NGFA Grain Trade Rules

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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 them 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 the principals only to the extent of the broker's 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 the broker's 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.

(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: 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 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 p.m. 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 the Buyer's 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.

(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 p.m. of the next business day after the date of official inspection by rapid written communication, or by telephone confirmed by subsequent written

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, the Seller shall notify the Buyer by rapid written communication, or by telephone confirmed by subsequent written communication. The Buyer shall immediately notify the Seller if the Buyer 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 p.m. 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, the Buyer 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.

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, the Buyer 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.

(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, the shipper's 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.

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., whichever is later.

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

(F) If Unit Trains are sold for other than loaded shipment and the seller notifies the Buyer by 12 p.m. 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. that day.

If the Seller notifies the Buyer between 12 p.m. and 4 p.m., the Buyer must furnish billing instructions to a named destination by 10 a.m. 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 p.m. 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. 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.

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 the Seller 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 the Seller's 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 the Seller's 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 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 the Buyer's 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.

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 the Seller's 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 the Seller will not be able to complete a contract within the contract specifications, it shall be the Seller's 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 the Seller's inability to complete the 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 the Buyer will not be able to complete a contract within the contract specifications, it shall be the Buyer's 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 the Buyer's inability to complete the 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 recision 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 8 a.m. to 5 p.m. 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.

(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.

(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 provided by the U.S. Naval Observatory 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.