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August 2000

EB 2000-10



# **Contracts and Agreements For Custom Dairy Heifer Growing**



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Publication Price Per Copy: \$3.00

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# Contracts and Agreements For Custom Dairy Heifer Growing

By

Jason Karszes<sup>1</sup> & Roger A. Cady<sup>2</sup>

A contract is a necessity for any business. It defines the terms of the relationship between involved parties and protects all. It is important for both the animal owner and the contract heifer grower to consider as many issues as possible in advance when drawing up an agreement or contract. The contract serves four major purposes.

- A management tool that requires joint planning between the grower and owner, describing how they are going to conduct their business and the implications of their choices. The largest benefit of this process is improving communications between all parties.
- Clearly defines expectations and responsibilities of each party before the relationship is entered into, thus decreasing the potential for conflicts during the period of the contract.
- Provides direction and legal recourse for the parties when conflicts occur.
- Provides documentation of a legal relationship to third parties such as bankers, regulators, or government agencies.

The following areas can be considered for two types of contracts: to board heifers and to transfer ownership of the heifers with an option to buy back. The information provided here might not be complete for individual circumstances and is intended to simply provide suggestions based on accumulated experience. Furthermore, *information contained herein does not constitute legal advice*. A lawyer should be consulted to draw up the final contract to ensure that it is acceptable to both parties and is in a legal and binding form according to pertinent state laws.

## **Elements of a Contract**

There are five major elements associated with a contract for raising dairy replacements. They are:

1. Time period.
2. Billing and payment procedures.
3. Definition of each party's responsibilities.
4. Amendments, renegotiations, and renewal.
5. Conditions for termination of agreement.

The following discussion addresses each area in more detail.

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## **Time Period & Number of Animals**

The length of time covered by the contract should be specified in writing along with the intended number of animals and how long individual animals will stay on the farm. By doing so, both parties have definitive information to use for planning activities within their own business. This information also provides a reference point from which to develop other aspects of the contract, such as renewal and cancellation of the contract. The term of the contract can be for the amount of time an individual animal is on the farm, such as eight months, or for a specified time limit and a specified number of animals (i.e., 100 heifers for 3 years, with animals spending 12 months of the farm). The specified number of heifers and time limit controls the rotation of animals as they grow larger and are sent back to the owner. A range can also be specified to cover fluctuations in animal numbers. The length of time, such as one year, should mean that there would be a specified number of animals on the farm for this time. If flexibility is intended in either number of heifers or length of stay on the farm, it should be in writing and understood by all concerned.

## **Billing and Payment Procedures**

Payment rates and timing should be stated in writing. The billing date, due date, grace period, itemization of charges, and interest on past due amounts need to be clearly stated. The following points highlight some of the different ways services and supplies can be charged for custom raising of dairy replacements.

- **Method of Charge**

Heifer growers charge for services in numerous ways. The method used, the amount charged, and calculation method need to be explained. What is covered by the base rate and what additional services may be provided and at what cost also should be clarified. Below are several different ways that heifer growers charge for services.

- *Per Day per Animal* - A flat fee charged per animal per day allows easy budgeting by both parties. The grower assumes all risk of cost changes. Growth, body condition scores, and weight requirements may be set as minimum standards to go along with the per day per animal basis. Charging per week, month, or total time animal is on farm is very similar to per day and is usually based off of per-day rates.
- *Per Animal* – A set fee per animal raised to a specific average weight (alternatively body condition and size) or for a set period of time provides ease of budgeting for both parties. Usually there is no differentiation based on performance of animals. Growth rate, body condition score, and weight requirements may want to be set. The grower assumes all cost uncertainty.
- *Per Pound of Gain* – The rate is based on animal weight gain while under the grower's care. Scales are highly recommended for weighing animals on and off farm. When charges will be calculated and paid ought to be predetermined. The anticipated time an animal is on farm, feeding systems, and shrinkage all should be predetermined under this plan. It is difficult to budget income amounts without historical performance records. There is incentive for the grower to maintain high

growth rates. Therefore, growth rates and body condition score standards should also be predetermined in order to protect against fat heifers. Grower assumes cost uncertainty.

- *Feed plus Yardage* – This rate is based on actual feed costs, plus a charge for services and supplies provided. The plan allows for rate adjustment based on changing feed costs but otherwise is similar to per day per animal plans. The adjustable rate for feed makes it difficult for the owner to budget expense because it allows the grower to transfer some uncertainty of changing costs to the owner. This plan can also be adapted to a per-pound-of-gain basis.
- *Option to Purchase* – Under this plan, animal ownership transfers to the grower with a first-option to buy back at a set price held by the dairy producer. How buy-back price is determined needs to be predetermined within the contract. Depending on how the buy-back price is set, the grower assumes the majority of uncertainty in costs to raise the animal. The owner may choose not to buy the animal back, at which point the grower can sell on the open market. Risk to the grower is highest in this plan because he assumes all cost risks, is not necessarily guaranteed a sale, and will usually have only intermittent incoming cash flow. However, this plan is often the first option for growers who are just getting started and need to develop a reputation for excellent service.

- **Payment for Additional Services**

If certain services or supplies are not going to be covered by the basic fee, then the following need to be laid out in advance: The amount for the service or supply, who decides on the use of the service/supply, and how it will be recorded in the billing procedure. An example of this would be the owner of the animal paying a set fee for each animal that is pregnancy checked, with the number of animals checked times the per animal fee being a part of the monthly bill.

- **Day of Arrival/Departure**

When will ownership transfer or when does charging begin and end needs to be established. For example, billing starts the day the animal arrives, and there is no charge for the last day when the animal leaves.

- **Late Payments**

Provisions for collection of late payments need to be established. The point in time the owner of the animals is in arrears and subject to collection action needs to be clearly defined. One example of how to collect on past-due amounts is for the heifer grower to legally sell animals under his care. The legal method for taking possession and selling property for remuneration varies by state and the process needs to be clearly stated.

## **Definition of Each Parties Responsibilities**

Discussed below are some of the major areas that should be discussed by both parties to ensure that expectations are clearly defined.

- **Pre-arrival Conditions**

Requirements and restrictions placed on animals before they arrive at the grower facility should be noted in the contract. Examples would be the requirement for specific amounts of colostrum to be fed and naval treatments for newborns or vaccination protocols for older animals. Records required at the time of arrival to show these requirements should be communicated clearly.

- **Time of Arrival**

Check-in procedures for new arrivals should be outlined. Quarantine, vaccinations, housing, physical exams and testing, weighing, information transfer, and billing should be determined in advance. Consequences for animals' not meeting the pre-arrival conditions or failing a physical exam or testing results also should be noted. Tests may include blood tests for disease titer, IgG levels and lung acoustics. Physical noting of diseases such as hairy foot wart may be part of the transfer process. Options include returning the animal to the owner, changing performance expectations for those animals, or changing the rate of charge. Determination of unanticipated additional expenses associated with the newly arrived animal and the liable party is also important. For example, treatment for illness occurring in the first 14 to 30 days may be billed back to the owner of the animal.

- **Identification and Records**

How animals are to be identified on the heifer grower's farm and what records are maintained for breeding and health care need to be included. The identification process is especially important because animals from different herds are often intermingled. Common methods of identification include different colored and numbered ear tags, leg bands, ear tattoos, or brands. Complete records provided to the grower and records kept while at the contract grower help improve the management of the animals and improve communication between owner and grower.

- **Services Provided**

The number and types of services, such as feeding, breeding, veterinarian care, and trucking, to be provided for by the grower and/or the owner should be established. Advance determination should be made as to which services provided by the grower are covered by the basic rate charge and which ones will be provided at an additional charge. An example of a situation covered by this provision is having normal herd vaccinations covered by the grower, but any additional veterinarian health care paid for by the owner. For services provided by the owner, clarify the amount of service provided, when it is provided, and how to change the amount when necessary.

Management plans are also necessary on issues such as how the animal is bred,

treated for diseases, transported to and from the farm, and the circumstances that demand culling. Using a predetermined weight and age is one method often used in deciding when animals come to and leave the farm. Routine vet health care is often left to the grower's judgment, while the owner may make any major vet care or culling decisions.

- **Supplies Provided**

The amounts of forages, grain, feed additives, bedding, medicine, semen, and other supplies provided by the grower and any items supplied by the owner plus the times of supply should be written. Itemization of such supplies is of particular importance for "feed cost + yardage" contracts. For the things being supplied by the grower, it should be determined what is covered by the rate charged and what is provided at an extra charge. A grower providing all basic feed for the daily rate but charging extra for special grain the owner wants fed is an example of this type of arrangement. If the owner is providing any supplies, the amount provided, when it is to be provided, and how to change the amount when necessary should be clarified.

- **Health and Vaccination Program**

The vaccination program to be followed should be determined. Identify veterinarians who can work with both parties and are familiar with disease risks in the grower and owner's locales. Ideally and if it is feasible, both the owner and the grower should share the same veterinarian. The prenatal vaccination program, the on-site grower program and the post-delivery program also should be spelled out. The fate of an animal that is not vaccinated as required also should be predetermined.

- **Performance**

Performance standards for animals should be clarified. Growth rates, body condition scores, breeding ages, percent of mature body size, maximum death loss rate, and general condition of the animals are some factors that can be monitored and used to evaluate performance of the animal while it is at the grower. Expectations for these factors may need to be modified due to animals' pre-arrival conditions. The expected percentage of animals that meet the performance guidelines and at what point the grower is considered to not be in compliance with the agreement should be spelled out. If performance standards are not met, is there any type of refund to the owner of the animal? Bonus payments or incentives to the grower for exceeding expected performance levels might also be considered. A flat payment fee per head that meets or exceeds certain expectations is one example of this.

- **Breeding**

The method of breeding as well as age and/or size requirements should be specified. If artificial insemination will be used, who provides semen, who pays for the service, who selects the bulls, and how many times are heifers bred for repeat service should all be addressed. How and when animals are going to be pregnancy checked should be predetermined.



- **Animal Nonperformance**

Benchmarks to determine when an animal is not meeting performance requirements and needs to be culled or returned to the owner should be identified at the beginning of the relationship between the grower and owner. Performance measures to be used, who makes the final decision on a given animal, notification methods, and the disposition of the animal all should be thought out and agreed upon. Animals that do not grow as expected or get pregnant in a timely manner are two areas of common non-performance.

- **Death Loss and Liability**

Who shall bear losses and how they are shared for natural and accidental death of an animal should be specified in the contract. Procedures regarding insurance need to be established in advance. The relationship between the parties concerning the ownership of animals will dictate in part which party is responsible for carrying insurance on the animals. What insurance each party will carry should be noted.

For death loss there are at least three different areas that need to be addressed: Who incurs the loss when the animal dies of natural causes, accidental causes, or poor management. When the grower incurs the loss for the animal, the reimbursement method needs to be clearly stated. How value is assessed on a particular animal, how loss is to be paid to the owner, and whether the animal will be replaced should be addressed. If the animal is going to be replaced, the manner by which an animal is selected needs to be determined. How liability is shared varies greatly. For instance, the grower may assume all the loss and replace the animal or at the other extreme the owner may receive no refund and absorb the loss of the animal. A common agreement is that losses prior to 30 days in residence at the grower operation due to pre-arrival conditions or diseases, is liable back to the owner. After the 30 days are completed, the losses are liable to the grower.

- **Third Party Liability**

An area often overlooked is liability for damage or losses incurred by a third party (someone other than the grower or the owner). The situation in which a third party suffers a loss due to the implementation of an agreement between the grower and owner is rare, but can happen. One possibility is the spread of disease to heifers owned by a different party, the origin of which can be traced back to an owner's heifers. In this case the owner of the source heifers could be cited because of ownership and the grower cited due to possession and management responsibilities. Another possibility is damage incurred on property neighboring to the grower property due to heifers that escape confinement. It is probably most important that the grower and owner understand what the potential liability is for these types of circumstances and how they need to be jointly addressed or managed. How insurance held by both parties will handle this type of issue also need to be considered.

- **Reporting and Monitoring**

Information to be reported back to the owner and the frequency of those reports should be part of the initial agreement. An example of a monitoring system is to include the following in each monthly bill or reported monthly, quarterly or annually: average daily gain, number of animals bred, hip height, conception rate, animals treated and for what, and the number of animals that arrived and departed each month.

- **Transportation**

How animals are transported, transport vehicle sanitation, scheduling days and times for transportation, transport payment, and responsibility for animals during transportation are some of the questions that should be addressed in this clause. Many growers have assumed transportation responsibilities in order to assure cleanliness and timeliness. Transportation is often scheduled in advance for a particular day of the week or month.

What records are required to go with animals, who decides which animals and how many go on each trip, assessment of the animals in terms of condition, and communication of information between both parties are additional issues to be addressed in this section.

- **Post Delivery**

Are there any issues or events that should be addressed after the animal arrives back onto the home operation to ensure the ability of the animal to successfully enter the dairy herd? Any injuries or illness, how they are treated, who bears the cost, and what can be done to prevent future occurrences are questions to answer when the agreement is entered into. Additionally, because heifers usually have a month to six weeks prior to calving when they arrive home, it is the responsibility of the owner to see that proper socialization, obstetrical care, and nutrition are provided so that the heifer can enter the milking herd successfully.

- **Communication**

Communication between the parties of the agreement is key to the success of the contract. Clarify the manner of communication. For example, transportation schedules arrangement will be done over the phone but modifying the agreement or monitoring performance will be in writing.

### **Amendments, Renegotiation, and Renewal**

Most contracts need to be modified over time as circumstances and the needs and desires of the involved parties' change. Providing and laying the ground rules for how the contract can be changed is an important section of the agreement.

- **Amendments**

Determine in advance the process for adding sections to clarify procedures and relationships between the owner and grower. How to propose an amendment, reach agreement on the content, and have it added to the contract are some of the issues to address. As with the full contract, if an amendment is to be made, it should be reviewed by the legal team, in writing, and signed by all parties.

- **Renegotiations**

If and when the circumstances change and certain provisions of the contract may no longer be applicable, determine beforehand how to go about contacting the other party, arranging meetings, and proposing and accepting changes. If unilateral ability to change the contract is left with one party, this needs to be stated clearly

- **Renewal**

A provision for renewal should be included in the agreement. This provides a means for renewal of the agreement for another period of time and helps build a long-term relationship. Provisions for renewal, such as how much time before the end of the current contract to begin renewal discussions, can be included. A method of notification for renewal should be established so that procedures are clearly specified.

- **Assignment of Interests**

The ability of either party to assign rights concerning the contract to another party in case of unusual circumstances needs to be considered during contract development. This will ensure that the contract continues, if desired, even if the original signing parties can no longer participate in the duties of the contract.

### **Conditions for Termination of Agreement**

All agreements should be entered with a clear explanation of how the relationship may be terminated or exited. What issues may terminate the agreement, how the agreement will be terminated, and how communication and notification of termination will be made all need to be clearly stated.

- **Contract Cancellation**

A means of terminating the contract by one party or by mutual agreement should be provided. This provision would give some protection to the grower for having a large number of animals taken from the farm without notice and also provides some protection to the dairy farmer for having a large number of animals returned without notice. Terms for termination should allow sufficient time for the dairy farmer and/or grower to find alternatives for feeding animals and/or a new source of income. Some minimum period of notice, such as 90 days, should be included.

- **Arbitration**

Disagreements can occur as a result of misunderstandings or unforeseen events. A means to legally and fairly solve these disputes should be provided for in the contract. A mutually agreed upon third party to arbitrate a dispute is one approach.

- **Non-Compliance**

A method for determining reasons why either party is not in compliance with the agreement and its responsibilities—or even a partial list of reasons of noncompliance is vital to predetermine. The contract should clearly identify the consequences of non-compliance, including but not limited to cancellation of the agreement, changes in the agreement, and payment of penalties or fee. An example of this would be what would occur if the owner removes animals early from the heifer grower or what would occur if animals were not being treated or delivered as specified in the contract

- **Last Payments**

If the contract is terminated, a set of procedures and a payment date to handle penalty payments and final charges for the raising and transportation of the animals during the period of time leading up to the day when all animals leave the farm should be specified.

### **Summary Comments**

Contracts, most importantly, enhance communication and establish trust between the dairy producer and the heifer grower. Written agreements help achieve this understanding. They are really only a means to that end. In most cases, there should never be a need to take legal action because understanding was established in advance. However, we stress that a lawyer should be consulted in drafting the final contract and each party should have the agreement reviewed by his or her attorneys to ensure that the contract complies and is enforceable within the jurisdictions of both the owner and grower. The preceding discussion doesn't constitute legal advice and is only intended to provide suggestions based on accumulated experience.

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# OTHER A.R.M.E. EXTENSION BULLETINS

<u>EB No</u>	<u>Title</u>	<u>Fee (if applicable)</u>	<u>Author(s)</u>
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