

# NORTH AMERICAN EXPORT GRAIN ASSOCIATION, INC.

ADDENDUM NO.1

TO NORTH AMERICAN EXPORT GRAIN ASSOCIATION, INC., F.O.B. CONTRACT NO.2

(REVISED AS OF MARCH 30, 2018)

## LOADING RATE GUARANTY

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

1. Seller guarantees to deliver at an average rate of \_\_\_\_\_ long tons per weather working day of 24 consecutive hours, Saturdays, Sundays and holidays excepted, provided vessel can receive at such rate. Holidays shall be those listed as such in the BIMCO Holiday Calendar and/or in the elevator tariff.

For this purpose, laytime shall commence to count:

(a) at 0700 hours on the business day following filing of the vessel in accordance with Clause 8 of North American Export Grain Association, Inc., FOB Contract No. 2 ("NAEGA 2"),

-or-

(b) at 0700 hours on the business day following expiration of the preadvice period stipulated in Clause 8 of NAEGA 2, unless an earlier date is agreed to by both parties,

-or-

(c) at 0000 hours on the first business day of the contract delivery period, unless an earlier date is agreed to by both parties, whichever is the latest, whether vessel is in berth or not.

2. Should seller deliver at less than the stipulated rate, seller to pay buyer demurrage at \$\_\_\_\_\_ for each additional day (or pro-rata for part of day) used. Should seller deliver faster than at the stipulated rate, buyer to pay seller despatch money at half the demurrage rate, i.e., \$\_\_\_\_\_ per day, for each day (or pro-rata for part of day) of laytime saved.
3. Any overtime work performed by the elevator and/or grain inspection and weighing services and/or stevedores shall be for seller's account if ordered by the elevator or the Port Authority; otherwise, for account of the party ordering the overtime.
4. If Clause 20 of NAEGA 2 has been duly invoked, time shall not count for demurrage purposes while the causes are in effect, until the termination of the causes and/or the resumption of work after the termination of the causes, whichever is later, and for an additional period ("additional period") of equal duration, but such additional period not to exceed 30 days. However, for purposes of settling despatch accounts only, any time lost in delivering through any of the causes, and the additional period, shall be counted as time used in loading.

If during the additional period the vessel nominated under this contract is not loaded in proper rotation but is bypassed by vessels (other than liners) which had filed after the vessel nominated under this contract, seller shall pay to buyer damages equal to the actual working time lost (i.e., weather working days, but Saturdays, Sundays and holidays excluded) to buyer's vessel during the loading of the bypassing vessels, at the demurrage rate stipulated in Clause 2 above. The provisions regarding payment of damages under paragraph (c) of Clause 20 of NAEGA 2 shall not apply to this Addendum.

Notwithstanding the above, if demurrage is already accruing under this Addendum when the causes of prevention or delay commence under Clause 20 of NAEGA 2, demurrage shall continue to accrue as if these causes did not exist. In such case, the preceding paragraph shall be deemed to be deleted.

5. Buyer's or seller's claim under this Addendum shall be accompanied by the statement of facts at loading, signed on behalf of the owner and the charterer or on behalf of the owner and by the supplier, and such other papers as may be necessary to process the claim. If payment is not made within 40 days from date of mailing of properly documented claim, interest shall accrue, starting on the 41<sup>st</sup> day after such mailing, and shall be computed on the final amount due, at the rate of interest stipulated elsewhere in this contract, up to the date of payment of the claim.
6. If vessel nominated under this contract also lifts additional commodities (grain and/or oilseeds), regardless of whether or not such commodities are covered by loading rate guaranties, the following shall apply:
  - (a) For commodities delivered to vessel at the same berth:

The "time allowed" shall be arrived at by dividing the tonnage loaded under this contract by the daily rate stipulated in Clause 1 above. A calculation of "total time used" for all the commodities loaded at the berth shall be made, in which any such time in excess of the "time allowed" shall be computed as time on demurrage. The "total time used" shall then be pro-rated to the tonnage loaded under this contract. The "time allowed" shall be deducted from this pro-rated figure to arrive at the time on demurrage or time saved under this contract.
  - (b) If the commodities other than those under this contract are delivered at (an) other berth(s) in the same port:

The waiting time ("waiting time") at the first berth shall be pro-rated among all the contracts for the commodities to be delivered to the

vessel.

The time spent getting to and used at the first berth ("berth time") shall be pro-rated among the contracts loaded at the first berth. The waiting time at the second berth shall be pro-rated among all remaining contracts for the commodities yet to be delivered to the vessel. The berth time at the second berth shall be pro-rated among the contracts loaded at the second berth. Waiting time and berth time for berths subsequent to the second berth shall be treated in a similar manner as for the second berth. Waiting time shall cease and berth time begin when pilot is on board and vessel lifts anchor in order to proceed to the loading berth. Berth time shall cease when loading is completed at that berth and waiting time shall begin when vessel drops anchor in waiting area after having sailed from berth. If no waiting time is involved between berths, berth time at the next berth shall begin when vessel sails from the previous berth. If, between the time that the vessel is ordered into a berth and the time of completion of loading at that berth, the vessel is ordered into one or more other berths, subsequently incurred waiting time at this (these) other berth(s) shall not count.

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

7. If vessel fails reinspection at the loading berth, laytime shall cease to count until vessel passes.
8. Any trimming costs as well as overtime costs for performing trimming shall be for buyer's account. Any time used for trimming shall not count as laytime and/or shall be exempt from demurrage, unless loading operations are being carried on simultaneously in other holds.
9. Other Conditions:
10. Buyer and seller expressly agree that any controversy or claim arising out of, in connection with or relating to this contract, or the interpretation, performance or breach thereof, shall be settled by arbitration in the City of New York before the American Arbitration Association (AAA), or its successors, in accordance with the International Arbitration Rules of the American Arbitration Association, as those Rules may be in effect at the time of such arbitration proceeding, which Rules are hereby deemed incorporated herein and made a part hereof, and under the laws of the State of New York. The number of arbitrators shall be three.

Each party shall designate one arbitrator from the list of Grain Arbitrators maintained and supplied by the North American Export Grain Association, Inc. The two party appointed arbitrators shall select a third panelist from the list of Special Grain Arbitrators or the AAA list of International Arbitrators and this person shall serve as Chairperson of the panel.

AAA shall maintain a list of Special Grain Arbitrators who are included on the North American Export Grain Association, Inc. list of Grain Arbitrators. If the tribunal is not formed by this procedure, the AAA shall appoint the panel in the same manner, two arbitrators from the North American Export Grain Association, Inc. supplied list of Grain Arbitrators and the Chairperson of the panel from the list of Special Grain Arbitrators or the AAA list of International Arbitrators.

The language of the arbitration shall be English. In disputes involving a "string" of contracts, two or more arbitrations may be consolidated before the same tribunal, at the written request of any party. The tribunal in consolidated arbitrations shall be mindful of differences in terms between the various contracts and in the action of the parties, and vary the award from contract to contract, if indicated. The arbitration award shall be final and binding on the parties and judgment upon such arbitration award may be entered in the Supreme Court of the State of New York or any other court having jurisdiction thereof. Buyer and seller hereby recognize and expressly consent to the jurisdiction over each of them of the American Arbitration Association or its successors, and all of the courts of the State of New York. The parties agree that arbitration awards may be released by the AAA to the North American Export Grain Association, Inc., for distribution to the interested public. Buyer and seller agree that this contract shall be deemed to have been made in New York State and be deemed to be performed there, any reference herein or elsewhere to the contrary notwithstanding.

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BUYER

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SELLER