

# FREE ON BOARD (FOB) EXPORT CONTRACT U.S.A./CANADA

Use of this contract, in whole or in part, is subject to compliance with its Terms of Use, which are available at [naega.org](http://naega.org) or upon request.

Contract No. \_\_\_\_\_ New York, N.Y. \_\_\_\_\_ 20 \_\_\_\_\_

1. Seller \_\_\_\_\_ 2. Buyer \_\_\_\_\_

3. Broker/Agent \_\_\_\_\_

## 4. Quantity

\_\_\_\_\_ in bulk, including dockage, 5% more or less at Buyer's option, and at market price (per Clause 10) as follows: If Seller's first Delivery under this contract is for a quantity between contract minimum and contract maximum (both inclusive), Seller has met its quantity obligations. If this contract is to be executed by more than one vessel the loading tolerance applies on the difference between the mean contract quantity and the quantity that has been delivered on all prior vessels. Any Delivery which falls within this difference, plus or minus 5%, completes Seller's quantity obligation under this contract.

## 5. Weight

Quantity to be final at port of loading in accordance with customary weight certificates. 1,016 kilograms shall be equal to 2,240 pounds.

## 6. Commodity

\_\_\_\_\_ in accordance with the official grain standards of the United States or Canada, whichever applicable, in effect on the date of this contract. Delivery of higher (better) grades of grain of the same type and description is permissible.

## 7. Quality

Quality and condition to be final at port of loading in accordance with official inspection certificates and/or other certificates as may be required in this contract.

In case of Delivery at St. Lawrence port(s) of U.S. origin commodities and where the commodity was first loaded on a vessel at a port on the Great Lakes (each a "Lake Port"), quality and condition are both final in accordance with official inspection certificates from the Lake Port(s) and/or loading ports official inspection certificates at St. Lawrence ports. Seller must properly identify Lake Port(s) inspection certificates when presenting documents after loading at the at St. Lawrence port(s).

Each party hereby authorizes the other party to request in both parties' names an appeal inspection under the U.S. Grain Standards Act, if applicable, or as may be required in this contract at any time prior to or during the loading of the vessel, and regardless of whether such request was filed before commencement of loading. The cost of such appeal inspection, unless otherwise stipulated in this contract, shall be borne by the party requesting it.

Notwithstanding any applicable law or regulation to the contrary, Seller excludes, and Buyer waives its claim to, any implied warranty of merchantability in the commodity, provided however that this exclusion applies only to the extent that any defect(s) that would make the commodity unmerchantable would not be apparent on reasonable examination at the time of Delivery.

## 8. Delivery and Preadvice

Delivery shall be made between \_\_\_\_\_ and \_\_\_\_\_, both inclusive (the "Delivery Period"), at discharge end of loading spout to Buyer's tonnage and vessel in readiness to load, in accordance with custom of the port and subject to the elevator tariff to the extent they do not conflict with the terms of this contract. For purposes of Delivery, the middle day of any month containing an odd number of days is considered to belong to both halves of the month. Incorporation of a loading rate guaranty in this contract shall not entitle Seller to delay Delivery.

Buyer shall nominate self-trimming bulk carrier(s) in accordance with Clause 15 ("Preadvice"), in time for Seller to receive minimum \_\_\_\_\_ days notice of probable readiness of tonnage and quantities required (the "Preadvice Period"). Buyer to keep Seller informed of changes in expected date of vessel readiness.

The Preadvice Period commences at 1200 hours, local time at place of receipt, on the business day of receipt of Preadvice by Seller and shall be counted in consecutive periods of 24 hours.

Seller shall, if applicable, declare port and berth of loading within a reasonable time except that Seller is not obligated to make such declaration earlier than (a) the 8th day prior to commencement of the Delivery Period for port declaration and (b) the 5th day prior to commencement of the Delivery Period for berth declaration.

Seller shall not prevent vessel from filing and from taking its place in the vessel line-up at the designated port/berth during the Preadvice Period or before commencement of the Delivery Period, notwithstanding which, Seller shall not be obliged to effect Delivery to the vessel before the expiration of the Preadvice Period or before commencement of the Delivery Period. For the purposes of this contract a vessel shall be considered filed when it: (a) has tendered valid notice of readiness to load to the charterer or its agent, at the port of loading; (b) has given written advice of such tender to the loading elevator, complete with all customarily required documents, such advice having been presented between the hours of 0900 and 1600 local time on a business day or between the hours of 0900 and 1200 hours on Saturday (provided not a holiday); and (c) is ready to receive grain in the compartments required for loading under this contract.

Date of mate's receipts and/or "on-board date" of bills of lading are considered proof of date of Delivery in the absence of evidence to the contrary. Any Delivery in partial fulfillment of this contract shall be considered as if made under a separate contract.

## 9. Vessel Substitution

Buyer may make one substitution of a vessel, provided the substituting vessel is of the same type, date of estimated time of arrival, plus or minus one day, and approximate size. If either the original or the substituting vessel is unable to lift the commodity by reason of the vessel having sunk or having suffered incapacitating physical damage, an additional substitution shall be made of a vessel of the same type, approximate size and with a position agreeable to Buyer and Seller. Such agreement shall not be unreasonably withheld. The nomination of any substituting vessel under this clause shall be subject to the Preadvice requirements of this clause, regardless of any Preadvice previously given, unless the estimated time of arrival of the substituting vessel is the same as the estimated time of arrival of the original vessel when nominated. No substitution of vessels other than as provided in this clause shall be made. If this is a "named vessel" contract, no substitution other than after a casualty as described above shall be permitted.

## 10. Price

\_\_\_\_\_ per \_\_\_\_\_ free on board Buyer's tonnage at \_\_\_\_\_. If this contract is for a flat price, any variance in quantity from the mean contract quantity shall be settled basis the FOB market value (as defined in paragraph (a) and (b) below).

If the contract price is to be established on an exchange of futures, futures shall be exchanged prior to Delivery of the commodity or on the day before the First Notice Day (FND) of the applicable futures month, whichever is earlier, to the nearest futures contract equivalent quantity of the mean contract quantity. Where Delivery under this contract results in a variance from the mean contract quantity, the Parties may exchange additional futures as soon as possible after the last date of loading to bring the resulting amount of futures exchanged to the nearest futures contract equivalent quantity of the quantity delivered. All exchanges of futures shall be made within the range of prices prevailing on the futures market on the date of the exchange and subject to exchange rules. The variance from the mean contract quantity shall be settled basis the market value of the premium (as defined in paragraph (a) and (b) below).

- (a) The FOB (flat price) market value, or the market value of the premium, as the case may be, shall be that prevailing on the close of the appropriate market in the country of origin of the commodity on the last date of loading, if such be a business day, otherwise on the close of such market on the previous business day.
- (b) In the event the parties do not agree on the market value by the time the shipping documents are ready to be transmitted to Buyer, Seller shall invoice the entire Delivery provisionally at contract price. Thereafter, final invoice for the difference between contract price and market value shall be presented as soon as possible and payment shall be made immediately.

## 11. Payment

- \* (a) Net cash by irrevocable letters of credit issued or confirmed by a prime U.S. bank in New York (or \_\_\_\_\_ by mutual agreement), available by sight drafts accompanied by shipping documents per Clause 12 (or warehouse receipts if option (c) of Clause 18 is exercised). Such letters of credit, in a form acceptable to Seller, shall be established not later than 5 days prior to the beginning of the Delivery Period, and shall be valid at least until the 30th day after expiration of the Delivery Period. Should Delivery be delayed beyond the Delivery Period, Buyer, if requested by Seller, shall amend letters of credit accordingly and Buyer shall increase the amount of the letter of credit to provide for carrying charges, if applicable. All bank charges shall be for Buyer's account.

—or—

- \* (b) Net cash in U.S. Dollars, by electronic transfer to the bank designated by Seller, against presentation of and in exchange for shipping documents per Clause 12 (or warehouse receipts if option (c) of Clause 18 is exercised). Payment made against mates receipts shall be made same day, provided the Notice of Delivery and commercial invoices are sent and received by Buyer by electronic means of communication no later than \_\_\_\_\_ hours \_\_\_\_\_ time. If said documents are sent after such time, payment to be made on the next business day.

Payment made against documents per Clause 12 shall be made as follows:

All bank charges in connection with payment under this provision shall be for Buyer's account.

—or—

- \* (c)

\*Delete paragraphs which are not applicable.

## 12. Shipping Documents

Payment to be made against mate's receipts or a full set of on board bills of lading (at Seller's option), and weight and inspection certificates. The Seller will use commercially reasonable efforts to follow Buyer's instructions to include in the bill(s) of lading clauses that the Buyer's or vessel's agents, or the vessel owners, usually include in bills of lading. The Buyer will accept these bill(s) of lading, though the Seller assumes no responsibility for the correctness or accuracy of these clauses.

Seller will release the original mates receipts to Buyer upon receipt of full payment along with the following documents or logs:

## 13. Notice of Delivery

Notice of Delivery stating vessel's name, dates of bills of lading (or mate's receipts), quantities and qualities loaded (including percentage of dockage if applicable) shall be given or passed on by Seller to Buyer without undue delay. Notices of Delivery shall be subject to correction of any errors but cannot be withdrawn.

## 14. Insurance

Marine and war risk (plus strikes, riots, civil commotions and mine risk) insurance, covering Seller's/Buyer's interests as they may appear, is to be covered by Buyer with first-class approved companies and/or underwriters and to be confirmed by such companies and/or underwriters to Seller at least 5 days prior to the expected readiness of the vessel. If this confirmation is not received by Seller by such time, Seller may place such insurance for Buyer's account and at Buyer's risk and expense.

## 15. Notices

All notices required under this contract shall be given by letter, if delivered by hand on the day of writing, or by any means of written electronic communication mutually agreed by the parties. If no address is specifically identified, the parties shall use the address typically used by the receiving party for communications related to the execution of this contract. Any notice received after 1600 hours (local time at place of receipt) on a business day shall be deemed to have been received on the following business day, except that for notices given and received by parties which are both located in the Continental United States and/or Canada, the reference herein to 1600 hours shall signify 1600 hours New York City time (E.S.T. or E.D.T., as in effect on date of receipt of the notice).

## 16. Circles

- (a) Where Seller repurchases from Buyer or from any subsequent Buyer the same goods or part thereof, a circle shall be considered to exist for purposes of this clause.
- (b) If this contract forms part of a circle, each party may agree with the other parties in the circle to forego actual Delivery and to participate in a settlement agreement for the settlement of contract price differences. Monies due and owed to parties in the circle shall be payable on the middle day of the contract Delivery Period.
- (c) If a circle can be shown to exist but no settlement agreement has been reached by the 10th calendar day following the last day of the Delivery Period, actual Delivery shall not be made and payment shall be made by each Buyer to its Seller of the excess of Seller's invoice amount over the lowest invoice amount in the circle. Such payments shall be made promptly after the 10th calendar day following the last day of the Delivery Period.
- (d) Should any party in a circle fail to make payment on the due date as required under paragraph (b) or (c) above for reasons cited in Clause 23 or for any other reason, payment shall be made between each Buyer and its Seller of the difference between the Seller's invoice amount at contract price and the market value of the commodity on date of insolvency or default, as the case may be. Such payment shall be made latest on the 2nd business day after the due date under paragraph (b) or (c) above. Payments already made under paragraph (b) or (c) above shall be refunded.
- (e) All circle settlements shall be based on the mean contract quantity.  
If a circle under paragraph (b), (c) or (d) above exists, Clause 21 shall not apply and Clauses 18 and 20 shall not be invoked. Payments due on a non-business day shall be made not later than the following business day.  
All payments made after the Delivery Period shall include carrying charges from the day following the last day of the Delivery Period, to the date of payment, at the rates stipulated in this contract. These carrying charges shall be settled individually between each Buyer and its Seller.
- (f) The parties agree that any dispute arising out of the voluntary settlement agreement entered into in accordance with paragraph (b) above shall be subject to arbitration as to any party thereto. Such arbitration shall be conducted in accordance with the provisions of Clause 30.

## 17. U.S./Canadian Government Rules and Regulations

Buyer and Seller will comply with all applicable United States of America and/or Canadian laws, rules and regulations, including but not limited to export subsidies, destination controls, government financing or the guarantee of financing of agricultural commodities and the monitoring of export purchases and sales. In particular, but without limitation, Buyer warrants that the goods will not be delivered to any country to which is prohibited by laws, rules or regulations of Canada or the United States, as applicable; and further warrants that the goods will not be sold or delivered to, or carried on any vessel, which is owned or controlled by a person, company, organization or entity which is a specially designated national, blocked person, or otherwise subject to sanctions by applicable law. In addition to the rights and remedies under Clauses 21 and 22, any losses including, but not limited to, fines, penalties, expenses, costs or damages incurred as a result of failure to perform in accordance with this provision shall be borne by the party responsible for such failure.

## 18. Failure to Take Delivery

If vessel fails to file before the end of the Delivery Period, Buyer shall be in breach of contract and Seller shall carry the grain for Buyer's account and risk as provided in Clause 19. In the event that Buyer has not given vessel nominations conforming to the applicable provisions of Clause 8 by the 15th calendar day following the last day of the Delivery Period, or if the vessels having been nominated within such time, fail to file by the 35th calendar day following the last day of the Delivery Period, Seller may, in its discretion: (a) continue to carry the commodity for Buyer's account and risk, (b) declare Buyer in default, or (c) tender to Buyer proper warehouse receipts in a quantity equal to the mean quantity open under this contract, in exchange for which Buyer shall pay at contract price plus accrued carrying charges, but less out-elevation and outbound weighing and inspection charges. Such tender of warehouse receipts shall be deemed due performance of the contract by Seller.

SPECIAL PROVISIONS FOR CONTRACTS PROVIDING FOR DELIVERY AT ST. LAWRENCE, GREAT LAKES OR HUDSON BAY PORTS:

- (1) Seller shall be barred from declaring option (b) above while the navigation in the designated Delivery area is officially closed for the ice season, and for 20 days thereafter.
- (2) However, if options (a), (b) and (c) above become available to Seller only while the navigation is officially closed, the Seller may declare option (b) during the first 10 days it becomes available to him; thereafter, he shall be barred from declaring it, until the 21st day after the official opening of navigation.
- (3) If Seller carries the grain into the new season for Buyer's account, Buyer shall have the right to nominate vessels per Clause 8, regardless of whether vessels were already nominated during the Delivery Period.

## 19. Carrying Charges

If the commodity is being carried for Buyer's account and risk as provided in Clause 18, it is mutually agreed that carrying charges, consisting of storage, insurance and interest, shall accrue as follows:

- (a) Storage and insurance from the day following the last day of the Delivery Period up to and including the dates of Delivery (or if Seller exercises option (b) or (c) of Clause 18, the date applicable thereto), both dates inclusive, at the following rates:  
\_\_\_\_\_ U.S. cents per \_\_\_\_\_ per day \_\_\_\_\_  
\_\_\_\_\_ U.S. cents per \_\_\_\_\_ per day \_\_\_\_\_  
\_\_\_\_\_
- (b) Interest from the day following the last day of the Delivery Period up to and including the last day of Delivery (or if Seller exercises option (b) or (c) of Clause 18, the date applicable thereto), both dates inclusive, at the following rates:

Seller will compute carrying charges on the mean contract quantity less any amounts previously delivered and regardless of whether Buyer has availed itself of the loading tolerance option under Clause 4. Any and all carrying charges as provided herein are considered liquidated damages and, as such, no further proof of damages shall be required in substantiation thereof.

## 20. Prevention or Delay of Delivery

- (a) **Application:** This clause shall apply where:
  - (1) Delivery by seller of the commodity, or any part thereof, is prevented or delayed at the port(s) of Delivery and/or elevator(s) of Delivery; and/or elsewhere where the forwarding of the commodity to such port(s) and/or elevator(s) is prevented [or delayed]; and
  - (2) is due to a cause as enumerated in 20 (b); and
  - (3) the Seller has provided timely notice pursuant to 20 (c).
- (b) **Cause[s]:** The causes of delay and/or prevention referred to in 20 (a) shall be one or more of the following:
  - (1) riots, strikes, and/or lockouts resulting in the interruption in or stoppage of the normal course of labor;
  - (2) action(s) by national, state, provincial or local government; or any agency, authority, bureau, commission, department or instrumentality of any of the foregoing including but not limited to laws, regulations, orders, notices, embargoes;
  - (3) acts of terror, civil unrest, natural disasters (inclusive of weather events) or other exceptional events beyond the Seller's reasonable control; and/or
  - (4) exceptional impediments to transportation beyond the Seller's reasonable control.
- (c) **Notice:** Seller shall provide notice to Buyer not later than 7 consecutive calendar days after the date of commencement of the cause(s), or not later than 2 business days after the 1st day of the Delivery Period, whichever occurs later. Subsequent sellers shall not be bound by these deadlines, provided they pass along the notice to their buyer, without delay.
- (d) **Certification:** Buyer may request that Seller provide a certificate of the North American Export Grain Association, Inc. certifying the existence and validity of the causes(s) identified by Seller pursuant to this Clause and the duration (if any) of said cause(s). Seller shall apply for said certificate pursuant to the Clause 20 Guidance published by the North American Export Grain Association, Inc., as approved annually by its Board of Directors. The parties agree to be bound by the certification and the certificate shall be final under the terms of this Agreement.
- (e) **Suspension of Delivery obligation:** The obligation of Seller to make Delivery shall be suspended while the causes are in effect. After the end of the cause Seller shall not be responsible for further delays, except where a vessel is not loaded in its 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 (weather working days, Saturdays, Sundays and holidays excluded) to Buyer's vessel during the loading of the bypassing vessels, at the demurrage rate in the Charter Party for the vessel nominated under this contract.

(f) **Delay of obligation to make Delivery**

(1) If the causes commence before or during the Delivery Period and terminate during or after Delivery Period, then the Delivery Period shall be deemed to be extended by a number of days equivalent to the period starting with the commencement of the causes or the commencement of the Delivery Period, whichever is later, and ending with the termination of the causes.

(2) If the causes commence after the Delivery Period and during the additional time afforded to Buyer under Clause 18 with respect to vessel nominations and filings, Seller retains its rights under Clause 18 except that Seller's right to exercise option (b) or (c) under Clause 18 shall be deemed to be delayed by a number of days equivalent to the period starting with the commencement of the causes and ending with the termination of the causes.

(3) Clause 20 may apply if a vessel has filed during or after the Delivery Period and the cause commences after the end of the Delivery Period.

(g) **Carrying charges:** if due under Clauses 18/19, carrying charges begin to accrue on the day following the last day of the Delivery Period, as extended by paragraph (f)(1) above; however, if this Clause becomes operative while carrying charges are already accruing, then such charges shall continue to accrue as they would in the absence of the causes.

## 21. Prohibition

In case of prohibition of export, blockade or hostilities or in case of any executive or legislative act done by or on behalf of the government of the country of origin or of the territory where the ports of loading named herein are situated, restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this contract and to the extent of such total or partial restriction to prevent fulfillment and to that extent this contract or any unfulfilled portion thereof shall be cancelled without prejudice to Seller's entitlement to carrying charges. Seller shall advise Buyer without delay of the reasons therefore, and if required by Buyer, Seller shall provide a certificate from the North American Export Grain Association, Inc. confirming the events listed herein and pursuant to the Clause 21 Guidance published by the North American Export Grain Association, Inc., as approved annually by its Board of Directors.

## 22. Default

Where notice of default has been declared by either party, the non-defaulting party shall be at liberty, to resell or repurchase, as the case may be, without undue delay and the defaulting party shall make good the loss, if any, to the non-defaulting party but the defaulting party shall not be entitled to any profit. If the non-defaulting party has not repurchased or resold the commodity by the 10th calendar day after the giving of notice of default, the market value on the said 10th day shall be used for settlement purposes. If such 10th day falls on a non-business day, the market value on the previous business day shall govern. In the event of a default by Buyer, the sale price under this contract shall automatically be increased by the value of carrying charges calculated up to the date of resale, or the 10th calendar day after the giving of notice of default, whichever is applicable.

## 23. Insolvency

Either party shall, at any time after sending notice, have the right to terminate this contract and to recover the loss (if any) in the event that:

(a) the other party suspends payments to creditors, notifies creditors of its inability to meet its debts, or enters bankruptcy;

--or--

(b) reasonable grounds for insecurity having arisen with respect to the financial capacity of the other party to perform under this contract, and a written demand for adequate assurance of due performance having been made, such assurance is not received within a period of time not exceeding 5 consecutive days.

## 24. Construction

For the purposes of this contract, except as otherwise expressly provided or unless the context otherwise requires, plural terms include the singular.

## 25. Passage of Title and Risk

Anything in this contract to the contrary notwithstanding, Seller shall retain title to the commodity until Seller has been paid in full (per Clause 11), it being understood that risk of loss passes to Buyer on Delivery at discharge end of loading spout (per Clause 8).

## 26. Limitation of Liability

The Seller shall not be liable under this contract, except as expressly stated herein, after Delivery of the commodity at the discharge end of the loading spout and presentation of the contractually required documentation. The Buyer assumes all claims, losses, costs, and damages ("expenses") and risks whatsoever after Delivery of the commodity at the discharge end of the loading spout including, but not limited to, compliance with any requirements by customs, quarantine and other authorities except for the U.S. and/or Canadian regulatory requirements applicable to this contract. All such expenses and risks arising from events or actions after the Delivery of the commodity at the discharge end of the loading spout shall be the sole responsibility of the Buyer, who shall indemnify and hold the Seller harmless for all such expenses and risks incurred (including attorney fees).

## 27. International Conventions

The following shall not apply to this contract:

(a) the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods;

(b) the United Nations Convention on Contracts for the International Sale of Goods of 1980; and

(c) the United Nations Convention on the Limitation Period in the International Sale of Goods, concluded at New York on 14 June 1974, and the Protocol Amending the Convention on the Limitation Period in the International Sale of Goods, concluded at Vienna on 11 April 1980.

## 28. Governing Law

The parties agree that this contract shall be governed by the laws of the State of New York, notwithstanding any choice of law provision to the contrary.

## 29. Other Conditions

## 30. Arbitration

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 their successors, and 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** \_\_\_\_\_