

## GRAIN TRANSPORTATION TERMS

1. **Private Contract of Carriage:** This is a private contract of carriage and in no case will Ingram Barge Company LLC (“Carrier”) be deemed or held liable as a common carrier. Any entity that places an order for transportation of heavy grains, soybeans in bulk, byproducts of the foregoing (if agreed to in advance by Carrier), or any combination thereof with Carrier will be deemed to accept these Grain Transportation Terms, as will any entity that causes the loading of such a cargo into Carrier’s barges or that holds the bill of lading covering cargo transported in Carrier’s barges. When used herein, “Contract” means (i) for the Carrier and the entity ordering the cargo transportation, these Grain Transportation Terms, the non-conflicting terms found in Carrier’s Confirmation of Barge Freight, and Carrier’s Bill of Lading (if issued); and, (ii) for the Carrier and the owners of the cargo (including any consignee(s)) these Grain Transportation Terms and Carrier’s Bill of Lading (if issued). As used in the Contract, “Customer” means the person or entity ordering the cargo transportation. “Shipper” means the owners of the cargo (including any consignee(s)) and the Customer, individually and collectively. Except as otherwise expressly provided in Section 12, Shipper will be jointly and severally liable to Carrier for all obligations owed to Carrier pursuant to these Grain Transportation Terms and Carrier’s Bill of Lading.
2. **Service:** Carrier shall provide Shipper with one or more barge(s) to carry Shipper’s cargo from origin where the cargo is to be loaded to a destination for the cargo to be unloaded. Carrier shall also supply and operate a towboat to conduct the necessary marine transportation. Carrier shall provide the full cargo capacity of each applicable barge to Shipper.
3. **Barge Tender and Acceptance:** Carrier shall use due diligence to tender barges that are suitable for the intended cargo, however, Carrier will not be bound to transport said cargo by any particular towboat or barge. Shipper or its agent shall inspect each barge after placement at origin and shall not permit loading unless the barge is clean and otherwise suitable for the intended cargo, and the covers (if any) are tight, fit, and in good condition. Commencement of loading will constitute Shipper’s final acceptance of the barge as clean and suitable for the cargo, with the covers (if any) tight, fit, and in good condition. Shipper shall immediately notify Carrier in writing if a barge is reasonably determined to be unsuitable or if any covers are damaged or in poor condition and shall include the specific reason(s) such barge is being rejected as unsuitable.
4. **Tonnage:** Wherever used in this Contract, the term “ton” shall mean a net ton of 2,000 pounds avoirdupois.
5. **Cargo Insurance; Limitation:** Carrier shall, at its own expense, obtain and keep in full force and effect during the term of this Contract, or any extension thereof, cargo insurance up to the cargo’s actual value, or \$500 per ton—whichever is less. Carrier’s liability for cargo loss, damage, or both will not exceed \$500 per ton—regardless of cause, unless Shipper declared the full value of the cargo in writing anywhere on Carrier’s Bill of Lading and paid 10% of the full value of the cargo to Carrier—prior to loading—as additional freight. Carrier may elect to self-insure the cargo. If pursuant to these Grain Transportation Terms Shipper (including through any of its other contractors) is liable for the cargo loss, damage, or both, then Carrier’s cargo insurance will not cover such loss, damage, or both.
6. **Billing Weights:** Unless otherwise agreed in Carrier’s Confirmation of Barge Freight, the cargo shipped under this Contract will be heavy grains, soybeans in bulk, byproducts of the foregoing (if agreed to in advance by Carrier), or any combination thereof. Shipper shall provide an accurate and complete description of its cargo. Freight charges will be calculated based on loaded weights at origin. Shipper shall weigh the cargo (or shall cause the cargo to be weighed), and Carrier assumes no responsibility to weigh the cargo at origin or destination. Within 72 hours after completion of loading, Shipper shall submit to Carrier a written report identifying the cargo and the per barge weight. If through reasonable means Shipper cannot ascertain the actual weight of cargo upon completion of loading, Shipper shall timely supply an estimated weight, which Carrier shall use for billing purposes until Shipper supplements the estimated weight with an actual out-turn weight at destination. If facilities for determining weight at destination are not available, Shipper shall cause the barge to be gauged before unloading, at Shipper’s sole expense, and the weight ascertained through such gauging will be used by Carrier in determining the applicable charges. Carrier may require proof of scale or gauged weights.
7. **Special Handling:** Carrier will not provide ventilation, turning of cargo, fumigation or any other special handling of cargo. Shipper acknowledges that Carrier is not liable for loss or damage to cargo caused, in whole or in part, by condensation of barge, which Shipper acknowledges is a risk inherent to barge transportation. Notwithstanding anything to the contrary in this Contract, Shipper shall release, protect, defend, indemnify and hold Carrier Parties (as defined in Section 20) harmless from and against all Losses arising from or related to combustion of any cargo while on board the Barge, regardless of cause, ***including the sole, joint, or concurrent negligence or fault (whether active, passive, gross, or a combination thereof) of any member of Carrier Parties, any tort, the unseaworthiness of any vessel including but not limited to the barge, any strict liability, or any other theory of liability which may be available against any member of Carrier Parties, either at law or in equity. For the avoidance of doubt, the Carrier Parties will not, under any circumstances, be (or be deemed) responsible or liable for any heat condition or combustion of any cargo, or any effects thereof, or any alleged failure to discover the same. Shipper will be solely responsible and liable if the Cargo combusts while on board the barge.***
8. **Minimum Weights:** The freight due from Shipper will be based on the actual tons loaded subject to the following minimum weights (unless different amounts are stated in Carrier’s Confirmation of Barge Freight): the applicable minimum tonnages will be 1400 tons for each rake barge and 1600 tons for each box barge. However, if the capacity of the barge (or draft if so specified by the Carrier) will not allow the Shipper to load to the minimum level specified, then the charges will be based on the actual tons loaded or the tons that could have been loaded at the specified draft according to Carrier’s draft tables, whichever is greater.

9. **Loading Requirements:** Shipper shall load a barge to the draft specified by Carrier, and Shipper shall adhere to Carrier's instructions regarding the height of load, the tonnage of the cargo, the draft of the barge, and such other instructions as Carrier may deem necessary for safe transportation. Carrier may, in its sole discretion, refuse to accept a barge for transport if Shipper has not complied with Carrier's loading instructions, and Shipper shall pay any demurrage charges that accrue due to the detention of any barge occasioned by non-compliance with Carrier's loading requirements specified herein. Shipper shall cause the barge to be loaded so that the cargo is evenly distributed throughout the barge, and shall not permit "center loading" or "end loading" of Carrier's barge.
10. **Transportation of Cargo:** Barges will move at the convenience of Carrier, either as a single unit or with one or more other barge units. Carrier is not bound to transport the cargo in time for any particular market. Carrier may deviate from its normal route and may call at any port in any order Carrier chooses, including those ports outside its normal route. Likewise, Carrier may shift or interchange the tow from one to another towing vessel as it may find convenient or expedient. If conditions or circumstances dictate, Carrier may transfer cargo from the barge into which the cargo was originally loaded to one or more other barges; provided, Carrier shall provide reasonable notice to Shipper when possible. Carrier may also procure towage from vessels not owned, chartered, or operated by Carrier and may employ leased or chartered vessels in the performance of this Contract.
11. **Accessorial Charges:** Carrier is not liable for the following accessorial charges: ballasting, excessive cleaning, demurrage, dockage, drayage, elevation, loading or unloading of cargo, opening or closing of barge hatch covers, removal or replacement of barge covers, sheddage, stacking or restacking of barge covers, switching tollage, wharfage, shifting or fleeting at destination fleet, or any other terminal expense at either origin or destination. All of the foregoing charges are for Shipper's sole account.
12. **Shifting and Additional Handling:**
- a. **At Origin.** Freight rates include one shift of the barge into and one shift out of the loading facilities at origin (i.e. from fleet to dock and dock to fleet), limited to \$250 per shift. Any charges in excess of the \$250 per shift will be for sole account of Customer. Any charges related to additional shifting, fleeting or handling of the barge at origin to accommodate Shipper's (or the loading facility's) loading or other requirements (individually and collectively "Origin Charges") will be for the sole account of the owner(s) of the cargo at the time of the additional shifting, fleeting or handling of the barge. If Customer is not the owner of the cargo at the time of such additional shifting, fleeting or handling of the barge, then Customer will be jointly and severally liable to Carrier for the Origin Charges, but only if the actual cargo owner(s) fail to timely pay the Origin Charges after receipt of invoice for same and Carrier (i) performed the additional shifting, fleeting or handling of the barge or (ii) receives an invoice or other payment demand for the additional shifting, fleeting or handling of the barge.
- b. **At Destination.** Upon placement of the barge (pursuant to the "Placement" Section herein) at the destination fleet or facility, whichever occurs first, all charges related to post-placement shifting, fleeting or handling of the barge (individually and collectively "Destination Charges") will be for the sole account of the owner(s) of the cargo at the time the Destination Charges are incurred and such owner(s) shall timely direct-pay the Destination Charges to whichever entity(ies) provide such post-placement shifting, fleeting or handling of the barge. If Customer is not the owner of the cargo at the time of such additional shifting, fleeting or handling of the barge, then Customer will be jointly and severally liable to Carrier for the Destination Charges, but only if the actual cargo owner(s) fail to timely pay the Destination Charges after receipt of invoice for same and Carrier (i) performed the post-placement shifting, fleeting or handling of the barge or (ii) receives an invoice or other payment demand for the post-placement shifting, fleeting or handling of the barge. When the barge is shifted post-placement at the destination fleet or facility (whichever occurs first), Shipper assumes full responsibility for the safety of the barge and its cargo during such shift and preparation therefor.
13. **Payment of Freight:** Upon loading, the entire amount of the freight charge will become earned and due to Carrier in cash and without discount, regardless of whether the barge or cargo is wholly or partially lost or damaged at any stage of the voyage. Interest at a rate of two percent (2%) per month (or any fraction thereof) or the maximum interest rate allowed by law, will accrue on any payment obligations hereunder that are past due until such payment obligations are satisfied by Shipper in full together with said interest. If any agency or attorney is employed to assist in the collection of such payment obligation, then Shipper shall pay such agency/attorneys' reasonable fees relating to such collection. If Shipper's payment obligation(s) to Carrier or to any third-party that services Carrier's barge or Shipper's cargo in connection with or related to this Contract or any other contract are due and owing, or if any default by Shipper under this Contract or any other agreement or contract between Carrier and Shipper exists, Carrier may defer: (i) placement of any barge, (ii) delivery of the cargo, or (iii) both (i) and (ii) until such time as all amounts due Carrier or any such third party (or both Carrier and any third party) are paid in full and any defaults are cured. Under such circumstances, Carrier's performance obligations under any such Contract or agreement are suspended and no default will occur (or be deemed to occur) under any such Contract or agreement due to Carrier's non-performance. Notwithstanding the above, Shipper may be granted credit by Carrier's Credit Manager, in which case the monies owed must be paid by the Shipper within 30 days from the date of delivery or within the number of days specified by Carrier's Credit Manager, whichever is shorter. The Carrier's Credit Manager has complete discretion on: whether to extend credit to Shipper; the amount of credit to be granted to Shipper; the payment due date from the Shipper; and, the form of payment. Shipper shall comply with all reasonable requests for financial information by Carrier's Credit Manager in order to establish Shipper's credit. The Carrier's Credit Manager may in his/her sole discretion change or cancel the extension and amount of credit and the payment due date or the form of the payment at any time.
14. **Placement:** Actual placement occurs at origin when a barge is placed for loading at the fleet or facility specified by Shipper or at a nearby fleet selected by Carrier, whichever occurs first. Actual placement occurs at destination when Carrier's boat arrives in the vicinity of the destination fleet or facility such that Shipper (or its other contractor) can shift it from Carrier's boat into the

destination fleet or facility. Except as otherwise provided for herein, if actual placement is hindered by any cause over which Carrier has no control, Carrier may constructively place the affected barge(s). Constructive placement consists of placing a barge at a point of Carrier's choice near the specified origin or destination.

15. **Possession of the Barge During Loading/Unloading:** Shipper is responsible for the safety of the barge at any loading and discharge facility(ies) including the period of time that the barge is awaiting access to such facility(ies) while at a nearby fleet. Shipper assumes the duty and responsibility for the safety of each barge following delivery and prior to pick-up. For the purposes of this Contract, a barge will be deemed delivered when it has been tied off by or on behalf of Carrier at the fleet or facility pursuant to "Placement" above, and it will be deemed picked up when it has been released by Shipper and untied by or on behalf of Carrier from such fleet or facility following loading or unloading. Shipper shall cause the barge to have a safe berth of not less than nine feet of draft, and shall not allow the barge at any time, to touch bottom while in the control of Shipper or its other contractors. Shipper shall cause the barge to be safely and adequately moored, free of wharfage, dockage, port and harbor charges at the loading and unloading points. Additionally, while the barge is in the care and custody of Shipper, or its agents, all U.S. Coast Guard and U.S. Army Corps of Engineers regulations will be complied with, including (without limitation) that Shipper shall cause the barges to have warning lights properly displayed as required by applicable governmental regulations and permits.
16. **Demurrage and Free Time:** Unless a different amount is stated in Carrier's Confirmation of Barge Freight, the free time to be allowed is as follows: three days of free time at Origin plus three days of free time at Destination; unused time at either Origin or Destination does not aggregate or transfer. No free time will be allowed on empty barges placed upon Shipper's request for placement if, subsequent to placement, such order is cancelled. Unless different terms are stated in the Carrier's Confirmation of Barge Freight, after free time has expired, the following demurrage charges will apply: for the first ten days of demurrage, Shipper shall owe Carrier \$400 per barge per day, and for any additional days after the first ten days, Shipper shall owe Carrier \$600 per barge per day. Unless different terms regarding inclusion of weekends and holidays are stated in the Carrier's Confirmation of Barge Freight, once free time has expired demurrage will—subject to the below—accrue for each day, including Saturdays, Sundays, and National Holidays, until the barge is released to the Carrier. Time will be computed for the total period the barge is in Shipper's possession for loading or for unloading and will begin as of the first 7:00 a.m. after the barge is actually or constructively placed for loading or for unloading and will run until Carrier has been notified in writing that the barge has completed loading or unloading and is available for pick up. The written release must be received by Carrier by 11:00 a.m. (Nashville time) or the barge will not be considered as having been released by 7:00 a.m. In computing time, days will consist of 24 hours running from 7:00 a.m. until the next 7:00 a.m. A fraction of a day will be considered as one day. When Carrier, for its convenience, places a barge for loading prior to the date specified by Shipper, time will run from the first 7:00 a.m. of the date specified by Shipper or from 7:00 a.m. of the date when actual loading began, whichever occurs sooner. If holidays are excluded from Free Time, the following are the holidays to be recognized: New Year's Day, Memorial Day, Independence Day, Labor Day, Easter Sunday, Thanksgiving Day, and Christmas Day. If the holiday (except for Easter) falls on a Sunday, the following Monday will be considered as the holiday. If a barge is on demurrage and the Shipper requests a reconsignment, the barge will remain on demurrage, even during transit, until the barge is released back to the Carrier.
17. **Cleaning:** Carrier shall pay cleaning costs to remove cargo left in the barge by Shipper; *provided, however*, that if the cleaning costs are considered excessive by Carrier, Shipper shall, upon written notice from Carrier, reimburse Carrier for such excessive cleaning expenses. All cargo remaining in the barge following unloading will be deemed abandoned.
18. **Unloading and Mooring:** Shipper shall unload and remove the cargo from the barge, including any cargo or debris spilled on the working surfaces, promptly following arrival of the barge at its destination. If the cargo is not so unloaded and removed, then the Carrier may retrieve its barge and remove, sell or otherwise dispose of all cargo.
19. **Mitigation:** If all or any part of the cargo is discovered to be damaged while subject to this Contract, Shipper shall cooperate with Carrier to assist in mitigation of the loss. If Shipper does not provide timely assistance to Carrier within 48 hours of Shipper's receipt of notice of the cargo loss or damage from Carrier, Carrier may in its sole discretion, in order to minimize the damage, proceed to sell the Cargo at public or private sale to the best advantage. In such event, Carrier shall, where practicable, provide Shipper with notice of the proposed sale. The proceeds of any sale made under this Section shall be applied by Carrier to the payment of freight, demurrage, storage, and any other charges and the expense of notice, advertisement, sale and other necessary expense of caring for and maintaining the Cargo, and the balance, if any, will be paid to Shipper.
20. **Indemnity:** (a) For purposes of this "Indemnity" Section and the "Special Handling," "Insurance," "Limitation of Liability," "Both to Blame Collision," and "Himalaya Clause" Sections in this Contract, Carrier and its affiliates and its and their employees, vendors, vessels, contractors, subcontractors at any tier, agents, or invitees will be referred to (individually and collectively) as the "Carrier Parties"; provided, however that the term "Carrier Parties" will not include any Shipper Parties (defined below). Shipper and its affiliates and its and their employees, vendors, vessels, contractors, subcontractors at any tier, agents, or invitees will be referred to (individually and collectively) as the "Shipper Parties"; provided, however that the term "Shipper Parties" will not include any Carrier Parties except any of Carrier's affiliates with which Shipper or any Shipper Party contracts directly in connection with the services or cargo covered by this Agreement.

(b) Carrier shall defend, indemnify and hold Shipper Parties harmless from all losses, damages, injuries, liabilities, judgments, claims and expenses, including without limitation penalties for violation of laws and pollution cleanup costs and reasonable attorney's fees (collectively "Losses") arising from or related to (i) Carrier's breach of this Contract, (ii) the negligence, gross negligence, recklessness or intentional misconduct of Carrier Parties (except to the extent of: the negligence, gross negligence, recklessness or intentional misconduct

of Shipper Parties; and, except for Losses covered by the last sentence of Section 20(c)), or (iii) any combination of 20(b)(i) and (ii). Additionally, Carrier shall defend, indemnify and hold the Shipper Parties harmless from all Losses arising from or related to any injury, illness, or death (or any combination thereof) of any employee of Carrier Parties regardless of cause, **including the sole, joint, or concurrent negligence or fault (whether active, passive, gross, or a combination thereof), any tort, unseaworthiness, any strict liability or any other theory of liability which may be available against Shipper Parties, either at law or in equity.**

(c) Shipper shall defend, indemnify and hold Carrier Parties harmless from all Losses arising from or related to (i) Shipper's breach of this Contract, (ii) the negligence, gross negligence, recklessness or intentional misconduct of Shipper Parties (except to the extent of: the negligence, gross negligence, recklessness or intentional misconduct of Carrier Parties; and, except for Losses covered by the last sentence of Section 20(b)), or (iii) any combination of 20(c)(i) and (ii). Additionally, Shipper shall defend, indemnify and hold the Carrier Parties harmless from all Losses arising from or related to any injury, illness, or death (or any combination thereof) of any employee of Shipper Parties regardless of cause, **including the sole, joint, or concurrent negligence or fault (whether active, passive, gross, or a combination thereof), any tort, unseaworthiness, any strict liability or any other theory of liability which may be available against Carrier Parties, either at law or in equity.**

21. **Insurance:** During the term of this Contract, Shipper shall procure and maintain, or shall cause its vendors, contractors, subcontractors or agents to procure and maintain, during the term of this Contract, Longshore and Harbor Workers' Compensation Act Insurance or Workers' Compensation Insurance, whichever is applicable, covering Shipper's responsibilities with respect to all workers at the docks and fleets at all origins, destinations and other locations operated by Shipper or its vendors, contractors, subcontractors or agents, and Comprehensive Marine Liability Insurance (in any combination of primary and excess coverage), including but not limited to Protection and Indemnity Liability, Jones Act (Maritime Employers Liability), Pollution Liability, Full Collision Liability, Marine Operators Liability, Marine Contractual Liability, Wharfingers Liability, Towers' Liability, Hull and cargo Legal Liability and Cost of Removal of Wreck and cargo (including voluntary or statutory), where applicable, covering the docks and fleets at all origins, destinations and other locations operated by Shipper or its vendors, contractors, subcontractors or agents, in an amount not less than \$10,000,000 per occurrence. All such policies shall contain waivers of the insurers' subrogation rights against the Carrier Parties; and the Comprehensive Marine Liability policy shall name the Carrier Parties as additional assureds to the extent of the liability assumed by Shipper under this Contract. The above policies shall be considered primary to any other insurance maintained by Carrier, and such policies shall provide that naming other parties as additional assureds and granting them waivers of subrogation will in no way impair the rights otherwise inuring to such parties. Within 30 days after the commencement of this Contract, Shipper shall furnish to Carrier a certificate, in customary form, evidencing the required insurance (including that of all vendors, contractors, subcontractors or agents performing services related to this Contract) and providing that Carrier shall be given at least (30) days' prior written notice of cancellation or material change in the provisions of such insurance.
22. **Limitation of Liability:** Nothing contained in this Contract will be deemed to waive or deprive the Carrier Parties of any right under U.S. law to limit its/their liability, and this Contract cannot be deemed a personal contract or otherwise operate to deprive Carrier or Shipper (or the owner or charterer of any substituted vessel) of any benefit allowed by any statute, regulation, or other law allowing shipowners to limit their liability,
23. **Both to Blame Collision:** If any of the barges comes into collision or contact with another vessel or object as a result of the negligence of the other vessel and any act, neglect or default of Carrier or of the master, mariners, pilot or servants of Carrier in the navigation, management or maintenance of the barges, Shipper shall indemnify the Carrier Parties against all loss or liability to the other or non-carrying vessel or her owners or any third parties—insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of Shipper or cargo or their underwriters, paid or payable by the other non-carrying vessel or her owners or any third parties to Shipper or the owners or underwriters of the cargo and setoff, recouped, or recovered by the other or non-carrying vessel or her owners or any third parties as part of their claim against Carrier, its officers, employees, or any of Carrier's vessels. The foregoing provisions will also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.
24. **Himalaya Clause:** All exceptions, exemptions, defenses, immunities, limitations of liability, privileges, and conditions granted or provided by this Contract or by any applicable statute for the benefit of Carrier will be extended to and for the benefit of the barges, Carrier's other vessels, and any substituted vessel as well as their respective owners, demise charterers, operators, master, officers and crew, and will further be extended to and for the benefit of all Carrier Parties.
25. **Independent Contractor:** Nothing contained in this Contract will be construed as a contract by Shipper for the chartering, hiring or leasing of any barge, towboat or other equipment of Carrier to be provided hereunder; nor will any of the agents, servants, subcontractors or employees of Carrier be regarded as employees of Shipper, it being understood that Carrier is in all respects an independent contractor and that Shipper shall exercise no control over the operation of any barge, towboat or other equipment of Carrier or over Carrier's agent, servants, subcontractors or employees.
26. **General Average:** General average will be payable according to York-Antwerp Rules 1950. The general average will be prepared by average adjusters selected by the Carrier. In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which the Carrier is not responsible by statute, contract, or otherwise, the Shipper or cargo shall contribute with the Carrier for losses or expenses of a general average nature and shall pay applicable salvage and special charges. If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if such salving vessel or vessels belonged to an independent third party. If required by Carrier, Shipper shall make a deposit as the Carrier deems sufficient to cover the estimated general average contribution of the cargo, or any the costs of any salvage, or special charges thereon, before delivery of the cargo by Carrier.

27. **Force Majeure:** Performance (excepting indemnity, payment, notification, and insurance obligations) under this Contract by Shipper and Carrier shall be excused to the extent such performance is prevented by Force Majeure, provided the party declaring Force Majeure gives written notice of such condition to the other party within a reasonable period of time after commencement of the Force Majeure condition. The term “Force Majeure” shall include acts of God or the elements, acts of a public enemy, insurrections, riots, strikes, labor disputes, fires, explosions, floods, accidents of navigation, ice, high or low water, embargoes, acts or orders of civil or military authorities, lock delays or closings, fuel shortages, disease, pandemics, epidemics, or other causes beyond the reasonable control of the party declaring Force Majeure. Such excuse from performance will continue until the Force Majeure ceases to exist. A party declaring Force Majeure shall make commercially reasonable efforts to eliminate or resolve the condition, recognizing, however, that the settlement of any strike or other labor dispute shall be solely within the discretion of that party. A declaration of Force Majeure does not excuse payment of demurrage for a barge on demurrage status, nor payment for costs/expenses that are due and owing, nor does it relieve Shipper from any responsibility for a barge in its custody. When a Force Majeure is declared on a barge with remaining Free Time, Free Time will continue to run; upon expiration of Free Time the barge will be placed in a demurrage status even if the Force Majeure event continues to exist. Any shortfall in cargo deliveries resulting from Force Majeure will not be made up except by mutual consent of the parties.
28. **COVID-19 Pandemic:** Both Shipper and Carrier acknowledge the epidemic/pandemic of COVID-19 is no longer a federal public health emergency or national health crisis. Nevertheless, both parties acknowledge the continued effects of COVID-19 on the river industry present a challenging and evolving work environment. Carrier and Shipper each shall take reasonable actions to prevent, mitigate, and overcome the effects of COVID-19, which may include but are not limited to contamination, scarcity of labor, supply chain failures, quarantine, or orders or recommendations of local, state, and federal government (individually and collectively “COVID-19 Impacts”), on performance of this Contract. Excluding the payment, insurance and defense/indemnification obligations stated herein, neither Carrier nor Shipper will be responsible or liable to the other party for delay or nonperformance of this Contract if such delay or nonperformance is caused by COVID-19 Impacts not preventable through such party’s exercise of reasonable diligence, provided the party seeking relief from its performance obligations gives written notice of such condition to the other party within a reasonable period of time after commencement of the specific COVID-19 Impacts causing the delay or nonperformance. Such excuse from performance will continue until the COVID-19 Impacts cease to exist or are overcome; a party declaring COVID-19 Impacts shall make commercially reasonable efforts to eliminate or resolve the condition, recognizing, however, that the resolution of any labor-related issues will be solely within the discretion of that party.
29. **Choice of Law and Forum:** This Contract is governed by the General Maritime Law of the United States and to the extent not inconsistent therewith, the laws of the State of Tennessee, both as to interpretation and performance. Any dispute arising from this Contract, the applicable bill of lading, or the performance of Carrier or Shipper’s obligations under either this Contract or the applicable bill of lading must be brought (i) if by Carrier: only in the U.S. District Court for the Middle District of Tennessee, or in the U.S. District Courts for the Eastern or Middle Districts of Louisiana; and, (ii) if by Shipper: only in the U.S. District Courts for the Eastern or Middle Districts of Louisiana. Each party hereby irrevocably waives any objection to personal jurisdiction or venue therein. Each party also waives its right to a trial by jury.
30. **Notice of Claim and Time for Suit:** Unless written notice of loss, liability, or damage arising from Carrier’s performance of this Contract describing the exact nature of such loss, liability, or damage is given to the Carrier at the place of delivery before or at the time of delivery of the cargo or, if the loss, liability, or damage is not apparent at delivery, within the three consecutive days after delivery, Shipper will be deemed not to have suffered a loss, liability, or damage arising from Carrier’s performance of this Contract, and will be deemed to have waived and released all related claims against Carrier. Shipper shall provide Carrier with an opportunity to jointly survey the cargo after discovery of any loss or damage and prior to disposition of the cargo. In any event, Carrier will be released and discharged from all liability for or relating to its performance of this Contract, regardless of cause or type of action, unless suit is brought within one year after delivery of the cargo or the date when the cargo should have been delivered.
31. **Failure to Place:** If Carrier is not able to place a barge within the agreed-upon scheduling window, Carrier shall provide Shipper with prompt notice, and Shipper shall provide a written response back to Carrier within 24 hours, either extending the placement time or canceling the unplaced barge. If Shipper elects to cancel Carrier’s unplaced barge and provides timely notice of the same, and subsequently incurs additional costs to secure a replacement barge at a greater cost that is reasonable under prevailing market conditions, then upon receipt of a timely claim (including reasonable documentation of the additional costs) Carrier shall pay the Shipper the difference between the cost of the canceled barge freight and the cost of the above-described replacement barge freight; such payment of the difference in barge freight amounts will be deemed Shipper’s exclusive remedy for such failures to place.
32. **Failure to Load or Accept:** If the Shipper is not able to accept a barge within the placement schedule described, Shipper shall provide Carrier with prompt notice, and Carrier shall provide a written response back to Shipper within 24 hours, either extending the placement time or canceling the unplaced barge. If Carrier cancels the unplaced barge and resells the barge capacity that Shipper was unable to accept for placement at a lesser price than the canceled barge was sold to the Buyer under the prevailing market conditions, then upon receipt of a timely claim (including reasonable documentation of the additional costs) Shipper shall pay the Carrier the difference between the price of the re-sold barge freight and what Carrier would have received if Shipper loaded the barge; such payment of the difference in barge freight amounts will be deemed Carrier’s exclusive remedy for such failures to load or accept.

33. **Toll or User Charges:** Should any waterway toll, user tax, fuel tax, user charge or any equivalent of such charge, be levied or charged to the transportation to be performed hereunder or the equipment or fuel used in performing said transportation, Shipper shall reimburse Carrier for the portion of such charges attributable to the transportation services Shipper receives from Carrier under this Contract.
34. **Notices:** Other than normal day-to-day communications, Shipper shall send all notices under this Contract via e-mail to **GrainSales@IngramBarge.com**, with a copy to **LegalDept@IngramBarge.com**. All notices must identify and describe the relevant cargo, voyage, and subject at issue in reasonable detail.
35. **Conflict:** If Shipper's confirmation or any other document or communication it sends to Carrier related to this Contract includes: (i) additional proposed terms, (ii) language stating that Shipper's terms supersede and govern for any reason, or (iii) any combination of (i) and (ii), any such additional terms described in (i) – (iii) will be deemed material alterations of this Contract. Carrier does not assent to any such alterations to the Contract absent an express statement to that effect in writing to Shipper, and this "Conflict" Section will be deemed sufficient notice of Carrier's objection to such additional terms under applicable law. The terms found in the Contract are the entirety of the terms offered by Carrier to Shipper; Shipper's acceptance of Carrier's terms is not (and will not be deemed) conditioned on Carrier's acceptance of any material alterations to the Contract proposed by Shipper —any such alterations will be deemed errant, void, and unenforceable against Carrier without further notice. If there is any conflict between these Grain Transportation Terms and the terms in Carrier's Bill of Lading (including any Carrier's Bill of Lading issued by a third-party pursuant to an agency agreement), then these Grain Transportation Terms will be deemed to supersede and govern. Likewise, to the extent that any conflicting terms are included in the Carrier's Confirmation of Barge Freight, these Grain Transportation Terms will be deemed to supersede and govern.
36. **Issuance of Electronic Bills of Lading:** If Carrier issues an electronic negotiable bill of lading to Customer, in consideration for Carrier's issuing the electronic negotiable bill of lading, Customer shall release, hold harmless, defend, and indemnify Carrier from any and all claims, damages, liabilities, and expenses (including attorneys' fees and all costs of defense) arising out of or related to mis-delivery of the cargo covered by the applicable electronic negotiable bill of lading regardless of cause, including but not limited to negligence, breach of contract, or other fault of Carrier. If, however, upon final judgment in a litigated claim in which Carrier is a party and which arises out of an electronic negotiable bill of lading issued hereunder, Carrier is found to be more than 5% at fault by a court or arbitration panel of competent jurisdiction, Carrier shall pay the Customer for Carrier's established portion of the judgment and shall reimburse Customer for a pro rata portion of the attorneys' fees and other defense costs expended.
37. **Integration; Acceptance:** This Contract, along with any associated Bill of Lading, sets forth the entire understanding between the parties hereto as to the subject matter and no amendment hereto will be valid unless made in writing and duly signed by the parties hereto. Regardless of whether Shipper signs Carrier's Confirmation of Barge Freight or provides any other written or verbal confirmation or acceptance of this Contract, Shipper's causing Carrier's barge to be loaded with cargo will be deemed Shipper's unqualified agreement to all Contract terms.
38. **Limited Intended Beneficiaries:** Notwithstanding anything to the contrary in this Contract, these Grain Transportation Terms are not intended to, and do not, confer any right(s) to the owner(s) of the cargo against Customer.
39. **Modification:** If any provision of this Contract, or the application of any such provision to any person or circumstance is held invalid, illegal, or unenforceable for any reason whatsoever, the remaining provisions of this Contract and the application of such provision to other persons or circumstances will not be affected thereby and to the fullest extent possible the court finding such provision invalid, illegal or unenforceable must modify and construe the provision so as to render it valid and enforceable as against all persons or entities and to give the maximum possible protection to the party or parties affected within the bounds of validity, legality and enforceability.
40. **Waiver:** The failure of either party to insist upon strict performance of any of the provisions of this Contract in one or more instances or the failure of either party to exercise any of its rights hereunder in one or more instances cannot be construed as a waiver of any such provisions or the relinquishment of any such rights, rather the same will be deemed to continue and remain in full force and effect.