NGFA Barge 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 barge transportation and in the carriage of bulk commodities by barge, 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.

NGFA Barge 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 barges
(C) Type(s) of commodities to be carried
(D) Rate(s)
(E) Governing weights
(F) Applicable Trade Rules
(G) Contract placement period(s)
(H) Placement point(s) or area(s)
(I) For Other than Weekly Contracts: Advice on placement schedules and origin point declarations
(J) Destination point(s) or area(s)
(K) Minimum loading requirements
(L) Free Time (which commences at 0700 hours)
(M) Origin/destination demurrage terms (which commences 0700 hours after Free Time)
(N) Cargo insurance coverage
(O) Terms of payment

Rule 2. Applicable Equipment/Barge

Only single compartment barges or equipment that can be unloaded by a marine leg and that are 195/200 by 35 feet shall be tendered on contract except by mutual agreement of both the Buyer and Seller.

Rule 3. Brokers

(A) A broker is a person, firm or electronic trading platform that is engaged for others, at least partially on a commission basis, in negotiating, or facilitating the execution of, contracts relative to property of which he 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 him 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 his principals only to the extent of his 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 execution of, a contract in accordance with instructions from both principals; that, at the time of negotiations, or the facilitation, advises each principal the name of the other; and that 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 4. 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 4(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 5. 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 6. 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 7. 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 on an approved scale meeting the requirements specified by the Weights and Measures Act and Regulations of Canada, and the weighing is 100% supervised by a licensed Canadian Grain Commission Weigher.

(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 8. Advice of Schedules

(A) **Placement of Barge Freight for Weekly Contracts**

(1) The Buyer shall furnish the Seller a specific river on multi-river contracts by 1600 hours two (2) business days preceding the contract placement period.

(2) The Seller can provide the Buyer a boat schedule no sooner than during the last business day preceding the contract period. The Buyer shall furnish the Seller a named origin point(s) based on the timing of said schedule.

(3) When a boat schedule has not been provided by the Seller to the Buyer, the Buyer shall furnish the Seller named origin point(s) no later than the second business day of the contract period.

(B) **Schedules Arriving before Contract Period**

(1) Should a barge arrive at origin point prior to commencement of the contract period, constructive placement will be effective the first 0700 hours of the contract period.

(2) Should the Buyer commence loading the barge prior to the contract period, placement will be effective the day loading commences.

(C) **Substitution of Schedule(s)**

The Seller may substitute a barge or schedule provided placement is no later than the timing of the original schedule. If substitute placement is earlier than the original schedule, constructive placement will occur no earlier than the timing of the original schedule

Rule 9. Placement of Barges (Origin and Destination)

(A) (1) Actual placement is made when a barge is placed in accordance with instructions of the Buyer or the Consignee at the facility in the port specified by the contract or bill of lading destination.

(2) Constructive placement may be made when actual placement is not possible by placing or holding a barge at a point of the Barge Operator's choice near the actual delivery point. In making any subsequent placement of the barge, no additional free time will be allowed. **Exception**: If a Barge Operator is initially prevented from actual placement or constructive placement because of a condition of the navigation channel, the provision for placement will not be applicable until the condition has been alleviated.

(3) Placement for loading is effective the first 0700 hours after a barge is actually or constructively placed provided the Seller has notified the Buyer of such placement by 1100 hours that same day by rapid written communication, or by telephone confirmed by subsequent written communication. Confirmation is to include the name of the Barge Operator. The Seller must receive confirmation of receipt of placement from the Buyer by telephone or rapid written communication no later than the 1100 hours of the barge placement date.

(4) Placement at the unloading port is effective the first 0700 hours after a barge is actually or constructively placed, provided the Barge Operator has notified Consignee or Consignee's designated agent of such placement by 1100 hours that same day by rapid written communication, or by telephone confirmed by subsequent written communication.

(B) **Bad Order or Dirty Equipment/Barge:**

(1) Placement is voided when a barge is found to be unfit ("bad order," "dirty") for loading if the Buyer/Shipper notifies the Seller on a business day or the Barge Operator on a Saturday, Sunday or legal holiday of the barge's condition by 1600 hours of the day immediately following the effective placement date. The Seller shall have a barge ready for loading no later than 0700 hours of the third business day following Buyer's notification. If notice is given on a Thursday, Friday, or Saturday the barge operator shall have a barge ready for loading no later than the close of the first business day of the following week.

(2) Placement is interrupted when a barge is found to be unfit ("bad order," "dirty") for loading if the Buyer/Shipper notifies the Seller on a business day or the Barge Operator on a Saturday, Sunday, or legal holiday of the barge's condition after 1600 hours of the day immediately following the effective placement date. Placement resumes the following 0700 hours after the barge is made ready for loading. The Seller shall have a barge ready for loading no later than 0700 hours of the third business day following Buyer's notification. If notice is given on a Thursday, Friday or Saturday the barge operator shall have a barge ready for loading no later than the close of the first business day of the following week.

Rule 10. Release Instructions

(A) Notice of Release after Loading:

(1) The Buyer shall give the Seller notice of release that same day by rapid written communication, or by telephone confirmed by subsequent written communication, when a barge is loaded and ready to be picked up. The Buyer must receive confirmation of receipt of release from the Seller by telephone or rapid written communication no later than 1100 hours of the barge release date.

(2) For Saturday, Sunday and legal holiday loading, barges shall not be considered to be released unless:

(a) The Buyer gives the Seller pre-advice no later than the preceding business day. If the Seller is unavailable, the Buyer will notify the Barge Operator. The Buyer shall confirm said release to the Seller in writing by the end of the next business day, or

(b) The Buyer contacts the Seller or Barge Operator (if the seller is unavailable) by telephone or rapid written communication on a Saturday, Sunday or legal holiday and releases the barge(s) by 1100 hours. The Buyer must receive confirmation of receipt of release from the Seller or Barge Operator by telephone or rapid written communication no later than 1100 hours of the barge release date.

(B) Notice of Release after Unloading:

(1) The Consignee or his agent shall give the Barge Operator or his agent notice of release by telephone, confirmed to the Barge Operator in writing by the end of the next business day, when a barge is unloaded and ready to be picked up. In order to release a barge as of 0700 hours the barge must be unloaded prior to 0700 hours and notice of release be given by 1100 hours.

(2) For Saturday, Sunday and legal holiday unloading, barges shall not be considered to be released unless:

(a) the Consignee or his agent gives the Barge Operator or his agent pre-advice on the preceding business day, or

(b) the Consignee or his agent contacts the Barge Operator or his agent by telephone on a Saturday, Sunday or legal holiday and releases the barge(s) by 1100 hours that day, confirmed to the Barge Operator in writing by the end of the next business day.

Rule 11. Billing Instructions

(A) The Buyer shall give the Seller billing instructions by the close of the third business day following the release date. These instructions shall be confirmed in writing. Billing instructions shall include:

(1) Barge number
(2) Commodity
(3) Loading port, facility and shipper
(4) Tonnage

(5) Consignee
(6) Notify party
(7) Bill of lading date
(8) Destination
(9) Applicable weights

(B) Barges that are not billed prior to arrival at contract destination are subject to Barge Operator's reconsignment charges.

Rule 12. Issuance of Bill of Lading

The barge operator shall cause an appropriate bill of lading to be issued on the same date as billing instructions are given provided those instructions are received before 1500 hours. Any billing instructions given to the barge operator after 1500 hours or on weekends or legal holidays may be issued on a bill of lading no later than the next business day.

Rule 13. Weight Settlements

(A) If the contract is based on destination weights, the unload Buyer shall notify the Original Shipper and the Barge Operator of the final unload weight(s) by telephone or rapid written communication within two (2) business days of unload, confirmed by mailing the original weight certificate to the Original Shipper and a copy to the Barge Operator within five (5) business days.

(B) If the contract is based on origin weights, the Consignor shall notify the Barge Operator of the loading weight(s) by telephone or rapid written communication within two (2) business days of unload, confirmed by mailing a copy of the original weight certificate to the Barge Operator within five (5) business days.

Rule 14. Failure to Perform

(A) **Seller's Non-Performance**

If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his 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 to:

(1) agree with the Seller upon an extension of the contract (a) at contract price, or (b) at fair market value for adjustment of a previously priced contract or to determine the spread from the contract period to another period of time; 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 that day.

If the Seller fails to tender an applicable schedule or placement by 1400 hours on the last business day of the contract placement period, the Buyer after giving notice to the Seller to complete the contract, shall then elect to:

(1) agree with the Seller upon an extension of the contract (a) at contract price or (b) at fair market value for adjustment of a previously priced contract or to determine the spread from the contract period to another period of time; 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 that day.

(B) **Buyer's Non-Performance**

If the Buyer finds that he will not be able to complete a contract within the contract specifications, it shall be his 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 to:

(1) agree with the Buyer upon an extension of the contract (a) at contract price, or (b) at fair market value for adjustment of a previously priced contract or to determine the spread from the contract period to another period of time; 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 that day.

If the Buyer fails to notify the Seller of his inability to complete his 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 Seller upon an extension of the contract, (a) at contract price or (b) at fair market value for adjustment of a previously priced contract or to determine the spread from the contract period to another period of time; or

(2) sell-out 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 that day.

(C) This rule does not permit compensation to the defaulting party to a contract.

Rule 15. Reconsignment

(A) Reconsignment for Gulf (Baton Rouge/Myrtle Grove) Destinations: A barge may only be reconsigned by mutual agreement of the Cargo Owner and Barge Operator. The terms and conditions of the reconsignment must be confirmed in writing by both parties the next business day.

(B) Reconsignment other than Gulf (Baton Rouge/Myrtle Grove) Destinations: A barge may only be reconsigned by mutual agreement of all parties involved in the freight chain. A reconsignment request shall be made verbally by telephone or rapid written communication by the owner of the cargo to the Seller who in turn, if applicable, continues such requests through the freight chain until the Barge Operator is finally contacted. If all parties in the freight chain agree to the reconsignment and the Cargo Owner elects to reconsign, then the Cargo Owner shall confirm the reconsignment verbally by telephone or rapid written communication to the Barge Operator. The terms and conditions of the reconsignment must then be confirmed in writing between each contracting party within two (2) business days of the day of reconsignment.

Rule 16. Payment of Invoice

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.

Rule 17. 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 18. Definitions

(A) **Barge**

The word "barge" shall mean a covered barge commonly used for carrying bulk grain or feedstuffs, which without any weight or quantity reference shall have no quantitative meaning insofar as these rules apply.

(B) **Bulk Commodity**

A commodity which, in accordance with the existing custom of the trade, is loose and is received and delivered by the Barge Operator without transportation mark or count.

(C) **Business Day**

For the purpose of these rules, a "business day" shall be defined as the hours from 0800 to 1700 hours in Chicago, Illinois, USA, excluding Saturday, Sunday and legal holidays.

(D) **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.

(E) **Commencement of Contract Placement Periods**

(1) **Weekly Contracts:** The contract placement/delivery period commences at 0001 hours on Sunday.

(2) **Monthly Contracts:** The contract placement/delivery period commences at 0001 hours on the first day of the month.

(3) **Semi-Monthly Contracts:** The contract placement/delivery period commences at 0001 hours on the first and sixteenth days of the month.

(F) **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.

(G) **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.

(H) **Legal Holidays or Holidays**

Wherever the term "holiday" or "legal holiday" appears in these rules, it shall mean any one of the following days: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. When such holidays fall on Sunday, the following Monday will be considered the holiday.

(I) **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.

(J) **Opening of the Mid-Mississippi**

The Dubuque and South (Mid-Mississippi) opening commences the first 07:00 hours of the first business day after the first empty dry cargo covered barge suitable for loading, originating at or below Winfield, MO, reaches Dubuque, Iowa.

The Mid-Miss opening shall be determined by a majority vote of a three person committee appointed by the NGFA Chairman and shall be announced by publishing the committee's confirmation of the opening on the NGFA web site.

(K) **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.

(L) **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 for the United States provided by the U.S. Naval Observatory converted to Central Standard Time or Central Daylight Savings Time, whichever is applicable in Chicago, Illinois, USA.