

## ADDENDUM NO.1 LOADING RATE GUARANTY

### NORTH AMERICAN EXPORT GRAIN ASSOCIATION, INC., FOB CONTRACT NO.2

**These Addendum terms for a loading rate guaranty apply where the lifting under the contract is by one self-trimming bulk carrier, unless otherwise specifically agreed.**

1. Seller guarantees to deliver at an average rate of \_\_\_metric tons/metric tonnes per weather working day of 24 consecutive hours, Saturdays, Sundays and holidays excepted, even if used, 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 the latest of the following, regardless of whether vessel is in berth:

(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.

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.

Alternatively, where demurrage/despatch rates are as per Charter Party, Buyer to provide and warrant the rates of this Charter Party voyage no later than 2 business days after the nomination; despatch always half the demurrage rate.

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. Where Clause 20 of NAEGA 2 has been duly invoked and for purposes of laytime, the following definitions shall apply:

(a) The "Cause Period" is the duration of the Clause 20 event

(b) The "Additional Period" is equal to the Cause Period limited to a maximum of 30 consecutive calendar days, and starts at the end of the Cause Period

For each vessel under this Contract, laytime shall not count during the Cause Period. Laytime shall also not count during the Additional Period, except where time is used for actual loading subject always to any exclusions to the running of laytime in the Contract or as otherwise agreed between Seller and Buyer.

For purposes of settling despatch accounts only, the exclusion of time in the Cause Period and the Additional Period, must be counted as time used in loading.

The provisions of this Clause extend to vessels that have filed as per Clause 8 of NAEGA 2 before or during the Cause Period or during the Additional Period.

If during the Additional Period the vessel nominated under this contract is not loaded in proper rotation but is bypassed by vessel(s) (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 (subject always to any exclusions to the running of laytime in the Contract or as otherwise agreed between Seller and Buyer) to Buyer's vessel during the loading of the bypassing vessel(s), at the demurrage rate stipulated in Clause 2 above. The provisions regarding payment of damages under paragraph (g) 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.

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 receipt of properly documented claim, interest shall accrue, starting on the 41st day after such receipt, 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, regardless of whether 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 allowed" shall be deducted from this pro-rated figure to arrive at the time on demurrage or time saved under this contract.

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 at the port where vessel is to load". 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 (inspection or) reinspection at the loading berth, laytime or the time on demurrage 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's (AAA) International Centre for Dispute Resolution (ICDR), or its successors, in accordance with its International Arbitration Rules, 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.

AAA/ICDR shall maintain lists of Grain Arbitrators and Special Grain Arbitrators who are supplied and maintained by the North American Export Grain Association, Inc.

Each party shall designate one arbitrator from the list of Grain Arbitrators and the two party appointed arbitrators shall select a third panelist from the list of Special Grain Arbitrators or the AAA list of International Arbitrators where no Special Grain Arbitrator on the list is available. The third panelist serves as Chairperson. If the tribunal is not formed by this procedure, the AAA shall appoint the panel in the same manner.

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 AAA/ICDR 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/ICDR 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.

**BUYER** \_\_\_\_\_

**SELLER** \_\_\_\_\_