Free on Board Export Contract (No. 2)

20. Strikes or Other Causes of Delay in Delivery

This clause shall apply if delivery by seller of the commodity, or any part thereof, is prevented or delayed at the port(s) of delivery and/or elevator(s) of delivery or elsewhere, or if the forwarding of the commodity to such port(s) and/or elevator(s) is prevented, by reason of the causes enumerated in paragraph (b) below; PROVIDED that seller shall have sent notice to buyer not later than 2 business days after the date of commencement of the causes, or not later than 2 business days after the 1st day of the delivery period, whichever occurs later (except that subsequent sellers shall not be bound by these deadlines, provided they pass along the notice to their buyer, without delay); and PROVIDED further that seller shall, at buyer's request, furnish a certificate of the North American Export Grain Association, Inc., certifying the existence and the duration of the causes. Such certificate shall be final.

The causes of delay and/or prevention ("causes") referred to in paragraph (a) above shall be:

1. Riots, strikes, lockouts, interruptions in or stoppages of the normal course of labor,
2. Embargoes or exceptional impediments to transportation,
3. Action by Federal, State or local government or authority.

The obligation of seller to make delivery shall be suspended while the causes are in effect, until the termination of the causes and/or the resumption of work after the termination of the causes, whichever is later. Seller shall not be responsible for further delays after resumption of work (whether such termination or resumption of work occurs prior to, during or after the delivery period) except that, if a vessel nominated under this contract is not loaded in the proper rotation but is bypassed by vessels (other than liners) which had filed after the vessel nominated under this contract, seller shall pay to buyer damages equal to the actual working time lost (weather working days, Saturdays, Sundays and holidays excluded) to buyer's vessel during the loading of the bypassing vessels, at the demurrage rate in the Charter Party for the vessel nominated under this contract.

If the Charter Party of the vessel under this contract does not indicate a demurrage rate, the damages are to be calculated at a reasonable demurrage rate predicated on the them current market, to be agreed upon amicably or to be determined by arbitration.

If the causes commence before or during the delivery period and terminate during or after delivery period, then the delivery period shall be deemed to be extended by a number of days equivalent to the period starting with the commencement of the causes or the commencement of the delivery period, whichever is later, and ending with the termination of the causes, and/or the resumption of work after the termination of the causes, whichever is later.

If the causes commence during the additional time afforded to buyer under Clause 18 with respect to vessel nominations and filings, then the right of seller to exercise option (b) or (c) under Clause 18 shall be deemed to be delayed by a number of days equivalent to the period starting with the commencement of the causes and ending with the termination of the causes and/or the resumption of work after the termination of the causes, whichever is
Carrying charges, if due under Clauses 18/19, shall begin to accrue on the day following the last day of the delivery period, as extended by paragraph (d)(1) above; however, if this clause becomes operative while carrying charges are already accruing, then such charges shall continue to accrue as they would in the absence of the causes.

[...]

22. Default

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

Referring Principles:
- VI.3 - Force majeure
- VII.1 - Damages in case of non-performance