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注：这些附录中所包括的形式上的协议，其目的只是作为一些例证，而不是想提供法律咨询或指南。对于您的契约所需的特定表格，条款和条件，您应向您自己的律师进行咨询。

一九九四年七月二十二日

北美出口谷物协会（股份有限）合同第2号—离岸价格出口合同（美国/加拿大），1988年8月1日修正。  
本合同包括对出口谷物数量、重量、质量、交货、价格、支付等规定，共28条。

# NORTH AMERICAN EXPORT GRAIN ASSOCIATION, INC.

## FREE ON BOARD EXPORT CONTRACT U.S.A./CANADA

# NO. 2

Revised as of August 1, 1988

Contract No. \_\_\_\_\_

New York, N.Y. \_\_\_\_\_ 19 \_\_\_\_\_

1. Sold by \_\_\_\_\_

2. Purchased by \_\_\_\_\_

3. Broker/Agent \_\_\_\_\_

4. Quantity \_\_\_\_\_  
in bulk, including dockage, 5% more or less at buyer's option, and at market price (per Clause 10) as follows: If the first delivery under this contract is for a quantity between contract minimum and contract maximum (both inclusive), no further deliveries shall be made. If this contract is to be executed by more than one vessel, the loading tolerance of 5% more or less shall apply on the difference between the mean contract quantity and the quantity that has been delivered on all prior vessels. Any delivery which falls within this difference, plus or minus 5%, shall complete the contract.

5. Weight \_\_\_\_\_  
Quantity to be final at port of loading in accordance with customary weight certificates. 1,016 kilos shall be equal to 2,240 lbs.

6. Commodity \_\_\_\_\_

In accordance with the official grain standards of the United States or Canada, whichever applicable, in effect on the date of this contract.

7. Quality \_\_\_\_\_  
Quality and condition to be final at port of loading in accordance with official inspection certificates.  
In case of delivery at St. Lawrence ports, quality and condition to be final in accordance with Lake and/or loading ports official inspection certificates; Lake inspection certificates to be properly identified at ports of shipment.

Each party hereby authorizes the other party to request in both parties' names an appeal inspection under the U.S. Grain Standards Act at any time prior to or during the loading of the vessel, and whether or not such request was filed before commencement of loading. The cost of such appeal inspection, unless otherwise stipulated in this contract, shall be borne by the party requesting it.

Delivery of higher grades of grain of the same type and description is permissible. The commodity is not warranted free from defect, rendering same unmerchantable, which would not be apparent on reasonable examination, any statute or rule of law to the contrary notwithstanding.

8. Delivery \_\_\_\_\_  
Delivery shall be made between \_\_\_\_\_ and \_\_\_\_\_, both inclusive (the "delivery period"), at discharge end of loading spout, to buyer's tonnage in readiness to load, in accordance with custom of the port and subject to the elevator tariff to the extent that it does not conflict with the terms of this contract. Incorporation of a loading rate guaranty in this contract shall not entitle seller to delay delivery.

Buyer shall give vessel nominations ("preadvice") in accordance with Clause 15, in time for seller to receive minimum \_\_\_\_\_ days notice of probable readiness of tonnage and quantities required (the "preadvice period"). Buyer to keep seller informed of changes in expected date of vessel readiness.

Time for the preadvice shall be deemed to commence to count at 1200 noon, local time at place of receipt, on the business day of receipt by seller and shall be counted in consecutive periods of 24 hours.

Seller shall, if applicable, declare port and berth of loading within a reasonable time (but not later than \_\_\_\_\_ days) after receipt by seller of the preadvice, except that seller shall not be obligated to make such declaration earlier than (a) the 8th day prior to commencement of the delivery period for port declaration and (b) the 5th day prior to commencement of the delivery period for berth declaration.

The vessel shall not be prevented from filing and from taking its place in the vessel line-up at the designated port/berth during the preadvice period or before commencement of the delivery period, notwithstanding which, seller shall not be obliged to effect delivery to the vessel before the expiration of the preadvice period or before commencement of the delivery period. For the purposes of this contract a vessel shall be considered filed when it (a) has tendered valid notice of readiness to load to the charterer or his agent, at the port of loading, (b) has given written advice of such tender to the loading elevator, complete with all customarily required documents, such advice having been presented between the hours of 0900 and 1600 local time on a business day or between the hours of 0900 and 1200 noon on Saturday (provided not a holiday) and (c) is ready to receive grain in the compartments required for loading under this contract.

Buyer shall be allowed to make one substitution of a vessel, provided the substituting vessel is of the same type and approximately the same size and position. If the original or the substituting vessel is unable to lift the commodity by reason of the vessel having sunk or having suffered incapacitating physical damage, an additional substitution shall be made of a vessel of the same type and approximately the same size, and with a position agreeable to buyer and seller. Such agreement shall not be unreasonably withheld. The nomination of the substituting vessel shall be subject to the preadvice requirements of this clause, regardless of any preadvice previously given, unless the estimated time of arrival of the substituting vessel is the same as the estimated time of arrival of the original vessel when nominated. No substitution of vessels other than as provided in this clause shall be made. If this is a "named vessel" contract, no substitution other than after a casualty as described above shall be permitted.

Bills of lading and/or mate's receipts to be considered proof of date of delivery in the absence of evidence to the contrary. Any delivery in part fulfillment of this contract shall be considered as if made under a separate contract.

9. Days \_\_\_\_\_  
In any month containing an odd number of days, the middle day shall be reckoned as belonging to both halves of the month.



## 10. Price

\_\_\_\_\_ per \_\_\_\_\_  
 free on board buyer's tonnage at \_\_\_\_\_

If this contract is for a flat price, any variance in quantity from the mean contract quantity shall be settled basis the FOB market value (as defined in paragraph (a) and (b) below).

If the contract price is to be established on an exchange of futures, futures shall be exchanged prior to delivery of the commodity or at least 5 calendar days prior to the last trading day of the applicable futures month, whichever is earlier, to the nearest 5,000 bushels of the mean contract quantity. If deliveries under this contract result in a variance from the mean contract quantity, there shall be another exchange of futures as soon as possible after the last date of loading to bring the resulting amount of futures exchanged to the nearest 5,000 bushels of the quantity delivered. All exchanges of futures shall be made within the range of prices prevailing on the futures market on the date of the exchange. The variance from the mean contract quantity shall be settled basis the market value of the premium (as defined in paragraph (a) and (b) below).

- (a) The FOB (flat price) market value, or the market value of the premium, as the case may be, shall be that prevailing on the close of the appropriate market in the country of origin of the commodity on the last date of loading, if such be a business day, otherwise on the close of such market on the previous business day.
- (b) In the event the parties do not agree on the market value by the time the shipping documents are ready to be transmitted to buyer, seller shall invoice the entire shipment provisionally at contract price. Thereafter, final invoice for the difference between contract price and market value shall be presented as soon as possible and payment shall be made immediately.

## 11. Payment

\* (a) Net cash by irrevocable divisible letters of credit issued or confirmed by a prime U.S. bank in New York (or \_\_\_\_\_ by mutual agreement), available by sight drafts accompanied by shipping documents per Clause 12 (or warehouse receipts if option (c) of Clause 18 is exercised). Such letters of credit, in a form acceptable to seller, shall be established not later than 5 days prior to the beginning of the delivery period, and shall be valid at least until the 30th day after expiration of the delivery period. Should delivery be delayed beyond the delivery period, buyer, if requested by seller, shall amend letters of credit accordingly and buyer shall increase the amount of the letter of credit to provide for carrying charges, if applicable. All bank charges shall be for buyer's account.

—or—

\* (b) Net cash in U.S. Dollars, by telegraphic transfer to the bank designated by seller, against presentation of and in exchange for shipping documents per Clause 12 (or warehouse receipts if option (c) of Clause 18 is exercised). Such presentation shall be made in the city of \_\_\_\_\_

All bank charges in connection with payment shall be for buyer's account.

—or—

\* (c) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\*Delete paragraphs which are not applicable.

## 12. Shipping Documents

Payment to be made against bills of lading or mate's receipts (at seller's option), and weight and inspection certificates. However, if practicable, seller shall follow instructions of buyer in establishing bills of lading containing such clauses as buyer's/vessel's agents or owners usually endorse or attach. Buyer shall accept such bills of lading but seller assumes no responsibility for their correctness.

## 13. Notice of Delivery

Notice of delivery stating vessel's name, dates of bills of lading (or mate's receipts), quantities and qualities loaded (including percentage of dockage if applicable) shall be given or passed on by seller to buyer without undue delay. Notices of delivery shall be subject to correction of any errors.

## 14. Insurance

Marine and war risk (plus strikes, riots, civil commotions and mine risk) insurance, covering seller's/buyer's interests as they may appear, is to be covered by buyer with first-class approved companies and/or underwriters and to be confirmed by such companies and/or underwriters to seller at least 5 days prior to the expected readiness of the vessel. If this confirmation is not received by seller by such time, seller may place such insurance for buyer's account and at buyer's risk and expense.

## 15. Communications

All notices under this contract shall be given by letter, if delivered by hand on the day of writing, or by cable, telex or other method of rapid written communication. Any notice received after 1600 hours (local time at place of receipt) on a business day shall be deemed to have been received on the following business day, except that for preadvice given and received by parties which are both located in the Continental United States and/or Canada, the reference herein to 1600 hours shall signify 1600 hours New York City time (E.S.T. or E.D.T.), as in effect on date of receipt of the notice).

## 16. Circles

(a) For the purposes of this clause, a circle shall consist of a series of contracts in which each seller is also a buyer of a commodity of the same description and quality, for delivery at the same ports and with compatible delivery periods.

(b) If this contract forms part of a circle, each party may agree with the other parties in the circle to forego actual delivery and to participate in a clearing agreement for the settlement of contract price differences. Monies due and owed to parties in the circle shall be payable on the middle day of the contract delivery period.

(c) If a circle can be shown to exist but no clearing agreement has been reached by the 10th calendar day following the last day of the delivery period, actual delivery shall not be made and payment shall be made by each buyer to his seller of the excess of seller's invoice amount over the lowest invoice amount in the circle. Such payments shall be made promptly after the 10th calendar day following the last day of the delivery period.

(d) Should any party in a circle fail to make payment on the due date as required under paragraph (b) or (c) above for reasons cited in Clause 23 or for any other reason, payment shall be made between each buyer and his seller of the difference between the seller's invoice amount at contract price and the market value of the commodity on date of insolvency or default, as the case may be. Such payment shall be made latest on the 2nd business day after the due date under paragraph (b) or (c) above.

Payments already made under paragraph (b) or (c) above shall be refunded.

(e) All circle settlements shall be based on the mean contract quantity.

If a circle under paragraph (b), (c) or (d) above exists, Clause 21 shall not apply and Clauses 18 and 20 shall not be invoked.



Payments due on a non-business day shall be made not later than the following business day.

All payments made after the delivery period shall include carrying charges from the day following the last day of the delivery period, to the date of payment, at the rates stipulated in this contract. These carrying charges shall be settled individually between each buyer and his seller.

- (f) The parties agree that any dispute arising out of the voluntary clearing agreement entered into in accordance with paragraph (b) above shall be subject to arbitration as to any party thereto. Such arbitration shall be conducted in accordance with the provisions of Clause 28.

17. **U.S./Canadian Government Rules and Regulations** Buyer and seller agree to comply with the U.S. and Canadian regulatory prerequisites applicable to this contract, including, but not limited to, those governing any export subsidy, destination controls, government financing of agricultural commodities and the monitoring of export purchases and sales. Any losses, fines, penalties, expenses, costs or damages incurred as a result of failure to perform in accordance with this provision shall be borne by the party responsible for such failure.

18. **Failure to Take Delivery** If vessel fails to file before the end of the delivery period, buyer shall be in breach of contract and seller shall carry the grain for buyer's account and risk as provided in Clause 19. In the event that buyer has not given vessel nominations conforming to the applicable provisions of Clause 8 by the 15th calendar day following the last day of the delivery period, or if the vessels having been nominated within such time, fail to file by the 35th calendar day following the last day of the delivery period, seller may, in his discretion: (a) continue to carry the commodity for buyer's account and risk, (b) declare buyer in default, or (c) tender to buyer proper warehouse receipts in a quantity equal to the mean quantity open under this contract, in exchange for which buyer shall pay at contract price plus accrued carrying charges, but less out-elevation and outbound weighing and inspection charges. Such tender of warehouse receipts shall be deemed due performance of the contract by seller.

SPECIAL PROVISIONS FOR CONTRACTS PROVIDING FOR DELIVERY AT ST. LAWRENCE, GREAT LAKES OR HUDSON BAY PORTS:

- (1) Seller shall be barred from declaring option (b) above while the navigation in the designated delivery area is officially closed for the ice season, and for 20 days thereafter.
- (2) However, if options (a), (b) and (c) above become available to seller only while the navigation is officially closed, the seller may declare option (b) during the first 10 days it becomes available to him; thereafter, he shall be barred from declaring it, until the 21st day after the official opening of navigation.
- (3) If seller carries the grain into the new season for buyer's account, buyer shall have the right to nominate vessels per Clause 8, regardless of whether vessels were already nominated during the delivery period.

19. **Carrying Charges** If the commodity is being carried for buyer's account and risk as provided in Clause 18, it is mutually agreed that carrying charges, consisting of storage, insurance and interest, shall accrue as follows:

- (a) Storage and insurance from the day following the last day of the delivery period up to and including the dates of delivery (or if seller exercises option (b) or (c) of Clause 18, the date applicable thereto), both dates inclusive, at the following rates:

\_\_\_\_\_ U.S. cents per bushel per day \_\_\_\_\_

\_\_\_\_\_ U.S. cents per bushel per day \_\_\_\_\_

- (b) Interest from the day following the last day of the delivery period up to and including the last day of delivery (or if seller exercises option (b) or (c) of Clause 18, the date applicable thereto), both dates inclusive, at the following rates:

\_\_\_\_\_

\_\_\_\_\_

Carrying charges for the delivery completing this contract shall be computed on the mean contract quantity less the amounts previously delivered (if any), irrespective of whether or not buyer has availed himself of the loading tolerance option under Clause 4. It is further expressly agreed that carrying charges as provided herein are to be construed in the nature of liquidated damages and, as such, that no further proof of damages shall be required in substantiation thereof.

20. **Strikes or Other Causes of Delay in Delivery**

- (a) This clause shall apply if delivery by seller of the commodity, or any part thereof, is prevented or delayed at the port(s) of delivery and/or elevator(s) of delivery or elsewhere, or if the forwarding of the commodity to such port(s) and/or elevator(s) is prevented, by reason of the causes enumerated in paragraph (b) below: PROVIDED that seller shall have sent notice to buyer not later than 2 business days after the date of commencement of the causes, or not later than 2 business days after the 1st day of the delivery period, whichever occurs later (except that subsequent sellers shall not be bound by these deadlines, provided they pass along the notice to their buyer, without delay); and PROVIDED further that seller shall, at buyer's request, furnish a certificate of the North American Export Grain Association, Inc., certifying the existence and the duration of the causes. Such certificate shall be final.

- (b) The causes of delay and/or prevention ("causes") referred to in paragraph (a) above shall be:

- (1) Riots, strikes, lockouts, interruptions in or stoppages of the normal course of labor,
- (2) Embargoes or exceptional impediments to transportation,
- (3) Action by Federal, State or local government or authority.

- (c) The obligation of seller to make delivery shall be suspended while the causes are in effect, until the termination of the causes and/or the resumption of work after the termination of the causes, whichever is later. Seller shall not be responsible for further delays after resumption of work (whether such termination or resumption of work occurs prior to, during or after the delivery period) except that, if a vessel nominated under this contract is not loaded in the proper rotation but is bypassed by vessels (other than liners) which had filed after the vessel nominated under this contract, seller shall pay to buyer damages equal to the actual working time lost (weather working days, Saturdays, Sundays and holidays excluded) to buyer's vessel during the loading of the bypassing vessels, at the demurrage rate in the Charter Party for the vessel nominated under this contract.

If the Charter Party of the vessel under this contract does not indicate a demurrage rate, the damages are to be calculated at a reasonable demurrage rate predicated on the then current market, to be agreed upon amicably or to be determined by arbitration.

- (d) (1) If the causes commence before or during the delivery period and terminate during or after delivery period, then the delivery period shall be deemed to be extended by a number of days equivalent to the period starting with the commencement of the causes or the commencement of the delivery period, whichever is later, and ending with the termination of the causes, and/or the resumption of work after the termination of the causes, whichever is later.

- (2) If the causes commence during the additional time afforded to buyer under Clause 18 with respect to vessel nominations and filings, then the right of seller to exercise option (b) or (c) under Clause 18 shall be deemed to be delayed by a number of days equivalent to the period starting with the commencement of the causes and ending with the termination of the causes and/or the resumption of work after the termination of the causes, whichever is later.
- (e) Carrying charges, if due under Clauses 18/19, shall begin to accrue on the day following the last day of the delivery period, as extended by paragraph (d)(1) above; however, if this clause becomes operative while carrying charges are already accruing, then such charges shall continue to accrue as they would in the absence of the causes.
- 21. Prohibition** In case of prohibition of export, blockade or hostilities or in case of any executive or legislative act done by or on behalf of the government of the country of origin or of the territory where the ports of shipment named herein are situate, restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this contract and to the extent of such total or partial restriction to prevent fulfillment and to that extent this contract or any unfulfilled portion thereof shall be cancelled without prejudice to seller's entitlement to carrying charges. Seller shall advise buyer without delay of the reasons therefor, and if required by buyer, seller shall provide certification of the North American Export Grain Association, Inc., as sufficient evidence for cancellation under this clause.
- 22. Default** In case of default by either party, the other party shall be at liberty, after giving notice, to resell or repurchase, as the case may be, without undue delay and the defaulting party shall make good the loss, if any, to the other party but the defaulting party shall not be entitled to any profit. If the non-defaulting party has not repurchased or resold the commodity by the 10th calendar day after the giving of notice of default, the market value on the said 10th day shall be used for settlement purposes. If such 10th day falls on a non-business day, the market value on the previous business day shall govern. In the event of a default by buyer, the sale price under this contract shall automatically be increased by the value of carrying charges calculated up to the date of resale, or the 10th calendar day after the giving of notice of default, whichever is applicable.
- 23. Insolvency** Either party shall, at any time after sending notice, have the right to terminate this contract and to recover the loss (if any) in the event that:
- (a) the other party suspends payment or commits an act of bankruptcy;
- or—
- (b) reasonable grounds for insecurity having arisen with respect to the financial capacity of the other party to perform under this contract, and a written demand for adequate assurance of due performance having been made, such assurance is not received within a period of time not exceeding 5 days.
- 24. Construction** For the purposes of this contract, except as otherwise expressly provided or unless the context otherwise requires, plural terms include the singular.
- 25. Passage of Title** Anything in this contract to the contrary notwithstanding, seller shall retain title to the commodity until seller has been paid in full (per Clause 11), it being understood that risk of loss shall pass to buyer on delivery at discharge end of loading spout (per Clause 8).
- 26. International Conventions** The following shall not apply to this contract:
- (a) the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods;
- (b) the United Nations Convention on Contracts for the International Sale of Goods of 1980; and
- (c) the United Nations Convention on the Limitation Period in the International Sale of Goods, concluded at New York on 14 June 1974, and the Protocol Amending the Convention on the Limitation Period in the International Sale of Goods, concluded at Vienna on 11 April 1980.
- 27. Other Conditions**
- 28. Arbitration** Buyer and seller expressly agree that any controversy or claim arising out of, in connection with or relating to this contract, or the interpretation, performance or breach thereof, shall be settled by arbitration in the City of New York before the American Arbitration Association, or its successors, pursuant to the Grain Arbitration Rules of the American Arbitration Association, as those Rules may be in effect at the time of such arbitration proceeding, which Rules are hereby deemed incorporated herein and made a part hereof, and under the laws of the State of New York. The arbitration award shall be final and binding on both parties and judgment upon such arbitration award may be entered in the Supreme Court of the State of New York or any other court having jurisdiction thereof. Buyer and seller hereby recognize and expressly consent to the jurisdiction over each of them of the American Arbitration Association or its successors, and all of the courts of the State of New York. Buyer and seller agree that this contract shall be deemed to have been made in New York State and be deemed to be performed there, any reference herein or elsewhere to the contrary notwithstanding.

BUYER

SELLER



北美出口谷物协会（股份有限）离岸价格合同第2号的附约1号，1988年8月1日修正。装货速度保证。  
本附约规定了签订合同的双方必须遵守的对装货时间，速度以及一旦滞期的赔偿费。本附约共9条。

# NORTH AMERICAN EXPORT GRAIN ASSOCIATION, INC.

## ADDENDUM NO. 1 TO NORTH AMERICAN EXPORT GRAIN ASSOCIATION, INC., F.O.B. CONTRACT NO. 2 (REVISED AS OF AUGUST 1, 1988) LOADING RATE GUARANTY

This Addendum shall apply if the parties have agreed to be bound by a loading rate guaranty, and provided that lifting under this contract is by one self-trimming bulk carrier only.

1. Seller guarantees to deliver at an average rate of \_\_\_\_\_ long tons per weather working day of 24 consecutive hours, Sundays and holidays excepted, Saturdays per Baltimore Form "C" Saturday Clause, provided vessel can receive at such rate. Holidays shall be those listed as such in the BIMCO Holiday Calendar and/or in the elevator tariff.  
For this purpose, laytime shall commence to count:
  - (a) at 0700 hours on the business day following filing of the vessel in accordance with Clause 8 of North American Export Grain Association, Inc., FOB Contract No. 2 ("NAEGA 2"),  
—or—
  - (b) at 0700 hours on the business day following expiration of the preadvice period stipulated in Clause 8 of NAEGA 2, unless an earlier date is agreed to by both parties,  
—or—
  - (c) at 0000 hours on the first business day of the contract delivery period, unless an earlier date is agreed to by both parties,  
whichever is the latest, whether vessel is in berth or not.
2. Should seller deliver at less than the stipulated rate, seller to pay buyer demurrage at \$ \_\_\_\_\_ for each additional day (or pro-rata for part of day) used. Should seller deliver faster than at the stipulated rate, buyer to pay seller despatch money at half the demurrage rate, i.e. \$ \_\_\_\_\_ per day, for each day (or pro-rata for part of day) of laytime saved.
3. Any overtime work performed by the elevator and/or grain inspection and weighing services and/or stevedores shall be for seller's account if ordered by the elevator or the Port Authority; otherwise, for account of the party ordering the overtime.
4. If Clause 20 of NAEGA 2 has been duly invoked, time shall not count for demurrage purposes while the causes are in effect, until the termination of the causes and/or the resumption of work after the termination of the causes, whichever is later, and for an additional period ("additional period") of equal duration, but such additional period not to exceed 30 days. However, for purposes of settling despatch accounts only, any time lost in delivering through any of the causes, and the additional period, shall be counted as time used in loading.  
If during the additional period the vessel nominated under this contract is not loaded in proper rotation but is bypassed by vessels (other than liners) which had filed after the vessel nominated under this contract, seller shall pay to buyer damages equal to the actual working time lost (i.e. weather working days, but Saturdays, Sundays and holidays excluded) to buyer's vessel during the loading of the bypassing vessels, at the demurrage rate stipulated in Clause 2 above. The provisions regarding payment of damages under paragraph (c) of Clause 20 of NAEGA 2 shall not apply to this Addendum.  
Notwithstanding the above, if time has started to count under Clause 1 above within the delivery period, and demurrage is already accruing under this Addendum when the causes of prevention or delay commence under Clause 20 of NAEGA 2, demurrage shall continue to accrue as if these causes did not exist. In such case, the preceding paragraph shall be deemed to be deleted.
5. Buyer's or seller's claim under this Addendum shall be accompanied by the statement of facts at loading, signed on behalf of the owner and the charterer or on behalf of the owner and by the supplier, and such other papers as may be necessary to process the claim. If payment is not made within 40 days from date of mailing of properly documented claim, interest shall accrue, starting on the 41st day after such mailing, and shall be computed on the final amount due, at the rate of interest stipulated elsewhere in this contract, up to the date of payment of the claim.
6. If vessel nominated under this contract also lifts additional commodities (grain and/or oilseeds), regardless of whether or not such commodities are covered by loading rate guaranties, the following shall apply:
  - (a) For commodities delivered to vessel at the same berth:  
The "time allowed" shall be arrived at by dividing the tonnage loaded under this contract by the daily rate stipulated in Clause 1 above. A calculation of "total time used" for all the commodities loaded at the berth shall be made, in which any such time in excess of the "time allowed" shall be computed as time on demurrage. The "total time used" shall then be pro-rated to the tonnage loaded under this contract. The "time allowed" shall be deducted from this pro-rated figure to arrive at the time on demurrage or time saved under this contract.
  - (b) If the commodities other than those under this contract are delivered at (an) other berth(s) in the same port:  
The waiting time ("waiting time") at the first berth shall be pro-rated among all the contracts for the commodities to be delivered to the vessel.  
The time spent getting to and used at the first berth ("berth time") shall be pro-rated among the contracts loaded at the first berth.  
The waiting time at the second berth shall be pro-rated among all remaining contracts for the commodities yet to be delivered to the vessel.  
The berth time at the second berth shall be pro-rated among the contracts loaded at the second berth.  
Waiting time and berth time for berths subsequent to the second berth shall be treated in a similar manner as for the second berth.

Waiting time shall cease and berth time begin when pilot is on board and vessel lifts anchor in order to proceed to the loading berth. Berth time shall cease when loading is completed at that berth and waiting time shall begin when vessel drops anchor in waiting area after having sailed from berth.

If no waiting time is involved between berths, berth time at the next berth shall begin when vessel sails from the previous berth.

If, between the time that the vessel is ordered into a berth and the time of completion of loading at that berth, the vessel is ordered into one or more other berths, subsequently incurred waiting time at this (these) other berth(s) shall not count.

- (c) If the commodities other than those under this contract are delivered at (an)other port(s):

The laytime statement shall be prepared as if the vessel had not called at another port. If the commodities under this contract are loaded at the second or a subsequent port, the words "filing of the vessel in accordance with Clause 8 of the North American Export Grain Association, Inc., FOB Contract No. 2 ("NAEGA 2")" in Clause 1(a) above shall be deemed to read "presentation of the vessel's passes." If, however, the first and second or subsequent ports have been nominated by the seller of the grain under this contract, laytime for the second and/or subsequent port(s) shall commence upon vessel's arrival at that or the subsequent port(s); except that, if vessel fails inspection at such port(s), laytime shall cease to count until vessel passes.

7. If vessel fails reinspection at the loading berth, laytime shall cease to count until vessel passes.
8. Any trimming costs as well as overtime costs for performing trimming shall be for buyer's account. Any time used for trimming shall not count as laytime and/or shall be exempt from demurrage, unless loading operations are being carried on simultaneously in other holds.
9. Other Conditions:

10. Buyer and seller agree that any controversy or claim arising out of, in connection with or relating to this Addendum, or the interpretation, performance or breach thereof, shall be settled by arbitration in the City of New York before the American Arbitration Association, or its successors, pursuant to the Grain Arbitration Rules of the American Arbitration Association, as those Rules may be in effect at the time of such arbitration proceeding, which Rules are hereby deemed incorporated herein and made a part hereof, and under the laws of the State of New York. The arbitration award shall be final and binding on both parties and judgment upon such arbitration award may be entered in the Supreme Court of the State of New York or any other court having jurisdiction thereof. Buyer and seller hereby recognize and expressly consent to the jurisdiction over each of them of the American Arbitration Association or its successors, and of all the courts in the State of New York. Buyer and seller agree that this contract shall be deemed to have been made in New York State and be deemed to be performed there, any reference herein or elsewhere to the contrary notwithstanding.

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BUYER

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SELLER





# Grain Arbitration Rules

*As amended and in effect October 1, 1988*



美国仲裁协会制定的《谷物仲裁条例》。经修正,1988年10月1日起生效。



## 引言

大家熟悉的NAEGA即北美出口谷物协会（股份有限）。此机构是美国和加拿大向国外市场出口谷物的主要出口商的组织。从其所起会名，也可看出它的成员都是美国和加拿大的谷物出口商，有的是私营合股公司，有的是谷物合作社。它成立于纽约，并在那里运作了56年，直至1976年迁到华盛顿特区。此组织的目的实际上只有一个，即推动谷物向国外市场出口，并为之服务。为此目的，它进行种种活动。

NAEGA积极参与制订影响整个谷物出口业的政策。它还设有下述四个委员会，分别承担任务，考虑谷物贸易界感兴趣的，技术性更强的问题。

—合同委员会，定期研究NAEGA的各种合同书，并根据当前需要加以修订；

—分级委员会，经常与美国农业部联邦谷物检验局共同研究分级和装船品质，以及同分级及谷物重量有关的一些问题；

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1400 K Street, NW-Suite 1200-Washington,  
DC 20005 U.S.A.  
电话：(202) 789-0789 传真：(202) 898-0522  
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—装运和港口条例委员会,从事与装运谷物有关的各种活动;

—NAEGA罢工委员会,考虑每次罢工对谷物出口业业务的影响,可开出罢工证书(strike certificate),以满足谷物出口业处理出口合同承诺的需要;

—NAEGA还有一些应临时需要而设立的特设委员会,为NAEGA理事会研究发生的事情,并提出政策性建议。

NAEGA办公地点在1030 15th Street,NW, Washington,DC 20005,电话 202/682-4030。

(此引言中还列出NAEGA建议在它的标准合同中加进的一条仲裁条款)。

谷物仲裁条例共10章50条。

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# Grain Arbitration Rules

## *I. Definitions*

1. As used in these Rules:
  - (a) The term "the AAA" means the American Arbitration Association.
  - (b) The term "NAEGA" means the North American Export Grain Association, Incorporated.
  - (c) The term "the Arbitration Advisory Committee" means the Arbitration Advisory Committee of the North American Export Grain Association, Incorporated.
  - (d) The term "these Rules" means the Grain Arbitration Rules of the AAA as they exist at the time an arbitration is initiated under them.
  - (e) The term "the Administrator" means the AAA or its designated representative.
  - (f) The term "the Panel" means the current list of persons available to serve as arbitrators under these Rules, as is described in Section 3 of these Rules.

## *II. Rules a Part of the Arbitration Agreement*

2. Whenever parties have entered into a contract that provides for arbitration under the Grain Arbitration Rules of the AAA, or its successors, those parties shall conclusively be deemed to have made these Rules and any amendment of them a part of their arbitration agreement.

## *III. Arbitrators*

3. The Administrator shall maintain a current list of the names of persons who are actively engaged in, or have retired from active engagement in, the grain-trade business, available to serve as arbitrators under these Rules. The Arbitration Advisory Committee shall, at the request of the Administrator, or may, at its discretion, appoint persons to the list. The Administrator may also, at its discretion, appoint persons to the list.

For the hearings of arbitrations under these Rules, any three members of the Panel, chosen as provided



in Section 10 of these Rules, shall constitute the board of arbitrators.

#### ***IV. Initiation of Arbitration***

##### **4. Under an Arbitration Clause in a Contract or Written Stipulation**

Any party to a contract in which these Rules are deemed to have been made a part, as provided in Section 2 of these Rules, or any party to a written stipulation or written agreement to arbitrate under these Rules may commence an arbitration in the following manner:

(a) By such a party doing all of the following (without the doing of which the arbitration shall not be deemed to have been commenced):

(i) Giving written notice to the other party of its intention to arbitrate (Demand), which notice shall contain (1) the name and address of the party on whom the Demand is made; (2) the date of the contract and complete text of the arbitration clause or of the stipulation or agreement to arbitrate, as the case may be; (3) a brief but specific statement of the dispute to be arbitrated, the amount claimed, if any, and the relief sought; (4) a request of the other party to comply with the arbitration agreement; and (5) the signature and address of an authorized person; and

(ii) Filing with the Administrator three copies of the Demand, together with three copies of the contract or such parts thereof as relate to the dispute, including the arbitration provisions, together with the appropriate administrative fee as provided in the Administrative Fee Schedule, described in Section 49 of these Rules.

(b) The Administrator shall give written notice of the filing of the Demand to the other party. If the party on whom the Demand has been made so desires, that party may, within ten days after receipt by it of the notice from the Administrator, file an answering statement (Answer) in writing, as follows: By simultaneously (1) filing the Answer in duplicate with the Administrator and (2) sending the Answer to the other party. If a monetary claim is made in the Answer, the appropriate fee as provided in the Administrative Fee Schedule shall be forwarded to the AAA with the Answer. If no Answer is filed within the stated time, it

will be assumed that the claim is denied. Failure to file an Answer shall not operate to delay the arbitration.

##### **5. Changes of Claim**

After filing of the Demand and Answer, if any, if either party desires to make any new or different claim, such a claim shall be made in writing and filed with the Administrator, and a copy thereof shall be mailed to the other party, who shall have a period of ten days from the date of such mailing within which to file an Answer to the new or different claim with the Administrator.

After the hearings by the arbitrators commence, however, no new or different claim may be submitted to them, except with the consent of the arbitrators.

##### **6. Initiation under a Submission**

Parties to an existing dispute may commence an arbitration under these Rules by filing with the Administrator three copies of a written agreement to arbitrate under these Rules, signed by the parties, containing a statement of the matter in dispute, the amount of money claimed, if any, and the remedy sought, together with the appropriate fee as provided in the Administrative Fee Schedule.

##### **7. Consolidation of Arbitrations**

Consolidation of two or more arbitrations, to be heard in joint proceedings before three arbitrators under these Rules, shall be had where all of the following circumstances exist:

(a) Each of the parties to each of the arbitrations to be consolidated has agreed (or has been ordered by the arbitrators pursuant to these Rules) to arbitrate its dispute under these Rules.

(b) Either (i) the contracts on which the arbitrations are based are linked in “string” or in “circle” or (ii) the parties or subject matters of the arbitrations are related in some other way so that consolidation will result in a more economical or efficient disposal of the issues presented in all of the arbitrations.

(c) There exist common issues of fact that will be required to be determined in each of the arbitrations to be consolidated, the proof of which will or could be substantially the same. However,



neither incomplete identity of fact issues nor varying contract terms or measures of damages shall be a reason for refusing consolidation, unless the differences are of a number and complexity that will make the determination of the liabilities by the arbitrators unwieldy or difficult.

(d) No party to any of the consolidated arbitrations will be substantially prejudiced by the consolidation.

A party to an arbitration wishing to consolidate that arbitration with another shall notify in writing all interested parties and the Administrator of its desire to consolidate. Any party who does not object to the consolidation within 15 days after receipt of the notice shall be deemed to have agreed to the consolidation.

If any of the parties objects to the consolidation within the 15-day period, then the Administrator shall (i) appoint three arbitrators pursuant to Articles III and V of these Rules to hear the issue of the appropriateness of the requested consolidation and (ii) fix a time for the filing of written submissions by the parties, dealing with the issue of consolidation only. (Arbitrators may order an oral hearing in exceptional cases, in which case Article VI of these Rules shall govern.) The arbitrators may rule for or against consolidation of any two or more arbitrations, and their determination shall be final as to the issue of consolidation.

If the arbitrators rule for consolidation, they shall continue to hear the consolidated arbitrations on the merits in joint proceedings and shall render awards as provided for in Section 43 of these Rules.

If the arbitrators rule against consolidation or for consolidation of some but not all arbitrations, they shall continue to hear on the merits the arbitration filed earliest (and any arbitrations that were ordered to be consolidated with it) only. The Administrator shall appoint other arbitrators to hear the other arbitration(s) on the merits, in accordance with Articles III and V of these Rules.

Notwithstanding the foregoing, if a request for consolidation is received later than twenty days before the first date on which hearings in any

of the arbitrations sought to be consolidated are scheduled to commence, there shall be no consolidation (other than consolidations already in effect).

## **8. Place of Arbitration Hearings**

All arbitrations shall be held in the City of New York at a place to be designated by the Administrator, unless the arbitrators and the parties agree on a different place.

## **V. Appointment of Arbitrators**

### **9. Qualifications**

No person shall serve as an arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration, unless the parties waive such disqualification in writing.

### **10. Selection of Arbitrators**

Arbitrations under these Rules shall be held before three arbitrators who, subject to their availability to serve, as determined by the Administrator, shall be chosen by the Administrator from the Panel in alphabetical order of their surnames, starting with the first name on the list and continuing through to the end. For the next and each following arbitration, arbitrators shall be chosen as provided in the preceding sentence, starting with those eligible on the Panel who have not served on the previous arbitration. The same method of choosing arbitrators shall be repeated from the beginning to the end of the Panel as often as is necessary in order to choose the number of arbitrators required for any given arbitration.

### **11. Notice to Arbitrators of Appointment**

Notice of the appointment of the arbitrators shall be mailed to each of the arbitrators by the Administrator, together with a copy of these Rules, and a signed acceptance of the arbitrator shall be filed prior to the opening of the first hearing.

### **12. Disclosure and Challenge Procedure**

A person appointed as an arbitrator shall disclose to the Administrator any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their counsel. Upon receipt of such information from an



arbitrator or other source, the Administrator shall communicate the information to the parties, and, if the Administrator deems it appropriate to do so, to the arbitrators. Thereafter, the AAA shall determine whether the arbitrator should be disqualified and the Administrator shall inform the parties of the decision of the AAA.

### **13. Vacancies**

If any arbitrator resigns, dies, withdraws, refuses to serve, is disqualified, or is unable to perform the duties of the office, the Administrator shall, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules and, unless the parties agree otherwise in writing, the matter shall continue to be heard or shall be reheard, as the arbitrators deem to be appropriate, before the remaining arbitrators and the newly designated arbitrator.

## ***VI. Procedure for Oral Hearings***

### **14. Time**

The arbitrators shall fix the time for each hearing. The Administrator shall mail to each party notice thereof at least ten days in advance, unless the parties by written agreement waive such notice or modify the terms thereof.

### **15. Representation by Counsel**

Any party may be represented by counsel. A party intending to be so represented shall notify the other party and the Administrator, in writing, of the name and address of counsel at least three days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel or when counsel replies for the other party, such notice will be deemed to have been given.

### **16. Stenographic Record**

The Administrator shall make the necessary arrangements for the taking of a stenographic record whenever such a record is requested by a party or by the arbitrators. If requested by a party, the cost of the stenographic record, if any is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies, unless the parties otherwise agree, and shall be paid by the responsible parties directly to the reporting

agency. If requested by the arbitrators, the cost of the record shall be paid as assessed by the arbitrators.

### **17. Interpreters**

The Administrator shall make the necessary arrangements for the services of an interpreter upon the request of one or more of the parties, which party or parties shall assume the cost of the service.

### **18. Attendance at Hearings**

Persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrators shall have the power to require the retirement of any witness during the testimony of other witnesses. It shall be discretionary with the arbitrators to determine the propriety of the attendance of any other person.

### **19. Adjournments**

The arbitrators (a) may take adjournments upon the request of a party or upon their own initiative and (b) shall take adjournments when all of the parties agree thereto.

### **20. Oaths**

Before proceeding with the first hearing, each arbitrator shall take an oath of office. The arbitrators may, in their discretion, require witnesses to testify under an oath administered by any duly qualified person and, if required by law or demanded by either party, shall do so.

### **21. Majority Decision**

All decisions of the arbitrators must be by at least a majority, unless the concurrence of all of the arbitrators is expressly required by law or by the arbitration agreement. In either event, the decision and award shall be final.

### **22. Order of Proceedings**

A hearing shall be opened by the filing of the oath of the arbitrators and by the recording of a minute. The minute shall set forth the place, time, and date of the hearing; the presence of the arbitrators, the parties, and counsel, if any; and the receipt by the arbitrators of the Demand and Answer, if any.

The arbitrators may, at the beginning of the hearing, ask for statements clarifying the issues involved.

