



National Grain and Feed Association Arbitration Decision

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1400 Crystal Drive, Suite 260
Arlington, VA 22202

P: (202) 289-0873
F: (202) 289-5388

September 23, 2026

CASE NUMBER 2957

**PLAINTIFF: PARRISH & HEIMBECKER, LIMITED, NORTH BATTLEFORD,
SASKATCHEWAN, CANADA**

DEFENDANT: SINGER ENTERPRISES, INC., BIGGAR, SASKATCHEWAN, CANADA

STATEMENT OF THE CASE

This case involves three contracts between Parrish & Heimbecker, Limited (“P&H”) and Singer Enterprises, Inc. (“Singer”) for #1 Canadian Western Barley for delivery in November and December 2021, as well as for #2 CP Plus wheat for delivery in October 2021. It is undisputed that the parties entered into the following contracts:

- Contract 314468 for 2000 MT of barley at \$252.62 CAD/MT for delivery in November 2021 to the P&H elevator at Hanover Junction, SK (“Hanover Elevator”);
- Contract 314930 for 1,000 MT of barley at \$259.51 CAD/MT for delivery in December 2021 to the Hanover Elevator; and
- Contract 315981 for 4,000 MT of wheat at \$266.40 CAD/MT for delivery in October 2021 to the Hanover Elevator.

(collectively referred to as “Contract Confirmations”).

Singer and P&H had a course of dealings whereby Singer entered into a series of contracts with P&H beginning in 2015. For 2021, P&H provided a settlement report that shows that Singer and P&H entered into contracts that are not at issue in this case between Singer and P&H.

There is no dispute about the amounts of barley and wheat that Singer delivered:

- For Contract 314468, Singer delivered 1,517.847 MT of barley, and P&H notified Singer that it had defaulted on 428.153 MT of barley.
- For Contract 314930, Singer did not deliver any barley, and P&H notified Singer of a default for the full amount (1,000 MT) of barley.
- For Contract 315981, Singer delivered 525.793 MT of wheat, and P&H notified Singer that it had defaulted on 3,474.207 MT of wheat.

From the time the Contract Confirmations were signed by both parties during the first quarter of 2021 until October 2021 when P&H determined that Singer was in default, there is no dispute that the price of barley went from \$250 CAD/MT to about \$380 CAD/MT and the wheat price went from \$265 CAD/MT to \$425 CAD/MT. P&H admits that weather in the Canadian prairies through much of the summer of 2021 was hot and dry and that many crops did not mature in the fields.

Throughout July, August, and September of 2021, P&H employees routinely reached out to Mr. O.J. Singer, the President of Singer (“Mr. Singer”), to discuss the status of his crops, namely the wheat and barley. On July 13, 2021, Mr. Singer stated that he wished he had not sold anything for 2021 fall harvest. Approximately ten days later, on July 23, 2021, Mr. Singer called P&H and reported that he had 70% crop insurance and that he would not have as much “crop” as he had hoped.

On July 26, 2021, Mr. Singer called and asked about the process if he did not have the wheat to deliver. P&H discussed with him how replacement values were determined, the buyout process, and potential scenarios. At that time, Mr. Singer reported that he had seeded acres of 3000MT of canola, 5000MT of wheat, and 2500MT of barley. He explained that he had a total of 7000MT of wheat sold (including 3,000MT that is not part of this case but was fully delivered on), and he expressed an interest in washing 2000MT of wheat. P&H could not find an offer across its network (including the Hanover Elevator) to find the exact replacement value for the wheat, so P&H offered the wash or buy-in values from Canadian Western Red Spring Wheat (“CWRS”) from P&H’s Hamlin elevator, but Mr. Singer declined this wash/buy-in offer and stated that he would find something cheaper to fulfill his Contract Confirmations.

By August 17, 2021, when P&H asked if Mr. Singer wanted to reduce the Contract Confirmations with P&H, he declined. In response, Mr. Singer said he wanted to wait to see how the wheat and barley progressed in the field.

By late August 2021, P&H tested Singer’s Barley, and there were no discounts on the test weight.

On October 4, 2021, Mr. Singer reported to P&H’s General Manager at the Hanover Elevator that he was waiting on the results of his crop insurance and was waiting to measure his bins. Mr. Singer also reported that he did not want to “buy in” on the default amounts from the Contract Confirmations for his barley as they were for November and December delivery periods.

Then, on October 12, 2021, Mr. Singer and P&H discussed financing options through an unrelated banking facility and the possibility of extending payment terms via a Consent to Judgment, which would allow him to pay for the defaulted portions of the Contract Confirmations over time.

By October 15, 2021, Mr. Singer reported to P&H that he had no more wheat to deliver, had not purchased any wheat, and had no intention of delivering the outstanding amounts of wheat under the Contract Confirmations. Mr. Singer disputed any administration fee associated with the defaulted Contract Confirmations.

On or about October 15, 2021, P&H closed out all of the Contract Confirmations and reviewed what amount that P&H would have to buy in as replacement product for the wheat and barley delivered by truck to the Hanover Elevator. Mr. Singer refused to pay the defaulted value claimed by P&H under the Contract Confirmations, which at that time was the following:

- Contract 314468: \$54,078.72 CAD;
- Contract 314930: \$119,417.00 CAD; and
- Contract 315981: \$542,518.27 CAD.

P&H also assessed the following administrative fees:

- Contract 314468: \$4,281.53 CAD;
- Contract 314930: \$10,000.00 CAD; and
- Contract 315981: \$34,742.07 CAD.

On October 19, 2021, P&H gave Mr. Singer \$908,175.41 CAD for the delivered wheat and \$395,406.00 CAD for the delivered barley.

Mr. Singer then retained counsel, and on November 17, 2021, Mr. Singer reported to P&H that he would not sign the Consent to Judgment with the payment plan and would not pay P&H anything on the defaulted amounts under the Contract Confirmations.

In March 2022, Singer initiated legal action in Provincial Court in Saskatchewan. From March 2022 through February 2024, Singer pursued legal avenues outside of the NGFA Arbitration process. On December 12, 2022, P&H received a stay of those legal proceedings whereby the King's Bench for Saskatchewan ordered that "P&H's application is granted to the extent that this action is stayed pending: (i) the arbitral tribunal's ruling on Singer's allegation that the arbitration clause is unconscionable; or (ii) if Singer does not participate in the arbitration process, the arbitral tribunal's determination of the arbitration process. . . ." ("King's Bench Decision"). Because the King's Bench's Decision sets forth the principles of the law with precision and thoroughness, this Arbitration panel is including the King Bench's Decision as Exhibit A to this award. Singer appealed the King's Bench's Decision, and on February 29, 2024, the Court of Appeals for Saskatchewan dismissed Singer's appeal and awarded costs be paid to P&H.

Contract Terms

Each of the Contract Confirmations provides that the NGFA Trade Rules shall govern. Above the signature line on the first page of the Contract Confirmations provides:

The Buyer(s) and Seller(s) signature on this contract acknowledge(s) the parties are authorized to enter into a binding agreement. By signing this Contract, the parties understand and agree to the terms and conditions on both the front and reverse side of this Contract. . . .

Further, the Contract Confirmations provide that "[a]ny claim relating to this Contract shall be settled by arbitration" under the NGFA Arbitration Rules. Section 7 of the Contract Confirmations provide:

If Seller finds he/she cannot deliver the contracted quantity, Seller shall immediately advise Buyer. If Seller fails to notify Buyer of their ability to complete the contracted delivery, Seller's liability shall continue until Buyer can determine whether Seller has defaulted. Buyer, when so notified or upon such determination, shall by the close of the next business day elect either to: (a) agree with Seller to extend the time for delivery; or (b) after having given notice to seller to complete the contract, buy-in for Seller's account the defaulted portion of the contract; or (c) after having given notice to Seller to complete the contract, cancel the defaulted portion of the contract at the difference between the contracted price and the replacement cost, plus an administrative fee of \$10 per metric tonne. Seller shall pay to Buyer on demand the amount as may be determined under paragraph 7(b) or 7(c), as may be applicable.

Section 16 of the Contract Confirmations further provides that "[n]one of the terms of this Contract may be added to, deleted, or altered in any way without the written consent of an authorized representative of the Buyer."

Finally, Section 13 provides that interest shall be at 1.5% per month.

Notwithstanding the express terms and conditions in the Contract Confirmations, the NGFA Trade Rules have significant protections for the producer/farmer/seller. Exhibit B is a copy of the NGFA Trade Rules in effect in 2021 (note that there is an October 2020 version in effect until the NGFA Trade Rules were amended in June 2021).

Singer's Legal and Equity Arguments

Upon careful review of Singer's written First Argument, Singer admits that "[t]he basis of the case is as described in the Parrish and Heimbecker First Argument so far as the signing of the contracts and delivery of grain and the balance of grain that was not delivered. . . ." Additionally, Singer admits that it had the obligation to deliver all of the grain he produced but that he was not responsible for "ungrown grain." That is, Singer argues that Singer did not deliver the "balance of the grain because it was not grown." From a factual basis, Singer has only provided a one-page sworn statement signed by Mr. Singer. Exhibit C is a copy of the Sworn Statement. No other factual information was provided by Singer in this arbitration.

Singer offers as evidence Court File Number KBG-SA-309-2023 as "case authority" for failure to mitigate damages in a defaulted contract situation in a case involving P&H, but with a different opposing party. Singer also offers a blog on equitable fraud as well as a law review article entitled *Equitable Remedies: Protecting "What We Have Coming to us"* written by Larissa Katz and published in the Drake Journal of Agricultural Law. Finally, Singer includes another law review article entitled *Adhesion Contracts, Bad Faith, and Economically Faulty Contracts* by J.W. Looney and Anita K. Poole in the Drake Journal of Agricultural Law discussing United States law.

In the Sworn Statement signed by Mr. Singer, Mr. Singer admits that he signed the Contract Confirmations on behalf of Singer, but he states that P&H did not explain to him the contract that he was signing and that he was "tricked from the beginning into agreeing to the Arbitration as well as the terms of the contract between [P&H] and [Singer], with heavy protection to [P&H] for breach of the contract but zero protection to [Singer]." He further states that he believed that he should be protected because the dry conditions were an Act of God. Specifically, he attests: "I delivered to [P&H] 100% of each of the crops that were contracted for and the short fall in delivery was because of the Act of God in a drought and the bushels were just not grown." He also attests that "[a]t no time did Parrish discuss with me the form of the contract, either a Production contract (which it was) or the contract that was executed and the difference in those two choices were never explained or offered." Finally, he wrote: "My company has not benefited from not delivering the contracted for grain as it was not grown."

In summary, Singer makes the following legal and equity arguments in his First Argument: (i) the laws of Saskatchewan should apply rather than the NGFA Trade Rules; (ii) the Contract Confirmations lack certain definitions such as "replacement cost" or "buy-in"; (iii) P&H did not mitigate its damages for the breaches of the Contract Confirmations; (iv) the Contract Confirmations are adhesion contracts and unconscionable; and (v) Singer's failure to produce the grain was an Act of God (also referred to as a force majeure event) and should be excused. We address each argument in the Decision section below.

THE DECISION

Singer argued to the King's Bench for Saskatchewan that there was ambiguity in the arbitration clause. The Honorable G.M. Currie found that there was no ambiguity in Section 7 of the Contract Confirmations, which provided that the Contract Confirmations are governed by Saskatchewan and Canadian law "except where an issue may be decided under the National Grain and Feed Association Trade Rules." Singer also argued to the King's Bench of Saskatchewan that the arbitration clause did not give the arbitral tribunal any jurisdiction to determine whether the contracts were unconscionable, and again, the Honorable Currie found that there is no ambiguity in the clause "[a]ny claim relating to this Contract shall be settled by arbitration. . . .," and therefore, the arbitration tribunal can and should address unconscionability of the Contract Confirmations. Further, the Honorable Currie determined that the NGFA arbitration panel can rule on its own "jurisdiction even when that issue touches on a matter of equity."

This arbitration panel agrees with the Honorable Currie. The arbitrators in this matter have taken into account all of the arguments, evidence, and information provided in the briefings. This arbitration panel concludes it has jurisdiction over the Contract Confirmations and equity claim as it relates to the Contract Confirmations at issue. As such, we turn to Singer's main argument that the Contract Confirmations were unconscionable and adhesion type contracts.

From a meaningful factual matrix, each of the three Contract Confirmations are two-page documents. The first page is entitled "Purchase Confirmation," which is in readily-readable print. The first page also includes the parties' details, the grain to be delivered, when and where the delivery is to be delivered, and the price to be paid. Above the signature lines, it further provides:

The Buyer(s) and Seller(s) signature on this contract acknowledge(s) the parties are authorized to enter into a binding agreement. By signing this Contract, the parties understand and agree to the terms and conditions on both the front and reverse side of this Contract. . . .

This language is standard across the North American agricultural industry and is consistent with NGFA Trade Rules from 2020 to present. This language specifically provides that Singer understood and agreed to the terms and conditions of the Contract Confirmations. The second page, which is also referred to as the reverse side, includes eighteen (18) readable provisions – transfer of good title, merchantable quality, rejection of grain, an arbitration clause, etc. – with another signature line. Singer signed each of the two pages for all of the Contract Confirmations.

We find that P&H's Contract Confirmations are consistent with the industry standard two-page contracts with the commercial terms and rules identified on the first page and then additional terms and conditions on the back. The Contract Confirmations also refer to the NGFA Trade Rules, which afford significant protections for producers/farmers/sellers.

Singer has only offered Exhibit C, signed by the President of Singer, as the factual basis to support its allegations of unconscionability and adhesion. Singer has not offered any evidence to conclude that Singer was forced into signing the Contract Confirmations; rather, the factual evidence supports that Singer had the option to not sign the Contract Confirmations. That is, each of the Contract Confirmations were sent to him for e-signatures. There is a time stamp on each one. Mr. Singer chose to electronically sign each of the Contract Confirmations within minutes of receipt – one signature on the first page and another signature on the second page. Mr. Singer had told P&H in July 2021, that he wished he had not pre-sold his crops for the fall. This signals, correctly so, that Mr. Singer knew he did not have to enter into the Contract Confirmations to sell his crops; rather, he chose to do so for whatever reason. Perhaps he was used to doing so, because he has contracted with P&H since 2015 and had numerous contracts on the books even in 2021 that are not at issue in this case. Or, perhaps he preferred to lock in a price for his crops where he would not have worry about lower prices in the fall harvest. There are many reasons why producers/farmers/sellers enter into contracts with buyers such as P&H. What is important in this factual matrix is that Mr. Singer had a choice whether to execute the Contract Confirmations on behalf of Singer, and he chose to do so.

In contrast to the scarcity of factual information provided by Singer, P&H has offered four sworn statements. These four sworn statements include specifics and details around the parties' interactions and discussions, the documentation showing the buy-in/replacement information, settlement reports showing all of Singer's grain deliveries, and text messages.

To address Singer's assertion that there was inequality in the bargaining, Singer provides no evidence – not even in the Sworn Statement – to support that there was inequality in the bargaining. While Singer ostensibly made certain arguments to the King's Bench (see King's Bench Decision at paragraphs 45-46) that only a few such companies operate in Saskatchewan for purchasing grain, and that all of those companies have non-negotiable standard form contracts, no such information was presented to this arbitration panel.

Additionally, Singer argues that Mr. Singer lacked a level of sophistication as compared to P&H and that Mr. Singer had a lack of opportunity to negotiate the standard terms. Singer also asserts that the Contract Confirmations were an improvident bargain. We do not find any factual evidence to support these allegations. In contrast, we find that Singer retained crop insurance on its crops. Crop insurance is used to protect a farmer/producer/seller from a myriad of potential risks ranging from adverse growing conditions to market fluctuations. The evidence in this matter demonstrates that Mr. Singer reported to P&H on two separate occasions that his company had crop insurance and that the crop insurance covered 70% of the crop.

In this case, we conclude that Mr. Singer knew what he was doing when he entered into the industry standard Contract Confirmations. His company hedged its risks related to weather and market fluctuations by purchasing crop insurance. Singer then defaulted on the Contract Confirmations and kept the money that P&H paid him (approximately \$1.3 million CAD). Singer also retained the crop insurance proceeds while at the same time refusing to pay P&H for the amount of money that it had to pay to buy in the replacement value of the wheat and barley that Singer had contracted to provide P&H.

Further, instead of proceeding with the NGFA arbitration process, Singer entered into a multi-year legal battle whereby P&H had to continue to chase Singer for the defaulted amounts and buy in replacement values from the 2021 harvest year. From a financial perspective and as to the question of an improvident bargain, there is ample evidence in the record that Singer received approximately \$1.3 million CAD and crop insurance. This information is notably absent from any of Singer's materials submitted to this arbitration panel.

Finally, Singer asserts that the dry weather/drought was an Act of God and that Singer should have been excused from the contractual commitments with P&H. One of the true risks in agriculture and farming is the weather. The parties can negotiate an Act of God or force majeure provision into the contracts, but Singer has not provided any factual basis showing a request for any revisions to the Contract Confirmations or that any such requests were denied. In Mr. Singer's Sworn Statement, he made three cursory statements that are relevant to this analysis:

6. I delivered to Parrish 100% of each of the crops that were contracted for and the short fall in delivery was because of the Act of God in a drought and the bushels were just not grown.

7. At no time did Parrish discuss with me the form of the contract, either a Production contract (which it was) or the contract that was executed and the difference in those two choices were never explained or offered.

* * *

9. I executed the contract to Arbitrate feeling like the Mob was giving me an offer I could not refuse.

Reviewing these statements, Mr. Singer carefully points out in paragraph 6 that he delivered “each of the crops that were **contracted for**,” and he does not reference the other metric tons of crops that he grew or the fact that on July 16, 2021, P&H offered to wash or buy-in with another crop he had grown. Mr. Singer declined this wash/buy-in offer and stated that he would find something “cheaper” to fulfill his Contract Confirmations. In paragraph 7 of his Sworn Statement, he acknowledges that he knows that there are different types of contracts but that P&H did not discuss them with him. As detailed above, though, there is evidence that on July 26, 2021, Mr. Singer called and asked about the process if he did not have the wheat to deliver, and P&H discussed with him how replacements values were determined, the buyout process, and potential scenarios. The parties discussed washes/buy-ins for the wheat. As such, the factual information before this arbitration panel demonstrates that Mr. Singer knew what are buy-in and replacement values; especially, because of the discussion that occurred on July 26, 2021, between Mr. Singer and P&H. When Mr. Singer chose not to wash the Contracts Confirmations and go to the market to “find something cheaper,” he demonstrated his savvy of industry principles including “buy-in” and “replacement value” of crops when a farmer/producer/seller is unable to provide the contractually agreed upon amounts of crops in a given harvest.

We find Singer’s equity arguments to be factually unconvincing. As such, there is no factual basis upon which we can find that the Contract Confirmations were unconscionable or constituted an adhesion contract.

Finally, as to the argument that P&H should have mitigated its damages for the breaches of the Contract Confirmations, P&H has provided the factual basis to demonstrate that P&H attempted in good faith to work with Singer throughout July to October on possible mitigation strategies due to Singer not producing enough crops to meet the contractual requirements. Singer rejected the reduced amount of the Contract Confirmations, rejected the offer to wash/buy in with respect to the CSWR, and rejected the Consent for Judgment. P&H has demonstrated through its factual evidence that it engaged in good faith negotiations and discussions with Singer to no avail.

This arbitration panel finds that Singer defaulted on the Contract Confirmations and awards P&H the damages of \$765,037.59 CAD plus interest.

THE AWARD

This Arbitration Panel finds that Singer defaulted on the Contract Confirmations and awards Parrish & Heimbecker, Limited the damages of \$716,013.99 (principal amount) CAD plus the contractually agreed upon interest of 1.5% per month on the original principal amount starting in October 2021 through the date of payment in full. This Arbitration Panel also awards the administrative fees of \$49,023.60 CAD per Section 7 of the Contract Confirmations. This Arbitration Panel declines to award the legal fees of \$65,660.10 CAD, because Parrish & Heimbecker, Limited has not demonstrated in its briefing that such is warranted based on the language in the Contract Confirmations.

Decided: March 3, 2026

Submitted with the unanimous consent of the arbitrators, whose names appear below:

Quinn Kulik, *Chair*

Vice President & General Counsel

J.D. Heiskell & Co.

Omaha, NE

Tony Smith

Vice President Grain Operations

United Quality Cooperative

Minot, ND

Mike Traxinger

Senior Vice President and

General Counsel

Agtegra Cooperative

Aberdeen, SD

EXHIBIT A

KING'S BENCH FOR SASKATCHEWAN

Citation: **2022 SKKB 268**

Date: **2022 12 12**
Docket: **QBG-SA-00275-2022**
Judicial Centre: **Saskatoon**

BETWEEN:

SINGER ENTERPRISES INC.

Plaintiff

- and -

PARRISH & HEIMBECKER, LIMITED

Defendant

Counsel:

Robert G. Kennedy, K.C., and Ellen K. Fitzgerald
Collin K. Hirschfeld, K.C.

for the plaintiff
for the defendant

FIAT
December 12, 2022

CURRIE J.

Introduction

[1] Since 2015 Singer Enterprises Inc. (“Singer”) and Parrish & Heimbecker, Limited (“P&H”) have entered into a series of contracts under which Singer sold grain to P&H. The proceedings here relate to three such contracts that were entered into in January and February 2021. The contracts provided for Singer to deliver grain to P&H in the last quarter of 2021.

[2] In July 2021 Singer realized that, due to poor growing conditions, it would have difficulty in meeting its contractual obligations to provide grain to P&H that year. Pursuant to the contracts Singer so notified P&H, explaining that the reason for the difficulty was drought and severe weather. Indeed, later that year Singer delivered some of the grain but it did not deliver all of the grain that it was to deliver to P&H.

[3] In response to the shortfall in grain delivery, pursuant to the contracts P&H cancelled Singer's obligation to deliver the shortfall amounts, and P&H triggered Singer's obligation to pay to P&H a total of \$765,037.59 in lieu of delivering the shortfall amounts of grain.

[4] Singer has refused to pay P&H, taking the position that those "buyout" provisions of the contracts are unconscionable and improvident, and therefore are unenforceable.

[5] In this circumstance, P&H has initiated arbitration proceedings. Arbitration is contemplated in each of the contracts, in an identical clause. In short, that arbitration clause provides that "Any claim relating to this Contract" will be settled by arbitration.

[6] Singer did not respond to P&H's initiation of arbitration proceedings. Instead, Singer commenced this action. In its statement of claim Singer alleges the unconscionability and improvidence of the contracts. Singer claims a declaration that the contracts are unenforceable, claiming specifically a declaration that the arbitration clause does not empower an arbitral tribunal to determine whether the contracts are unconscionable. Singer further claims an interlocutory injunction restraining P&H from pursuing the arbitration.

[7] Now each party brings an application before me. P&H applies for a stay

of this action on the basis that the parties have agreed to arbitration. Singer applies for a declaration that the arbitration clause does not apply to the question of whether the contracts are unconscionable, and on that basis Singer applies for an injunction restraining P&H from perfecting or prosecuting the arbitration.

[8] In its notice of application Singer asserted that the arbitration clause does not apply to the question of unconscionability because that question is outside the scope of “Any claim relating to this Contract”. At the hearing of these applications, though, Singer refined its position. Singer now asserts that the arbitration clause itself is unconscionable and that it is for that reason that the arbitration should not proceed.

[9] P&H says that, since the parties agreed in the contracts to have all issues determined by an arbitral tribunal, it should be the arbitral tribunal who determines whether the arbitration clause is unconscionable (along with all other issues). Singer says that the question of the unconscionability of the arbitration clause must be determined by the court, not by the arbitral tribunal.

[10] Singer further submits that, if this court determines that the arbitration clause is not unconscionable, the court should rule that it will be this court – not the arbitral tribunal – who addresses all of the other issues identified in this action.

[11] With this background, potentially there are several issues to be decided on these applications. The first of these is whether it be the arbitral tribunal or the court who rules on whether the arbitration clause is unconscionable.

A. Will it be the arbitral tribunal or the court who rules on whether the arbitration clause is unconscionable?

1. The contracts

[12] Each of the three contracts is a two-page document (although I infer that each original contract is on a single sheet of paper, with printing on both sides). The

first page is entitled “Purchase Confirmation”. It identifies, in readily-readable print, details of the parties, the grain that is to be delivered, when delivery is to take place, and the price to be paid. Under the large heading “Special Instructions and Conditions”, in a small but readable font, a paragraph includes this statement:

... By signing this Contract, the parties understand and agree to the terms and conditions on both the front and reverse side of this Contract. ...

[13] The second page (the “reverse side”) almost entirely is filled with terms in a small but readable font. These terms include provisions such as those relating to transfer of good title, merchantable quality, rejection of grain, and many others. Among those terms is the arbitration clause, clause 12:

12) This Contract shall be governed by the laws of the Province in which it was written and the laws of Canada as may be applicable therein except where an issue may be decided under the National Grain and Feed Association Grain Trade Rules. Any claim relating to this Contract shall be settled by arbitration under the National Grain and Feed Association Arbitration Rules as are in effect at the date of this agreement. The parties agree to submit to arbitration. Judgment upon any arbitration award may be entered in any court or tribunal of competent jurisdiction. Copies of the National Grain and Feed Association Trade Rules and National Grain and Feed Association Arbitration Rules are available upon request and also on the National Grain and Feed Association’s website at <http://www.ngfa.org>.

[14] The parties’ execution of the contracts is not disputed.

2. The National Grain and Feed Association Rules

[15] P&H has filed in evidence a copy of the National Grain and Feed Association Rules. On the face of those Rules, however, they are not the Rules that were in effect at the date of the contracts. The contracts all had been entered into by February 2021, but the Rules that have been provided by P&H were amended March 31, 2021. Singer also has filed in evidence a copy of the Rules, but those Rules were amended March 15, 2022, so they also are not the Rules that were in effect at the

date of the contracts.

[16] The “Rules as are in effect at the date of this agreement”, then, are not in evidence. Fortunately, reference to those Rules is not necessary for a determination of these applications.

3. An arbitral tribunal’s power to rule on its jurisdiction

[17] In Saskatchewan there are two principal statutes dealing with arbitration. If an arbitration is international, *The International Commercial Arbitration Act*, SS 1988-89, c I-10.2 (“the *ICAA*”), applies. If an arbitration is domestic, *The Arbitration Act*, 1992, SS 1992, c A-24.1 (“the domestic *Act*”), applies.

[18] Here the parties do not agree as to whether the arbitration that is the subject of these proceedings is an international arbitration or a domestic arbitration. Which *Act* applies does not matter, though. This is so because the key provision of each *Act* effectively is the same in both *Acts*. That provision empowers an arbitral tribunal to rule on its own jurisdiction, including the existence or validity of the arbitration agreement:

- (a) The *ICAA* declares that the UNCITRAL Model Law on International Commercial Litigation (“the *International Law*”) applies in Saskatchewan. The *International Law* appears as the Schedule to the *ICAA*. Article 16(1) of the *International Law* provides:

The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(b) The domestic *Act* provides in s. 18:

18(1) An arbitral tribunal may rule on its own jurisdiction to conduct the arbitration and may in that connection rule on objections with respect to the existence or validity of the arbitration agreement.

(2) The arbitral tribunal may determine any question of law that arises during the arbitration.

(3) If the arbitration agreement forms part of another agreement, it shall, for the purposes of a ruling on jurisdiction, be treated as an independent agreement that may survive even if the main agreement is found to be invalid.

...

[19] As Chief Justice Richards has observed in *Greer v Babey*, 2016 SKCA 45 at paras 26-28, such provisions firmly incorporate the well-established “competence-competence” principle:

[26] ... [The *ICAA*] strongly promotes the systemic referral of disputes to arbitration. ...

[27] Article 16(1) [of the *ICAA*] is also critical in this context because it authorizes arbitrators to rule on challenges to their jurisdiction...

[28] Article 16 embodies the “competence-competence” principle -- the idea that an arbitration tribunal should decide questions concerning its own jurisdiction.

[20] Before I delve more deeply into the application of the “competence-competence” principle to this matter, I must address three additional grounds that have been advanced by Singer as reasons for concluding that the arbitral tribunal does not have the power to rule on its jurisdiction. Those grounds relate to ambiguity, *contra proferentum* and equity.

4. Ambiguity in the arbitration clause

[21] Singer says that the arbitration clause is ambiguous. The ambiguity, says

Singer, arises from the clause providing that the contracts are governed by Saskatchewan and Canadian law “except where an issue may be decided under the National Grain and Feed Association Trade Rules”. I do not find an ambiguity in that provision.

5. *Contra proferentum*

[22] Singer asserts that the arbitration clause does not give to the arbitral tribunal any jurisdiction to determine whether the contracts are unconscionable. Invoking the principle of *contra proferentum* (by which an ambiguity is interpreted against the party who prepared the contract), Singer points out that the arbitration clause does not expressly say that the unconscionability of the contracts may be decided by arbitration. Therefore, Singer argues, the operation of *contra proferentum* leads to the conclusion that the unconscionability of the contracts may *not* be decided by arbitration.

[23] I do not find that the absence of an express reference to unconscionability leaves an ambiguity. There is no ambiguity in “Any claim relating to this Contract shall be settled by arbitration” Furthermore, the power to rule on jurisdiction that is given to an arbitral tribunal under both the *ICAA* and the domestic *Act* is so broadly and forcefully stated in those *Acts*, as noted by Chief Justice Richards, that one may conclude only that each *Act* states expressly that an arbitral tribunal has the jurisdiction to rule on the existence and validity of contracts, full stop.

6. The arbitral tribunal’s power to apply equity

[24] Singer says that declaring a contract unconscionable would be a matter of applying equity, because doing so involves the equitable remedy of contract rescission. The domestic *Act*, in s. 32, empowers an arbitral tribunal to apply equity but, says Singer, the *ICAA* does not. Thus Singer asserts that if this dispute is subject to the *ICAA*, the arbitral tribunal has no jurisdiction to rule on an issue involving unconscionability.

[25] The *International Law* specifically addresses the application of equity in Article 28(3):

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

[26] *Ex aequo et bono* and *amiable compositeur* both are references to equity.

[27] It is significant that Article 28 appears in Chapter VI of the *International Law*. That chapter is entitled “Making of Award and Termination of Proceedings”. The significance is apparent when one refers also to Article 16 of the *International Law*, which states that an arbitral tribunal “may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement” (emphasis added). Article 16, which includes this broad and forceful statement of the arbitral tribunal’s power to rule on jurisdiction, appears in Chapter IV, which is entitled “Jurisdiction of Arbitral Tribunal”.

[28] Those chapter headings are not part of any specific article of the *International Law*, of course. This raises a question of interpretation – specifically, whether it is appropriate to consider those chapter headings in interpreting the *International Law*. In that regard I have reference to s. 2-19 of *The Legislation Act*, SS 2019, c L-10.2:

2-19(1) In this section, “section heading” means a heading that appears in an enactment immediately above or beside a section or a provision of a section.

(2) The following are part of an enactment:

(a) a preamble;

(b) headings other than section headings.

(3) The following are not part of an enactment and are to be considered to have been included editorially and for convenience of reference only:

- (a) section headings;
- (b) tables of contents;
- (c) information notes providing legislative history;
- (d) information notes providing text as an alternative for non-text content.

[29] The *International Law* is part of the *ICAA* by way of being the schedule to the *ICAA*. That being the case, applying s. 2-19(1) I may consider the chapter headings, which amount to “headings”, but I may not consider the article headings, which amount to “section headings”.

[30] On this topic of statutory interpretation I note s. 11 of the *ICAA*:

11(1) This Act shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Act in their context and in the light of its objects and purposes.

(2) In applying subsection (1) to the *International Law*, recourse may be had to:

- (a) the Report of the United Nations Commission on International Trade Law on the work of its 18th session (June 3 – 21, 1985);
- (b) the International Commercial Arbitration Commentary on Draft Text of a Model Law on International Commercial Arbitration;

as published in Part I of *The Canada Gazette* on October 4, 1986.

[31] Section 11(1) confirms the appropriateness of applying s. 2-19 of *The Legislation Act* to the interpretation of the *International Law*. Doing so is the normal approach to determining the ordinary meaning of the terms of Saskatchewan legislation, and s. 11(2) specifically contemplates that s. 11(1) will be applied to the *International Law*. It further permits but does not require recourse to the additional references listed there.

[32] Thus I may consider the circumstance that, in the *ICAA*, the sole restriction on the use of equity appears under the heading “Making of Award and Termination of Proceedings”, while the broad power to rule on jurisdiction appears under the heading “Jurisdiction of Arbitral Tribunal”. A ruling on jurisdiction is one thing, and making an award and bringing that process to an end is another.

[33] The *International Law*, then, prohibits (without agreement) the application of equity in making the award on the *merits* of the matter, and it bestows upon the arbitral tribunal the broad power to rule on any jurisdictional issue, including the existence or validity of the arbitration agreement.

[34] In this circumstance, given the breadth and force with which the power to rule on jurisdiction is stated in the legislation, I conclude that an arbitral tribunal is empowered to rule on its own jurisdiction even when that issue touches on a matter of equity.

7. When the “competence-competence” principle is applied

[35] I return now to the application of the “competence-competence” principle to this matter. As I have noted, both the *ICAA* and the domestic *Act* incorporate the principle. The principle was discussed by Justice Deschamps in *Dell Computer Corp. v Union des consommateurs*, 2007 SCC 34, [2007] 2 SCR 801, at paras 84-85:

[84] First of all, I would lay down a general rule that in any case involving an arbitration clause, a challenge to the arbitrator’s jurisdiction must be resolved first by the arbitrator. A court should depart from the rule of systemic referral to arbitration only if the challenge to the arbitrator’s jurisdiction is based solely on a question of law. This exception is justified by the courts’ expertise in resolving such questions, by the fact that the court is the forum to which the parties apply first when requesting referral and by the rule that an arbitrator’s decision regarding his or her jurisdiction can be reviewed by a court. It allows a legal argument relating to the arbitrator’s jurisdiction to be resolved once and for all, and also allows the parties to avoid duplication of a strictly legal debate...

[85] ... Where questions of mixed law and fact are concerned, the court hearing the referral application must refer the case to arbitration unless the questions of fact require only superficial consideration of the documentary evidence in the record.

[36] Not long ago, contract interpretation was considered to be exclusively a question of pure law. In *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53, [2014] 2 SCR 633, the Supreme Court modified that approach, with Justice Rothstein explaining that the interpretation of commercial arbitration contracts generally is a question of mixed fact and law, not a question of law alone.

[37] The Supreme Court returned to the topic in *Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 SCR 23, specifically addressing standard form contracts (also known as contracts of adhesion). Justice Wagner (as he then was) addressed the nature of a standard form contract at paragraph 25:

[25] ... Professor John D. McCamus has described standard form contracts as follows:

... the document put forward will typically constitute a standard printed form that the party proffering the document invariably uses when entering transactions of this kind. The form will often be offered on a "take it or leave it" basis. In the typical case, the other party, then, will have no choice but either to agree to the terms of the standard form or to decline to enter the transaction altogether. Standard form agreements are a pervasive and indispensable feature of modern commercial life. It is simply not feasible to negotiate, in any meaningful sense, the terms of many of the transactions entered into in the course of daily life.

(*The Law of Contracts* (2nd ed. 2012), at p. 185)

...

[38] At paragraphs 46 and 48, Justice Wagner explained the proper approach to interpreting what appears to be a standard form contract:

[46] *Sattva* should not be read as holding that contractual interpretation is always a question of mixed fact and law, and always owed deference on appeal. I would recognize an exception to *Sattva*'s holding on the standard of review of contractual interpretation. Where,

like here, the appeal involves the interpretation of a standard form contract, the interpretation at issue is of precedential value, and there is no meaningful factual matrix specific to the particular parties to assist the interpretation process, this interpretation is better characterized as a question of law subject to correctness review.

...

[48] Depending on the circumstances, however, the interpretation of a standard form contract may be a question of mixed fact and law, subject to deferential review on appeal. For instance, deference will be warranted if the factual matrix of a standard form contract that is specific to the particular parties assists in the interpretation. Deference will also be warranted if the parties negotiated and modified what was initially a standard form contract, because the interpretation will likely be of little or no precedential value. There may be other cases where deferential review remains appropriate. As Iacobucci J. recognized in *Southam* [[1997] 1 SCR 748], the line between questions of law and those of mixed fact and law is not always easily drawn. Appellate courts should consider whether “the dispute is over a general proposition” or “a very particular set of circumstances that is not apt to be of much interest to judges and lawyers in the future” (para. 37).

[39] The Saskatchewan Court of Appeal elaborated on this discussion in *Mosten Investments LP v The Manufacturers Life Insurance Company (Manulife Financial)*, 2021 SKCA 36, [2019] 9 WWR 1, at paras 52-3 and 55:

[52] ... A contract (or issue) is a standard form contract (or an issue of standard form contract interpretation) for the purposes of appellate review only if three conditions are met. ...

[53] Second, there must be no factual matrix that is specific to the parties to the contract and that is probative of the issue of contract interpretation. ...

...

[55] ... The interpretation of a standard form contract or of a standard form clause is *always* a question of law because the answer has precedential value. That is so because the law and the facts are the same each time the standard form contract language is interpreted. ... [Emphasis added]

[40] While both the Court of Appeal in *Mosten* and the Supreme Court in *Ledcor* were addressing this topic in the context of appellate review, the principle

applies directly to the interpretation of a contract. Where the factual circumstances of a contract will affect the interpretation of what otherwise is a standard form contract, the interpretation is not a question of pure law and the interpretation lacks precedential value. The interpretation lacks precedential value because it depends on the facts of the case (“a meaningful factual matrix specific to the particular parties” per Justice Wagner in *Ledcor*) and not exclusively on the wording of the contract.

8. The nature of an unconscionable contract

[41] The contract interpretation question here is whether the arbitration clause is unconscionable. Justices Abella and Rowe discussed the nature of an unconscionable contract in *Uber Technologies Inc. v Heller*, 2020 SCC 16 at paras 62-65:

[62] Most scholars appear to agree that the Canadian doctrine of unconscionability has two elements: “an inequality of bargaining power, stemming from some weakness or vulnerability affecting the claimant and ... an improvident transaction” (McInnes [Mitchell McInnes, *The Canadian law of Unjust Enrichment and Restitution* (Markham, Ont: LexisNexis, 2014)], at p. 524 (emphasis deleted); see also Swan, Adamski and Na [Angela Swan, Jakub Adamski & Annie Y. Na, *Canadian Contract Law*, 4th ed (Toronto: LexisNexis, 2018)], at p. 986; McCamus [John McCamus, *The Law of Contracts*, 2d ed (Toronto: Irwin Law, 2012)], at pp. 424 and 426-27; Benson [Peter Benson, *Justice in Transactions: A Theory of Contract Law*, (Cambridge, Mass.: Harvard University Press, 2019)], at p. 167; Waddams (2017) [S.M. Waddams, *The Law of Contracts*, 7th ed (Toronto: Thomson Reuters, 2017)], at p. 379; Stephanie Ben-Ishai and David R. Percy, eds., *Contracts: Cases and Commentaries* (10th ed. 2018), at p. 719).

[63] This Court has long endorsed this duality. In *Hunter* [[1989] 1 SCR 426], Wilson J. observed that

[t]he availability of a plea of unconscionability in circumstances where the contractual term is *per se* unreasonable *and* the unreasonableness stems from inequality of bargaining power was confirmed in Canada over a century ago [Emphasis in original; p. 512; see also p. 462, per Dickson C.J.]

[64] In *Norberg* [[1992] 2 SCR 226], La Forest J. described proving the elements of unconscionability as “a two-step process”, involving “(1) proof of inequality in the positions of the parties, and (2) proof of an improvident bargain” (p. 256). The concurring

judgment in *Douez v. Facebook Inc.*, [2017 SCC 33,] [2017] 1 S.C.R. 751, followed a similar approach in a case involving a standard form consumer contract:

Two elements are required for the doctrine of unconscionability to apply: inequality of bargaining powers and unfairness. Prof. McCamus describes them as follows:

... one must establish both inequality of bargaining power in the sense that one party is incapable of adequately protecting his or her interests and undue advantage or benefit secured as a result of that inequality by the stronger party. [Emphasis deleted; para. 115.]

(See also *Loychuk v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122, 347 D.L.R. (4th) 591, at paras. 29-31; *Roy v. 1216393 Ontario Inc.*, 2011 BCCA 500, 345 D.L.R. (4th) 323, at para. 29; *McNeill v. Vandenberg*, 2010 BCCA 583, at para. 15 (CanLII); *Kreutziger* [(1978), 9 BCLR 166], at p. 173; *Morrison* [(1965) 55 DLR (2d 710)], at p. 713)

[65] We see no reason to depart from the approach to unconscionability endorsed in *Hunter*, *Norberg* and in *Douez*. That approach requires both an inequality of bargaining power and a resulting improvident bargain.

[42] A standard form contract tends to be viewed as arising from an inequality of bargaining power, but it is not necessarily so. Justices Abella and Rowe said in *Uber* at paras 88-89:

[88] We do not mean to suggest that a standard form contract, by itself, establishes an inequality of bargaining power (Waddams (2017), at p. 240). Standard form contracts are in many instances both necessary and useful. Sophisticated commercial parties, for example, may be familiar with contracts of adhesion commonly used within an industry. Sufficient explanations or advice may offset uncertainty about the terms of a standard form agreement. Some standard form contracts may clearly and effectively communicate the meaning of clauses with unusual or onerous effects (Benson, at p. 234).

[89] Our point is simply that unconscionability has a meaningful role to play in examining the conditions behind consent to contracts of adhesion, as it does with any contract. The many ways in which standard form contracts can impair a party's ability to protect their interests in the contracting process and make them more vulnerable, are well-documented. For example, they are drafted by one party without input from the other and they may contain provisions that are difficult to read or understand (see Margaret Jane Radin, "Access to Justice and Abuses of Contract" (2016), 33 Windsor Y.B. Access Just.

177, at p. 179; Stephen Waddams, “Review Essay: The Problem of Standard Form Contracts: A Retreat to Formalism” (2013), 53 *Can. Bus. L.J.* 475, at pp. 475-476; Thal, at pp. 27-28; William J. Woodward, Jr., “Finding the Contract in Contracts for Law, Forum and Arbitration” (2006), 2 *Hastings Bus. L.J.* 1, at p. 46). The potential for such contracts to create an inequality of bargaining power is clear. So too is their potential to enhance the advantage of the stronger party at the expense of the more vulnerable one, particularly through choice of law, forum selection, and arbitration clauses that violate the adhering party's reasonable expectations by depriving them of remedies. This is precisely the kind of situation in which the unconscionability doctrine is meant to apply.

[43] The question of unconscionability here, then, involves a consideration of whether the arbitration clause arose in the context of inequality of bargaining power, and whether the arbitration clause amounts to an improvident bargain for Singer.

[44] This takes me to the question (flowing from my discussion of when the “competence-competence” principle is applied) of whether those two elements can be determined purely through examining the contract provisions, with no more than a cursory reference to facts, or whether a determination of those two elements requires consideration of a meaningful factual matrix.

9. Meaningful factual matrix: inequality of bargaining power

[45] Singer alleges that the arbitration clause is unconscionable not just on its face but in the circumstances. Singer invites an examination of the facts of this dispute in the course of examining whether there was an inequality of bargaining power between the parties when they entered into the contracts.

[46] In its statement of claim, Singer invites the court to consider:

- the comparative levels of sophistication between Singer and P&H, including the size and extent of each's business operation;
- Singer's lack of opportunity to negotiate the standard terms; and

- the circumstance that Singer needed to contract with someone in selling its grain, and:
 - o only a few such companies operate in Saskatchewan; and
 - o all of those companies have non-negotiable standard form contracts.

[47] Consideration of these factors requires evidence to be adduced and the finding of the relevant facts.

[48] Similarly, in his second affidavit on these applications OJ Singer, the representative of Singer, identifies the stages of the negotiation of the contracts, specifically referring to emails between Singer and P&H. This likewise is evidence that needs to be evaluated for a determination of fact.

[49] In that affidavit Mr. Singer also provides some detail of his own sophistication, factors that Singer hopes will be taken into account in a consideration of the allegation of inequality of bargaining power. Again, this is evidence that needs to be evaluated for a determination of fact.

[50] P&H counters Singer's assertion as to inequality of bargaining power with its own evidence as to how the contracts were negotiated and as to the parties' sophistication, and P&H has filed documentation in that regard. That documentation includes evidence of the history between the two parties, including reference to their cumulative contracts totalling a value of over \$20 million. This, too, is evidence that needs to be evaluated for a determination of fact.

[51] The issue of whether the arbitration clause is unconscionable will be determined in part by a determination of whether there was an inequality of bargaining power between the parties in entering into the contracts. The question of inequality of

bargaining power is not one that will be determined with reference to the clause and the contracts *without* reference to any facts that would be specific to this case. Rather, the question will be determined with reference to – and, if Singer succeeds in its position, in reliance on – facts that are specific to this case.

[52] Determination of whether there was an inequality of bargaining power requires consideration of a meaningful factual matrix.

10. Meaningful factual matrix: improvident bargain

[53] An example of an improvident bargain was provided by Justices Abella and Rowe in *Uber* at paras 94-95:

[94] The improvidence of the arbitration clause is also clear. The mediation and arbitration processes required US\$14,500 in up-front administrative fees. This amount is close to Mr. Heller’s annual income and does not include the potential costs of travel, accommodation, legal representation or lost wages. The costs are disproportionate to the size of an arbitration award that could reasonably have been foreseen when the contract was entered into. The arbitration award also designates the law of the Netherlands as the governing law and Amsterdam as the “place” of the arbitration. This gives Mr. Heller and other Uber drivers in Ontario the clear impression that they have little choice but to travel at their own expense to the Netherlands to individually pursue claims against Uber through mandatory mediation and arbitration in Uber’s home jurisdiction. Any representations to the arbitrator, including about the location of the hearing, can only be made after the fees have been paid.

[95] The arbitration clause, in effect, modifies every other substantive right in the contract such that all rights that Mr. Heller enjoys are subject to the apparent precondition that he travel to Amsterdam, initiate an arbitration by paying the required fees and receive an arbitral award that establishes a violation of this right. It is only once these preconditions are met that Mr. Heller can get a court order to enforce his substantive rights under the contract. Effectively, the arbitration clause makes the substantive rights given by the contract unenforceable by a driver against Uber. No reasonable person who had understood and appreciated the implications of the arbitration clause would have agreed to it.

[54] As with its assertion of inequality of bargaining power, Singer advances

a factual element in the determination of whether the arbitration clause constitutes an improvident bargain for Singer.

[55] For example, in his first affidavit Mr. Singer observes that the arbitration process dictated by the arbitration clause requires Singer to pay an initial arbitration fee of US \$8,958.97. He adds that the arbitration process will cause Singer to incur further expenses, including expenses relating to Mr. Singer attending in Virginia. Singer's point is that these expenses demonstrate an improvident bargain, presumably drawing an analogy to the expenses that were reviewed in *Uber*.

[56] Whether such expenses lead to a finding of an improvident bargain can be determined only in the context of knowing Singer's financial resources. A consideration of Singer's suggestion that such expenses are relevant to the question requires knowing how such expenses would affect Singer – a consideration of facts.

[57] More broadly, Singer asserts that the arbitration clause gives P&H an undue advantage or benefit over Singer. Singer says so in the context of anticipating that the arbitration would be conducted in the U.S. state of Virginia. A consideration of that assertion requires considering how an arbitration in Virginia would affect both P&H and Singer.

[58] The issue of whether the arbitration clause is unconscionable will be determined in part by a determination of whether, arising from an inequality of bargaining power, the arbitration clause constitutes an improvident bargain for Singer. As with the previous question, the question of improvident bargain is not one that will be determined with reference to the clause and the contracts *without* reference to any facts that would be specific to this case. Rather, the question will be determined with reference to – and, if Singer succeeds in its position, in reliance on – facts that are specific to this case.

[59] Determination of whether the arbitration clause constitutes an improvident bargain for Singer requires consideration of a meaningful factual matrix.

11. The arbitral tribunal will rule on whether the arbitration clause is unconscionable

[60] Determining the unconscionability issue is not just a matter of interpreting a standard form provision. Rather, that issue must be determined with reference to the circumstances that are peculiar to this case. There is a meaningful factual matrix that must be considered.

[61] The question of the unconscionability of the arbitration clause, then, is one of mixed fact and law. It must be ruled on, in the first instance, not by the court but by the arbitral tribunal.

B. Disposition of the applications

[62] The arbitral tribunal will rule on the issue of the unconscionability of the arbitration clause. That being the case, as contemplated in such circumstances in both the *ICAA* (s. 9) and the domestic *Act* (s. 8), this action is stayed pending:

- (a) the arbitral tribunal's ruling on Singer's allegation that the arbitration clause is unconscionable; or
- (b) if Singer does not participate in the arbitration process, the arbitral tribunal's determination of the arbitration process.

[63] The other issues raised on these applications cannot be addressed until the arbitral tribunal has made that ruling. In this sense, then, the other issues have been raised prematurely. Accordingly:

- (a) the balance of P&H's application is dismissed, without prejudice to P&H's right to renew it following the above ruling or determination

by the arbitral tribunal; and

- (b) Singer's application is dismissed, without prejudice to Singer's right to renew the application (except for that part seeking to prevent the arbitral tribunal from determining the validity of the arbitration clause) following the above ruling or determination by the arbitral tribunal.

C. Costs

[64] P&H has been successful in obtaining an initial stay and in opposing an injunction, and both applications were argued fully. Accordingly, P&H will have the costs of each application under column 2.

D. Conclusion

[65] I order that:

- (a) P&H's application is granted to the extent that this action is stayed pending:
 - (i) the arbitral tribunal's ruling on Singer's allegation that the arbitration clause is unconscionable; or
 - (ii) if Singer does not participate in the arbitration process, the arbitral tribunal's determination of the arbitration process;
- (b) the balance of P&H's application is dismissed, without prejudice to P&H's right to renew it following the above ruling or determination by the arbitral tribunal;
- (c) Singer's application is dismissed, without prejudice to Singer's right to renew the application (except for that part seeking to prevent the

arbitral tribunal from determining the validity of the arbitration clause) following the above ruling or determination by the arbitral tribunal; and

- (d) P&H will have the costs of each application under column 2.



J.
G.M. CURRIE

EXHIBIT B

NGFA®
Trade Rules
and
Arbitration Rules

Amended June 4, 2021
(Published June 2021)



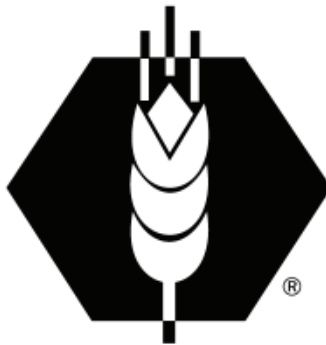
National Grain and Feed Association
1400 Crystal Drive, Suite 260
Arlington, VA 22202
(202) 289-0873 | www.ngfa.org

Code of Ethics

We declare it to be the strong belief of the National Grain and Feed Association that the best interests of the country, the public, and all levels of American agriculture and the free enterprise system are served by a strong competitive market. Therefore, the Membership of this Association dedicates itself to encouraging and vigorously defending political and economic circumstances which foster and encourage the viability, health and expansion of free markets. The Association further commits itself to the promulgation and implementation of necessary rules and standards which will foster and sustain public trust and confidence. Accordingly, upon becoming a member of the Association each member shall exert every reasonable effort:

- ◆ To comply with the laws and regulations relating to the merchandising, inspection, grading, weighing, storing, and handling and shipment of grain.*
- ◆ To maintain and promote the highest ethical and honest procedures in the transaction of business by members of this Association.*
- ◆ To hold of primary importance the concepts of free enterprise and service to the public, and to continually strive to gain and maintain respect for the industry locally, nationally and internationally.*
- ◆ To engage in sales and purchasing methods, promotional practices and other transactions, giving consideration to the best interests of the agricultural industry as well as the public.*
- ◆ To encourage research and development of new methods and practices which would improve the efficiency and future of the grain and feed industry.*

NGFA[®] Trade Rules, Arbitration Rules, Rail Arbitration Rules and Rail Mediation Rules[©]



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The NGFA rules contained herein are amended periodically pursuant to the NGFA Bylaws. Current copies of the rules are available to the general public by contacting NGFA or through the NGFA website. Only NGFA members are ensured access to the NGFA Arbitration System.

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General Explanation of NGFA Trade Rules and Arbitration System

There are five sets of Trade Rules established and maintained by the National Grain and Feed Association:

- **Grain Trade Rules:** Adopted in 1902, these rules govern all transactions of a financial, mercantile or commercial nature involving grains and oilseeds.
- **Feed Trade Rules:** Adopted in 1921, these rules govern transactions of all feed-stuffs (including mill products or byproducts). Users of these rules should note that references are made to American Association of Feed Control Officials (AAFCO) definitions. Additional information on AAFCO is available through a direct link from the NGFA web site at: <http://www.ngfa.org>
- **Barge Trade Rules:** Adopted in 1964, these rules supplement the Grain Trade Rules and Feed Trade Rules whenever such shipments are designated by contract to be transported by barge.
- **Barge Freight Trading Rules** (affreightment): Adopted in 1981, these rules govern all disputes of a financial, mercantile or commercial character involving transactions in the purchase and/or sale of barge transportation.
- **Secondary Rail Freight Trading Rules:** Adopted in 2007, these rules govern all disputes of a financial, mercantile or commercial character involving transactions between non-railroad parties in the purchase and/or sale of secondary rail freight transportation.

NGFA's Trade Rules Committee formulates and recommends rule changes to the NGFA membership. Rules are proposed that reflect trade practice and facilitate trade between NGFA members specifically, as well as between all firms in the grain, feed and processing industry generally.

The Trade Rules Committee consists of four subcommittees — Grain Trade Rules, Feed Trade Rules, Barge Trade Rules and Barge Freight Trading Rules — with a general chairman and four subcommittee chairpersons. The subcommittees annually, or more frequently if needed, review the rules to ensure they reflect current trade practices.

Pursuant to the NGFA Bylaws, NGFA members receive 30 days notice of proposed changes to the Trade Rules. Approval is by a two-thirds majority vote of the membership at the annual business meeting. The NGFA Bylaws also provide that changes to the Trade Rules may be approved by the Board of Directors, subject to affirmation by the membership at the next annual meeting. Amendments to the Trade Rules become effective 30 days after the date of adoption by the board.

General Explanation

Formally established in 1901, NGFA's Arbitration System has operated in some form since the formation of the Association on November 9, 1896. It is believed to be North America's oldest industry-based arbitration system.

The Arbitration System provides a fair, cost-effective and timely way to resolve disputes involving grain, feed, barge, barge freight and secondary rail freight transactions. Its use is compulsory for resolution of disputes between Active members under NGFA's Bylaws. The Arbitration System is also available for resolving disputes with and between Allied or Transportation members if the Arbitration Rules are referenced in the underlying contractual agreement or the parties otherwise consent. The Arbitration System is kept current through the amendment process at NGFA's annual business meeting.

The Rail Arbitration Rules, first adopted on Aug. 24, 1998, supplement the Arbitration Rules. The Rail Arbitration Rules are applicable to disputes between railroads and their customers using the NGFA Arbitration System.

NGFA-member railroads and their customers can use the NGFA Arbitration System to resolve any type of dispute where both agree. All NGFA Active, Transportation and Allied members are covered by, and have access to, NGFA rail arbitration unless they notify NGFA of their desire to withdraw from the Rail Arbitration System within 30 days of membership approval. Thereafter, an Active, Transportation or Allied member may withdraw from the Rail Arbitration System after providing 90-days advance notice to the NGFA Secretary. A list of any NGFA-member rail carrier(s) or Active member(s) electing to withdraw from the Rail Arbitration System is posted on the NGFA Web Site at: www.ngfa.org.

In addition, all Class I railroads and some shortline and regional railroads have agreed to enter confidential mediation on certain rate-related issues upon request by a NGFA Active or Allied member. The text of these agreements is set forth in this publication.

Arbitration cases are presented and prepared by the parties involved. Decisions are based upon evidence submitted by the parties.

Cases are considered by an Arbitration Committee comprised of three persons selected by the NGFA Secretary. Arbitrators are employees, active partners, principals, officers, or directors of Active, Allied and Transportation members. Arbitrators generally are selected based upon their personal experience in the type of trade practices or questions involved in the case. Arbitrators must have no commercial interest in the case.

Parties involved in an arbitration case may appeal the decision of the Arbitration Committee to an Arbitration Appeals Committee, typically consisting of a permanent chairman and four others selected from a standing Arbitration Appeals Panel appointed by the NGFA chairman.

Either party may elect an oral hearing before the Arbitration Committee or the Arbitration Appeals Committee.

Arbitration committees endeavor to decide cases as soon as reasonably possible after receipt of papers and documentary evidence pertaining to the case. Each award under the Arbitration System subsequently is published as an Arbitration Decision. New decisions are also posted on the NGFA web site at: www.ngfa.org.

Further information about NGFA's Trade Rules and Arbitration System is available through the NGFA website and by contacting NGFA at (202) 289-0873.

NGFA Grain Trade Rules

Adopted Oct. 03, 1902	Amended Sept. 20, 1954	Amended March 27, 1990
Amended Oct. 08, 1903	Amended Sept. 09, 1957	Amended March 12, 1991
Amended Jan. 01, 1906	Amended Sept. 14, 1959	Amended March 24, 1992
Amended June 05, 1906	Amended March 08, 1960	Amended March 23, 1993
Amended Oct. 12, 1910	Amended March 23, 1962	Amended March 21, 1994
Amended Oct. 02, 1912	Amended March 14, 1963	Amended March 13, 1995
Amended Oct. 14, 1914	Amended March 06, 1964	Amended March 15, 1996
Amended Oct. 13, 1915	Amended March 19, 1965	Amended March 21, 1997
Amended Sept. 26, 1917	Amended March 23, 1966	Amended March 10, 1998
Amended Sept. 25, 1918	Amended March 24, 1966	Amended March 23, 1999
Amended Oct. 15, 1919	Amended March 27, 1969	Amended March 31, 2000
Amended Oct. 13, 1920	Amended March 12, 1970	Amended March 16, 2001
Amended Oct. 05, 1921	Amended March 25, 1971	Amended March 19, 2002
Amended Oct. 03, 1922	Amended March 23, 1972	Amended March 20, 2007
Amended Oct. 03, 1923	Amended March 01, 1973	Amended March 28, 2008
Amended Sept. 24, 1924	Amended March 14, 1974	Amended March 31, 2009
Amended Oct. 13, 1925	Amended March 20, 1975	Amended March 05, 2010
Amended Oct. 13, 1931	Amended March 25, 1976	Amended March 15, 2011
Amended Sept. 21, 1932	Amended March 23, 1977	Amended March 20, 2012
Amended Sept. 20, 1933	Amended March 31, 1978	Amended March 19, 2013
Amended Oct. 13, 1937	Amended March 08, 1979	Amended March 17, 2015
Amended Nov. 26, 1942	Amended March 20, 1980	Amended March 15, 2016
Amended Sept. 16, 1947	Amended March 26, 1981	Amended March 21, 2017
Amended Sept. 30, 1948	Amended March 23, 1982	Amended March 20, 2018
Amended Oct. 11, 1949	Amended March 15, 1983	Amended March 10, 2020
Amended Sept. 26, 1950	Amended March 13, 1984	Amended March 31, 2021
Amended Sept. 11, 1951	Amended March 14, 1989	

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NGFA Grain Trade Rules

Preamble: The following rules shall govern all transactions of a financial, mercantile, or commercial character connected with grains and oilseeds arising between Active members of the National Grain and Feed Association and other parties using these rules unless otherwise and specifically agreed to at the time of the trade or subsequent thereto.

All Active members and other parties using these rules are free to agree upon any contractual provisions, which they deem appropriate, and these rules apply only to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to a matter dealt with by the pertinent rule.

Rule 1. Trade

Both the Buyer and the Seller shall include in their original articles of trade, whether entered into orally or in writing the following specifications, if applicable:

- (A) Date of contract
- (B) Quantity
- (C) Kind and grade of grain including type, class and quality characteristics (if any)
- (D) Price or pricing method
- (E) Type of inspection
- (F) Type of weights
- (G) Applicable Trade Rules
- (H) Transportation specifications:
 - (1) Type of conveyance
 - (2) Type of billing
 - (a) Export
 - (b) Multi-car specifications
 - (3) Point of origin or delivery or rate basing point
 - (4) Loading weight requirements
 - (5) Time of shipment or delivery
 - (6) Route
 - (7) Responsibility for freight increases or decreases
 - (8) Buyer's or Seller's conveyance
 - (9) Type of bill of lading
 - (10) Length of time permitted for loading or unloading
 - (11) Mechanical seals
- (I) Payment terms
- (J) Other terms

If the Buyer and Seller have been trading on agreed terms and conditions, the use of the phrase "usual terms" in the confirmation shall mean that such terms and conditions that governed previous trades of a like character shall apply instead of the specifications required above.

Rule 2. Brokers

(A) A broker is a person, firm or electronic trading platform that is engaged on behalf of others, at least partially on a commission basis, to negotiate or facilitate the formation of contracts for goods of which the broker has no actual or constructive custody.

(B) A person, firm, or electronic trading platform is not a broker:

- (1) who has possession and absolute control of merchandise shipped to him to sell and collect the price (Therefore, a commission merchant to whom grain is consigned for sale is not a broker.)
- (2) who receives a salary instead of a commission or brokerage.
- (3) who acts for one principal to the exclusion of all others.

(C) A broker has the power to bind his principals only to the extent of his instructions. The principals are not liable for any acts of the broker in excess of such instructions.

(D) A broker who, in good faith or otherwise, exceeds his authority is liable for any resulting damages.

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(E) A broker that, in good faith, negotiates, or facilitates the formation of a contract in accordance with instructions from both principals; identifies the principals to each other at the time of negotiations or facilitation, and completes such negotiations or facilitation in accordance with the rules and customs governing such transaction, thereby fulfills all obligations and has no further liability to either principal. The contract so negotiated or facilitated is valid and binding between the Buyer and Seller as if it had been negotiated or facilitated directly between them.

(F) Brokerage shall be credited when shipments are invoiced or when contract is otherwise consummated or terminated.

Rule 3. Confirmation of Contracts

(A) Both the Buyer and Seller shall send a written confirmation, each to the other, not later than the close of the business day following the date of trade, or an agreed amendment, setting forth the specifications as agreed upon in the original articles of trade, or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein and, upon finding any differences, shall immediately notify the other party to the contract by rapid written communication, or by telephone confirmed by subsequent written communication.

(B) If either the Buyer or the Seller fails to send a confirmation, the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 3(A), of any disagreement with the confirmation received.

(C) When a trade is made through a broker, it shall be the duty of the broker to send a written confirmation not later than the close of the business day following the date of trade to each of the principals setting forth the specifications of the trade. Upon receipt of said confirmation, the parties shall carefully check all specifications therein, and upon finding any differences, shall immediately give notice to the other party to the contract and to the broker. If either party fails to give such notice, the terms and specifications contained in the confirmation issued by the broker shall govern the contract.

(D) A document or record otherwise complying with this rule shall be effective even though it fails to use the term "confirmation."

Rule 4. Alteration of Contract

The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by written communication by both parties.

Rule 5. Electronic Communication

These rules may be applied to trades that occur by electronic methods in lieu of conventional paper-based documents. A party to a trade may, in lieu of paper-based documents, transmit or receive from the other party an electronic communication, and such electronic communication shall suffice in lieu of a paper-based document. An exchange of communications between the parties by electronic means constitutes acknowledgement of that means as a viable method of contractual communication.

Rule 6. Passing of Title as Well as Risk of Loss and/or Damage

Title, as well as risk of loss and/or damage, passes to the Buyer as follows:

(A) On f.o.b. origin or f.o.b. basing point contracts, at the time and place of shipment. The time of shipment is the moment that the carrier accepts the appropriate shipping document.

(B) On delivered contracts:

(1) By rail, when the conveyance is constructively placed or otherwise made available at the Buyer's original destination.

(2) By truck, upon arrival at the Buyer's final destination.

(3) By container:

(a) On container yard contracts upon return of the container at the Buyer's designated destination.

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(C) On in-store contracts, at the time of contract, transfer, or sending of documents, unless, and to the extent that the warehouse tariff, warehouse receipt, and/or storage contract assumes the risk of loss and/or damage.

Rule 7. Net Bushels

If grain is sold subject to dockage and/or foreign material in accordance with the U.S. Grain Standards Act, the trade shall be executed on the basis of the net weight. The Seller shall pay the freight charges on the gross weight to the price-basing point.

Rule 8. Sample Grain

If grain is sold on the basis of samples, it shall be the duty of the Seller to furnish grain fully up to sample. The term “sample” used in this context shall mean a portion of the shipment, or of the lot, from which the shipment is to be made, and must represent the identical grain shipped or to be shipped. The phrase “type sample” shall mean a sample of like character but not necessarily identical in all respects to the grain shipped or to be shipped.

Shipments rejected because of quality discrepancies shall be compared with the sale sample by either the inspection committee or some other duly authorized or agreed committee of the market in which such rejection is made, and the finding of said committee shall be final. If the finding is in favor of the Buyer, the Buyer shall at once notify the Seller by telephone. It shall then be the duty of the Seller to make satisfactory adjustment with the Buyer not later than 12 noon of the following business day. If not adjusted within this time frame, the shipment shall be subject to the order of the Seller and the Buyer shall buy-in for the account of the Seller, cancel, or extend the defaulted contract and notify the Seller of his action.

If the Buyer and the Seller fail to arrive at a basis for adjustment that enables the Buyer to handle such grain not up to sample, and should the grain be finally rejected, the Seller shall promptly reimburse the Buyer for the full amount of money advanced on the rejected shipment.

Rule 9. Unpriced Contracts

All unpriced contracts shall be priced within the trading day’s price range at Buyer’s option while futures markets are open and tradable. Pricing shall not go beyond the contracted date of shipment, the date of actual shipment, or the day before the first notice day of the contract futures month involved, whichever comes first.

Rule 10. Inspection

(A) Official Inspections

(1) **Class A Official Inspection** (white certificate) is an inspection and certification by an official inspector employed by an official inspection agency of an official sample taken by an official sampler employed by an official inspection agency.

(2) **Class B Official Inspection** (yellow certificate) is an inspection and certification by an official inspector employed by an official inspection agency of an official sample taken by a grain elevator or warehouse employee licensed under the U.S. Grain Standards Act.

(3) **Class C Official Inspection** (pink certificate) is an inspection and certification by an official inspector employed by an official inspection agency of any submitted sample.

(4) **Class D Official Commercial Inspection** (green certificate) is an inspection and certification (if requested) by an official inspector employed by an official inspection agency of a sample-lot of grain obtained by an official sampler employed by an official agency in accordance with the procedures mutually agreed to between the person requesting the service and the official agency.

(5) **Class E Official Commercial Inspection** (blue certificate) is an inspection and certification (if requested) by an official inspector employed by an official inspection agency of any submitted sample in accordance with the procedures mutually agreed to between the person requesting the service and the official agency.

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(B) An unofficial inspection is any inspection performed by an unofficial inspector that results in the issuance of a scale ticket or other document attesting to the quality of the grain.

(C) The term “official inspection” without specifying class shall mean Class A Official Inspection.

(D) Official Inspection shall include only official grading factors that are included in the U.S. Grain Standards Act.

Rule 11. Grade Inspections

(A) Rail

(1) If grain is sold basis official origin inspection, the Seller shall furnish the Buyer an inspection certificate as specified in the contract. The Seller shall send such certificate directly to the Buyer within five (5) days of the date of inspection.

If the Seller fails to send the inspection certificate to the Buyer within the above time limits, the Buyer has the right to delay payment of invoice or draft until the Seller has complied, or else to make prompt settlement based on an inspection en route or at destination. At the time of such final settlement, the Buyer shall send the Seller a Class A, Class B, or Class C official inspection, whichever is available, as described in Rule 10.

(2) If grain is sold basis official destination inspection and the Buyer and Seller agree that payment is to be net cash upon unload, the Buyer shall, except for rail at export terminals, make final settlement to the Seller on each shipment within ten (10) calendar days after the date of unload, or after the identity of the Seller is known, whichever is later. This is considered to be the normal time to clear the paperwork involved.

For grain which is unloaded at export terminals, the unloading Buyer shall notify the original shipper or designated agent of the official destination inspection by telephone or rapid written communication within two (2) business days of unload. The unloading Buyer shall send the original inspection certificate or duplicate copy thereof to the original shipper or designated agent within five (5) business days of the date of inspection. A Class A, Class B, or Class C official inspection certificate, whichever is specified by the contract, and as defined by Rule 10 shall accompany such final settlements.

For grain that is sold basis official destination grades, shipments may not be diverted by the Buyer to a destination where an official inspection of the class specified by the contract is not available without the permission of the Seller. Such diversion agreement must be confirmed in writing and shall describe what type of alternative inspection certificate was agreed upon for final settlement.

(3) If grain is sold basis destination inspection, and the Buyer, by the terms of the contract, has the option of selecting the destination, settlement shall be based upon inspection at the first contractually acceptable inspection point to which the grain is shipped.

(B) Truck and Container

(1) House Grade grain is unofficially sampled, inspected and graded.

(2) Submit Grade grain is unofficially sampled and submitted to official personnel for unofficial inspection and grading.

(3) Official Grade grain is officially sampled, inspected and graded.

Rule 12. Grades Outside of Contract Terms

(A) Rail Shipments

(1) Destination Grades

(a) It shall be the duty of all Buyers to exercise due diligence in seeing that cars are promptly inspected on arrival. The Buyer shall notify the Seller of any cars which fail to grade according to the contract terms no later than 12 noon of the next business day after the date of official inspection by rapid written communication, or by telephone confirmed by subsequent written

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communication. This notice shall contain the grade of grain and the Buyer's rejection of the shipment or acceptance of the shipment with a discount. It shall then be the duty of the Seller receiving such notice to agree upon the discount with the Buyer or to give disposition instructions for the car(s) at once.

(b) Off grade grain sold for the account of shippers shall not apply on contract.

(c) Replacement of shipments rejected under this rule shall be shipped within ten (10) calendar days.

(d) When mechanical samplers are used for unload grades, prevailing discounts will apply.

(2) Origin Grades

Grain that is sold for delivery, origin inspection, shall be covered by an inspection certificate of the grade contracted. If the Seller wishes to apply grain that is not in accordance with the contract specifications, he shall notify the Buyer by rapid written communication, or by telephone confirmed by subsequent written communication. The Buyer shall immediately notify the Seller if he will accept the grain and at what discount.

If the Seller submits an inspection certificate of a lower grade to apply on a contract for a higher grade without notifying the Buyer in accordance with the above, the Buyer shall have the authority to reject or sell the grain represented by such certificate for the account of whom it may concern, and proceed to buy-in, extend or cancel the affected portion of the contract for the account of the Seller. The Buyer shall notify the Seller on the same business day of such action.

(B) Truck Shipments

(1) Destination Grades

(a) The Buyer must exercise due diligence to ensure that the contents of the load are inspected on arrival. The Buyer shall then notify the Seller or the vehicle driver of any load which Buyer rejects for failing to grade or comply with quality specifications according to the contract terms, stating the reason for rejection. The Buyer and Seller subsequently may agree upon the terms of any acceptance of the load.

(b) Any rejected load sold for the account of the Seller shall not apply on contract.

(c) Replacement of any load rejected under this rule shall be shipped within the contract period.

(2) Origin Grades

Grain that is sold for delivery, origin inspection, shall be covered by an inspection certificate of the grade contracted. The Seller shall notify the Buyer by telephone prior to delivery if the Seller wishes to apply grain that is not in accordance with the contract specifications. The Buyer and Seller subsequently may agree upon the terms of any acceptance of the load.

Rule 13. Condition Guaranteed on Arrival of Rail Cars

(A) If grain is sold with condition guaranteed on arrival at destination, and the destination is provided in the billing instructions, the Buyer shall ascertain the condition and official grade of the grain. The Buyer shall report the condition and official grade to the shipper by a telephone call placed not later than 12 noon of the next business day after arrival of the car of grain at the destination.

If the Buyer fails to ascertain and report the condition and official grade as provided above, he shall waive all rights under the guarantee for that portion of the contract. Diversion of the shipment by the Buyer to a point beyond the original destination shall constitute an acceptance of the grain and a waiver of the guarantee.

(B) If grain is sold for shipment to specified rate group or rate basis points, with condition guaranteed on arrival at destination and the shipment is ordered billed to a blind billing or diversion point, the Buyer shall file diversion orders with the carrier within the free time permitted by the carrier's rules at such diversion point. The Buyer shall send a copy of such notice of diversion to the shipper. The Buyer shall assume all expenses incident to, or caused by, such diversion.

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If the Buyer fails to notify the carrier within the time limit named, the Seller's liability under the guarantee shall cease at such diversion point. Only one diversion shall be permitted under the guarantee. The Seller's liability shall not continue to points taking a higher rate than the rate basis on which the grain is sold.

(C) If the Buyer receives a shipment that is out of condition on arrival, and the Buyer has given notice in accordance with (A) or (B) above, the Seller may request the Buyer to unload, recondition, and salvage the grain to the best advantage of the Seller.

If the Buyer is unable to unload, recondition and salvage the grain as requested by the Seller, he shall immediately notify the Seller of this fact. The Seller shall then dispose of the shipment. The Buyer shall then elect either to cancel the affected portion of the contract or request a replacement shipment.

(1) If the Buyer elects to cancel the affected portion of the contract, the cancellation shall be at the fair market price. The Buyer shall reimburse the Seller for any market loss suffered through cancellation and the Seller shall reimburse the Buyer for any market gain received through cancellation.

(2) If the Buyer requests replacement, the Seller shall be obligated to make a replacement, and the Buyer shall be obligated to accept such a replacement. The replacement shipment must be made within ten (10) calendar days from the date of the Buyer's request.

Rule 14. Weights

(A) Official Weights

(1) U.S. Official Weights

(a) U.S. Class X Weights: An official Class X weight shall be any weight that meets the requirements specified by the U.S. Department of Agriculture in its regulations implementing the U.S. Grain Standards Act.

(b) U.S. Class Y Weights: An official Class Y weight shall be a partially supervised weight that meets the requirements specified by the U.S. Department of Agriculture in its regulations implementing the U.S. Grain Standards Act.

(2) **Canadian Official Weights:** An official weight shall be any weight that meets the requirements specified by the Canadian Grain Commission in its regulations implementing the Weights and Measures Act.

(B) Other Weights

(1) **U.S. Certified Weights:** A certified weight shall be any weight that is obtained by a licensed weigher, using a certified scale. A scale shall be considered certified when it meets the requirements specified in the current edition of Handbook 44 (published by the National Institute of Standards and Technology) and has successfully passed inspection, at least annually, by the U.S. Department of Agriculture or its approved agent, a State Board of Weights and Measures, or its approved agent. A scale, to remain certified, must be tested and pass inspection a minimum of once every twelve months or more frequently when required by the governing regulatory authority.

(a) Class I: A weight documented by a weight certificate obtained by a licensed weigher using a certified scale under 100% supervision of a disinterested third party.

(b) Class II: A weight documented by a weight certificate obtained by a licensed weigher using a certified scale under a minimum of 25% supervision of a disinterested third party.

(c) Class III (or Certified House Weights): A weight documented by a weight certificate obtained by an unsupervised licensed weigher using a certified scale.

(2) **Canadian Certified Weights:** A certified weight shall be any weight on an approved scale meeting the requirements specified by the Weights and Measures Act and Regulations of Canada. A qualified representative of the company (in-house weight) issuing a certified weight certificate shall supervise weighing.

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(3) **Affidavit Weights:** Affidavit weights are those obtained by a weigher on any scale not inspected for certification within the past twelve months.

Rule 15. Rail Weight Settlements

(A) Multiple Cars and Unit Trains: Official and certified weights for multiple cars and unit train shipments billed on one bill of lading may be batch weights.

(B) On rail grain shipments, truck weights shall not apply.

(C) If grain is sold basis official or certified origin weights, the Seller shall furnish the Buyer a weight certificate meeting the qualifications of Rule 14(A), (B)(1) or (B)(2).

The Seller shall send the weight certificate directly to the Buyer within three (3) days of the date of shipment, unless attached to a subsequent draft and/or invoice, but no later than five (5) calendar days after weighing.

If the Seller fails to send the weight certificate to the Buyer within the above time limits, the Buyer has the right in accordance with Rule 22 to delay payment of the invoice or draft until the Seller has complied, or else to make prompt settlement on official or other destination weight, if possible, or on railroad track scale weight. At the time of such final settlement, the Buyer shall send the Seller a weight certificate meeting the requirements of Rule 14(A), (B)(1) or (B)(2) or a weight certificate or freight bill from the railroad to document a railroad track scale weight.

(D) If grain is sold basis official or certified destination weights, the Buyer shall furnish billing instructions to a destination where official or certified weights are available, as described in Rule 14(A), (B)(1) or (B)(2). Grain that is sold basis official or certified destination weights may not be diverted by the Buyer to a destination where official or certified weights are not available except with the permission of the Seller. Such diversion agreement must be confirmed in writing, and shall specify the type of alternative weights that were agreed upon for final settlement.

If the Buyer and Seller agree that payment is to be net cash upon unload the Buyer shall, except for rail at export terminals, make final settlement to the Seller on each shipment within ten (10) calendar days after date of unload, or after identity of the Seller is known, whichever is later.

For rail grain which is unloaded at export terminals, the unloading Buyer shall notify the original shipper or, at shipper's option, his designated agent of the final unload weights by telephone or rapid written communication within two (2) business days of unload. The unloading Buyer shall send the original weight certificate or duplicate copy thereof to the original shipper or designated agent within five (5) business days of unload, accompanied by a statement covering the cost of weighing charges. The original shipper or designated agent shall make final settlement with the original weight certificate or duplicate copy. All invoices are due and payable upon presentation.

Application of each shipment shall contain the telephone number of the original shipper or designated agent and the loading elevator.

(E) If grain is sold basis other than official or certified loading weights, the Seller shall furnish to the Buyer a weight certificate meeting the requirements of Rule 14(B)(3). The Seller shall send such certificate directly to the Buyer within three (3) days of the date of shipment, unless attached to a subsequent draft and/or invoice, but in no case later than five (5) calendar days after weighing.

If the Seller fails to send the weight certificate to the Buyer within the above time limits, the Buyer has the right, in accordance with Rule 22, to delay payment of the invoice or draft until Seller has complied, or else to make prompt settlement on official or certified destination weight, if possible, or on railroad track scale weight. At the time of such final settlement, the Buyer shall send the Seller a weight certificate meeting the requirements of Rule 14(B)(3) or a weight certificate or freight bill from the railroad to document a railroad track scale weight.

(F) If grain is sold basis destination weights and the Buyer and Seller agree that payment is to be net cash upon unload, the Buyer, except for rail at export terminals, shall make final settlement to the Seller on each Shipment within ten (10) calendar days after date of unload, or after the identity of the Seller is known, whichever is later. This is considered to be the normal Time to clear the paperwork involved.

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If grain is sold basis destination weights at export terminals, notification and settlement procedures will be in accordance with section (D) above. Certificates meeting requirements of Rule 14(A), (B) (1) or (B)(2) shall accompany such final settlements.

(G) For grain sold on specific destination weights, shipments may not be diverted by the Buyer to any other destination without the permission of the Seller. Such diversion agreement must be confirmed in writing, and shall describe what kind of alternative weights were agreed upon for final settlement.

Rule 16. Rail Loading Weight Requirements

(A) FOB Contracts

If grain is sold other than loaded, the Seller shall request loading weight instructions from the Buyer prior to the loading of cars. If the Buyer fails to give such instructions in a timely manner, the Seller shall load the cars to their full visible capacity without exceeding a maximum of 263,000 pounds gross weight. This provision shall not require the Seller to load more or less grain than set forth in the contract.

(B) Delivered Contracts

(1) For grain which is sold basis delivered to a specific destination, the Seller shall load cars in accordance with the applicable carrier(s) rule(s) and/or federal law in effect on the date of shipment, and shall assume any loss resulting from noncompliance with such rules. In the event the weight prescribed by the applicable carrier(s) rule(s) and/or federal law is changed between the date of sale and date of shipment, the Seller shall deliver grain in accordance with the weight requirements in effect on date of shipment. Any resulting variance from the original contract shall be settled at the market price on the date of shipment.

(2) For grain which is sold delivered to a price basing point, the Seller shall request loading weight instructions from the Buyer prior to the loading of cars. If the Buyer fails to give such instructions in a timely manner, the Seller shall load the cars to their full visible capacity in accordance with the applicable carrier(s) rule(s) and/or federal law in effect on the date of shipment to that price basing point, and shall assume any loss resulting from noncompliance with such rules. In the event the weight prescribed by the applicable carrier(s) rule(s) and/or federal law is changed between the date of sale and date of shipment, the Seller shall deliver grain in accordance with the weight requirements in effect on date of shipment. Any resulting variance from the original contract shall be settled at the market price on the date of shipment.

(C) Open top rail cars (covered or not) and boxcars are not applicable to grain contracts.

Rule 17. Billing Instructions

(A) If grain is sold “loaded” by truck, the Buyer shall furnish the Seller billing instructions to a named destination at the time of the trade.

(B) If grain is sold by truck, with shipment at Buyer’s call, Buyer shall give Seller a minimum of one (1) business day’s pre-advice of delivery schedule and billing instructions.

(C) If grain is sold by truck with shipment at Seller’s option, billing instructions shall be given by the Buyer to the Seller no later than the end of the business day before the beginning of the contract shipping period.

(D) If grain is sold “loaded” by rail, the Buyer shall furnish the Seller billing instructions to a named destination at the time of the trade or by 4 p.m., Central Time, whichever is later.

(E) If grain is sold other than “loaded” and the Seller notifies the Buyer by 12 noon, Central Time, that the cars are ready for loading and billing that day, the Buyer must furnish billing instructions to a named destination by 4 p.m., Central Time on that day. If the Seller makes notification between 12 noon and 4 p.m., Central Time, the Buyer must furnish billing instructions to a named destination by 10 a.m., Central Time the following day. Notices and billing instructions may not be given on Saturdays, Sundays and legal holidays.

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(F) If Unit Trains are sold for other than loaded shipment, and the seller notifies the Buyer by 12 noon, Central Time, that the unit will be ready for billing within twenty-four (24) hours, the Buyer must furnish billing to a named destination by 4 p.m., Central Time that day.

If the Seller notifies the Buyer between 12 noon and 4 p.m., Central Time, the Buyer must furnish billing instructions to a named destination by 10 a.m., Central Time, the following day. Notices and billing instructions may not be given on Saturdays, Sundays and legal holidays.

If the Seller notifies the Buyer by 12 noon, Central Time, on a Friday or a day preceding a holiday that a unit will be ready for billing on a Saturday, Sunday or legal holiday within the shipment period, the Buyer must furnish billing instructions to a named destination by 4 p.m., Central Time, the same day. The notification date need not be within the shipment period.

(G) If the Buyer fails to furnish billing instructions as specified in (A), (B), (C), (D), (E), or (F) above, the Seller shall have the right to either:

- (1) agree with the Buyer to extend the time allowed; or
- (2) after having given notice, sell the affected portion of the contract for the account of the Buyer; or
- (3) after having given notice, cancel the affected portion of the contract at fair market value.

(H) Where rail sales are made "Buyer's Option," the Seller shall be entitled to five (5) calendar days after receipt of billing instructions in which to make shipment.

(I) If sales are made on a carrying-charge basis, such charges are to cease on the day the grain is loaded. In no case shall carrying charges be assessed against the Buyer for shipments made more than ten (10) calendar days after the requested shipping date.

Rule 18. Time of Shipment or Delivery

Contracts shall state a specific time within which shipment or delivery is to be made.

A specific number of days shall mean calendar days, excluding the date of sale in which to load and ship grain to apply on a contract for shipment, or to deliver at the agreed destination grain to apply on a contract for delivery.

Grain to apply on a contract for shipment must be billed within the shipment or delivery period of the contract, as evidenced by a bill of lading.

In terminal markets where the loading is made on a railroad line other than the one which will perform the road haul, and the line haul carrier will not sign a bill of lading until the car is received at its rails, a switching order carrying full shipping instructions, given to and duly signed and dated by the authorized agent of the carrier on whose line the car is loaded shall be evidence that the car is billed within the shipment or delivery period of the contract.

For rail shipments, when the last day of the contract falls on Saturday, Sunday or a legal holiday, shipment may be made on the next business day.

A certificate of inspection shall not predate the bill of lading date by more than three (3) calendar days. For unit trains, certificates of inspection shall not predate the bill of lading date by more than five (5) calendar days.

When the terms "immediate," "quick" and "prompt" are used to specify the shipment or delivery time, they shall have the following meanings:

- "Immediate," three (3) days;
- "Quick," five (5) days;
- "Prompt," ten (10) days.

Where no specifications for the time of shipment or delivery are enumerated in the contract, "prompt" shipment or delivery shall be implied.

First half of the month shipment shall mean the first fifteen (15) days, including February, and the last half of the month shipment shall mean the remaining days.

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First week in; second week in; etc., shall mean:

- First to seventh day inclusive.
- Eighth to fourteenth day inclusive.
- Fifteenth to twenty-first day inclusive.
- Twenty-second to last day of month inclusive.
- The fourth week in any month may consist of from seven to ten days.

First calendar week in; second calendar week in; etc., shall mean the respective weeks as shown on the calendar. A calendar week begins on a Monday. The first calendar week begins on the first Monday of the month, and the last calendar week may consist of from one to seven days.

Rule 19. Routing of Rail Grain

(A) Grain that is sold delivered shall be deliverable via any railroad at the discretion of the Seller, unless otherwise agreed at the time of sale. If such shipments are routed by the Buyer, the carrier becomes the Buyer's agent, and the Seller's liability for routing ceases when he furnishes bill of lading in accordance with the Buyer's instructions.

(B) Grain that is sold track or f.o.b. the original point of shipment shall be routed in accordance with the billing instructions furnished by the Buyer.

Rule 20. Bills of Lading

(A) Order bills of lading shall be original and negotiable, and conform to the specifications of the contract on which the shipment is to apply. Any errant party shall pay any loss that is caused by incorrect bills of lading.

The Seller shall be liable for any demurrage and/or additional charges accruing on grain billed to "shipper's order," when such charges are attributable to the inability of the Buyer to obtain rightful possession of the bill of lading whenever said bill of lading is necessary to furnish disposition, provided that the Buyer notifies the Seller upon the date of arrival.

(B) Straight bills of lading shall be original and conform to the specifications of the contract on which the shipment is to apply. Any errant party shall pay any loss that is caused by incorrect bills of lading.

(C) Electronic Data Interchange (EDI) bills of lading shall be signed or unsigned and conform to the specifications of the contract on which the shipment is to apply. These bills of lading do not waive any of the terms and conditions of the applicable uniform domestic straight bill of lading set forth in the uniform freight classification, including those terms and conditions on the back of the bills of lading.

Rule 21. Drafts

(A) Margins

If sales are made on destination terms, the Seller shall leave ample margin in his drafts to provide for possible variations in weights, grades or other quality factors.

(B) Overdrafts

If an overdraft has been made on a grain shipment, and has been discovered before the draft is paid, the Buyer shall elect either to pay the overdraft for account of the Seller, or to request the Seller to reduce his draft to the proper amount.

If the Buyer elects to pay the overdraft for account of the Seller, or if drafts are paid and an overdraft is not discovered until final accounting is rendered, the Seller shall reimburse the Buyer on demand for the full amount of said overdrafts.

Rule 22. Payment That Is Conditioned on Presentation of Original Drafts and/or Invoices

If payment is conditioned on presentation of original drafts or invoices, the Seller shall provide to the Buyer, or other such consignee as may have been previously designated by the Buyer, an invoice giving the conveyance identification, kind and grade of grain, actual or estimated weight (state which

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applies), price, contract on which shipment is to apply, date of contract, date of shipment, point of origin, amount of invoice, and complete railroad routing, if applicable.

Sight drafts or invoices are subject to payment on presentation to the Buyer or his designated agent, when properly documented and substantiated by the original bill of lading, and/or delivery order and, if applicable, original weight and inspection certificate(s).

Rule 23. Overfill and Underfill Grain on Bushel Contracts

(A) Truck

Any overfill on truck grain shall be priced by the Buyer at the afternoon closing market price at the close of the business day that the truck grain is unloaded. An overfill on truck grain shall be the balance of the load that fills the contract.

(B) Rail

Any underfill or overfill on rail grain shall be settled at the market value at the close of the first business day following the date of load or unload of the last car in fulfillment of the contract, whichever weight is applicable.

(1) Market Value: For rail overfills and underfills, "market value" shall mean the basis at the close of the first business day following date of load or unload, whichever weight is applicable. The flat price shall be established at the time the overfill or underfill becomes known by both parties to the contract.

Overfills and underfills shall be settled on a basis over or under the futures month currently used for the majority of cash trades. To convert the basis the business day after the last load or unload to a basis relative to the futures month currently used for the majority of cash trades, the futures spread of the business day after last load or unload shall be used.

(2) Tolerance for Rail Shipments: On bushel contracts, a total tolerance of 5% more or less than the mean quantity up to a maximum of 15,000 bushels shall be permissible in the fulfillment of the contract. An overfill or underfill of 5% or 1,000 bushels, whichever is less, shall apply at contract price. If the total overfill or underfill is in excess of the lesser of 5% of the mean quantity or 1,000 bushels the entire overfill or underfill shall be settled at the market value.

If bushel contracts are for more than one multi-car shipment, each multi-car shipment must be within the lesser of 5% or 1,000 bushels of the contract quantity divided by the number of shipments. Any resulting overfill or underfill on each multi-car shipment shall be settled in accordance with (B) above.

(C) Container

Any underfill or overfill on container grain shall be settled at the market value at the close of the first business day following the date of load or unload of the last container in fulfillment of the contract, whichever weight is applicable.

(1) Market Value: For container overfills and underfills, "market value" shall mean the basis at the close of the first business day following date of load or unload, whichever weight is applicable. The flat price shall be established at the time the overfill or underfill becomes known by both parties to the contract.

Overfills and underfills shall be settled on a basis over or under the futures month currently used for the majority of cash trades. To convert the basis the business day after the last load or unload to a basis relative to the futures month currently used for the majority of cash trades, the futures spread of the business day after last load or unload shall be used.

(2) Tolerance for Container Shipments: On bushel contracts, a total tolerance of 10% more or less than the mean quantity up to a maximum of 5,000 bushels shall be permissible in the fulfillment of the contract. An overfill or underfill of 10% or 1,000 bushels, whichever is less, shall apply at contract price. If the total overfill or underfill is in excess of the lesser of 10% of the mean quantity or 1,000 bushels, the entire overfill or underfill shall be settled at the market value.

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Rule 24. Balances

If the Buyer and Seller agree that payment is to be net cash upon unload, any cash balances accruing to the Seller on a shipment shall be remitted on a prompt basis to the Seller after the date of unload. If more than one Seller is involved in a shipment, each must process the papers and make quick remittance.

Rule 25. Grain In Transit or In Store

Grain that is shipped prior to the date of sale or grain in-store at destination shall not be applicable on contract.

Rule 26. Contracts Made Subject to “Embargoes,” “Strikes” or “Cars”

(A) If a contract is made “subject to no penalty on account of embargoes” and an embargo is placed, the final shipment or delivery date of the contract shall be extended for the duration of the embargo plus the number of days remaining in the contract shipment or delivery period at the commencement of the embargo.

(B) If a contract is made “subject to no penalty on account of strikes” and a strike takes place, the final shipment or delivery date of the contract shall be extended for the duration of the strike plus the number of days remaining in the contract shipment or delivery period at the commencement of the strike.

(C) If a contract is made “subject to no penalty on account of inability to secure cars,” the Seller must use due diligence in ordering and obtaining empty cars from the carrier. The Seller must, to the extent possible, ship all contracts in the order in which the sales are made and shipping instructions are received for each shipment or delivery period.

(D) The burden of proof shall be upon the Seller to show that the conditions specified in section (A), (B), or (C) above prevented shipment or delivery within the contractual specifications.

(E) It shall be the duty of the Seller to notify the Buyer by rapid written communication, or by telephone confirmed by subsequent written communication, on or before the expiration of the contract, of his inability to make the shipment or delivery within the contractual specifications. If the Seller fails to notify the Buyer as above, the embargo, strike and/or car clause shall be void.

Rule 27. Loss and Damage Claims

If a party in possession of the necessary papers for use in filing a loss or damage claim against the carrier, is unable or refuses to deliver the papers to other interested parties before the time for filing the claim has expired, the party in possession of the papers shall file a preliminary claim for the account of whom it may concern. Failure to file such a claim will leave the party in possession of the papers responsible for any loss.

Rule 28. Failure to Perform

(A) Seller’s Non-Performance

If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer by telephone confirmed by subsequent written communication. The Buyer shall then, at once elect either to:

- (1) agree with the Seller upon an extension of the contract; or
- (2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

If the Seller fails to notify the Buyer of his inability to complete his contract, as provided above, the liability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. In such case it shall then be the duty of the Buyer, after giving notice to the Seller to complete the contract, at once to:

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- (1) agree with the Seller upon an extension of the contract; or
- (2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

(B) Buyer's Non-Performance

If the Buyer finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Seller by telephone confirmed by subsequent written communication. The Seller shall then, at once elect either to:

- (1) agree with the Buyer upon an extension of the contract; or
- (2) sell out for the account of the Buyer, using due diligence, the defaulted portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

If the Buyer fails to notify the Seller of his inability to complete his contract, as provided above, the liability of the Buyer shall continue until the Seller, by the exercise of due diligence, can determine whether the Buyer has defaulted. In such case it shall then be the duty of the Seller, after giving notice to the Buyer to complete the contract, at once to:

- (1) agree with the Buyer upon an extension of the contract; or
- (2) sell out for the account of the Buyer, using due diligence, the defaulted portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

(C) Failure to perform any of the terms and conditions of a contract shall be grounds only for the refusal of such shipment or shipments, and not for rescission of the entire contract or any other contract between the Buyer and the Seller.

(D) This rule does not permit compensation to the defaulting party to a contract.

Rule 29. Arbitration

Where a transaction is made subject to these rules in whole or in part, whether by express contractual reference or by reason of membership in this Association, then the sole remedy for resolution of any and all disagreements or disputes arising under or related to the transaction shall be through arbitration proceedings before the National Grain and Feed Association pursuant to the NGFA® Arbitration Rules; provided, however, that at least one party to the transaction must be a NGFA member entitled to arbitrate disputes under the NGFA Arbitration Rules.

Rule 30. Definitions

(A) Business Day

For the purpose of these rules, a "business day" shall be defined as the hours from 0800 to 1700 hours in Chicago, Illinois, USA excluding Saturday, Sunday and legal holidays. Wherever the term "holiday" or "legal holiday" appears in these rules, or in a contract, it shall mean those scheduled holidays observed by the Chicago Board of Trade, Chicago, Illinois, USA.

(B) Buying-In

When the phrase "buy-in" is used in these rules they shall mean an actual purchase of grain of like kind and quantity on the open market; provided, that when this is not feasible or would result in undue penalty to the Seller, the Buyer shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Seller.

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(C) Communications

(1) Written communication, confirmation or notification shall include those communications sent/received by postal mail, courier, or electronic means. The sender shall be responsible for the correct transmission of the message.

(2) Rapid written communication, confirmation or notification shall mean those communications sent/received by electronic means. The sender shall be responsible for the correct transmission of the message.

(3) Telephone, verbal or voice communication, confirmation, or notification must be confirmed by subsequent written communication.

(D) Container

The term "container" when used in these rules refers to an intermodal shipping container commonly used for carrying bulk grain or feedstuffs. Shipping container dimensions and weight loading requirements should be specified in contract confirmations exchanged between parties.

(E) Delivery

(1) Rail and Barge

The term "delivery" when used in these rules shall mean that the conveyance has been actually or constructively placed to the Buyer.

(2) Truck

Truck grain shall be considered to have been delivered at the time and date of unloading as evidenced by a scale ticket or dock receipt issued by the receiving facility.

(F) Electronic Trading Platform

The term "Electronic Trading Platform" shall include all systems designed for execution of trades in cash markets on an open, or Internet-based, electronic network.

(G) Futures

All references in these rules or contractual documents to futures markets, close of market, futures spread, futures or futures-related pricing, and similar terms shall mean the trading day as defined by the CME Group or, when so designated, the day session of other futures exchanges in North America.

(H) Mean Quantity

On bushel contracts, the bushel reference, whether preceded by the term "about" or not, shall be the mean quantity of the contract.

(I) Mechanical Seals

For the purposes of these rules, a "mechanical seal" shall be defined as a locking mechanical device, readily identifiable by unique markings or numbers, whose primary purpose is to provide evidence of tampering with the conveyance, and whose type and/or usage may be mutually agreed upon between the Buyer and Seller as part of the contract terms.

(J) Notice; Furnish

The terms "notice" and "furnish," or any derivatives of these words, when used in these rules shall mean verbal communication when possible, and in all cases by rapid written communication.

(K) Rail Arrival

Arrival of a rail car of grain shall be:

(1) The time of actual physical placement at the billed destination; or

(2) If not physically placed, then 48 hours after the car is constructively placed or reported to the Buyer as available for Buyer's instructions. This period shall exclude Saturdays, Sundays, or legal holidays.

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(L) Shipment – Rail, Barge and Truck

The term “shipment” when used in these rules shall mean that the shipper has filed shipping instructions with the authorized agent of the carrier.

(M) Selling-Out

Where the phrase “sell-out” is used in these rules, it shall mean an actual sale of grain of like kind and quantity on the open market, provided that when this is not feasible or would result in undue penalty to the Buyer, the Seller shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Buyer.

(N) Time

When these rules require that an action be taken at or by a specified time of day, then "time" shall mean the official time for the United States provided by the U.S. Naval Observatory converted to Central Standard Time or Central Daylight Savings Time, whichever is applicable in Chicago, Illinois, USA.

(O) Truckload

If no truck size is specified in the contract, a truckload shall be 50,000 pounds net weight.

(P) Unit Train

For the purposes of these rules, a unit train is 25 or more cars for movement as a unit under one bill of lading.

(Q) Original bill of lading

The term "original" when used in relation to bills of lading shall mean such a document that is original, complete and, if a negotiated bill of lading, properly endorsed.

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Adopted Oct. 05, 1921	Amended March 14, 1974	Amended March 31, 2000
Amended Oct. 11, 1940	Amended March 20, 1975	Amended March 16, 2001
Amended Sept. 30, 1948	Amended March 25, 1976	Amended March 19, 2002
Amended Sept. 26, 1950	Amended March 23, 1977	Amended March 16, 2004
Amended Nov. 13, 1952	Amended March 31, 1978	Amended March 20, 2007
Amended Sept. 13, 1955	Amended March 08, 1979	Amended March 28, 2008
Amended Sept. 09, 1957	Amended March 29, 1980	Amended March 31, 2009
Amended Sept. 14, 1959	Amended March 26, 1981	Amended March 05, 2010
Amended March 08, 1960	Amended March 13, 1984	Amended March 15, 2011
Amended March 23, 1962	Amended March 27, 1990	Amended March 19, 2013
Amended March 06, 1964	Amended March 12, 1991	Amended March 17, 2015
Amended March 19, 1965	Amended March 24, 1992	Amended March 15, 2016
Amended March 30, 1967	Amended March 23, 1993	Amended March 21, 2017
Amended March 27, 1969	Amended March 21, 1994	Amended March 20, 2018
Amended March 12, 1970	Amended March 13, 1995	Amended March 10, 2020
Amended March 25, 1971	Amended March 15, 1996	Amended March 31, 2021
Amended March 23, 1972	Amended March 21, 1997	
Amended March 01, 1973	Amended March 23, 1999	

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Preamble: The following rules shall govern all transactions of a financial, mercantile or commercial character connected with feed, including feed ingredients, as defined by the Association of American Feed Control Officials (AAFCO) as now existing or hereinafter amended, arising between Active members of the National Grain and Feed Association (NGFA) and other parties using these rules, unless otherwise and specifically agreed to at the time of the trade, or subsequent thereto.

All Active members and other parties using these rules are free to agree upon any contractual provisions, which they deem appropriate, and these rules apply only to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to a matter dealt with by the pertinent rule.

NGFA Feed Trade Rules

Rule 1. Trade

Both the Buyer and Seller shall include in their original articles of trade, whether entered into orally or in writing the following specifications, if applicable:

- (A) Date of contract and trade date
- (B) Quantity
- (C) Kind and description (including quality) of feed
- (D) Type of weights
- (E) Price
- (F) Terms of payment
- (G) Transportation specifications:
 - (1) Type of conveyance
 - (2) Applicable Freight Terms
 - (3) Type of billing
 - Transit (storage or milling)
 - Non-transit
 - Export
 - Multi-car specifications
 - (4) Point of origin and/or delivery and/or rate-basing point
 - (5) Loading weight requirements
 - (6) Time of shipment or delivery
 - (7) Route
 - (8) Responsibility for freight changes
 - (9) Buyer's or Seller's conveyance
 - (10) Private or rail system equipment
 - (11) Freight prepaid or collect
 - (12) Mechanical seals
- (H) Production origin of feed
- (I) Responsibility for import/export duties
- (J) Applicable Trade Rules to apply
- (K) Usual Terms:

The specifications above shall apply except in cases where the Buyer and the Seller have been trading on agreed terms and conditions, in which event it shall be sufficient for the words "usual terms" to be used in confirmation, and the use of said words shall imply that such terms and conditions as governed previous trades of like character shall apply.
- (L) Other Terms

Rule 2. Brokers

(A) A broker is a person, firm or electronic trading platform that is engaged on behalf of others, at least partially on a commission basis, to negotiate or facilitate the formation of contracts for goods of which the broker has no actual or constructive custody.

(B) A person, firm, or electronic trading platform is not a broker:

- (1) who has possession and absolute control of merchandise shipped to him to sell and collect the price. (Therefore, a commission merchant to whom feed is consigned for sale is not a broker.)
- (2) who receives a salary instead of a commission or brokerage.
- (3) who acts for one principal to the exclusion of all others.

(C) A broker has the power to bind his principals only to the extent of his instructions. The principals are not liable for any acts of the broker in excess of such instructions.

(D) A broker who, in good faith or otherwise, exceeds his authority is liable for any resulting damages.

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(E) A broker that, in good faith, negotiates, or facilitates the formation of a contract in accordance with instructions from both principals; identifies the principals to each other at the time of negotiations or facilitation, and completes such negotiations or facilitation in accordance with the rules and customs governing such transaction, thereby fulfills all obligations and has no further liability to either principal. The contract so negotiated or facilitated is valid and binding between the Buyer and Seller as if it had been negotiated or facilitated directly between them.

(F) Brokerage shall be credited when shipments are invoiced or when contract is otherwise consummated or terminated.

Rule 3. Confirmation of Contracts

(A) Both the Buyer and Seller shall send a written confirmation, each to the other, not later than the close of the business day following the date of trade, or an agreed amendment setting forth the specifications as agreed upon in the original articles of trade, or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein and, upon finding any differences, shall immediately notify the other party to the contract by rapid written communication, or by telephone confirmed by subsequent written communication.

(B) If either the Buyer or the Seller fails to send a confirmation, the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 3(A), of any disagreement with the confirmation received.

(C) When a trade is made through a broker, it shall be the duty of the broker to send a written confirmation not later than the close of the business day following the date of trade to each of the principals setting forth the specifications of the trade, or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein, and upon finding any differences, shall immediately give notice to the other party to the contract and to the broker. If either party fails to give such notice, the terms and specifications contained in the confirmation issued by the broker shall govern the contract.

(D) A document or record otherwise complying with this rule shall be effective even though it fails to use the term "confirmation."

Rule 4. Alteration of Contract

The specifications of a contract cannot be altered or amended without the expressed consent of both the Buyer and Seller. Any alteration mutually agreed upon between Buyer and Seller must be confirmed by written communication by both parties by the end of the next business day.

Rule 5. Electronic Communication

These rules may be applied to trades that occur by electronic methods in lieu of conventional paper-based documents. A party to a trade may, in lieu of paper-based documents, transmit or receive from the other party an electronic communication, and such electronic communication shall suffice in lieu of a paper-based document. An exchange of communications between the parties by electronic means constitutes acknowledgement of that means as a viable method of contractual communication.

Rule 6. Passing of Title as Well as Risk of Loss and/or Damage

Title, as well as risk of loss and/or damage, passes to the Buyer as follows:

(A) On f.o.b. origin or f.o.b. basing point contracts, at the time and place of shipment. The time of shipment is the moment that the carrier accepts the appropriate shipping document.

(B) On delivered contracts:

(1) By rail, when the conveyance is constructively placed or otherwise made available at the Buyer's original destination.

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(2) By truck, upon delivery at the Buyer's final destination.

(3) By container:

(a) On container yard contracts upon return of the container at the Buyer's designated destination.

(C) On in-store contracts, at the time of contract, transfer, or sending of documents, unless and to the extent warehouse tariff, warehouse receipt, and/or storage contract assumes the risk of loss and/or damage.

Rule 7. Rail Loading Weight Requirements

(A) FOB Contracts

If feed is sold other than loaded, the Seller shall request loading weight instructions from the Buyer prior to the loading of cars. If the Buyer fails to give such instructions in a timely manner, the Seller shall load the cars to their full visible capacity without exceeding a maximum of 263,000 pounds gross weight. This provision shall not require the Seller to load more or less feed than set forth in the contract.

(B) Delivered Contracts

(1) For feed that is sold basis delivered to a specific destination, the Seller shall load cars in accordance with the applicable carrier(s) rule(s) and/or federal law in effect on the date of shipment, and shall assume any loss resulting from noncompliance with such rules. In the event the weight prescribed by the applicable carrier(s) rule(s) and/or federal law is changed between the date of sale and date of shipment, the Seller shall deliver feed in accordance with the weight requirements in effect on date of shipment. Any resulting variance from the original contract shall be settled at the market price on the date of shipment.

(2) For feed that is sold delivered to a price basing point, the Seller shall request loading weight instructions from the Buyer prior to the loading of cars. If the Buyer fails to give such instructions in a timely manner, the Seller shall load the cars to their full visible capacity in accordance with the applicable carrier(s) rule(s) and/or federal law in effect on the date of shipment to that price basing point, and shall assume any loss resulting from noncompliance with such rules. In the event the weight prescribed by the applicable carrier(s) rule(s) and/or federal law is changed between the date of sale and date of shipment, the Seller shall deliver feed in accordance with the weight requirements in effect on date of shipment. Any resulting variance from the original contract shall be settled at the market price on the date of shipment.

(C) Open top rail cars (covered or not) and boxcars are not applicable to feed contracts.

Rule 8. Bills of Lading

(A) Order bills of lading shall be original and negotiable, and conform to the specifications of the contract on which the shipment is to apply. Any errant party shall pay any loss that is caused by incorrect bills of lading.

The Seller shall be liable for any demurrage and/or additional charges accruing on feed billed to "shipper's order," when such charges are attributable to the inability of the Buyer to obtain rightful possession of the bill of lading whenever said bill of lading is necessary to furnish disposition, provided that the Buyer notifies the Seller upon the date of arrival.

(B) Straight bills of lading shall be original and conform to the specifications of the contract on which the shipment is to apply. Any errant party shall pay any loss that is caused by incorrect bills of lading.

(C) Electronic Data Interchange (EDI) bills of lading shall be signed or unsigned and conform to the specifications of the contract on which the shipment is to apply. These bills of lading do not waive any of the terms and conditions of the applicable uniform domestic straight bill of lading set forth in the uniform freight classification, including those terms and conditions on the back of the bills of lading.

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Rule 9. Routing of Rail Feed

(A) Feed that is sold delivered shall be deliverable via any railroad at the discretion of the Seller. If such shipments are routed by the Buyer, the carrier becomes the Buyer's agent, and the Seller's liability for routing ceases when he furnishes bill of lading in accordance with the Buyer's instructions.

(B) Feed that is sold track or f.o.b. the original point of shipment shall be routed in accordance with the billing instructions furnished by the Buyer. If the Buyer fails to furnish routing instructions to the Seller along with the billing instructions, unless previously furnished, then the Seller has the discretion to route the shipment via any reasonable route. If available railroad equipment, or other reason, precludes routing as requested, then the Seller has the responsibility of so advising the Buyer.

Rule 10. Rail Privileges

In all delivered sales to any terminal market or rate-basing point, the point specified shall be considered as a rate basis only and not necessarily final destination of goods, and shipment shall be made to any point and via any line open for business designated by the Buyer which is reached by lake, or lake- and rail-lines during the season of navigation, or by all-rail trunk lines at other times, provided shipment is made within contract time, and provided further that such routing is in accord with transit arrangements of the shipper.

Rule 11. Time of Shipment

On the date of contract, the shipping schedule shall be determined by specifying: (1) requested date(s); or (2) frequency of shipment [in days, weeks, or month(s)]; or (3) one of the shipment terms defined below. Also, the contract shipping period shall be specified.

(A) "**Immediate**" means shipment within three (3) calendar days from the date of the trade.

(B) "**Quick**" means shipment within five (5) calendar days from the date of the trade.

(C) "**Prompt**" means shipment within ten (10) calendar days from the date of the trade. When no shipping period is specified, "Prompt" shipment shall apply.

(D) "**Loaded**," "**spot**," or "**on-track**" means that the goods are actually loaded and ready for billing, and must be billed on the date of the trade.

(E) "**In transit**" means that the car must have been billed at least one day prior to the date of the trade.

(F) "**Weekly**" means shipment during each calendar week that begins on a Monday and the schedule shall specify the requested Monday date(s).

(G) "**First Half**" of the month means that shipment shall occur during the first fifteen (15) days of the month (including February) and shipment "**Last Half**" means shipment shall occur in the remaining days of the month.

(H) "**Monthly**" means that shipment shall occur during the period beginning with the first day and ending with the last day of the month.

(I) "**Buyer's Option**" means that the Seller shall have five (5) calendar days after receipt of shipping instructions in which to make shipment.

The contract shipping period is that period of time during which shipment must be made.

When a scheduled ship date or shipping period begins or ends on a Saturday, Sunday, or Legal holiday, shipment shall be made on the next business day.

Rule 12. Evidence of Shipping Date

(A) On carload shipments, the date shown on the railroad expense bill shall be the governing factor as to date of shipments, unless conclusive evidence to the contrary can be shown.

NGFA Feed Trade Rules

(B) On truckloads, dray tickets or properly executed documents from the Seller to the trucking company shall be accepted as evidence of the date of shipment.

(C) Dray tickets or shipping receipts when dated and signed by railroads in terminal markets shall also be accepted as evidence of shipment.

(D) In terminal markets, where the loading is made on a railroad line other than the one which will perform the road haul, and line haul carrier will not sign lading until the car is received at its rails, a switching order carrying full shipping instructions, given to and duly signed and dated by the authorized agent of the carrier on whose line the car is loaded, shall be evidence that the car is loaded within the life of the contract.

(E) On the last day of shipment under the contract, Seller shall provide car numbers on Buyer's request by 4 p.m., Central Time.

(F) On delivered ramp containers, the stamped drayage ticket date indicating the container has been returned to the ramp shall be accepted as evidence of shipment.

(G) On FOB containers, the time stamped scale ticket when the container is weighed shall be accepted as evidence of shipment.

Rule 13. Rail Notice and Billing Instructions

The words, "notice," "notify," and "notification" mean verbal communication or rapid written communication. Cars shall be billed to a named destination and ordering cars to lines for billing purposes does not constitute billing to a named destination.

Notification(s) and billing instruction(s) shall be provided during the Contract Shipping Period. A change in specifications previously filed with the Seller does not extend any contract except upon mutual agreement at the time such change is requested.

To comply with the "Time of Shipment" (Rule 11) schedule, the Buyer shall notify the Seller and furnish billing instructions as follows:

(A) **Requested Date(s):** On the date of trade.

(B) **Frequency of shipment [in days, weeks, or month(s)]:** On the date of trade.

(C) **Shipment Terms:** If any one of the following shipment terms is specified on the date of trade, the Buyer shall notify the Seller and furnish billing instructions as follows:

(1) **Immediate, Quick, Loaded, Spot, On-Track, and/or In Transit:** On the date of trade.

(2) **Weekly:** By Wednesday of the shipping week.

(3) **First or Last Half:** By the seventh business day of the shipping period.

(4) **Monthly:** By the seventh calendar day before the end of the month. If that day falls on a weekend or legal holiday, the preceding business day applies.

(5) **Prompt:** Within seven calendar days of the date of trade.

(6) **Buyer's Option:** By the fifth business date before expiration of the contract shipping period.

During the Contract Shipping Period (excluding Buyer's Option), if the Buyer has not yet provided billing instructions, the Seller may notify the Buyer regarding applicable car number(s) and request suitable billing instructions. The Buyer shall be responsible for all charges that accrue after 4:00 p.m. that day. The Seller's liability for deterioration of quality, due to delay in shipment, ceases 72 hours after notification, if the cars have not yet been billed.

Any time during the contract shipping period, the Seller may demand billing instructions (excluding Buyer's Option) and the Buyer shall provide them by the third business day after such demand.

NGFA Feed Trade Rules

For monthly shipment terms, the Seller has seven days to ship the car(s) from receipt of billing instructions, if so demanded. Failure, by the Buyer, to provide billing instructions shall constitute "Default on Shipping Period" (Rule 19).

If the Seller fails to demand billing instructions and the Buyer fails to provide billing instructions, the contract shall remain in force until such time that either the Seller does demand billing instructions or the Buyer does provide billing instructions.

If the Buyer is late in providing billing instructions, the Seller may extend the time of shipment by an equivalent amount of time, except for monthly shipment terms where the Seller has seven days to ship the car(s) from the receipt of billing instructions. The Seller shall have the same amount of time to make shipment, after late receipt of the billing instructions, as was originally specified in the contract.

Rule 14. Rail Demurrage and/or Additional Charges

The Seller shall be liable for any demurrage and/or additional charges accruing on feed billed to "shipper's order" or "delivery order" when such charges can be shown to have accrued by reason of the inability of the Buyer, through act of the Seller or his agent, to get possession of the bill of lading and/or other documents necessary to furnish disposition and also providing Buyer notifies Seller on date of arrival that such documents are unavailable to Buyer.

Rule 15. Shortage and/or Damage

(A) Rail Shipments

All claims for shortage and/or damage shall be made by the receiver within thirty (30) days after arrival, and must be accompanied by paid expense bill together with railroad agent's written report as to condition of car, contents, damages and/or shortages as well as listing of seal numbers with a copy of bill of lading and invoice, or in case of truck shipment, driver's or receiver's agent's notation on delivery and/or truck bill of lading.

(B) Truck Shipments

All claims for shortage and/or damage shall be made by the receiver within thirty (30) days after arrival and must be accompanied by driver's or receiver's agent's notation on delivery and/or truck bill of lading.

Rule 16. Quality Outside of the Contract Terms

It is the responsibility of both Seller and Buyer to verify that the feedstuff complies with an Association of American Feed Control Officials (AAFCO) definition.

(A) Rail Shipments

(1) When the Seller becomes aware that the quality of the shipment does not comply with the contract terms, the Seller is obligated to notify the Buyer not later than 12 noon the next business day by rapid written communication, or by telephone confirmed by subsequent written communication. The Buyer and Seller subsequently may agree upon the terms of any acceptance of the shipment.

(2) The Buyer must exercise due diligence to ascertain by inspection and report if the shipment does not comply with contract terms to the Seller not later than 12 noon of the second business day after arrival at final destination, otherwise the Seller's liability ceases at the expiration of such time.

(B) Truck Shipments

(1) When the Seller becomes aware that the quality of the shipment does not comply with the contract terms, the Seller is obligated to notify the Buyer not later than 12 noon the next business day by rapid written communication, or by telephone confirmed by subsequent written communication. The Buyer and Seller subsequently may agree upon the terms of any acceptance of the load.

NGFA Feed Trade Rules

(2) The Buyer must exercise due diligence to ascertain by inspection and report if the shipment does not comply with the contract terms to the Seller or the vehicle driver.

(C) Container Shipments

(1) When the Seller becomes aware that the quality of the shipment does not comply with the contract terms, the Seller is obligated to notify the Buyer not later than 12 noon the next business day by rapid written communication, or by telephone confirmed by subsequent written communication. The Buyer and Seller subsequently may agree upon the terms of any acceptance of the shipment

(2) The Buyer must exercise due diligence to ascertain by inspection and report to the Seller if the shipment does not comply with the contract terms.

Rule 17. Condition Guaranteed Upon Arrival

(A) The Seller shall guarantee shipments to arrive at final destination in a condition, cool, sound and sweet, free of objectionable extraneous material and dischargeable from the conveyance without excessive or unsafe action, with the following exception: When shipments are ordered to a reconsignment point, the Seller shall not be responsible for condition at final destination unless shipments are ordered forward from such reconsignment points within 48 hours after arrival, and the Seller shall not be responsible for condition at final destination if a second reconsignment or diversion is made.

(B) (1) Rail Shipments

It shall be the duty of the Buyer to ascertain by inspection or other means and report the condition of the shipment not later than 12 noon of the second business day after arrival at final destination, otherwise the Seller's liability ceases at the expiration of such time.

(2) Truck Shipments

The Buyer must exercise due diligence to ascertain by inspection and report the condition of the shipment to the Seller or the vehicle driver.

(C) A Buyer receiving a shipment that is out of condition on arrival, and handled as outlined in preceding paragraphs, shall upon Seller's request, unload, recondition, and salvage to best advantage of the Seller whenever practical to do so.

If the Buyer is unable to handle as requested, it shall be his duty to notify the Seller of this fact at the time he notifies the Seller of the shipment's condition and the Seller shall dispose of the shipment and shall, at the Buyer's option, either cancel the affected portion of the contract or make a replacement shipment.

(1) In the event the Buyer elects to cancel the affected portion of the contract, then the contract shall be cancelled at the fair market price on the date the shipment is rejected and the Buyer shall reimburse the Seller for any market loss suffered through cancellation and the Seller shall pay to the Buyer any market gain received through cancellation.

(2) In the event the Buyer requests replacement, then the Seller shall be obligated to make replacement, and the Buyer shall be obligated to accept such replacement, which must be made by a new shipment within four (4) calendar days (excluding Saturday, Sunday, and legal holidays) from the date of refusal by the Buyer.

Rule 18. Refusal of Shipment

Failure to make any shipment in keeping with the terms and conditions of a contract shall be grounds for the refusal only of such shipment or shipments, and not for the rescission of the entire contract or any other contract between the Buyer and Seller.

NGFA Feed Trade Rules

Rule 19. Default on the Shipping Schedule and/or the Contract Shipping Period

(A) Default by the Seller: When the Seller finds that he is in default on the shipping schedule, and/or the contract shipping period, he shall notify the Buyer at once by telephone confirmed by subsequent written communication.

Upon receipt of such notice, the Buyer shall, within twenty-four (24) hours thereafter, advise the Seller by telephone confirmed by subsequent written communication which of the following options he elects to exercise:

- (1) agree to extend the shipping period; or
- (2) buy-in, for the Seller's account, the defaulted portion of the shipments; or
- (3) cancel the defaulted portion of the shipments at fair market value based on the day this option is exercised.

If the Seller fails to notify the Buyer of his default, the liability remains in force until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. The Buyer shall notify the Seller at once by telephone confirmed by subsequent written communication and within twenty-four (24) hours thereafter, advise the Seller by telephone confirmed by subsequent written communication, which of the options (1) or (2) or (3) above he elects to exercise.

If the Seller defaults on the contract, he is liable for all reasonable costs and expenses as shall have been incurred to and including the day the Buyer elects one of the three options.

(B) Default by the Buyer: When the Buyer finds that he is in default on the shipping schedule and/or the contract shipping period, he shall notify the Seller at once by telephone confirmed by subsequent written communication.

Upon receipt of such notice, the Seller shall, within twenty-four (24) hours thereafter, advise the Buyer by telephone confirmed by subsequent written communication which of the following options he elects to exercise:

- (1) agree to extend the shipping period; or
- (2) sell-out, for the Buyer's account, the defaulted portion of the shipments; or
- (3) cancel the defaulted portion of the shipments at fair market value based on the day this option is exercised.

If the Buyer fails to notify the Seller of his default, the liability remains in force until the Seller, by the exercise of due diligence, can determine whether the Buyer has defaulted. The Seller shall notify the Buyer at once by telephone confirmed by subsequent written communication and within twenty-four (24) hours thereafter, advise the Buyer by telephone confirmed by subsequent written communication which of the options (1) or (2) or (3) above he elects to exercise.

If the Buyer defaults on the contract he shall be liable for all the reasonable costs and expenses as shall have been incurred to and including the day the Seller elects one of the three options.

(C) This rule does not permit compensation to the defaulting party to a contract.

Rule 20. Production Origin of Feed

A sale of feedstuffs must be for a product of United States origin unless otherwise specified at time of sale. If the contracting parties designate a specific non-U.S. origin as the shipment point, then it shall be presumed that the feedstuff was produced in that country unless otherwise specified at the time of sale.

NGFA Feed Trade Rules

Rule 21. Labeling

Bagged feed must bear a complete label, either stenciled upon the bag or on a tag attached thereto, indicating the net weight, name brand or trademark, minimum percent of protein and fat, and maximum percent of crude fiber, the specific name of each ingredient, expressed in its common or usual term, together with name and address of the manufacturer. On bulk shipments, either the analysis tag is to be attached to invoice or analysis is to be stamped or typed on all invoice papers. Labels, where used, must be clear and distinct, in type of sufficient size to be easily read, and must conform to applicable state law or the uniform label adopted by the Association of American Feed Control Officials where a specific state law is not applicable.

Rule 22. Weights

On the date of trade, the Seller and Buyer shall agree on the market where the weights will be obtained and the rules governing that market shall apply. When feed is shipped in bulk, the following type weights may be specified:

(A) Official Weights

(1) U.S. Official Weights

(a) U.S. Class X Weights: An official Class X weight shall be any weight that meets the requirements specified by the U.S. Department of Agriculture in its regulations implementing the U.S. Grain Standards Act.

(b) U.S. Class Y Weights: An official Class Y weight shall be a partially supervised weight that meets the requirements specified by the U.S. Department of Agriculture in its regulations implementing the U.S. Grain Standards Act.

(2) **Canadian Official Weights:** An official weight shall be any weight that meets the requirements specified by the Canadian Grain Commission in its regulations implementing the Weights and Measures Act.

(B) Other Weights

(1) **U.S. Certified Weights:** A certified weight shall be any weight that is obtained by a licensed weigher, using a certified scale. A scale shall be considered certified when it meets the requirements specified in the current edition of Handbook 44 (published by the National Institute of Standards and Technology) and has successfully passed inspection, at least annually, by the U.S. Department of Agriculture or its approved agent, a State Board of Weights and Measures, or its approved agent. A scale, to remain certified, must be tested and pass inspection a minimum of once every twelve months or more frequently when required by the governing regulatory authority.

(a) Class I: A weight documented by a weight certificate obtained by a licensed weigher using a certified scale under 100% supervision of a disinterested third party.

(b) Class II: A weight documented by a weight certificate obtained by a licensed weigher using a certified scale under a minimum of 25% supervision of a disinterested third party.

(c) Class III (or Certified House Weights): A weight documented by a weight certificate obtained by an unsupervised licensed weigher using a certified scale.

(2) **Canadian Certified Weights:** A certified weight shall be any weight on an approved scale meeting the requirements specified by the Weights and Measures Act and Regulations of Canada. A qualified representative of the company (in-house weight) issuing a certified weight certificate shall supervise weighing.

(3) **Affidavit Weights:** Affidavit weights are those obtained by a weigher on any scale not inspected for certification within the past twelve months.

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(4) **Railroad Weights:** Railroad weights shall be weights obtained by a rail carrier using track scales to obtain a gross weight less rail car marked tare weight to determine a net weight.

(C) Weight Settlements

(1) If weight terms have not been specified in the contract, then the Seller's weight shall govern if it is a U.S. or Canadian Official, Canadian Certified, or U.S. Certified Class I or II weight as defined in this rule.

(2) If weight terms have not been specified in the contract and the Seller cannot furnish a U.S. or Canadian Official, Canadian Certified, or U.S. Certified Class I or II weight as defined in this rule, then the Buyer's U.S. or Canadian Official, Canadian Certified, or U.S. Certified Class I or II weight shall govern.

(3) If weight terms have not been specified in the contract, and neither Buyer nor Seller can furnish a U.S. or Canadian Official, Canadian Certified, or U.S. Certified Class I or II weight as defined by this rule, then the first weight supplied by either the Seller or Buyer which meets the requirements of this rule for a U.S. Certified Class III weight shall govern. If neither the Buyer nor Seller can furnish a U.S. Certified Class III weight, then the first Affidavit weight supplied by either Buyer or Seller shall govern. If neither the Buyer nor Seller can furnish any weight meeting any of the foregoing requirements, then the first Railroad weight supplied by either Buyer or Seller shall govern.

Rule 23. Uniform Certificate for Affidavit Weights

When a shipper or receiver furnishes an affidavit weight, the certificate shall show the following information:

- (1) Car number and date of loading
- (2) Seal numbers
- (3) Type of scale used:
Hopper Scale
Track Scale

If Hopper Scale:

- (a) Size of dump
- (b) Number of dumps
- (c) Partial dump
- (d) Total Weight

This Hopper Scale was last tested by . .

If Track Scale:

- (a) Private or Railroad (state which). . .
- (b) Gross Weight.
- (c) Marked Tare (whether or not used) .
- (d) Net Weight.
- (e) Actual Tare (unless railroad scale). . .

If private Track Scale:

This Track Scale was last tested
by.
Signature.

Rule 24. Registration

On sales of feedstuffs, the Seller guarantees that the feedstuffs shall comply with the laws of the state into which it is sold, including registration and tax, if any.

NGFA Feed Trade Rules

Rule 25. Drafts

(A) Margins

If sales are made on destination terms, the Seller shall leave ample margin in his drafts to provide for possible variations in weights, grades or other quality factors.

(B) Overdrafts

If an overdraft has been made on a feed shipment, and has been discovered before the draft is paid, the Buyer shall elect either to pay the overdraft for account of the Seller, or to request the Seller to reduce his draft to the proper amount.

If the Buyer elects to pay the overdraft for account of the Seller, or if drafts are paid and an overdraft is not discovered until final accounting is rendered, the Seller shall reimburse the Buyer on demand for the full amount of said overdrafts.

Rule 26. Payment That Is Conditioned on Presentation of Original Drafts and/or Invoices

If payment is conditioned on presentation of original drafts or invoices, the Seller shall provide to the Buyer, or other such consignee as may have been previously designated by the Buyer, an invoice giving the conveyance identification, kind and type of feed, actual or estimated weight (state which applies), price, contract on which shipment is to apply, date of contract, date of shipment, point of origin, amount of invoice, and complete railroad routing, if applicable.

Sight drafts or invoices are subject to payment on presentation to the Buyer or his designated agent, when properly documented and substantiated by the original bill of lading, and/or delivery order and, if applicable, original weight and inspection certificate(s).

Rule 27. Arbitration

Where a transaction is made subject to these rules in whole or in part, whether by express contractual reference or by reason of membership in this Association, then the sole remedy for resolution of any and all disagreements or disputes arising under or related to the transaction shall be through arbitration proceedings before the National Grain and Feed Association pursuant to the NGFA® Arbitration Rules; provided, however, that at least one party to the transaction must be a NGFA member entitled to arbitrate disputes under the NGFA Arbitration Rules.

Rule 28. Definitions

(A) Business Day

For the purpose of these rules, a “business day” shall be defined as the hours from 0800 to 1700 hours in Chicago, Illinois, USA excluding Saturday, Sunday and legal holidays. Wherever the term “holiday” or “legal holiday” appears in these rules, or in a contract, it shall mean those scheduled holidays observed by the Chicago Board of Trade, Chicago, Illinois, USA.

(B) Buying-In

When the phrase “buy-in” is used in these rules it shall mean an actual purchase of feed of like kind and quantity on the open market; provided, that when this is not feasible or would result in undue penalty to the Seller, the Buyer shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Seller.

(C) Communications

(1) Written communication, confirmation or notification shall include those communications sent/received by postal mail, courier, or electronic means. The sender shall be responsible for the correct transmission of the message.

NGFA Feed Trade Rules

(2) Rapid written communication, confirmation or notification shall mean those communications sent/received by electronic means. The sender shall be responsible for the correct transmission of the message.

(3) Telephone, verbal or voice communication, confirmation, or notification must be confirmed by subsequent written communication.

(D) Container

The term "container" when used in these rules refers to an intermodal shipping container commonly used for carrying bulk grain or feedstuffs. Shipping container dimensions and weight loading requirements should be specified in contract confirmations exchanged between parties.

(E) Delivery

(1) Rail and Barge

The term "delivery" when used in these rules shall mean that the conveyance has been actually or constructively placed to the Buyer.

(2) Truck

Truck feed shall be considered to have been delivered at the time and date of unloading as evidenced by a scale ticket or dock receipt issued by the receiving facility.

(F) Electronic Trading Platform

The term "Electronic Trading Platform" shall include all systems designed for execution of trades in cash markets on an open, or Internet-based, electronic network.

(G) Feed or Feedstuffs

The definitions of feed or feedstuffs, in the absence of an applicable state law to the contrary, shall be as set forth in the Official Publication of the Association of American Feed Control Officials as now existing or hereinafter amended.

(H) Futures

All references in these rules or contractual documents to futures markets, close of market, futures spread, futures or futures-related pricing, and similar terms shall mean the trading day as defined by the CME Group or, when so designated, the day session of other futures exchanges in North America.

(I) Mechanical Seals

For the purposes of these rules, a "mechanical seal" shall be defined as a locking mechanical device, readily identifiable by unique markings or numbers, whose primary purpose is to provide evidence of tampering with the conveyance, and whose type and/or usage may be mutually agreed upon between the Buyer and Seller as part of the contract terms.

(J) Notice; Furnish

The terms "notice" and "furnish," or any derivatives of these words, when used in these rules shall mean verbal communication when possible, and in all cases by rapid written communication.

(K) Packaging

(1)(a) It shall be understood that all feedstuffs when sold in sacks shall be packed in new bags, unless otherwise agreed at time of trade; and (b) Shipments shall be in even weight packages and the weight of packages shall be net when packed, two thousand (2,000) pounds net shall constitute a ton and two thousand two hundred four and 6/10 (2,204.6) pounds shall constitute a metric tonne.

(2) Shipments in totes, and supersacks may be shipped in clean reusable containers, with net weights per container or by shipment designated.

NGFA Feed Trade Rules

(L) Rail and Truck Arrival

(1) **Rail.** Arrival of a car of feed shall be:

(a) The time of actual physical placement at the billed destination; or

(b) If not physically placed, then 48 hours after the car is constructively placed or reported to the Buyer as available for Buyer's instructions. This period shall exclude Saturdays, Sundays, or legal holidays.

(2) **Trucks.** Trucks shall be considered to have arrived at the time and date of unloading as evidenced by a scale ticket or dock receipt at the receiving facility. Where such evidence is not available, other routine business records may be used to show arrival time and date.

(M) Shipment-Rail and Barge

The term "shipment" when used in these rules shall mean that the shipper has filed shipping instructions with the authorized agent of the carrier.

(N) Selling-Out

Where the phrase "sell-out" is used in these rules, it shall mean an actual sale of feed of like kind and quantity on the open market, provided that when this is not feasible or would result in undue penalty to the Buyer, the Seller shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Buyer.

(O) Time

When these rules require that an action be taken at or by a specified time of day, then "time" shall mean the official time for the United States provided by the U. S. Naval Observatory converted to Central Standard Time or Central Daylight Savings Time, whichever is applicable in Chicago, Illinois, USA

(P) Trains

For the purposes of these rules:

(1) a Multi is any group of cars of less than 25 for movement as one unit and under one bill of lading.

(2) a Unit Train is a group of 25 or more cars for movement as one unit under one bill of lading.

(Q) Truckload

If no truck size is specified in the contract, a truckload shall be 50,000 pounds net weight.

(R) Original bill of lading

The term "original" when used in relation to bills of lading shall mean such a document that is complete and, if a negotiated order bill of lading, properly endorsed.

NGFA Barge Trade Rules

Adopted March 06, 1964
 Amended March 19, 1965
 Amended March 30, 1967
 Amended March 27, 1969
 Amended March 25, 1971
 Amended March 23, 1972
 Amended March 01, 1973
 Amended March 14, 1974
 Amended Sept. 12, 1974
 Amended March 25, 1976
 Amended March 23, 1977
 Amended March 31, 1978
 Amended March 08, 1979

Amended March 20, 1980
 Amended March 26, 1981
 Amended March 23, 1982
 Amended March 15, 1983
 Amended March 13, 1984
 Amended Sept. 11, 1985
 Amended March 27, 1990
 Amended March 12, 1991
 Amended March 24, 1992
 Amended March 21, 1994
 Amended March 31, 2000
 Amended March 16, 2001
 Amended March 28, 2008

Amended March 31, 2009
 Amended March 17, 2015
 Amended March 15, 2016
 Amended March 21, 2017
 Amended March 10, 2020
 Amended March 31, 2021
 Amended June 04, 2021*

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Rule 2. Passing of Title as Well as Risk of Loss and/or Damage
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Rule 5. Feedstuffs-Analysis
Rule 6. Weights
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- Rule 8.** Time of Shipment
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Rule 11. Reconsignment/Diversion
Rule 12. Payment of Original Drafts and/or Invoices
Rule 13. Demurrage
Rule 14. Overfill and Underfill on Bushel/Tons Contracts
Rule 15. Definitions

Preamble: The following rules amend and are a supplement to the Grain Trade Rules and Feed Trade Rules so that such rules so amended apply to shipments of grain, oilseeds, hay and all feedstuffs, including mill products or byproducts, hereinafter referred to as “feedstuffs” whenever such shipments are designated by contract to be shipped by barge.

Where no distinction is made in the text of a rule among products covered by these rules, the rule applies to all grains, oilseeds and feedstuffs; otherwise the rule or subpart, wherein a distinction is made, covers only the product(s) mentioned.

All Active members and other parties using these rules are free to agree upon any contractual provisions, which they deem appropriate, and these rules apply only to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to a matter dealt with by the pertinent rule.

**The italicized rules contained herein include amendments to the NGFA Barge Trade Rules approved by the NGFA Board of Directors on June 4, 2021 (effective July 4, 2021). These amendments are subject to ratification by the NGFA membership pursuant to the NGFA Bylaws.*

NGFA Barge Trade Rules

Rule 1. Applicable Equipment/Barge

Only single compartment barges or equipment that can be unloaded by a marine leg and that are 195/200 by 35 feet shall be tendered on contract except by mutual agreement of both the Buyer and Seller.

Rule 2. Passing of Title as Well as Risk of Loss and/or Damage

Title as well as risk of loss and/or damage, passes to the Buyer as follows:

(A) Grain:

- (1) On f.o.b. origin contracts title and risk of loss shall pass from the Seller to the Buyer at the time and place of shipment. The time is the moment when the Seller notifies the Buyer that the barge is loaded.
- (2) On c.i.f. contracts title and risk of loss shall pass from the Seller to the Buyer at the time and place of shipment. The time is the moment of either:
 - (a) the issuance of the bill of lading by the carrier or the carrier's agent in accordance with Seller's instructions; or
 - (b) transmittal by written communications of shipping instructions by the Seller to the carrier in accordance with Buyer's instructions.

(B) Feedstuffs:

- (1) Title and risk of loss or damage caused by other than by going out of condition shall pass as provided in Rule 2(A), but the original shipper shall be responsible for the condition of the feedstuffs up to (a) five (5) calendar days subsequent to the arrival of the barge at destination; or (b) commencement of unloading of the barge, whichever occurs first.
- (2) If the barge is sold after reaching its destination, the first Seller and each subsequent Seller will be responsible for the condition of the feedstuffs for five (5) calendar days following the date of each reconsignment.
- (3) The Buyer shall have until 4 p.m. on the fifth calendar day following the date of arrival of the barge at destination to notify the Seller of any out of condition cargo. If the fifth (5) calendar day falls on a Saturday, Sunday or holiday, the following business day shall be considered the fifth calendar day.
- (4) If the Buyer under the provisions of Rule 2(B) (1), (2) and (3) above declares a barge of feedstuffs to be infested, the Buyer shall notify the Seller of the cost of fumigation. The Buyer will assume the responsibility to fumigate the barge and charge the mutually agreed expense to the Seller. Alternatively, the Seller has the right to fumigate the barge within twenty-four (24) hours at the Seller's expense. If, in the latter case, the Seller has not fumigated the barge within twenty-four (24) hours, the Buyer may arrange for fumigation at the reasonable expense of the Seller. The barge cannot be rejected on account of infestation, and demurrage incurred shall continue for the account of the Buyer.

Rule 3. Inspection

Inspection as defined in Grain Trade Rule 10.

Rule 4. Destination Inspections, Quality and Condition Guaranteed on Arrival:

If barge grain is sold basis destination inspection, or guaranteed condition on arrival, it shall be the obligation of the Buyer to obtain an inspection or condition check within five (5) calendar days of the date of arrival of the barge. If the barge cannot be opened for inspection or condition check away from the unload berth because of faulty equipment on the barge, it shall be the obligation of the Buyer to notify the Seller within the period specified herein.

NGFA Barge Trade Rules

Rule 5. Feedstuffs-Analysis

(A) **Specific Analysis:** If the contract requires a specific analysis on the feedstuffs being shipped, the contract must specify whether a certificate of analysis is required, and if so, the certificate of analysis must specify the name of the laboratory issuing the certificate, the method of sampling used, when and where the sample was taken, and the percentage of each factor for which there is a contractual requirement.

(B) **Origin Analysis:** If feedstuffs are sold basis origin analysis, the last Buyer in the string to whom a barge has been applied may inquire of the original shipper as to its analysis provided at least five (5) business days have elapsed since the origin bill of lading date.

Rule 6. Weights

(A) **Official Weights:** Official Weights shall be those weights described in Grain Trade Rule 14 A(1) or Feed Trade Rule 22 A(1).

(B) **Certified Weights:** Certified Weights shall be those weights described in Grain Trade Rule 14 B(1) or Feed Trade Rule 22 B(1).

(C) If weights other than Official or Certified Weights are provided for in the contract of purchase and sale, the weighing party shall on request of the other party indicate the method of obtaining weights and such other information on the weighing process as the other party may reasonably request, including copies of supporting documentation.

(D) Cargo transferred by truck or rail car to the loading barge after weighing in the elevator, or cargo weighed after the transfer to the elevator by truck or railroad from the barge being unloaded, shall not be considered official or certified weights.

(E) Every official or certified barge unload weight certificate shall include either a statement that no cargo was left in the barge or a statement specifying the estimated quantity of cargo left in the barge.

(F) In the event any portion of the barge cargo is not unloaded at the receiving elevator or at the receiving point, the unloading Buyer must notify his Seller and the shipper within twenty-four (24) hours, or as soon thereafter as practicable.

(G) **Grain:** If the contract is based on destination weights, the unloading Buyer shall notify the original shipper and the barge operator of the final unload weights by telephone or rapid written communication within two (2) business days of unload, confirmed by mailing the original weight certificate to the original shipper and a copy to the Barge Operator within five (5) business days of unload, accompanied by a statement of the cost of weighing charges, if applicable.

Rule 7. Weight Settlements

(A) **Grain:** The original shipper shall issue an invoice and initiate final settlement with the attached original weight certificate, or a duplicate copy thereof. If the Buyer and Seller agree that payment is to be net cash upon receipt of invoice, the invoice shall be due and payable within five (5) business days, which is considered to be the normal time to clear the paperwork involved.

(B) **Feedstuffs:** The ultimate Buyer shall make final settlements of weight and quality with the original weight certificates, or duplicate copy thereof within five (5) business days of unload. If the Buyer and Seller agree that payment is to be net cash, all intermediate parties shall make final settlement with the original weight certificate, or a duplicate copy thereof, within five (5) business days of receipt, which is considered to be the normal time to clear the paperwork involved.

Rule 8. Time of Shipment

The date of the original barge bill of lading consigning the shipment to the destination specified by the contract shall be evidence of shipment and the determining date for establishing time of shipment on contract. The time of shipment must always fall within the contract period unless otherwise mutually agreed upon by Buyer and Seller.

NGFA Barge Trade Rules

Rule 9. Applicability/Application

(A) Application of a barge is the exchange from Seller to Buyer of the following information:

- (1) Barge number;
- (2) Barge operator;
- (3) Loading elevator;
- (4) Original shipper;
- (5) Bill of lading date;
- (6) Quantity in barge (bushels, tons);
- (7) In the case of grain, the type of inspection (e.g., state or federal), numerical grade, and all factors.

(B) *The bill of lading shall not predate notification of application by more than five (5) calendar days. (Example: Bill of Lading Date 4-7-21 — last applicable date 4-12-21 at 11:00 a.m. except for corn, which must be applied by 10:50 a.m.)*

(C) Certificate(s) of inspection for grain barges shall not predate their corresponding bill of lading date(s) by more than three (3) calendar days.

(D) If grain transactions are made on the basis of origin official weights, the weight certificate shall not predate the bill of lading date by more than three (3) calendar days.

(E) Barges must be applied on contract verbally by telephone (written confirmation per Grain Trade Rule 30(C)(3) does not apply) on business days, holidays excepted, between the hours of 8 a.m. and 4 p.m., except for corn, which must be applied by 3:50 p.m. When the CBOT agricultural grain and oilseed contracts have a scheduled shortened session, applications must be made between the hours of 8 a.m. and 1 p.m., except for corn, which must be applied by 12:50 p.m. Last day application barges must be applied by 11 a.m. except for corn, which must be applied by 10:50 a.m.

(F) Application of grain barges may be made with the type of inspection certificate stipulated in the contract. If a subsequent federal appeal inspection does not meet contract requirements, the Buyer may reject application.

Rule 10. Billing Instructions

The Buyer shall furnish billing instructions to the Seller not later than 4:30 p.m. on the day of application. When the CBOT agricultural grain and oilseed contracts have a scheduled shortened session, the Buyer shall furnish billing instructions to the Seller not later than 1:30 p.m. on the day of application.

Rule 11. Reconsignment/Diversion

The Seller's only obligation with respect to destination on a c.i.f. or delivered sale in the Seller's barges is to furnish the Buyer the bill of lading ordering the barge to the rate point specified in the contract. Nothing in this rule shall be construed as preventing the Buyer from seeking to divert the barge to other than the specified destination.

Rule 12. Payment of Original Drafts and/or Invoices

Sight drafts or invoices are subject to payment on presentation to the Buyer or his designated agent, when properly documented and substantiated by the original bill of lading, a certificate of cargo insurance where applicable, and any other loading documents required by the contract.

Drafting or invoicing may be made with the type of inspection certificate stipulated in the contract. If a federal appeal inspection was requested and the federal appeal inspection does not meet the requirements of the contract, the Buyer may reject the application. If the Buyer has not paid the draft or invoice, he may reject it. If the Buyer has paid the draft or invoice, the Seller shall reimburse the Buyer on demand for the full amount paid on the draft or invoice.

NGFA Barge Trade Rules

Rule 13. Demurrage

For barges applied before or after arrival at the destination specified by the contract, the buyer is entitled to such free time and demurrage terms as specified by the contract. Free time shall commence the first 7 a.m. following: (A) arrival of the barge at the destination specified by the contract; or (B) following notification of application if application is made after arrival of the barge.

Rule 14. Overfill and Underfill on Bushel/Tons Contracts

(A) **Grain:** Any underfill or overfill on barge grain shall be settled at the market value at the close of the first business day following the date of load or unload of the last barge in fulfillment of the contract, whichever weight is applicable.

(1) **Market Value:** “Market value” shall mean the basis at the close of the first business day following date of load or unload, whichever weight is applicable. The flat price shall be established at the time the overfill or underfill becomes known by both parties to the contract.

Overfills and underfills shall be settled on a basis over or under the futures month currently used for the majority of cash trades. To convert the basis the business day after the last load or unload to a basis relative to the futures month currently used for the majority of cash trades, the futures spread of the business day after last load or unload shall be used.

(2) **Tolerance:** On bushel contracts, a total tolerance of 10% more or less than the mean quantity up to a maximum of 30,000 bushels shall be permissible in the fulfillment of the contract. An overfill or underfill of 10% or 1,000 bushels, whichever is less, shall apply at contract price. If the total overfill or underfill is in excess of the lesser of 10% of the mean quantity or 1,000 bushels the entire overfill or underfill shall be settled at the market value.

(B) Settlements: Overfills and Underfills — Feedstuffs

Overfills and underfills within 5% of contract quantity shall be settled at the contract price. If the overfill or underfill is in excess of 5% of the contract quantity, the entire overfill or underfill shall be settled basis the fair market value at the close of the first business day following the date of load or unload of the last barge in fulfillment of the contract. If the contract calls for specific barge quantities, each barge shall be settled individually.

Rule 15. Definitions

(A) Barge

The word “barge” shall mean a covered barge commonly used for carrying bulk grain or feedstuffs. Weight or quantity requirements should be specified in contracts.

(B) Cargo Insurance or Cargo Insured Bill of Lading

The terms “Cargo Insurance” or “Cargo Insured” bill of lading as used in these rules shall mean protection afforded to the holder of title of not less than that described as follows: For all physical loss and/or damage to the cargo for any and all risks or perils (including but not limited to all Acts of God); provided that, there need not be protection for 1) shrinkage, expansion or other change to sound grain due to natural causes on sound grain; 2) loss, damage or deterioration resulting from delay in the delivery of the shipment and/or moisture content of the cargo itself; 3) any inherent vice or defect in the cargo; 4) improper stowage, or the physical act of loading or unloading, when not performed by carrier; 5) the authority of law, including without limitation, quarantine and embargo; or 6) the acts of the public enemy, hostilities, or war-like operations, whether or not there be a declaration of war.

It shall be the obligation of the Seller to furnish cargo insurance or a cargo insured bill of lading with respect to barges furnished by the seller involving CIF or delivered contracts. It shall be the obligation of Buyer to furnish cargo insurance with respect to barges furnished by the Buyer involving FOB contracts.

NGFA Barge Trade Rules

(C) c.i.f.

For purposes of barge contracts, the term c.i.f. or “delivered,” followed by a destination point shall mean f.o.b. origin, but the price includes the cost of the cargo f.o.b. origin point, plus cargo insurance, plus barge freight to the destination rate point.

(D) f.o.b.

For purposes of barge contracts, the term f.o.b. means free of charge on board barge at point of origin.

(E) Original bill of lading

The term “original” when used in relation to bills of lading shall mean such a document that is original, complete and, if a negotiated order bill of lading, properly endorsed.

NGFA Barge Freight Trading Rules (Affreightment)

Adopted March 26, 1981
 Amended March 23, 1982
 Amended Sept. 11, 1985
 Amended Sept. 12, 1986
 Amended March 14, 1989
 Amended March 27, 1990
 Amended March 12, 1991
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 Amended March 15, 1996
 Amended March 21, 1997
 Amended March 10, 1998

Amended March 23, 1999
 Amended March 31, 2000
 Amended March 16, 2001
 Amended March 28, 2003
 Amended April 01, 2005
 Amended March 31, 2009
 Amended March 05, 2010
 Amended March 15, 2011
 Amended March 19, 2013
 Amended March 17, 2015
 Amended March 10, 2020
 Amended March 31, 2021

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Rule 5. Alteration of Contract	Rule 15. Reconsignment
Rule 6. Electronic Communication	Rule 16. Payment of Invoice
Rule 7. Weights	Rule 17. Arbitration
Rule 8. Advice of Schedules	Rule 18. Definitions
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Preamble: The following rules shall govern all transactions of a financial, mercantile or commercial character connected with the purchase and/or sale of barge transportation and in the carriage of bulk commodities by barge, arising between Active members of the National Grain and Feed Association and other parties using these rules, unless otherwise and specifically agreed to at the time of the trade, or subsequent thereto.

All active members and other parties using these rules are free to agree upon any contractual provisions, which they deem appropriate, and these rules apply only to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to a matter dealt with by the pertinent rule.

NGFA Barge Freight Trading Rules (Affreightment)

Rule 1. Trade

Both the Buyer and the Seller shall include in their original articles of trade, whether entered into orally or in writing the following specifications, if applicable:

- (A) Date of contract
- (B) Number of barges
- (C) Type(s) of commodities to be carried
- (D) Rate(s)
- (E) Governing weights
- (F) Applicable Trade Rules
- (G) Contract placement period(s)
- (H) Placement point(s) or area(s)
- (I) For Other than Weekly Contracts: Advice on placement schedules and origin point declarations
- (J) Destination point(s) or area(s)
- (K) Minimum loading requirements
- (L) Free Time (which commences at 0700 hours)
- (M) Origin/destination demurrage terms (which commences 0700 hours after Free Time)
- (N) Cargo insurance coverage
- (O) Terms of payment

Rule 2. Applicable Equipment/Barge

Only single compartment barges or equipment that can be unloaded by a marine leg and that are 195/200 by 35 feet shall be tendered on contract except by mutual agreement of both the Buyer and Seller.

Rule 3. Brokers

(A) A broker is a person, firm or electronic trading platform that is engaged on behalf of others, at least partially on a commission basis, to negotiate or facilitate the formation of contracts for goods of which the broker has no actual or constructive custody.

(B) A person, firm, or electronic trading platform is not a broker:

- (1) who has possession and absolute control of merchandise shipped to him to sell and collect the price. (Therefore, a commission merchant to whom freight is consigned for sale is not a broker.)
- (2) who receives a salary instead of a commission or brokerage.
- (3) who acts for one principal to the exclusion of all others.

(C) A broker has the power to bind his principals only to the extent of his instructions. The principals are not liable for any acts of the broker in excess of such instructions.

(D) A broker who, in good faith or otherwise, exceeds his authority is liable for any resulting damages.

(E) A broker that, in good faith, negotiates, or facilitates the formation of a contract in accordance with instructions from both principals; identifies the principals to each other at the time of negotiations or facilitation; and completes such negotiations or facilitation in accordance with the rules and customs governing such transaction, thereby fulfills all obligations and has no further liability to either principal. The contract so negotiated or facilitated is valid and binding between the Buyer and Seller as if it had been negotiated or facilitated directly between them.

Rule 4. Confirmation of Contracts

(A) Both the Buyer and Seller shall send a written confirmation, each to the other, not later than the close of the business day following the date of trade or an agreed amendment, setting forth the specifications as agreed upon in the original articles of trade, or an agreed amendment. Upon

NGFA Barge Freight Trading Rules (Affreightment)

receipt of said confirmation, the parties shall carefully check all specifications therein and, upon finding any differences, shall immediately notify the other party to the contract by rapid written communication, or by telephone confirmed by subsequent written communication.

(B) If either the Buyer or the Seller fails to send a confirmation, the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 4(A), of any disagreement with the confirmation received.

(C) When a trade is made through a broker, it shall be the duty of the broker to send a written confirmation not later than the close of the business day following the date of trade to each of the principals setting forth the specifications of the trade. Upon receipt of said confirmation, the parties shall carefully check all specifications therein, and upon finding any differences, shall immediately give notice to the other party to the contract and to the broker. If either party fails to give such notice, the terms and specifications contained in the confirmation issued by the broker shall govern the contract.

(D) A document or record otherwise complying with this rule shall be effective even though it fails to use the term “confirmation.”

Rule 5. Alteration of Contract

The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by written communication by both parties.

Rule 6. Electronic Communication

These rules may be applied to trades that occur by electronic methods in lieu of conventional paper-based documents. A party to a trade may, in lieu of paper-based documents, transmit or receive from the other party an electronic communication, and such electronic communication shall suffice in lieu of a paper-based document. An exchange of communications between the parties by electronic means constitutes acknowledgement of that means as a viable method of contractual communication.

Rule 7. Weights

(A) Official Weights

(1) U.S. Official Weights

(a) **U.S. Class X Weights:** An official Class X weight shall be any weight that meets the requirements specified by the U.S. Department of Agriculture in its regulations implementing the U.S. Grain Standards Act.

(b) **U.S. Class Y Weights:** An official Class Y weight shall be a partially supervised weight that meets the requirements specified by the U.S. Department of Agriculture in its regulations implementing the U.S. Grain Standards Act.

(2) **Canadian Official Weights:** An official weight shall be any weight on an approved scale meeting the requirements specified by the Weights and Measures Act and Regulations of Canada, and the weighing is 100% supervised by a licensed Canadian Grain Commission Weigher.

(B) Other Weights

(1) **U.S. Certified Weights:** A certified weight shall be any weight that is obtained by a licensed weigher, using a certified scale. A scale shall be considered certified when it meets the requirements specified in the current edition of Handbook 44 (published by the National Institute of Standards and Technology) and has successfully passed inspection, at least annually, by the U.S. Department of Agriculture or its approved agent, a State Board of Weights and Measures, or its approved agent. A scale, to remain certified, must be tested and pass inspection a minimum of once every twelve months or more frequently when required by the governing regulatory authority.

NGFA Barge Freight Trading Rules (Affreightment)

(a) Class I: A weight documented by a weight certificate obtained by a licensed weigher using a certified scale under 100% supervision of a disinterested third party.

(b) Class II: A weight documented by a weight certificate obtained by a licensed weigher using a certified scale under a minimum of 25% supervision of a disinterested third party.

(c) Class III (or Certified House Weights): A weight documented by a weight certificate obtained by an unsupervised licensed weigher using a certified scale.

(2) **Canadian Certified Weights:** A certified weight shall be any weight on an approved scale meeting the requirements specified by the Weights and Measures Act and Regulations of Canada. A qualified representative of the company (in-house weight) issuing a certified weight certificate shall supervise weighing.

(3) **Affidavit Weights:** Affidavit weights are those obtained by a weigher on any scale not inspected for certification within the past twelve months.

Rule 8. Advice of Schedules

(A) Placement of Barge Freight for Weekly Contracts

(1) The Buyer shall furnish the Seller a specific river on multi-river contracts by 1600 hours two (2) business days preceding the contract placement period.

(2) The Seller can provide the Buyer a boat schedule no sooner than during the last business day preceding the contract period. The Buyer shall furnish the Seller a named origin point(s) based on the timing of said schedule.

(3) When a boat schedule has not been provided by the Seller to the Buyer, the Buyer shall furnish the Seller named origin point(s) no later than the second business day of the contract period.

(B) Schedules Arriving before Contract Period

(1) Should a barge arrive at origin point prior to commencement of the contract period, constructive placement will be effective the first 0700 hours of the contract period.

(2) Should the Buyer commence loading the barge prior to the contract period, placement will be effective the day loading commences.

(C) Substitution of Schedule(s)

The Seller may substitute a barge or schedule provided placement is no later than the timing of the original schedule. If substitute placement is earlier than the original schedule, constructive placement will occur no earlier than the timing of the original schedule

Rule 9. Placement of Barges (Origin and Destination)

(A) (1) Actual placement is made when a barge is placed in accordance with instructions of the Buyer or the Consignee at the facility in the port specified by the contract or bill of lading destination.

(2) Constructive placement may be made when actual placement is not possible by placing or holding a barge at a point of the Barge Operator's choice near the actual delivery point. In making any subsequent placement of the barge, no additional free time will be allowed. **Exception:** If a Barge Operator is initially prevented from actual placement or constructive placement because of a condition of the navigation channel, the provision for placement will not be applicable until the condition has been alleviated.

(3) Placement for loading is effective the first 0700 hours after a barge is actually or constructively placed provided the Seller has notified the Buyer of such placement by 1100 hours that same day by rapid written communication, or by telephone confirmed by subsequent written communication.

NGFA Barge Freight Trading Rules (Affreightment)

Confirmation is to include the name of the Barge Operator. The Seller must receive confirmation of receipt of placement from the Buyer by telephone or rapid written communication no later than the 1100 hours of the barge placement date.

(4) Placement at the unloading port is effective the first 0700 hours after a barge is actually or constructively placed, provided the Barge Operator has notified Consignee or Consignee's designated agent of such placement by 1100 hours that same day by rapid written communication, or by telephone confirmed by subsequent written communication.

(B) Bad Order or Dirty Equipment/Barge:

(1) Placement is voided when a barge is found to be unfit ("bad order," "dirty") for loading if the Buyer/Shipper notifies the Seller on a business day or the Barge Operator on a Saturday, Sunday or legal holiday of the barge's condition by 1600 hours of the day immediately following the effective placement date. The Seller shall have a barge ready for loading no later than 0700 hours of the third business day following Buyer's notification. If notice is given on a Thursday, Friday, or Saturday the barge operator shall have a barge ready for loading no later than the close of the first business day of the following week.

(2) Placement is interrupted when a barge is found to be unfit ("bad order," "dirty") for loading if the Buyer/Shipper notifies the Seller on a business day or the Barge Operator on a Saturday, Sunday, or legal holiday of the barge's condition after 1600 hours of the day immediately following the effective placement date. Placement resumes the following 0700 hours after the barge is made ready for loading. The Seller shall have a barge ready for loading no later than 0700 hours of the third business day following Buyer's notification. If notice is given on a Thursday, Friday or Saturday the barge operator shall have a barge ready for loading no later than the close of the first business day of the following week.

Rule 10. Release Instructions

(A) Notice of Release after Loading:

(1) The Buyer shall give the Seller notice of release that same day by rapid written communication, or by telephone confirmed by subsequent written communication, when a barge is loaded and ready to be picked up. The Buyer must receive confirmation of receipt of release from the Seller by telephone or rapid written communication no later than 1100 hours of the barge release date.

(2) For Saturday, Sunday and legal holiday loading, barges shall not be considered to be released unless:

(a) The Buyer gives the Seller pre-advice no later than the preceding business day. If the Seller is unavailable, the Buyer will notify the Barge Operator. The Buyer shall confirm said release to the Seller in writing by the end of the next business day, or

(b) The Buyer contacts the Seller or Barge Operator (if the seller is unavailable) by telephone or rapid written communication on a Saturday, Sunday or legal holiday and releases the barge(s) by 1100 hours. The Buyer must receive confirmation of receipt of release from the Seller or Barge Operator by telephone or rapid written communication no later than 1100 hours of the barge release date.

(B) Notice of Release after Unloading:

(1) The Consignee or his agent shall give the Barge Operator or his agent notice of release by telephone, confirmed to the Barge Operator in writing by the end of the next business day, when a barge is unloaded and ready to be picked up. In order to release a barge as of 0700 hours the barge must be unloaded prior to 0700 hours and notice of release be given by 1100 hours.

(2) For Saturday, Sunday and legal holiday unloading, barges shall not be considered to be released unless:

NGFA Barge Freight Trading Rules (Affreightment)

(a) the Consignee or his agent gives the Barge Operator or his agent pre-advice on the preceding business day, or

(b) the Consignee or his agent contacts the Barge Operator or his agent by telephone on a Saturday, Sunday or legal holiday and releases the barge(s) by 1100 hours that day, confirmed to the Barge Operator in writing by the end of the next business day.

Rule 11. Billing Instructions

The Buyer shall give the Seller billing instructions (1) by the close of the fifth calendar day following the release date or (2) before the barge reaches mile 230 on the Lower Mississippi River regardless of the release date, whichever occurs first. Billing given not in accordance with this rule may result in Barge Operator's reconsignment charges for the Buyer. These instructions shall be confirmed in writing. Billing instructions shall include:

- (1) Barge number
- (2) Commodity
- (3) Loading port, facility and shipper
- (4) Tonnage
- (5) Consignee
- (6) Notify party
- (7) Bill of lading date
- (8) Destination
- (9) Applicable weights

Rule 12. Issuance of Bill of Lading

The barge operator shall cause a bill of lading to be issued on the same date as billing instructions are given provided those instructions are received before 1500 hours. Any billing instructions given to the barge operator after 1500 hours or on weekends or legal holidays may be issued on a bill of lading no later than the next business day.

Rule 13. Weight Settlements

(A) If the contract is based on destination weights, the unload Buyer shall notify the Original Shipper and the Barge Operator of the final unload weight(s) by telephone or rapid written communication within two (2) business days of unload, confirmed by mailing the original weight certificate to the Original Shipper and a copy to the Barge Operator within five (5) business days.

(B) If the contract is based on origin weights, the Consignor shall notify the Barge Operator of the loading weight(s) by telephone or rapid written communication within two (2) business days of unload, confirmed by mailing a copy of the original weight certificate to the Barge Operator within five (5) business days.

Rule 14. Failure to Perform

(A) Seller's Non-Performance

If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer by telephone confirmed by subsequent written communication. The Buyer shall then at once elect to:

- (1) agree with the Seller upon an extension of the contract (a) at contract price, or (b) at fair market value for adjustment of a previously priced contract or to determine the spread from the contract period to another period of time; or
- (2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market that day.

NGFA Barge Freight Trading Rules (Affreightment)

If the Seller fails to tender an applicable schedule or placement by 1400 hours on the last business day of the contract placement period, the Buyer after giving notice to the Seller to complete the contract, shall then elect to:

- (1) agree with the Seller upon an extension of the contract (a) at contract price or (b) at fair market value for adjustment of a previously priced contract or to determine the spread from the contract period to another period of time; or
- (2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market that day.

(B) Buyer's Non-Performance

If the Buyer finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Seller by telephone confirmed by subsequent written communication. The Seller shall then at once elect to:

- (1) agree with the Buyer upon an extension of the contract (a) at contract price, or (b) at fair market value for adjustment of a previously priced contract or to determine the spread from the contract period to another period of time; or
- (2) sell-out for the account of the Buyer, using due diligence, the defaulted portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market that day.

If the Buyer fails to notify the Seller of his inability to complete his contract, as provided above, the liability of the Buyer shall continue until the Seller, by the exercise of due diligence, can determine whether the Buyer has defaulted. In such case it shall then be the duty of the Seller, after giving notice to the Buyer to complete the contract, at once to:

- (1) agree with the Seller upon an extension of the contract, (a) at contract price or (b) at fair market value for adjustment of a previously priced contract or to determine the spread from the contract period to another period of time; or
- (2) sell-out for the account of the Seller, using due diligence, the defaulted portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market that day.

(C) This rule does not permit compensation to the defaulting party to a contract.

Rule 15. Reconsignment

(A) Reconsignment for Gulf (Baton Rouge/Myrtle Grove) Destinations: A barge may only be reconsigned by mutual agreement of the Cargo Owner and Barge Operator. The terms and conditions of the reconsignment must be confirmed in writing by both parties the next business day.

(B) Reconsignment other than Gulf (Baton Rouge/Myrtle Grove) Destinations: A barge may only be reconsigned by mutual agreement of all parties involved in the freight chain. A reconsignment request shall be made verbally by telephone or rapid written communication by the owner of the cargo to the Seller who in turn, if applicable, continues such requests through the freight chain until the Barge Operator is finally contacted. If all parties in the freight chain agree to the reconsignment and the Cargo Owner elects to consign, then the Cargo Owner shall confirm the reconsignment verbally by telephone or rapid written communication to the Barge Operator. The terms and conditions of the reconsignment must then be confirmed in writing between each contracting party within two (2) business days of the day of reconsignment.

NGFA Barge Freight Trading Rules (Affreightment)

Rule 16. Payment of Invoice

If the Buyer and Seller agree that payment is to be net cash upon receipt, the invoice shall be due and payable within five (5) business days of receipt, which is considered to be the normal time to clear the paperwork involved.

Rule 17. Arbitration

Where a transaction is made subject to these rules in whole or in part, whether by express contractual reference or by reason of membership in this Association, then the sole remedy for resolution of any and all disagreements or disputes arising under or related to the transaction shall be through arbitration proceedings before the National Grain and Feed Association pursuant to the NGFA® Arbitration Rules; provided, however, that at least one party to the transaction must be a NGFA member entitled to arbitrate disputes under the NGFA Arbitration Rules.

Rule 18. Definitions

(A) Barge

The word “barge” shall mean a covered barge commonly used for carrying bulk grain or feedstuffs, which without any weight or quantity reference shall have no quantitative meaning insofar as these rules apply.

(B) Bulk Commodity

A commodity which, in accordance with the existing custom of the trade, is loose and is received and delivered by the Barge Operator without transportation mark or count.

(C) Business Day

For the purpose of these rules, a “business day” shall be defined as the hours from 0800 to 1700 hours in Chicago, Illinois, USA, excluding Saturday, Sunday and legal holidays.

(D) Buying-In

When the phrase “buy-in” is used in these rules it shall mean an actual purchase of freight of like kind on the open market; provided, that when this is not feasible or would result in undue penalty to the Seller, the Buyer shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Seller.

(E) Commencement of Contract Placement Periods

- (1) **Weekly Contracts:** The contract placement/delivery period commences at 0001 hours on Sunday.
- (2) **Monthly Contracts:** The contract placement/delivery period commences at 0001 hours on the first day of the month.
- (3) **Semi-Monthly Contracts:** The contract placement/delivery period commences at 0001 hours on the first and sixteenth days of the month.

(F) Communications

- (1) Written communication, confirmation or notification shall include those communications sent/received by postal mail, courier, or electronic means. The sender shall be responsible for the correct transmission of the message.
- (2) Rapid written communication, confirmation or notification shall include those communications sent/received by electronic means. The sender shall be responsible for the correct transmission of the message.
- (3) Telephone, verbal or voice communication, confirmation, or notification must be confirmed by subsequent written communication.

NGFA Barge Freight Trading Rules (Affreightment)

(G) Electronic Trading Platform

The term “Electronic Trading Platform” shall include all systems designed for execution of trades in cash markets on an open, or Internet-based, electronic network.

(H) Legal Holidays or Holidays

Wherever the term “holiday” or “legal holiday” appears in these rules, it shall mean any one of the following days: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. When such holidays fall on Sunday, the following Monday will be considered the holiday.

(I) Notice; Furnish

The terms "notice" and "furnish," or any derivatives of these words, when used in these rules shall mean verbal communication when possible, and in all cases by rapid written communication.

(J) Opening of the Mid-Mississippi

The Dubuque and South (Mid-Mississippi) opening commences the first 07:00 hours of the first business day after the first empty dry cargo covered barge suitable for loading, originating at or below Winfield, MO, reaches Dubuque, Iowa.

The Mid-Miss opening shall be determined by a majority vote of a three person committee appointed by the NGFA Chairman and shall be announced by publishing the committee's confirmation of the opening on the NGFA web site.

(K) Selling-Out

Where the phrase “sell-out” is used in these rules, it shall mean an actual sale of freight of like kind on the open market, provided that when this is not feasible or would result in undue penalty to the Buyer, the Seller shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Buyer.

(L) Time

When these rules require that an action be taken at or by a specified time of day, then time shall mean the official time for the United States provided by the U.S. Naval Observatory converted to Central Standard Time or Central Daylight Savings Time, whichever is applicable in Chicago, Illinois, USA.

NGFA Secondary Rail Freight Trading Rules (Affreightment)

Adopted March 20, 2007
Amended March 31, 2009
Amended March 05, 2010
Amended March 15, 2011
Amended March 19, 2013
Amended March 10, 2020

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Rule 6. Advice of Schedules	Rule 12. Definitions

Preamble: The following rules shall govern all transactions of a financial, mercantile or commercial character connected with the purchase and/or sale of secondary rail freight transportation (any subsequent transfer of freight ownership and obligations as defined by each individual rail carrier), arising between Active members of the National Grain and Feed Association and other non-railroad parties using these rules, unless otherwise and specifically agreed to at the time of the trade, or subsequent thereto.

All Active members and other parties using these rules are free to agree upon any contractual provisions, which they deem appropriate, and these rules apply only to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to a matter dealt with by the pertinent rule.

NGFA Secondary Rail Freight Trading Rules (Affreightment)

Rule 1. Trade

Both the Buyer and the Seller shall include in their original articles of trade, whether entered into orally or in writing the following specifications, if applicable:

- (A) Date of contract
- (B) Number of rail cars, units, shuttles
- (C) Type(s) of equipment
- (D) Price to be paid
- (E) Applicable Trade Rules
- (F) Contract placement period(s)
- (G) Destination restriction(s)
- (H) Terms of payment
- (I) Other terms

If the Buyer and Seller have been trading on agreed terms and conditions, the use of the phrase “usual terms” in the confirmation shall mean that such terms and conditions that governed previous trades of a like character shall apply instead of the specifications required above.

Rule 2. Brokers

(A) A broker is a person, firm or electronic trading platform that is engaged on behalf of others, at least partially on a commission basis, to negotiate or facilitate the execution of contracts for goods of which the broker has no actual or constructive custody.

(B) A person, firm, or electronic trading platform is not a broker:

- (1) who has possession and absolute control of merchandise shipped to him to sell and collect the price. (Therefore, a commission merchant to whom freight is consigned for sale is not a broker.)
- (2) who receives a salary instead of a commission or brokerage.
- (3) who acts for one principal to the exclusion of all others.

(C) A broker has the power to bind his principals only to the extent of his instructions. The principals are not liable for any acts of the broker in excess of such instructions.

(D) A broker who, in good faith or otherwise, exceeds his authority is liable for any resulting damages.

(E) A broker that, in good faith, negotiates, or facilitates the formation of a contract in accordance with instructions from both principals; identifies the principals to each other at the time of negotiations, or facilitation; and completes such negotiations or facilitation in accordance with the rules and customs governing such transaction, thereby fulfills all obligations and has no further liability to either principal. The contract so negotiated or facilitated is valid and binding between the Buyer and Seller as if it had been negotiated or facilitated directly between them.

Rule 3. Confirmation of Contracts

(A) Both the Buyer and Seller shall send a written confirmation, each to the other, not later than the close of the business day following the date of trade or an agreed amendment, setting forth the specifications as agreed upon in the original articles of trade, or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein and, upon finding any differences, shall immediately notify the other party to the contract by rapid written communication, or by telephone confirmed by subsequent written communication.

(B) If either the Buyer or the Seller fails to send a confirmation, the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 3(A), of any disagreement with the confirmation received.

NGFA Secondary Rail Freight Trading Rules (Affreightment)

(C) When a trade is made through a broker, it shall be the duty of the broker to send a written confirmation not later than the close of the business day following the date of trade to each of the principals setting forth the specifications of the trade. Upon receipt of said confirmation, the parties shall carefully check all specifications therein, and upon finding any differences, shall immediately give notice to the other party to the contract and to the broker. If either party fails to give such notice, the terms and specifications issued by the broker shall govern the contract.

(D) A document or record otherwise complying with this rule shall be effective even though it fails to use the term "confirmation."

Rule 4. Alteration of Contract

The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by written communication by both parties.

Rule 5. Electronic Communication

These rules may be applied to trades that occur by electronic methods in lieu of conventional paper-based documents. A party to a trade may, in lieu of paper-based documents, transmit or receive from the other party an electronic communication, and such electronic communication shall suffice in lieu of a paper-based document. An exchange of communications between the parties by electronic means constitutes acknowledgement of that means as a viable method of contractual communication.

Rule 6. Advice of Schedules

(A) Application of Shuttle Freight:

(1) The Seller shall furnish the identifying number(s) and identity of the shuttle trip owner to the Buyer for the unit/freight by 12 noon, Central Time. Application including all pertinent shuttle information is defined as a phone call from the Seller to the Buyer. The Buyer shall notify the Seller of acceptance or rejection of application by 2 p.m., Central Time. In the case of rejection, the last Buyer shall also notify the shuttle trip owner by 2 p.m., Central Time. Acceptance shall be defined as transfer of shuttle trip ownership or naming of a loading origin. Application may not be given on Saturdays, Sundays and legal holidays.

(2) First day of pre-advice is defined as day of accepted application. For pre-advice, a day is defined as a calendar day, including weekends and holidays.

(B) Application Process for Non-Shuttle Freight:

(1) The Buyer, by verbal communication, shall furnish car placement order information to the Seller no later than:

- (a) 2:00 p.m. on normal business days.
- (b) 12:00 (noon) on partial business days.
- (c) 2:00 p.m. on order deadline day.

(2) For applicable freight types (e.g. pool) controlled by the seller, it is the responsibility of seller to provide the buyer in a "timely manner" the railroad permit number corresponding with the order or notification that the order has been rejected by the railroad.

(3) For applicable freight types (e.g. cot/voucher), if specific railroad rules assign responsibility to order transfers of freight ownership to the seller, the seller's responsibility ceases at the time of verbal acceptance by the buyer of the specific freight's railroad identification number.

NGFA Secondary Rail Freight Trading Rules (Affreightment)

Rule 7. Placement

(A) Shuttles

- (1) Actual placement is made when a unit is placed at the facility in accordance with instructions of the Buyer.
- (2) When actual placement is not possible due to the loading facility's inability to accept the shuttle upon arrival, the Seller's obligation is met.
- (3) In the event of equipment substitution by the rail carrier, any new placement times shall be by agreement of the shuttle loader, shuttle trip owner, rail carrier, and primary shuttle owner.

(B) Non-Shuttle Freight

The seller is not responsible for actual placement of non-shuttle equipment in the contracted time of shipment. (See failure to perform)

Rule 8. Issuance of Bill of Lading

The shuttle trip owner shall provide a copy of the bill of lading to the Seller and primary shuttle owner within two business days of date of bill of lading.

Rule 9. Failure to Perform

(A) Seller's Non-Performance

If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer by telephone confirmed by subsequent written communication. The Buyer shall then, at once elect either to:

- (1) agree with the Seller upon an extension of the contract; or
- (2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

If the Seller fails to notify the Buyer of his inability to complete his contract, as provided above, the liability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. In such case it shall then be the duty of the Buyer, after giving notice to the Seller to complete the contract, at once to:

- (1) agree with the Seller upon an extension of the contract; or
- (2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

(B) Buyer's Non-Performance

If the Buyer finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Seller by telephone confirmed by subsequent written communication. The Seller shall then, at once elect either to:

- (1) agree with the Buyer upon an extension of the contract; or
- (2) sell out for the account of the Buyer, using due diligence, the defaulted portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

NGFA Secondary Rail Freight Trading Rules (Affreightment)

If the Buyer fails to notify the Seller of his inability to complete his contract, as provided above, the liability of the Buyer shall continue until the Seller, by the exercise of due diligence, can determine whether the Buyer has defaulted. In such case it shall then be the duty of the Seller, after giving notice to the Buyer to complete the contract, at once to:

- (1) agree with the Buyer upon an extension of the contract; or
- (2) sell out for the account of the Buyer, using due diligence, the defaulted portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

(C) Failure to perform any of the terms and conditions of a contract shall be grounds only for the refusal of such shipment or shipments, and not for rescission of the entire contract or any other contract between the Buyer and the Seller.

(D) Railroad Non-Performance for Non Shuttle Freight

For non-shuttle freight failure by the railroad to perform does not constitute a breach of the secondary market contract. In this instance the buyer may seek restitution from the seller through the specific carrier rules addressing non-performance penalties.

(E) This rule does not permit compensation to the defaulting party to a contract.

Rule 10. Payment of Invoice

(A) If the Buyer and Seller agree that payment is to be net cash upon receipt, the invoice shall be due and payable within five (5) business days of receipt, which is considered to be the normal time to clear the paperwork involved.

(B) For shuttle freight, a copy of the bill of lading must accompany the invoice. Payment will be based on the number of cars on the bill of lading.

(C) For non-shuttle freight, payment will be based on the number of cars contracted.

Rule 11. Arbitration

Where a transaction is made subject to these rules in whole or in part, whether by express contractual reference or by reason of membership in this Association, then the sole remedy for resolution of any and all disagreements or disputes arising under or related to the transaction shall be through arbitration proceedings before the National Grain and Feed Association pursuant to the NGFA® Arbitration Rules; provided, however, that at least one party to the transaction must be a NGFA member entitled to arbitrate disputes under the NGFA Arbitration Rules.

Rule 12. Definitions

(A) Business Day

- (1) For the purpose of these rules, a “normal business day” shall be defined as the hours from 0800 to 1700 hours in Chicago, Illinois, USA excluding Saturday, Sunday and legal holidays when the Chicago Board of Trade open outcry has a full session.
- (2) A “partial business day” shall be defined as the hours from 0800 to 1200 hours in Chicago, Illinois, USA excluding Saturday, Sunday and legal holidays when the Chicago Board of Trade open outcry has a partial session.
- (3) Wherever the term “holiday” or “legal holiday” appears in these rules, or in a contract, it shall mean those scheduled holidays observed by the Chicago Board of Trade, Chicago, Illinois, USA.

NGFA Secondary Rail Freight Trading Rules (Affreightment)

(B) Buying-In

When the phrase “buy-in” is used in these rules it shall mean an actual purchase of freight of like kind on the open market; provided, that when this is not feasible or would result in undue penalty to the Seller, the Buyer shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Seller.

(C) Communications

(1) Written communication, confirmation or notification shall include those communications sent/received by postal mail, courier, or electronic means. The sender shall be responsible for the correct transmission of the message.

(2) Rapid written communication, confirmation or notification shall include those communications sent/received by electronic means. The sender shall be responsible for the correct transmission of the message.

(3) Telephone, verbal or voice communication, confirmation or notification must be confirmed by subsequent written communication.

(D) Electronic Trading Platform

The term “Electronic Trading Platform” shall include all systems designed for execution of trades in cash markets on an open, or Internet-based, electronic network.

(E) Notice; Furnish

The terms "notice" and "furnish," or any derivatives of these words, when used in these rules shall mean verbal communication when possible, and in all cases by rapid written communication.

(F) Selling-Out

Where the phrase “sell-out” is used in these rules, it shall mean an actual sale of freight of like kind on the open market, provided that when this is not feasible or would result in undue penalty to the Buyer, the Seller shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Buyer.

(G) Time

When these rules require that an action be taken at or by a specified time of day, then time shall mean the official time for the United States provided by the U.S. Naval Observatory converted to Central Standard Time or Central Daylight Savings Time, whichever is applicable in Chicago, Illinois, USA.

(H) Primary Shuttle Owner

The owner of the original freight obligation with the rail carrier.

(I) Shuttle Trip Owner

The owner of the current shuttle trip.

(J) Shuttle Loader

The rail carrier-approved party and/or facility loading the current shuttle trip.

(K) Railroad Rules

(1) Shuttle: rules established in tariff form by a specific carrier governing its shuttle freight program.

(2) Non-shuttle: rules established in tariff form by a specific carrier governing its non-shuttle freight program.

NGFA Arbitration Rules

Adopted Oct. 03, 1901	Amended March 14, 1963	Amended March 19, 2002
Amended Jan. 01, 1906	Amended March 25, 1971	Amended March 16, 2004
Amended Oct. 17, 1908	Amended March 20, 1975	Amended April 01, 2005
Amended Oct. 12, 1910	Amended March 23, 1977	Amended March 07, 2006
Amended Oct. 16, 1913	Amended March 31, 1978	Amended March 20, 2007
Amended Sept. 27, 1916	Amended March 08, 1979	Amended March 28, 2008
Amended Sept. 25, 1918	Amended March 23, 1982	Amended March 31, 2009
Amended Oct. 15, 1919	Amended March 13, 1984	Amended March 17, 2015
Amended Oct. 13, 1920	Amended Sept. 12, 1986	Amended March 15, 2016
Amended Oct. 05, 1921	Amended March 27, 1990	Amended March 21, 2017
Amended Oct. 03, 1922	Amended March 12, 1991	Amended March 19, 2019
Amended Oct. 03, 1923	Amended March 24, 1992	Amended March 31, 2021
Amended Oct. 20, 1926	Amended March 23, 1993	
Amended Sept. 26, 1928	Amended March 21, 1994	
Amended Oct. 15, 1940	Amended Sept. 15, 1996	
Amended Sept. 16, 1947	Amended Sept. 08, 1997	
Amended Oct. 11, 1949	Amended Aug. 24, 1998	
Amended Sept. 26, 1950	Amended March 23, 1999	
Amended Sept. 22, 1953	Amended March 31, 2000	

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Rule 1. Jurisdiction and Scope	Rule 6. Arbitration Committee Procedures
Rule 2. Commencing an Arbitration Case	Rule 7. Appealing an Arbitration Decision
Rule 3. Preparing an Arbitration Case	Rule 8. Oral Hearings
Rule 4. Timelines Governing the Filing of Arbitration Arguments	Rule 9. Exclusion of Liability; Judicial Proceedings
Rule 5. Formation of Arbitration Committees	Rule 10. General Provisions

Preamble

The following Arbitration Rules of the National Grain and Feed Association (NGFA) shall govern the resolution of disputes among its members and those nonmembers subject to these rules. The NGFA Arbitration System provides a fair, cost-effective, and timely way to resolve disputes. These rules are kept current through the review and amendment process specified in the NGFA Bylaws.

Arbitration cases are prepared by the parties involved. Arbitration decisions are based upon evidence and arguments submitted by the parties. Cases are considered by a committee of three arbitrators who have experience in the issues involved and who have no commercial interest in the case.

NGFA Arbitration Rules

Rule 1. Jurisdiction and Scope

(A) NGFA may consider a case involving a dispute between or among the following:

(1) Active members of NGFA (for which arbitration is compulsory under the NGFA Bylaws). For purposes of compulsory arbitration, the term “dispute” shall mean issues involving the storage, processing, manufacturing, merchandising, financing, transportation, or distribution of grain, feed, or feed ingredients within or between the United States, Mexico or Canada; or any issue involving the NGFA Trade Rules.

(2) Active, Allied, or Transportation members of NGFA and others, by consent of both parties or by court order. If the contract in dispute provides for arbitration by NGFA or under the NGFA Arbitration Rules, the parties to the contract are deemed to have consented to arbitration under these rules.

(3) Other classes of members accorded arbitration rights under the NGFA Bylaws.

(B) NGFA shall not, except by consent of both parties, assume jurisdiction over (1) transactions between members of the same commodity exchange when such transactions are subject to the terms of such commodity exchange; or (2) transactions subject to the dispute resolution terms in the contracts of the North American Export Grain Association.

(C) Parties subject to these rules shall be deemed to have consented to confirmation and enforcement of arbitration awards in any federal or state court having jurisdiction thereof. This provision shall not be construed to limit confirmation or enforcement of arbitration awards in foreign jurisdictions also having such jurisdiction.

(D) Contract Interpretation: The following general rules of contract interpretation apply in arbitration cases:

(1) Between NGFA Active members, the NGFA Trade Rules apply unless specifically excluded or inconsistent with the express contract terms governing a transaction.

(2) Where the parties have expressly provided for the trade rules of another entity to apply to a transaction in lieu of the NGFA Trade Rules, the other entity’s rules will be used to decide the case.

(3) If a contract between a member and nonmember references NGFA Arbitration but does not also reference the NGFA Trade Rules, the NGFA Trade Rules do not expressly govern the transaction but they may reflect general customs and practices of the trade.

(4) A general reference to NGFA rules is deemed to incorporate all rules of NGFA, including the Trade Rules and Arbitration Rules.

(E) The original arbitration complaint must be filed with the NGFA Secretary within 12 months after a claim arises, or within 12 months after the expiration date for performance of the contract(s) involved, whichever occurs last.

In cases between a member and nonmember arbitrated pursuant to a court order, the complaint must be filed within 30 days of issuance of the court order, or within 12 months after a claim arises, or within 12 months after the expiration date for performance of the contract(s), whichever occurs last.

Rule 2. Commencing an Arbitration Case

(A) To commence a case, a complaint must be submitted by the plaintiff to the NGFA Secretary. This complaint should state specifically the nature of the dispute; including the defendant’s name and address, applicable contract numbers, date of incident giving rise to the dispute, and the amount of damages claimed.

The case shall incorporate the claims in the original complaint as well as any cross-complaint, counterclaim, or offset as set forth by the defendant, provided that any matters submitted by the defendant must be directly related to the claims in the original complaint. Any cross-complaint

NGFA Arbitration Rules

or counterclaim shall be heard as one case with the original complaint. Any cross-complaint or counterclaim must be filed by the defendant at the same time the defendant's answer is due.

(B) The NGFA Secretary will submit to the parties an arbitration services contract, to be signed by an official representative of each party. This contract shall provide that the parties agree to abide by the award of the Arbitration Committee or the Arbitration Appeals Committee; and to release NGFA and the members of said committee(s) from any liability, damage, or loss resulting from their decision or related to the arbitration case.

(C) Upon signing the arbitration services contract, each party must pay an arbitration service fee of 1.5% of the amount of the plaintiff's claims. The minimum arbitration service fee is \$750. The maximum arbitration service fee is \$20,000.

In the event a case is settled prior to the request to the plaintiff for the rebuttal, the parties may receive a refund of up to 50% of the previously submitted arbitration fees. In all cases, the NGFA Secretary may reduce refunds by direct or indirect costs incurred by NGFA. For cases settled following submission of the rebuttal, fees are non-refundable. In string trades or other multi-party cases treated as a single arbitration, a party is not required to pay more than a maximum of two arbitration service fees.

(D) Each party must return the completed arbitration services contract within 15 days from the date the party receives it from the NGFA Secretary.

(E) Where a party fails to execute the arbitration services contract or pay the arbitration service fee, the NGFA Secretary may without further submissions by the parties enter a default judgment or such other relief as the NGFA Secretary deems appropriate.

A party against whom a default judgment has been entered may apply to vacate the default judgment within 15 days of entry of the default judgment by providing:

- (1) a verified statement explaining the failure to respond to the complaint and the specific grounds for defense that the defaulting party would present to an Arbitration Committee.
- (2) the arbitration service fee in the form of a certified money order, cashier's check, or by wire transfer or other comparable payment mechanism payable to NGFA. Failure to tender the required fee will result in denial of the relief sought by the defaulting party.

The NGFA Secretary may vacate the default judgment based on the defaulting party's submission within 30 days of receipt. A timely request to vacate a default judgment shall stay the time for appeal under Rule 7 of these rules. A judgment entered by the NGFA Secretary shall have the same effect as a judgment entered by an Arbitration Committee.

(F) If all parties to a string trade (a trade in which the same shipment is applied sequentially to multiple contracts by different parties) consent to abide by the ultimate decision, the original plaintiff and ultimate defendant will be permitted to release the parties in the middle of the string from the case.

Rule 3. Preparing an Arbitration Case

(A) In preparing a case for submission to an Arbitration Committee a party is to submit:

- (1) A concise and clear statement of all claims. The parties are responsible for clearly presenting all aspects of their case. The NGFA Secretary and the Arbitration Committee are not responsible for undertaking fact-finding searches or discovery.
- (2) The contract(s), if any, including all written evidence, letters, communications, and other supporting documents (including but not limited to shipping directions, bills of lading, affidavits, etc.) relied upon by a party to establish the terms and conditions related to the dispute. If the grade or quality of commodities is in dispute, inspection certificates or other documentary evidence must be submitted (physical samples should not be submitted as evidence).

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(3) Proof of market difference when there is probability of the market difference affecting the parties' claims, for example, because of discounts for grade, delay in shipment, or non-fulfillment of contract. Proof of market difference may be the price bulletin of the market in question for the date on which the price is to be established. If it is necessary to establish such difference in a market where no price bulletin is regularly issued, other forms of proof should be furnished such as affidavits by disinterested persons.

(B) All evidence should be arranged in chronological order to present a clear history of the case.

(C) Six copies of the parties' arguments must be filed with the NGFA Secretary. All papers should be fastened together securely to avoid loss.

Rule 4. Timelines Governing the Filing of Arbitration Arguments

(A) The plaintiff shall have 20 days from the date it receives notification from the NGFA Secretary to file its first argument.

(B) Upon receipt of the first argument from the plaintiff, the NGFA Secretary shall have 10 days to forward to the defendant a copy of plaintiff's first argument.

(C) The defendant shall have 20 days to file its answer (and any cross-complaint or counterclaim) from the date it receives the plaintiff's first argument from the NGFA Secretary.

(D) Upon receipt of such answer (and any cross-complaint or counterclaim) from the defendant, the NGFA Secretary shall have 5 days to forward a copy of same to the plaintiff, who has 10 days from receipt to file a rebuttal to the defendant's answer (and any cross-complaint or counterclaim). The plaintiff is not obligated to file a rebuttal.

(E) Upon receipt of any rebuttal, the NGFA Secretary shall have 5 days to forward a copy to the defendant, who has 10 days from date of receipt to file a surrebuttal. The defendant is not obligated to file a surrebuttal.

(F) Upon receipt of any surrebuttal, the NGFA Secretary shall have 5 days to forward a copy to the plaintiff. There shall be no additional arguments filed by the parties related to the claims between the plaintiff and defendant.

(G) In cases involving more than two parties, the NGFA Secretary may adjust the procedure and time periods for filing written pleadings. The NGFA Secretary may, for good cause shown, extend the time limits specified herein for a period no longer than 20 days. Requests for extension of time must be made prior to expiration of the specified time period. Any extension so granted must be in writing, and a copy thereof sent to both parties.

(H) For cases involving a string trade, the time limits established in these rules may be amended by the NGFA Secretary to permit the exchange of arguments between original plaintiff and ultimate defendant.

(I) In addition to default judgments issued pursuant to Rule 2(E), where a plaintiff fails to file its first argument or a defendant fails to file its answer in accordance with the time limits specified in this rule or by the NGFA Secretary, the delinquent party shall be deemed to be in default.

Rule 5. Formation of Arbitration Committees

(A) Each Arbitration Committee shall consist of three arbitrators selected by the NGFA Secretary.

(B) Each Arbitration Appeals Committee shall consist of five persons selected by the NGFA Secretary from the Arbitration Appeals Panel, which is appointed pursuant to the NGFA Bylaws.

(C) To qualify as an arbitrator, an individual must be:

(1) an employee, or active partner, principal, officer or director of a NGFA member eligible to arbitrate disputes under these rules. If an arbitrator ceases to be employed by or affiliated with a

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member prior to the decision, the arbitrator would be disqualified. In the event of the absence, resignation, refusal to act or disqualification of an arbitrator, the NGFA Secretary shall fill the vacancy with an eligible member; and

(2) commercially disinterested with respect to the particular dispute. If an arbitrator changes employment or affiliation from one member to another member, the arbitrator must continue to be commercially disinterested or be replaced.

(D) Arbitrators also shall be selected with a view to forming arbitration committees experienced in the type of trade or transaction involved in the case.

Rule 6. Arbitration Committee Procedures

(A) Upon assigning a case to an Arbitration Committee, the NGFA Secretary shall notify each party of the chair and members of the committee. Either party may challenge the appointment of a member of the committee for prejudicial or other causes within 5 days of receipt of this notice. Upon determination that such challenge is valid, the NGFA Secretary will replace such member.

(B) A member of the Arbitration Committee shall disclose to the NGFA Secretary any circumstances that subsequently arise or become known affecting the arbitrator's impartiality, including any bias or financial or personal interest in the case. Upon receipt of any such information from a committee member, the NGFA Secretary shall transmit such information to both parties and replace said member if either party requests such action within 5 days from receipt of such information or after the voluntary withdrawal of such committee member.

(C) The chair of the Arbitration Committee may choose for the Committee to proceed with the case by such means as the chair deems necessary.

(D) A decision of the Arbitration Committee shall be by majority vote.

(E) The Arbitration Committee shall act promptly on all cases submitted. The NGFA Secretary shall transmit the decision of the Arbitration Committee to the parties promptly. Each decision shall contain a concise statement of the pertinent facts and the conclusions of the Arbitration Committee, including the names of the parties involved, the nature of the case, the claims involved, the names of the arbitrators and their reasoning, the award (if any), and such other information as may be of interest.

(F) The Arbitration Committee and/or the Arbitration Appeals Committee may include an amount of interest in an award. If interest is awarded, unless otherwise provided by agreement between the parties, the applicable rate of interest shall be the Prime Rate as published in the **Wall Street Journal** on the date the case was filed.

(G) The parties to the arbitration shall file a notice of appeal or comply with the terms of the Arbitration Committee's decision within 15 days from the receipt of said decision.

(H) NGFA shall publish all decisions of Arbitration Committees and/or Arbitration Appeals Committees, as well as default judgments, following conclusion of the appeal process (if applicable). Copies of all NGFA Arbitration decisions are transmitted to the NGFA membership and are accessible to the public through the NGFA website.

Rule 7. Appealing an Arbitration Decision

(A) A decision of the Arbitration Committee or a judgment of default or dismissal issued by the NGFA Secretary shall be final unless appealed by either party. If timely and properly appealed, the case shall be reviewed by an Arbitration Appeals Committee, which may then affirm, modify, or reverse the decision or remand the decision for reconsideration back to the original Arbitration Committee or the NGFA Secretary.

(B) Notice of appeal of a decision of an Arbitration Committee or the NGFA Secretary shall be filed with the NGFA Secretary within 15 days from the date of receipt of the decision. Such notice must be accompanied by:

NGFA Arbitration Rules

(1) a statement of reasons for the appeal (6 copies);

(2) a non-refundable appeal fee, payable only by the appellant, that shall be double the amount of the arbitration service fee assessed under Rule 2(C) for the filing of the original case. Unless said fee is deposited, the award of the Arbitration Committee shall be affirmed or the appeal dismissed.

(3) when appealing an award of damages, the appellant shall also include full payment of the award by certified, cashier's check, or by wire transfer or other comparable payment mechanism payable to the NGFA.

(C) NGFA shall deposit the appellant's payment of the award received pursuant to Rule 7(B)(3) in an interest-bearing account pending the decision of the Arbitration Appeals Committee or other resolution of the case. Interest accrued (less any deposit-related costs or charges incurred by NGFA) on any arbitration award deposits shall be paid to the party entitled to the principal based upon the decision of the Arbitration Appeals Committee or other resolution of the case.

The party responsible for payment of an award to an adverse party shall remain responsible for any difference between the rate of interest earned while on deposit with NGFA and the rate of interest set forth in a decision by the Arbitration Appeals Committee or other resolution of the case. For example, if the deposit earns a net interest rate of 4% per annum and the rate awarded by the Arbitration Appeals Committee is 9%, then the responsible party shall remain liable for the difference. NGFA shall not have any obligation to the parties regarding the rate of interest earned on any such deposits.

(D) Arguments on appeal shall be confined only to the facts contained in the record of the case. Any new evidence submitted in violation of this rule may be removed from the argument upon request by the NGFA Secretary, or if necessary the chairman of the Arbitration Appeals Panel shall instruct the panel to disregard the new evidence.

(E) The following timeline applies to Arbitration Appeals:

(1) Within 10 days from the receipt of a notice of appeal, the NGFA Secretary shall forward to the appellee, by registered or certified mail, a copy of the appellant's statement of reasons.

(2) Within 20 days from the receipt of said statement of reasons, the appellee shall file a response with the NGFA Secretary.

(3) Upon receipt of the appellee's response, the NGFA Secretary shall assemble a record of the case, indexed and with pages numbered consecutively, including the aforementioned statements of appeal and answer and any other papers deemed pertinent to the case. The NGFA Secretary subsequently shall submit the record of the case to the parties.

(4) Within 10 days of receipt of the record of the case, the appellant shall file 10 copies of a brief of its case with the NGFA Secretary, each argument keyed to facts contained in the record of the case.

(5) Within 7 days of receipt of the appellant's brief from the NGFA Secretary, the appellee shall file its brief, in the same form and number as the appellant's brief.

(6) Upon receipt of the appellee's brief, the NGFA Secretary shall send a copy to the appellant. There shall be no additional briefs or arguments filed by the parties.

(7) The NGFA Secretary may, for good cause shown, extend the time limits specified for the filing of the appellant's and appellee's briefs for a period of no longer than 20 days. Requests for extension of these time limits must be made prior to expiration of the specified time period. Any extension so granted must be in writing, and a copy thereof sent to the parties.

(F) When a case is assigned to an Arbitration Appeals Committee, the NGFA Secretary shall inform the parties of the names of the appeal arbitrators and give notice that a challenge for prejudicial or other causes would be entertained for 5 days from receipt of such notice. Upon a valid challenge being made, the NGFA Secretary must immediately name a replacement to the committee.

NGFA Arbitration Rules

(G) The Arbitration Appeals Committee chair shall proceed with the case by such means as the chair deems necessary. On request of either party, the Arbitration Appeals Committee shall hear oral argument but no new evidence shall be heard in the appeal of any case.

(H) There shall be no appeal under these rules from the decision of an Arbitration Appeals Committee. The party or parties to the appeal shall comply with the terms of the Arbitration Appeals Committee decision within 15 days from the receipt of said decision.

(I) Any decision of the Arbitration Appeals Committee must be signed by a majority of the members thereof.

Rule 8. Oral Hearings

(A) Either party may request an oral hearing by written request to the NGFA Secretary within 10 days after receipt by plaintiff of the defendant's surrebuttal in a non-appeal case, and within 10 days after receipt by the appellant of the appellee's brief in an appeal case.

(B) The introduction of new documents or written evidence at an oral hearing is not permitted.

(C) The party requesting an oral hearing must pay whatever amounts, in addition to the regular deposits as provided in Rule 2(C), as shall be necessary to cover the approximate additional expenses of the Committee and NGFA for the hearing.

(1) The NGFA Secretary shall estimate the amount of such additional hearing expenses (including a stenographic record and travel and hotel expenses of the arbitrators, NGFA staff, and NGFA's legal counsel) and notify the requesting party in a timely manner.

(2) The party requesting an oral hearing shall advance the amount determined necessary to cover the additional estimated hearing expenses. If both parties request an oral hearing, the amount to be paid by each in advance shall not exceed one-half of the estimated amount.

(3) The amount specified shall be advanced by the requesting party no later than 10 days after notification from the NGFA Secretary. Failure to advance expenses may be grounds for denying a request for an oral hearing.

(4) After the committee determines and fixes the actual amount of additional expense incurred, the party or parties shall be refunded or billed by the NGFA Secretary for the difference between the amount advanced and actual costs.

(D) The NGFA Secretary shall make the necessary arrangements for the taking of the official stenographic record of the hearing. The stenographic record shall be made a part of the official transcript of the case.

(E) The chair of the committee shall determine a time and a place for the hearing, and the NGFA Secretary shall notify the parties of the date and place selected. Neither party shall seek to postpone the hearing 10 days after such date has been set, unless good cause, satisfactory to the committee, can be shown.

(F) For appeal hearings, the appellant shall have one hour for opening statement; appellee shall have one hour and 15 minutes for argument; and the appellant shall have 15 minutes confined to rebuttal argument.

(G) For non-appeal hearings, the chair of the committee shall determine timing of the proceedings.

Rule. 9 Exclusion of Liability; Judicial Proceedings

The parties to an arbitration under these rules release from liability and waive any right to pursue any action or claim against NGFA, NGFA arbitrators, the NGFA Secretary and NGFA's employees and non-employee directors and officers for any act or omission related to any proceeding, conduct or activity in connection with these rules, the arbitration, administration of the arbitration process

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or the arbitration award. The parties also agree that no party shall seek to make the NGFA Secretary, NGFA arbitrators or NGFA's employees or non-employee directors or officers a party or witness in any judicial or other proceeding related to any arbitration under these rules.

Rule 10. General Provisions

(A) The NGFA Secretary is authorized to make such decisions as are necessary to execute these rules.

(B) Whenever any papers, documents, or pleadings are required to be filed, there should be filed with the NGFA Secretary 6 copies thereof. One copy shall be mailed by the NGFA Secretary to the adverse party. In cases involving more than two parties, the NGFA Secretary may adjust the number of copies required to be filed. This rule shall apply with equal force and effect to the petition, complaint, exhibits, answers, and cross-complaints, and any and all other papers that either party desires to or may be required to file.

(C) In computing time, the first day shall be excluded and the last day included. If, however, the first or last day falls on a Saturday, Sunday, or a national legal holiday, then the next business day shall be considered the first or last day. The final date for filing required documents or papers in any proceedings under these rules shall be midnight of the stated final day.

(D) Registered, certified or express receipts shall be used to determine the timeliness of any filing in accordance with the several periods of time specified in these rules. As used throughout these rules, the term "filing" shall mean the time at which the document is mailed, first class mail, postage prepaid, or by a recognized overnight delivery service. No extension of time shall be granted for filing a notice of appeal. All time limits placed on the NGFA Secretary shall begin on the date the NGFA Secretary receives the document or request which triggers the obligation.

NGFA Rail Arbitration Rules

These Rail Arbitration Rules were originally adopted by the Association of American Railroads and the National Grain and Feed Association (NGFA) in 1998. Rail Arbitration is not intended to replace private negotiation and resolution of disputes by parties. In all cases, rail users and railroads are encouraged to make reasonable efforts to resolve matters before pursuing formal dispute resolution procedures.

Adopted Aug. 24, 1998
(Effective Oct. 01, 1998)
Amended March 23, 1999
Amended July 13, 1999
Amended March 28, 2003

Amended April 01, 2005
Amended March 20, 2007
Amended March 31, 2009
Amended March 15, 2011
Amended March 19, 2013

Amended April 01, 2014
Amended March 21, 2017
Amended March 19, 2019

Table of Rules

Rule 1.	Description and Purpose	Rule 4.	Real Estate Leases
Rule 2.	Matters to be Arbitrated	Rule 5.	Amendments
Rule 3.	Substantive Law Unaffected	Rule 6.	Arbitration Services Fees

Rule 1. Description and Purpose

These Rail Arbitration Rules amend and supplement the NGFA Arbitration Rules, which along with these supplementary rules, shall constitute the rules applicable to arbitration of disputes involving the transportation of grain, oilseeds, feedstuffs and/or products derived from grain or oilseeds and designated in Rule 2(D) by a railroad in North America when one or more of the parties to the dispute is a railroad. These Rules and their application shall be enforceable under the provisions of the Federal Arbitration Act at 9 U.S.C. §2, as now existing or hereinafter amended.

Rule 2. Matters to be Arbitrated

(A) A railroad and a rail user may agree to submit any dispute to arbitration before NGFA where at least one party to the dispute is a NGFA member.

(B) Unless either NGFA member that is involved in a dispute has elected to withdraw from these Rail Arbitration Rules, as provided for in Article III, Section D(3) of the NGFA Bylaws, NGFA members shall arbitrate the following disputes arising between railroads and rail users involving rail transportation in the United States upon the filing of a complaint with the NGFA Secretary:

- (1) disputes involving the application of a railroad's demurrage rule(s) or term(s);
- (2) disputes involving the misrouting of loaded rail cars or locomotives;
- (3) disputes arising under receipts and bills of lading governed by 49 U.S.C. §11706 (e.g., Carmack disputes such as loss and damage claims, etc.);
- (4) except as otherwise mutually agreed, disputes arising from a contract between the parties for transportation between one or more rail carriers with one or more purchasers of rail services that has become effective under 49 U.S.C. § 10709;
- (5) disputes involving the application of a railroad's special car or equipment program rules (e.g., certificates of transportation, vouchers, pool contracts, etc.);
- (6) disputes involving the application of a railroad's general car distribution rules;
- (7) disputes involving the mishandling of private cars or locomotives;
- (8) disputes involving a lease by a rail user of real property owned by a railroad or railroad affiliate, subject to the limitations set forth in Rule 4;

NGFA Rail Arbitration Rules

(9) disputes involving property damage claims arising under or related to a rail sidetrack agreement, whether the sidetrack is owned and/or operated by a rail user member of the NGFA, a railroad or third party. The arbitrators shall decide such a case based upon the express terms of such sidetrack agreement between the parties unless the arbitrators find that the relevant liability provision(s) in such agreement is/are commercially unreasonable. In that event, the arbitrators may decide the case based upon what they find to be commercially reasonable under the facts of the particular case;

(10) (a) Except as provided in paragraph (C) of this rule, specific railroad-rail user disputes involving the reasonableness of a railroad's published rules and practices as applied in the particular circumstances of the dispute on matters related to transportation or service (including demurrage), that otherwise would be subject to the unreasonable practice jurisdiction of the Federal Surface Transportation Board under 49 U.S.C. §10702(2).

(b) In determining whether the application of a particular rule or practice is reasonable, the arbitrators should consider, among other things, (i) the practical effects on the operation of both the railroad and rail user involved, and (ii) whether the rule or practice, or its absence, has a disparate negative impact on either the rail user or the railroad.

(C) Disputes involving the establishment or modification of the following are not subject to arbitration hereunder: (i) a railroad's rates or charges, including rate levels and rate spreads, (ii) whether an industry or station is or should be open or closed to reciprocal switching, (iii) a railroad's credit terms, or (iv) a railroad's car allocation/distribution rules or practices.

(D) The disputes for which a party to the "Agreement on Predispute Consent to NGFA Arbitration" is obligated to arbitrate under paragraph (B) above shall be limited to those involving grain, oilseeds, feedstuffs and/or products derived from grain or oilseeds and designated by the following Standard Transportation Commodity Code (STCC) definitions:

<u>STCC</u>	<u>Description</u>	<u>STCC</u>	<u>Description</u>
01 131	Barley	20 416 10	Oat flour
01 132	Corn	20 418	Grain Mill By-Products
01 133	Oats	20 419	Flour or Other Grain Mill Products, NEC
01 134	Rough Rice	20 421	Prepared Feeds
01 135	Rye	20 442 15	Rice Flour
01 136	Sorghum Grains	20 442 20	Rice Bran
01 137	Wheat	20 449	Milled Rice, Rice By-Products, Etc.
01 139	Grain, NEC	20 461	Corn Syrup
01 141	Cottonseeds	20 462	Corn Starch
01 142	Flaxseeds	20 463	Corn Sugar
01 144	Soybeans	20 464	Dextrine, Corn, Tapioca or Other
01 149	Oil Kernals, Nuts or Seeds	20 465	Corn Oil
01 152	Popcorn	20 466	Other Starch
01 159	Seeds	20 467	Wet Process Corn or Similar Mill By-Products
01 191	Fodder Hay or Roughage	20 469	Wet Process Corn Milling or By-Products
01 341	Beans, Dry Ripe	20 471 10	Bird Food or Seed, Domestic
01 342	Peas, Dry	20 511	Bakery Products/Sweepings
01 343	Cowpeas, Lentils or Lupines	20 616 25	Molasses
01 992	Alfalfa Meal	20 619	Beet Pulp Pellets
20 143	Grease/Inedible Tallow	20 823	Spent Grains
20 144	Animal Protein Products	20 831	Malt
20 411	Wheat Flour	20 832	Malt Flour or Sprouts
20 412	Wheat Bran, Middlings	20 839	Malt Products
20 412 90	Mill Run		
20 413	Corn Meal or Flour		
20 414	Rye flour		

NGFA Rail Arbitration Rules

<u>STCC</u>	<u>Description</u>	<u>STCC</u>	<u>Description</u>
20 859	Distillers By-Products	28 184 19	Ethanol (grain and products derived from grain)
20 911 10	Cottonseed Oil		[also 28 184 45; 28 184 46; 28 184 47]
20 914	Cottonseed Meal or By-Products	28 184 91	Biodiesel (grain and products derived from grain)
20 921	Soybean Oil		[also 28 994 15; 28 994 16; 28 994 25; 28 994 40]
20 923	Soybean Meal and Hulls	28 185	Glycerin
20 923 36	Soapstock (for feed use only)	28 199 10	Dical and Monocal Phosphate
20 933	Nut or Vegetable Oils	28 991 12	Salt (for feed use only)
20 933	Rice Oil	28 994	Distillate (fatty acids)
20 939	Oil Seed Meals and By-Products, NEC	37 422	Freight Cars Moving on Own-Wheels
20 939 17	Peanut Meal		
20 942	Fish Meal		
28 126 30	Limestone (for feed use only)		

The 5-digit STCC categories listed above shall be deemed to include all commodities with codes derived from the 5-digit categories. For example, the STCC 20-939 shall be deemed to include STCC 20-939-39 (Rapeseed or Canola Meal).

(E) A party against whom a complaint has been filed may file a counterclaim or offset, and assert any defense it may have against the plaintiff arising out of the same transaction upon which the complaint is based so long as such claim or defense is one of the issues included in paragraph (B). The NGFA Secretary may, upon application of one of the parties, stay an arbitration pending the resolution of non-arbitrable issues if the NGFA Secretary is satisfied that such a stay will not unfairly prejudice the other party and provided that the applicant is not in default in the arbitration proceedings.

(F) A party shall not be obligated to arbitrate claims seeking more than \$400,000 per occurrence, exclusive of interest and legal costs. A party shall not be obligated to arbitrate personal injury claims.

(G) The original complaint in connection with any disputed matter proposed for arbitration under these Rail Arbitration Rules must be filed with the NGFA Secretary within 12 months after the claim arises, or within 90 days after a claim is first rejected by the railroad, whichever occurs last; provided, however, in no event shall arbitration be brought more than 15 months after a claim arises.

Rule 3. Substantive Law Unaffected

These rules do not change substantive law and thus shall not be construed as either creating or limiting the general or specific substantive law applicable to disputes arising between parties to an arbitration case. All decisions rendered pursuant to these rules shall be binding upon the parties as provided for in the NGFA Arbitration Rules, subject to vacation only on such grounds as are set forth in the Federal Arbitration Act at 9 U.S.C. § 10, as now existing or hereinafter amended.

Rule 4. Real Estate Leases

Real estate leases subject to arbitration under Rule 2(B)(8) of these rules and the standards and limitations applicable to arbitration of such disputes, are as follows:

(A) A dispute involving the application of a lease of real property owned by a railroad or railroad affiliate ("Rail Lessor"), on the one hand, and leased by a rail user member of NGFA which operates a grain elevator, feed mill, processing plant or other agricultural facility, receiving or entitled to receive rail service as provided herein, on the leased premises ("Facility Lessee"), on the other, except for specific disputes arising under Chapter 109, 111 or 113 of Subtitle IV, Part A, Title 49 U.S.C. The arbitrators shall have no authority to modify or refuse to apply the existing terms of a lease in resolving such disputes. Railroad affiliate means any person which succeeds to the real property interest of a Rail Lessor after this provision takes effect if that person continues to provide rail service to a Facility Lessee which is subject to Subtitle IV, Title 49 U.S.C.

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(B) A dispute involving termination, expiration or renewal of a lease of real property owned by a Rail Lessor and leased by a Facility Lessee, except for specific disputes arising under Chapter 109, 111, or 113 of Subtitle IV, Part A, Title 49 U.S.C., subject to the following:

(1) The arbitrators shall have no authority to resolve a dispute concerning such termination, expiration, or renewal where:

(a) The lease covers real property which the Facility Lessee has not used to receive or forward rail shipments for a continuous period of 12 months or more, unless such disuse has been caused by any act of force majeure or unwillingness or inability of the serving railroad to provide rail service when reasonably requested to do so;

(b) Notwithstanding the provisions of Rule 4(B)(1)(d), the Facility Lessee is in material default under the terms of the lease, and such default either has not been cured after reasonable notice, or as required by the lease. (This, however, does not preclude the arbitration of the question of whether the Facility Lessee is in material default);

(c) The Rail Lessor's title to the leased premises is reversionary and the reversion has occurred;

(d) The dispute involves a matter other than rental or liability terms;

(e) The Rail Lessor provides an affidavit verifying that it intends to use the premises for rail or rail-related operations that justify non-renewal or termination of the lease; or

(f) The Rail Lessor sells the premises on terms that are the same or more favorable to the Rail Lessor than sale terms presented in writing by the Rail Lessor to the Facility Lessee and not accepted in writing by the Facility Lessee within 30 days.

(2) In the event a Rail Lessor and a Facility Lessee are unable to agree on the rental rate for renewal of a lease of real property, the arbitrators may establish the rental rate. However, the arbitrators may not require the Rail Lessor to accept a rental rate which is less than the fair market rental value of the leased premises based on the highest and best use, but not including the separate value of tenant improvements attributable to the current tenant.

(3) In the event the parties fail to agree to the liability terms proposed for renewal of a lease of real property, either party may submit the liability terms proposed for review to NGFA arbitration. The arbitrators may reject and revise the terms proposed to the extent that they are commercially unreasonable (giving consideration, but not limited, to the nature of the Facility Lessee's operations, the rental rate relative to potential liabilities assumed by each of the parties, and customary commercial real estate practices), or unconscionable. The arbitrators shall not require a party to bear any liability for environmental contamination caused by the other party.

(4) The arbitrators may not require renewal or extension of a lease of real property for a term exceeding 5 years. If, at the expiration of such lease, the Rail Lessor and Facility Lessee are unable to agree on the rental or liability terms for renewal or continuation of the lease, either party may seek prescription of such terms under this paragraph (B) of Rule 4.

(5) The arbitrators in making a decision on the renewal or extension of a lease of real property shall consider whether the Rail Lessor has demonstrated other uses for the property which justify a refusal by a Rail Lessor to renew or extend a lease.

Rule 5. Amendments

The NGFA chairman shall appoint a Rail Arbitration Rules Committee comprised of up to 18 persons who are officers, partners or employees of NGFA-member railroads and rail users. At least one-half of the members of the committee shall be representatives of railroads. It shall be the duty of the committee to consider amendments to the Rail Arbitration Rules and report its recommendations to the membership at any annual meeting or to the NGFA Board of Directors. Changes to these rules shall be approved by the Rail Arbitration Rules Committee before being considered for approval by

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the NGFA Board or the membership. All Transportation railroad members of the association shall be entitled to vote on changes to the Rail Arbitration Rules at any annual meeting considering the adoption, ratification or amendment of such rules.

Rule 6. Arbitration Service Fees

The arbitration service fees paid by a disputant under these Rail Arbitration Rules shall be the same as those set forth in the NGFA Arbitration Rules, except that the fees paid by nonmembers under these rules shall be 150% of the fees paid by NGFA members.

Rail Mediation Rules of the National Grain and Feed Association Governing Rate Disputes

1. These rules were originally adopted by the Association of American Railroads and the National Grain and Feed Association in August 1998, and first became effective October 1, 1998. Signatory railroads commit to mediation of certain rate issues with NGFA members, unless such commitment is voluntarily withdrawn.
2. Unless the railroad Associate/Trading member has elected to withdraw from these Rail Mediation Rules as provided for in Article II, Section 3 (f) of the Bylaws, NGFA railroad Associate/Trading members consent to confidential mediation with NGFA Active or NGFA Associate/Trading members who are rail users when a dispute arises regarding the following issues involving the rail transportation of agricultural commodities designated by the Standard Transportation Commodity Code (STCC) definitions referenced in Section 2(c) of the Rail Arbitration Rules of the National Grain and Feed Association:
 - a) a dispute involving an allegation of unreasonable discrimination by a rail carrier as to rates charged a rail shipper or receiver for rail transportation;
 - b) a dispute involving an allegation that the switching rates, rules or practices of carriers unreasonably bar access of a rail shipper or receiver to markets.
3. The following shall apply to all mediations conducted pursuant to this agreement:
 - a) The mediation and any statements made in the mediation process shall be treated as confidential;
 - b) All statements made in such a mediation are privileged against use in any other proceeding relating to the dispute, even in cross-examination;
 - c) Notes taken by any person at the mediation must be destroyed at the conclusion of the mediation, except for the notes of any final agreement reached by the parties;
 - d) Any person(s) serving as a mediator will not be called as a witness or be otherwise involved in any ongoing arbitration or litigation, should the mediation not result in a settlement.
4. **Procedure for Initiating Mediation:** A NGFA Active or Associate/Trading member may initiate a request for mediation on one or more of the issues set forth above by filing a request with the NGFA Secretary. Mediation shall mean an informal, nonbinding conference or conferences between the parties in which a mediator will seek to guide the parties to a resolution of the dispute.
5. **Selection of Mediators:** The parties to a mediation may select any mutually agreeable panel member from the list of mediators maintained by NGFA. If the parties cannot agree or have no particular choice of a mediator, then the names and resumes of three (3) available mediators shall be sent to each of the parties, each of whom may strike up to two (2) names from the list. If more than one (1) name remains after each party acts, then the NGFA Secretary shall select the mediator from the remaining names.
6. **Duration of Mediation:** The mediation process shall continue until the case is resolved or the mediator makes a finding that there is no possibility of settlement through mediation or either party chooses not to continue further.
7. **Costs of Mediation:** The party requesting mediation shall pay a fee of \$500 to the National Grain and Feed Association, which shall accompany the request to mediate. Thereafter, each party shall pay their own expenses plus one-half (1/2) of the expenses of the mediation including the mediator's fees. The mediator selected for the mediation shall disclose the basis for calculating his/her fees and expenses upon request by the NGFA Secretary or any party to a mediation.
8. **Limitations of Actions:** Except as otherwise agreed by the parties, the commencement of a mediation under these rules shall not be deemed to toll the statute of limitations as to the claims being mediated.
9. **Term of Agreement:** This agreement is effective for all mediation requests filed on or after October 1, 1998, for those carriers who have voluntarily agreed. A current list of railroad signatories (as of November 1, 2002) is shown below. This agreement shall continue in effect until terminated by the voluntary withdrawal of individual carriers. Railroads may withdraw from this agreement by giving ninety (90) days notice of such withdrawal. Such withdrawal shall become effective ninety (90) days after receipt by NGFA. The following railroads are signatory to the agreement as of November 1, 2002.

Burlington Northern Santa Fe Railway Co.
Canadian National-Illinois Central Railroads
Iowa Interstate Ltd.

Kansas City Southern Railway
Norfolk Southern Corp.
Ohio Central Railroad System

Red River Valley & Western Railroad
Union Pacific Railroad
WATCO Transportation Services

EXHIBIT C

Sworn Statement of OJ Singer

1. I am over 18 years of age and am the President of Singer Enterprises Inc. and as such have a personal knowledge of the matters and facts.
2. I have reviewed the First Argument of Parrish and do not take except to their listing of when the various contacts were made, contracts executed and my advise to Parrish once it appeared that the Crop would not be sufficient to meet the full delivery requirements.
3. At no time did any one from Parrish or any one else explain to me the terms on the reverse side of the contracts as they related to the resolution of any issues concerning the contracts and because of my lack of legal experience and contracting I did not appreciate that my right to access the Courts was at the discretion of Parrish.
4. I now know that Parrish has used the Arbitration process with me but I also know that Parrish has commenced a law suit in Manitoba, Saskatchewan on the same issue of failure to deliver but did not go Arbitration.
5. I never agreed that Parrish could chose to either go to Arbitration and deny my access to the Saskatchewan Courts or sue directly, whichever they felt was to their best interests.
6. I delivered to Parrish 100% of each of the crops that were contracted for and the short fall in delivery was because of the Act of God in a drought and the bushels were just not grown.
7. At no time did Parrish discuss with me the form of the contract, either a Production contract (which it was) or the contract that was executed and the difference in those two choices were never explained or offered.
8. That when Parrish triggered the Arbitration NFGA forwarded an Adhesion contract that I was forced to agree to under direct threat of a large judgement being entered against my company if I did not do so.
9. I executed the contract to Arbitrate feeling like the Mob was giving me an offer I could not refuse.
10. I do not believe that NFGA has the ability to Arbitrate this claim because of the bias that I believe exists in favour of Parrish by virtue of Parrish being a member of NFGA and that all of the Arbitrators are to come from that gang.
11. I believe that I was tricked from the beginning into agreeing to the Arbitration as well as the terms of the contract between Parrish and my company, with heavy protection to Parrish for breach of the contract but zero protection to my company.
12. My company has not benefited from not delivering the contracted for grain as it was not grown.

Pursuant to 28 USC, I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.


Signed- OJ Singer

Sept-17/24
Date