NGFA Secondary Rail Freight Trading Rules (Affreightment)

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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 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 them 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 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 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 of 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 make 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 p.m. 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. In the case of rejection, the last Buyer shall also notify the shuttle trip owner by 2 p.m. 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 2 p.m.

(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.

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 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) 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 "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 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 provided by the U.S. Naval Observatory 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.