

**Trade Rules
of the
National Hay Association
U.S. FORAGE EXPORT COUNCIL**

Adopted May 6, 2014

All Active members and other parties using these rules are free to agree upon any contractual provisions that 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.

Rule 1. Trade

Both the Buyer and Seller shall include in their original articles of trade, whether entered into orally or in writing the following specifications, if applicable:

- (A) Contract date
- (B) Kind and description (including quality) of feed
- (C) Quantity
- (D) Price and delivery basis (see Rule 22 Definitions)
 - (1) FAS
 - (2) FOB
 - (3) CFR
 - (4) CIF
 - (5) If other delivery basis, see Incoterms 2010
- (E) Terms of payment
- (F) Type of weights
- (G) Shipping terms:
 - (1) Shipping container type
 - (2) Applicable Freight Terms
 - (3) Type of billing
 - (4) Loading weight requirements

(5) Time period of shipment or delivery

(6) Route

(7) Responsibility for freight changes

(8) Buyer's or Seller's conveyance

(9) Freight Prepaid or Collect

(H) Packaging

(I) Production origin of feed

(J) Trade rules to apply

(K) Usual Terms: The specifications above shall apply except in cases where the Buyer and the Seller have been trading on agreed terms and conditions, in which event it shall be sufficient for the words "usual terms" to be used in confirmation, and the use of said words shall imply that such terms and conditions as governed previous trades of like character shall apply.

(L) If destination regulatory officials require any portion of this contract to be shipped back for failure to meet import regulations then buyer and seller agree to share the responsibility for ship back cost as outlined in NHA/USFEC ship back Option "___" (per options below). It is the responsibility of the Buyer and Seller, at their option, to insure any portion of their individual risks associated with cargo being shipped back.

Option A: CFR/CIF Sales

Buyer's responsibilities: All cost associated with destination demurrage charges and warehouse charges.

Seller's responsibilities: Refunding to Buyer full C&F value. All return freight cost to origin port or freight cost to new destination port. All cost for custom clearance in destination country.

Option B: FAS/FOB/CY Sales

Buyer's responsibilities: All cost associated with destination demurrage charges, warehouse charges, and custom clearance in destination country. All cost for return freight to origin port or freight cost to new destination port. All cost for ocean freight from origin port to destination port.

Seller's responsibilities: Refunding to Buyer full CY value.

(M) Other terms

Rule 2. Brokers/Agents

(A) A broker/agent is a person, or firm 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 or firm 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 feed 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/agent 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/agent who, in good faith or otherwise, exceeds his authority is liable for any resulting damages.

(E) A broker/agent 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.

(F) Payment for brokerage shall be credited when shipments are invoiced or when contract is otherwise consummated or terminated, unless otherwise agreed.

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 material differences, shall immediately notify the other party to the contract and confirm corrections by 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 3 (A), of any disagreement with the confirmation received.

(C) When a trade is made through a broker/agent, 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, or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein, and upon finding any differences, shall immediately give written 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/agent shall govern the contract.

Rule 4. Alteration of Contract

The specifications of a contract cannot be altered or amended without the expressed consent of both the Buyer and Seller. Any alteration mutually agreed upon between Buyer and Seller must be confirmed by both in writing by the end of the next business day.

Rule 5. Electronic Data Interchange and E-mail

These rules may be applied to trades that include electronic transmission and receipt of data in agreed formats, e.g., Electronic Data Interchange (EDI), in substitution for conventional paper-based documents. A party to a trade may, in lieu of written documents, transmit or receive from the other party an electronic transmission in agreed formats to which the parties have given their prior written consent.

These rules may be applied to trades that occur by email in substitution for conventional paper-based documents. A party to a trade may, in lieu of written documents, transmit or receive from the other party an email, and such email shall substitute for a written document provided that the parties have previously so agreed.

Rule 6. Passing of Title as Well as Risk of Loss and/or Damage

Title, as well as risk of loss and/or damage, passes to the Buyer as follows:

(A) On FAS/FOB/CY basing point contracts, at the time and place of shipment. The time of shipment is the moment that the carrier accepts the appropriate interchange shipping document.

(B) On CFR contracts:

(1) By rail, when the conveyance is constructively placed or otherwise made available at the Buyer's original destination.

(2) By truck, upon arrival at the Buyer's final destination.

(3) By ocean vessel, upon loading of cargo at port of origin.

(C) On in-store contracts, at the time of contract, transfer, or sending of documents, unless and to the extent warehouse tariff and/or storage contract assumes the risk of loss and/or damage.

Rule 7. Container Loading Weight Requirements

Unless otherwise agreed in purchase contract, buyer shall advise seller of container load weights. If the buyer fails to give such instructions in a timely manner, the Seller may load the container to legally allowable weight without exceeding a maximum weight capacity of the intermodal container. This provision shall not require the Seller to load more or less than set forth in the contract.

Rule 8. Ocean Bills of Lading

Unless otherwise agreed, the bill of lading shall be an order bill of lading.

(A) Order bills of lading shall be original and negotiable, and conform to the specifications of the contract on which the shipment is to apply. They must be properly executed and signed by an authorized agent of the carrier within the shipment or delivery period of the contract. The Seller shall pay any loss that is caused by irregular or incorrect bills of lading.

The Seller shall be liable for any demurrage and/or additional charges accruing on feed billed to "shipper's order," when such charges are attributable to the inability of the Buyer to obtain rightful possession of the bill of lading whenever said bill of lading is necessary to furnish disposition, provided that the Buyer notifies the Seller upon the date of arrival.

(B) Straight bills of lading shall be original and conform to the specifications of the contract on which the shipment is to apply. They must be properly executed and signed by an authorized agent of the carrier within the shipment or delivery period of the contract. The Seller shall pay any loss that is caused by irregular or incorrect bills of lading.

(C) Electronic Data Interchange (EDI) bills of lading shall be signed or unsigned and conform to the specifications of the contract on which the shipment is to apply. They shall be issued within shipment or delivery period of the contract. These bills of lading do not waive any of the terms and conditions of the applicable uniform domestic straight bill of lading set forth in the uniform freight classification, including those terms and conditions on the back of the bills of lading.

Rule 9. Routing of Shipment

(A) CFR/CNF shipments shall be deliverable via any ocean carrier at the discretion of the Seller, unless otherwise agreed at the time of sale. If such shipments are routed by the Buyer, the carrier becomes the Buyer's agent, and the Seller's liability for routing ceases when he furnishes bill of lading in accordance with the Buyer's instructions.

(B) Cargo that is sold on FAS/FOB/CY terms shall be routed in accordance with the billing instructions furnished by the Buyer. If available equipment, or other reason, precludes routing as requested, then the Seller has the responsibility of so advising the Buyer.

Rule 10. Time of Shipment

On the date of contract, the shipping schedule shall be determined by specifying: (1) requested date(s); or (2) frequency of shipment [in days, weeks, or month(s); or (3) one of the shipment terms defined below. Also, the contract shipping period shall be specified.

(A) "**Immediate**" means shipment within five (5) calendar days from the date of the trade.

(B) "**Quick**" means shipment within ten (10) calendar days from the date of the trade.

(C) "**Prompt**" means shipment within fifteen (15) calendar days from the date of the trade. When no shipping period is specified, "Prompt" shipment shall apply.

(D) "**Loaded,**" "**spot,**" or "**Dock**" means that the goods are actually loaded and ready for billing, and must be billed on the date of the trade.

(E) "**In transit**" means that the cargo must have been billed at least one day prior to the date of the trade.

(F) "**Weekly**" means shipment during each calendar week that begins on a Monday and the schedule shall specify the requested Monday date(s).

(G) "**First Half**" of the month means that shipment shall occur during the first fifteen (15) days of the month (including February) and shipment "Last Half" means shipment shall occur in the remaining days of the month.

(H) "**Monthly**" means that shipment shall occur during the period beginning with the first day and ending with the last day of the month.

The contract shipping period is that period of time during which shipment must be made. On FAS/FOB/CY contracts, buyer is responsible to provide seller with a shipping schedule where the cutoff falls within the contract shipping period. On CFR/CNF contracts, seller is responsible to ship cargo via ocean vessel within the contract shipping period.

When a scheduled ship date or shipping period begins or ends on a Saturday, Sunday, or Legal holiday, shipment shall be made on the next business day.

Intermodal container interchange shipping receipts when dated and signed by ocean carriers or carrier's agents shall also be accepted as evidence of shipment. Markets where the loading is made on a railroad shall be evidence that the car is loaded within the life of the contract.

Rule 11. Shipment Notice and Billing Instructions

The words, "notice," "notify," and "notification" means verbal communication and/or communication by facsimile or e-mail regarding applicable numbers and billing instructions. Cargo shall be billed to a named destination and booking cargo to carrier lines for billing purposes does not constitute billing to a named destination.

Notification(s) and billing instruction(s) shall be provided during the Contract Shipping Period. A change in specifications previously filed with the Seller does not extend any contract except upon mutual agreement at the time such change is requested.

To comply with the "Time of Shipment" (Rule 10) schedule, the Buyer shall notify the Seller and furnish shipment instructions as follows:

- (A) **Requested Date(s):** On the date of trade.
- (B) **Frequency of shipment [in days, weeks, or month(s)]:** On the date of trade.
- (C) **Shipment Terms:** If any one of the following shipment terms is specified on the date of trade, the Buyer shall notify the Seller and furnish billing instructions as follows:
 - (1) **Immediate, Quick, Loaded, Spot, On-Track, and/or In Transit:** On the date of trade.
 - (2) **Weekly:** No less than 15 working days prior to booking cutoff.
 - (3) **First or Last Half:** No less than 15 working days prior to booking cutoff.
 - (4) **Monthly:** No less than 15 working days prior to booking cutoff.
 - (5) **Prompt:** Within five (5) calendar days of the date of trade.

During the Contract Shipping Period (excluding Buyer's Option), if the Buyer has to provide shipment instructions, the Seller may notify the Buyer and request suitable shipment instructions.

If the Seller fails to demand shipment instructions and the Buyer fails to provide shipment instructions, the contract shall remain in force until such time that either the Seller does demand shipment instructions or the Buyer does provide shipment instructions.

If the Buyer is late in providing shipment instructions, the Seller may extend the time of shipment by an equivalent amount of time. The Seller shall have the same amount

of time to make shipment, after late receipt of the shipment instructions, as was originally specified in the contract.

Rule 12. Container Demurrage and/or Additional Charges

The Seller shall not be held liable for any demurrage and/or additional charges accruing on cargo when such charges can be shown to have accrued by reason of the inability of the Buyer to provide timely notification of changes to shipment instructions.

Rule 13. Shortage and/or Damage/Claims

All claims for shortage and/or damage/claims shall be made by the receiver within thirty (30) days after arrival, and must be accompanied by photos of damaged cargo and written documentation as to the condition of cargo, contents, damages and/or shortages. Buyer must provide documentation showing movement of product from arrival at port to its final destination. Buyer shall also provide seller with documentation detailing plan for mitigation of loss, detailing due diligence in minimizing financial exposure.

In the event the buyer notifies seller of a claim issue within the thirty (30) day period specified above, seller and buyer agree to work towards any financial settlement in the ensuing thirty (30) day period.

Rule 14. Seller's Default on Quality

It is the responsibility of Seller to verify that the product complies with mutually acceptable industry standards, or a specific quality description.

Prior to scheduled shipment, if the Seller, by exercise of due diligence, verifies that the shipment does not comply with contract terms, he shall notify the Buyer in writing by facsimile or e-mail by the next business day. Upon receipt of such notice, the Buyer shall, within one (1) business day thereafter, advise the Seller in writing by facsimile or e-mail, which of the following options he elects to exercise:

1. Reject the shipment and (a) cancel the rejected portion of the contract at fair market value of the contracted cargo as of the date of the rejection or (b) schedule a replacement shipment;
2. Accept the shipment under mutually acceptable conditions.

Force majeure. The time for performance by seller shall be extended by any delays caused by war, fire, acts of god, riot, embargo, casualty, or other matters outside of the reasonable control of seller.

Rule 15. Refusal of Shipment

Failure to make any shipment in keeping with the terms and conditions of a contract shall be grounds for the refusal only of such shipment, and not for the rescission of the entire contract or any other contract between the Buyer and Seller.

Rule 16. Condition Guaranteed Upon Arrival

(A) Shipment on contracts shall be guaranteed by the Seller to arrive at final destination with quality per contract specifications and free of objectionable foreign material, with the following exception(s):

1. Damage to container in transit from loading port to devanning point.
2. Product is stored in intermodal container at destination longer than 21 days.

(B) It shall be the duty of the Buyer to ascertain by inspection or other means and report the condition of the shipment not later than 30 days after arrival at destination port, otherwise the Seller's liability ceases at the expiration of such time.

(C) A Buyer receiving a shipment that is out of condition on arrival, and handled as outlined in preceding paragraphs, shall upon Seller's request, unload, recondition, and salvage to best advantage of the Seller whenever practical to do so.

(D) In the event the Seller is responsible for quality damages the maximum amount is limited to the purchase price of the affected cargo. At no time will Seller be responsible for consequential damages.

In the event the Buyer requests replacement, then the Seller shall be obligated to make replacement if available, and the Buyer shall be obligated to accept such replacement, which must be made by a new shipment within (15) calendar days (excluding Saturday, Sunday, and legal holidays) from the date of notification by the Buyer.

Rule 17. Default on the Shipping Schedule and/or the Contract Shipping Period

(A) **Default by the Seller:** When the Seller finds that he is in default on the shipping schedule, and or the contract shipping period, he shall notify the Buyer at once in writing by facsimile or e-mail.

Upon receipt of such notice, the Buyer shall, within twenty-four (24) hours thereafter, advise the Seller in writing by facsimile or e-mail, which of the following options he elects to exercise:

- (1) agree to extend the shipping period; or

- (2) buy-in, for the Seller's account, the defaulted portion of the shipments; or
- (3) cancel the defaulted portion of the shipments.

If the Seller fails to notify the Buyer of his default, the liability remains in force until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. The Buyer shall notify the Seller at once in writing by facsimile or e-mail and within twenty-four (24) hours thereafter, advise the Seller in writing by facsimile or e-mail which of the options (1) or (2) or (3) above he elects to exercise.

If the Seller defaults on the contract, he is liable for all reasonable costs and expenses as shall have been incurred to and including the day the Buyer elects one of the three options.

Force majeure: Fulfillment of this contract is contingent upon, but not limited to, Acts of God, fires, strikes, accidents, riots, delays of carriers, actions of government authorities or other causes beyond sellers control.

(B) Default by the Buyer: When the Buyer finds that he is in default on the shipping schedule and or the contract shipping period, he shall notify the Seller at once in writing by facsimile or e-mail. Upon receipt of such notice, the Seller shall, within twenty-four (24) hours thereafter, advise the Buyer in writing by facsimile or e-mail, which of the following options he elects to exercise:

- (1) agree to extend the shipping period; or
- (2) sell-out, for the Buyer's account, the defaulted portion of the shipments; or
- (3) cancel the defaulted portion of the shipments at fair market value based on the day this option is exercised.

If the Buyer fails to notify the Seller of his default, the liability remains in force until the Seller, by the exercise of due diligence, can determine whether the Buyer has defaulted. The Seller shall notify the Buyer at once in writing by facsimile or e-mail and within twenty-four (24) hours thereafter, advise the Buyer in writing by facsimile or e-mail which of the options (1) or (2) or (3) above he elects to exercise.

If the Buyer defaults on the contract he shall be liable for all the reasonable costs and expenses as shall have been incurred to and including the day the Seller elects one of the three options.

Rule 18. Production Origin of Feed

A sale must be for a product of United States origin unless otherwise specified at time of sale. If the contracting parties designate a specific non-U.S. origin as the shipment point, then it shall be presumed that the feedstuff was produced in that country unless otherwise specified at the time of sale.

Rule 19. Weights

On the date of trade, the Seller and Buyer shall agree on the market where the weights will be obtained and the rules governing that market shall apply. When feed is shipped in bulk, the following type weights may be specified:

(A) Official 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.

(2) Class III (or Certified House Weights): A weight documented by a weight certificate obtained by an unsupervised licensed weigher using a certified scale.

(B) Weight Settlements

(1) If weight terms have not been specified in the contract, then the Seller's weight shall govern if it is a U.S. Certified or Class III House Weight as defined in this rule.

(2) If weight terms have not been specified in the contract, and neither Buyer nor Seller can furnish a U.S. weight as defined by this rule, then the first weight supplied by either the Seller or Buyer which meets the requirements of this rule for a U.S. Certified or Class III weight shall govern. If neither the Buyer nor Seller can furnish a U.S. Certified or Class III weight, then the first Affidavit weight supplied by either Buyer or Seller shall govern. If neither the Buyer nor Seller can furnish any weight meeting any of the foregoing requirements, then the first recorded weight supplied by either Buyer or Seller shall govern.

Rule 20. Payment That Is Conditioned on Presentation of Original Drafts and/or Invoices

If payment is conditioned on presentation of original drafts or invoices, the Seller shall provide to the Buyer, or other such consignee as may have been previously designated by the Buyer, an invoice giving the conveyance identification, kind and type of feed, actual or estimated weight (state which applies), price, contract on which shipment is to apply, date of contract, date of shipment, point of origin, amount of invoice, and complete routing, if applicable.

Unless otherwise agreed, sight drafts or invoices are subject to payment on presentation to the Buyer or his designated agent, when properly documented and

substantiated by the original bill of lading, and/or delivery order and, if applicable, original weight and inspection certificate(s).

Rule 21. Contractual Disputes

Where a transaction is made subject to these rules in whole or in part, then the sole remedy for resolution of any and all disagreements or disputes arising under or related to the transaction shall be through the legal venues of the origin processing plant and/or loading point.

Rule 22. Force Majeure

The time for performance by seller shall be extended by any delays caused by war, fire, acts of god, riot, embargo, casualty, or other matters outside of the reasonable control of seller.

Rule 23. Definitions

(A) Business Day

For the purpose of these rules, a "business day" shall be defined as the hours from 0800 to 1700 hours on the US West Coast, USA excluding Saturday, Sunday and U.S. legal holidays.

(B) Buying-In

When the phrase "buy-in" is used in these rules it shall mean an actual purchase of feed of like kind and quantity 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) When a rule refers to written communication, confirmation or notification, it shall include those communications sent/received by postal mail, courier, or rapid electronic means, e.g., telex, facsimile, EDI, email, or communications generated by an electronic trading platform. The sender shall be responsible for the correct transmission of the message.

(D) Delivery

The term "delivery" when used in these rules shall mean that the conveyance has been actually or constructively placed to the Buyer as evidenced by a scale ticket, dock receipt or bill of lading.

(E) Notice

The term "notice," when used in these rules shall mean oral communication when possible, and in all cases by rapid written communication.

(F) Packaging

It shall be understood that all feedstuffs when sold in bags/sleeves shall be packed in new bags/sleeves, unless otherwise agreed at time of trade. Other packaging terms as agreed between buyer and seller.

(G) Arrival

Rail: A car of feed shall be considered "arrived" as the first 12:01 a.m. after the car is placed, constructively placed, or reported to the Buyer as available for the Buyer's instructions, but excluding Saturdays, Sundays, or U.S. legal holidays.

Trucks: Trucks shall be considered to have arrived at the time and date of unloading as evidenced by a scale ticket or dock receipt at the receiving facility. Where such evidence is not available, other routine business records may be used to show arrival time and date.

Containers to CY. Containers shall be considered to have arrived at the port when an interchange is generated.

(H) Shipment-Rail

The term "shipment" when used in these rules shall mean that the shipper has filed shipping instructions with the authorized agent of the carrier.

(I) Selling-Out

Where the phrase "sell-out" is used in these rules, it shall mean an actual sale of feed of like kind and quantity 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.

(J) Time

When these rules require that an action be taken at or by a specified time of day, then "time" shall mean US West Coast Time.

(K) Truckload

If no truck size is specified in the contract, a truckload shall be approximately 25 short tons net weight.

(L) Container Load

If no container size or length is specified in the contract, a container load shall be 40 feet in length.

(M) FAS - Free Alongside Ship

"Free Alongside Ship" means that the seller delivers when the goods are placed alongside the vessel (e.g., on a quay or a barge) nominated by the buyer at the named port of shipment. The risk of loss of or damage to the goods passes when the goods are alongside the ship, and the buyer bears all costs from that moment onwards.

(N) FOB - Free On Board

"Free On Board" means that the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel, and the buyer bears all costs from that moment onwards.

(O) CFR - Cost and Freight

"Cost and Freight" means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. the seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.

(P) CIF - Cost, Insurance and Freight

“Cost, Insurance and Freight” means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.

The seller also contracts for insurance cover against the buyer’s risk of loss of or damage to the goods during the carriage. The buyer should note that under CIF the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree as much expressly with the seller or to make its own extra insurance arrangements.