

More Than A Handshake:
Why the Beef Industry Needs Written Embryo Transfer Contracts

By Cari Rincker, Esq.

All parties involved with embryo transfers should consider memorializing the terms of the agreement in writing. Contracts are important because it clearly defines the terms of the agreement and obligations of both parties. Each party in an embryo transfer transaction has specific interests to protect. Below are some suggested terms for the beef industry that should be included in contracts dealing with embryo transfers.

Recipient Agreement. Cattle producers who are selling embryo transfer recipient should make sure that the following terms are included in the written contract: (1) sale/rental price of recipient; (2) payment terms including penalties for late payments; (3) instructions for receipt of embryos; (4) embryo transfer fees; (5) dates/procedures/costs associated with pregnancy checks (*e.g.*, palpation, ultrasound); (6) duration that recipient will stay under the care of owner and any daily boarding/maintenance fees (*e.g.*, feed, pasture); (7) if necessary, reimbursement for routine veterinary care and transportation; (8) limitation of liability for congenital birth defects or reasonable calving difficulties; and, (9) if appropriate, security on the embryo transfer calf and the assignment of necessary registration papers. Furthermore, the recipient owner may request additional fees for genetic testing or marketing services.

Breeder Agreement. On the other hand, breeders should make sure that the recipient owner agrees to bear the burden that the recipient cow is (1) in good health and obtains necessary vaccinations; (2) within the ages of two to four years (or whatever age is appropriate for the herd) and not a first calf-heifer; (3) has an acceptable body condition score; (4) if appropriate, a certain breed or color (*e.g.*, Angus influenced, solid black/red hided recipient cows); and, (5) structurally sound. The breeder may want to hold the recipient owner liable for gross negligence or intentional misconduct relating to the care of the recipient and the progeny including calving complications and require that the recipient owner use best management practices. If the recipient cow owner will be raising the calf until weaning and retaining ownership of the recipient cow, the breeder may want to list special management terms (*e.g.*, early weaning at 90 days, creep feeding, DNA testing).

Flush Agreement. If a cattle breeder is purchasing a flush from another owner, the breeder may want to memorialize a minimum number of transferable embryos from the flush (*e.g.*, five embryos) and the date/procedures for the receipt of the flush. Additionally, this breeder would also want to make sure that that flush is guaranteed to be what was ordered (*e.g.*, free of certain genetic defects, use of sexed semen) and note liquidated damages in case of an error. Conversely, the owner of the flushed cow will want to enumerate the payment terms including shipping expenses and ensure that he/she is not responsible for the transfer of the embryos to the recipient or calving problems that may occur.

General Considerations. There are also some general considerations that the parties should consider such as the name and contact information of the parties (including D/B/A or corporate business entity), choice of law, and attorneys' fees for the prevailing party in a dispute. The contract should also be binding on the heirs, successors and assigns. Additionally, some parties wish to have an arbitration clause or alternatively a forum selection clause for a neutral courtroom. Some embryo transfer contracts also require credit card information to be used as security for late payment. Finally, each party of the contract should agree to comply with all federal, state, and local laws including livestock animal cruelty laws.

It is highly suggested that all parties dealing with embryo transfers put their agreements in writing. The agriculture industry is notoriously trustworthy oftentimes doing business with a handshake. Having terms of an agreement in writing is not an indication of a lack of trust; instead, it is a sound business practice. Things go wrong outside of everyone's control. Make sure everyone involved in the transaction is clear on the terms of the agreement in a legally enforceable contract and all parties' interests are protected. Contract law is state specific so it is recommended that beef producers seek counsel from an attorney licensed in their jurisdiction.

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