cannot honor order changes after 5pm on Mondays. If you wish to make a change, please contact us by the deadline.”

## Activity Handout: Creating strong sales procedures

Anne has been farming for a few years. She started out doing only farmers' market sales. After learning that a few of her customers were chefs in a nearby town, she started marketing to them at their restaurants. Anne didn't do very much to reach out to the audience- she initially stopped by the kitchen with a brochure and asked the chefs if they wished to be placed on an email list to receive her weekly availability list. Many of them did, and Anne's sales to restaurants have doubled in the last year.

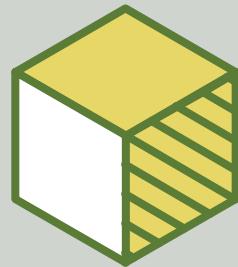
Now, Anne is running into some problems with her restaurant accounts. Specifically, many chefs are changing their order at the last minute. Anne's weekly availability list says that chefs must call in their order 4 days before delivery. But, two chefs in particular call Anne one day before delivery and make changes to the order. They do this at least twice per month. When Anne doesn't have enough time to make the change or has already harvested the original order, she doesn't make the change. The chefs appear put out when Anne shows up with the original order.

Anne knows she has to talk with these chefs to explain her situation. She's also thinking of making changes to her ordering system. This might help the problem from cropping up again when she starts delivering to a new town next year.

Currently, Anne does the following: She sends out an email with a large list of what she has for sale the next week, the pack size, and the price. At the bottom of the email, she tells chefs to call with their order by Monday- 4 days before delivery on Thursday.

Anne has come to you for help. How can she change her ordering process to help stop this problem?

1. Anne would like a more formal ordering process that makes it feel like more of a commitment, but without being too stern. What would you suggest for how orders should be structured?
2. Anne would like specific language to include in her communications. Choose one of the ideas brainstormed above and draft specific language. Also indicate where would you include this language: On the order form? The invoice?



# Sales Module Discussion

The objective of this discussion is to encourage beginning farmers to think critically about the role of a sales contract in a direct-to-consumer relationship.

## Discussion: Facilitator's Guide

### Building a strong CSA through sales agreements

#### Objective

The objective of this discussion is to encourage beginning farmers to think critically about the role of a sales contract in a direct-to-consumer relationship. As a secondary point, the conversation is designed to help beginning farmers see the importance (and difficulty) of precisely articulating their commitments to buyers, especially within a CSA program. By asking farmers to move to the next step of writing out their thoughts, the abstract becomes much more tangible. This is a significant threshold to cross, as the inertia of not writing things down can persist for some time unless farmers are pushed to break that barrier.

Discussions such as this one can be very important for the farming community as a whole. If farmers form a consensus and create collective standards for things like sales contracts and CSA programs, the legal position of the community is stronger. The practices of farmers as a whole have a role in a legal argument regarding any specific farmer's practices. If farmers are in alignment with each other- in philosophy or practice- each individual farmer will have a stronger case that her or his individual practices deserve deference.

#### Ways to use this activity

- Longer Discussion: This discussion requires reading a CSA member agreement. The model is quite long, so facilitators should schedule up to 10 minutes for reading the agreement. Then, depending on the level of experience or passion for CSA in the room, the discussion could take between 20 and 30 minutes.
- Shorter Discussion: These discussion points can be integrated into a presentation rather than hosting a stand-alone discussion. Rather than ask students to read the entire model, the presenter can feature just the shared commitments section. To generate limited discussion, the presenter can call on just one or

two students to share their thoughts on the questions suggested below.

- Non-CSA discussion: If there are no farmers interested in CSA in the class, the facilitator may adapt this discussion to the model sales contract in the “Writing a Basic Sales Agreement” guide. The questions are easily adaptable to a general sales contract. Rather than discuss the shared commitments section of the CSA agreement, students might discuss the procedure for changing orders in the basic sales contract. This conversation remains relevant because many of the large distributors buyers are accustomed to working with allow changed orders at any time. The strict procedures necessary for small businesses to remain competitive deserve through discussion as well.

### Facilitator's Discussion Points

The following are potential responses to the discussion questions.

1. Question: From the perspective of a potential CSA member, does this agreement seem like a contract?

Responses:

- The signature at the bottom seems like a contract.
- The signup procedure isn't especially contract focused.
- But, if the farmer uses a checkbox on the signup sheet which says, “By checking this box, I indicate that I have read and agree to the member agreement,” we don't have a signature. We still have a legal agreement though. It seems less like a contract.

2. Question: If it does seem like a contract, how might that be a good thing? A bad thing?

Responses:

- If something appears like a contract, the person agreeing to it may read it more thoroughly and take it more seriously. This can make it more likely that members will follow the rules, pay on time, and have accurate expectations for the season. But, it can also make some people hesitant to sign up. If they don't know anyone who has joined a CSA farm, they

may think the risk is greater and the rules more onerous than they are.

- By the same token, if something does not look like a contract, people may take it less seriously. They will more easily sign up, but may not pay on time or follow the farmer's preferences.
- The importance of these factors comes down to the type of buyers a farmer wishes to have, as well as the farmer's business plan. If turnover is something the farmer wishes to minimize, and the farmer has only a few CSA shares in the first place, the contract strategy appears to be the wiser choice. It all depends on an individual farmer's needs.

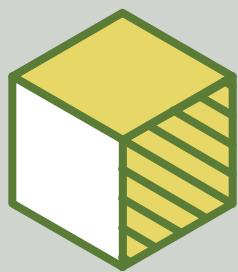
The remaining questions are designed to get at the consensus and standard practices that are legally valuable to the farming community as a whole. No recommended discussion points, necessarily.

# Discussion Handout: Building a strong CSA through sales agreements

First, please read through Farm Commons' model CSA Member Agreement.

Discuss:

1. From the perspective of a potential CSA member, does this agreement seem like a contract?
  - a. If it does seem like a contract, how might that be a good thing? A bad thing?
  - b. Would you use kind of an agreement if you had/have a CSA program?
2. Look back through Section 2: Shared Commitments. Discuss:
  - a. Does this section fit with your understanding of CSA?
  - b. Does this section fit with what you know or see other CSA farmers doing?
  - c. What concerns come to mind if you imagine yourself using this language in your own CSA agreement?
3. Individually or in pairs, draft your own Shared Commitments section for your fictional or real CSA farm. Start with a bulleted list of things you want to say. Or, you might choose to write the entire section. Make note of the tone you want to adopt and the mood or atmosphere your words create.



# Sales Module Further Resources

## Sales Module Further Resources

### Writing a Basic Sales Contract guide

A sales agreement is simply a set of procedures that a buyer and seller agree to follow when they work with each other. These procedures create predictability and accurate expectations for everyone, which goes a long way to preventing problems. Rather than putting distance between two parties, a sales agreement can merge the space between. A good sales agreement creates understanding where it may not exist. This guide will help farmers understand how to craft a comprehensive sales procedure and how to record it for later reference or enforcement.

[www.farmcommons.org](http://www.farmcommons.org)

### Farm Law Webinars, Selling Products to Larger Buyers

Now that hospitals, food service operations, and grocery stores have caught on to the merits of local food, farmers are learning how to work with these operations. A good relationship between buyer and seller is key to making these sales worthwhile. Learn how the right sales agreement can help keep everyone happy. Also, learn how to protect the farm business if the relationship goes south.

[www.farmcommons.org](http://www.farmcommons.org)

### Farm Law Webinars, CSA Legal Issues

CSA farms are developing a truly innovative business model that promises to change the way consumers think about food. But, this innovation comes with some interesting legal issues. We will discuss the complex employment law, insurance, zoning, and volunteer worker legal issues encountered through CSA. Farmers will learn how to move forward in addressing these concerns.

[www.farmcommons.org](http://www.farmcommons.org)

### Model CSA Member Agreement

A worker share agreement can encourage clear communication between farmer and worker share, while protecting the farmer from serious liability

and employment concerns. “Worker shares” are volunteers that serve the farm in exchange for food. Many CSA farms have a worker share program to reward committed, weekly volunteers with a free share in the CSA. This guide will help a farmer write his or her own agreement.

[www.farmcommons.org](http://www.farmcommons.org)

### Illinois Direct Farm Business Guide: Chapters 3 and 4

The Illinois Direct Farm Business Guide is a comprehensive resource discussing the laws that affect farms who sell directly to consumers. Chapter 3, Section I addresses production contracting and sales contracts. Chapter 4 addresses taxation, including sales and service taxes.

[www.directfarmbusiness.org](http://www.directfarmbusiness.org)

### Farmers' Legal Action Group: Farmers' Guide to Organic Contracts

The Farmers' Guide to Organic Contracts can assist farmers with all types of agricultural contracts, but the guide's primary purpose is to serve farm operations certified as organic under U.S. Department of Agriculture (USDA) National Organic Program (NOP) regulations. Specific suggestions and information for certified organic operations are highlighted throughout the guide, which features a color-coded symbol system designed to enhance reader understanding. Farmers can use the guide as a helpful reference tool to answer questions related to organic contracts. The guide's main Table of Contents, Quick Organic Contract Checklist, and individual chapter tables of contents allow readers to easily find topics of interest. Furthermore, each chapter's table of contents highlights some of the useful contract-related tips found throughout the guide.

<http://www.flaginc.org/publication/farmers-guide-to-organic-contracts/>

**End of Sales Module**