

### Key

**Red** – serious potential exposure to the party in the middle of a string  
**Orange** – potential exposure, but this can be avoided  
**Green** – note the differences, but exposure is not likely to be serious

## NAEGA II vs GAFTA 64

Term	NAEGA II	GAFTA 64	Comments
Required pre-advice	Buyer to give preadvice in time for seller to receive a minimum number of days' notice (to be agreed between the parties). To include tonnage and quantities required. (Clause 8)	Buyer to give preadvice in time for seller to receive a minimum number of days' notice (to be agreed between the parties). To include name and probable readiness date of vessel and estimated tonnage required. (Clause 6)	No likely issue.
Substitution of vessels	Generally only one substitution allowed. (Clause 8)	Multiple substitutions of vessels possible, provided this does not affect the original delivery period or any operative extension. (Clause 6)	No likely issue.
Time for delivery of vessel	No extension possible. Any failure to present a vessel before the end of the delivery period is a breach of contract.  However, seller may carry goods for the account and risk of buyer (an effective extension – but at seller's option). During this time, buyer has 15 days to nominate a vessel or, if a vessel has been nominated, 35 days from the last date of the delivery period to present the vessel. (Clause 18)	Buyer can extend time for delivery of the vessel by up to 21 days upon notifying seller and claiming an extension. During this extended period, seller will "carry" the cargo for buyer's account. (Clause 8)	A party in the middle of a string can be left with an extension under its on-sale but not under its purchase contract.
Delivery	Defined delivery window. No provision entitling the seller to continue to load outside of the contractual period. (Clause 8)	Provided the vessel is presented at the loading port in readiness to load within the delivery period, seller can complete loading after the delivery period and carrying charges shall not apply. (Clause 6)	No likely issue where buying on NAEGA and selling on GAFTA.
Strikes/other similar causes resulting in delay to delivery	Notice to be given by seller no later than 2 business days after the date of commencement of the cause of delay or no later than 2 business days after the first day of the delivery period, whichever is the later. (Clause 20)	Seller to serve a notice no later than 5 business days after commencement of the cause of delay or no later than 5 business days after the first day of the delivery period whichever is later. (Clause 18)	No likely issue.  (Although note the importance of always passing on notices as soon as received in order to maintain a back-to-back position.)

Term	NAEGA II	GAFTA 64	Comments
Right to reject	No right to reject. (Clause 7)	Generally possible to reject a cargo if not of satisfactory quality.  (Clause 5)	A party in the middle of a string can be left with a poor quality cargo which it cannot reject under its purchase contract but that is rejected under its sale contract.
Damages for default	Based on market value of the goods on the 10th day following the notice of default. (Clause 22)	Based on estimated value of the goods on the date of default. (Clause 21)	Potential that a different amount of damages is claimed from the party in the middle than can be passed “up string” by the middle party.
Governing law	New York law (Clause 28)	English law (Clause 24)	Potential for conflict of laws, different outcomes and increased costs of obtaining legal advice in both jurisdictions.
Arbitration	AAA arbitration (Clause 30)	GAFTA arbitration (Clause 25)	Potential for disputes in different forums and very different outcomes for the party in the middle of the string; increased costs as claims cannot be consolidated or passed up/down the string easily.

### NAEGA II vs FOSFA 4

Term	NAEGA II	FOSFA 4	Comments
Required pre-advice	Buyer to give preadvice in time for seller to receive a minimum number of days’ notice (to be agreed between the parties). To include tonnage and quantities required. (Clause 8)	Buyer to give seller not less than 15 clear days’ pre-advice. To include vessel’s name, date of expected readiness to load, demurrage rate, flag, approximate quantity and name of ship’s agent at load port. (Clause 5)	Potential issue – ensure that preadvice period agreed with seller corresponds to the 15 day requirement in FOSFA. Also ensure that detail is added to buyer’s pre-advice to meet FOSFA requirements.
Substitution of vessels	Generally only one substitution allowed. (Clause 8)	Multiple substitutions of vessels possible, provided that loading will take place no earlier than the original ship and not more than 10 consecutive days later unless agreed. (Clause 6)	No likely issue where buying on NAEGA and selling on FOSFA.
Time for delivery of vessel	No extension possible. Any failure to present a vessel before the end of the delivery period is a breach of contract.  However, seller may carry goods for the account and risk of buyer (an effective extension – but at seller’s option). During this time, buyer has 15 days to nominate a vessel or, if a vessel has been nominated, 35 days from the last date of the delivery period to present the vessel. (Clause 18)	Buyer is entitled to an extension for no more than 15 days upon notifying seller. During this extended period, seller will “carry” the cargo for buyer’s account. (Clause 11)	A party in the middle of a string can be left with an extension under its on-sale but not under its purchase contract.

Term	NAEGA II	FOSFA 4	Comments
Delivery	Defined delivery window. No provision entitling seller to continue to load outside of the contractual period. (Clause 8)	Provided the ship is presented at the loading port in readiness to load not later than 14.00 hours on the business day preceding the last working day of the contract period, seller shall if necessary load after the contractual period and such delivery shall be deemed to be within the contractual period. (Clause 7)	No likely issue where buying on NAEGA and selling on FOSFA.
Strikes/other similar causes resulting in delay to delivery	Notice to be given by the seller no later than 2 business days after the date of commencement of the cause of delay or no later than 2 business days after the first day of the delivery period, whichever is the later. (Clause 20)	Notice to be given “by any means of rapid communication”. (Clause 25)	No likely issue. (Although always note the importance of passing on notices as soon as received in order to maintain a back-to-back position.)
Right to reject	No right to reject. (Clause 7)	Generally possible to reject a cargo if not of satisfactory quality. (Clause 3)	A party in the middle of a string can be left with a poor quality cargo which it cannot reject under its purchase contract but that is rejected under its sale contract.
Damages for default	Based on market value of the goods on the 10th day following the notice of default. (Clause 22)	Based on estimated market price on the day of default. (Clause 29)	Potential that a different amount of damages is claimed from the party in the middle than can be claimed “up string” by the middle party.
Governing law	New York law (Clause 28)	English law (Clause 30)	Potential for conflict of laws, different outcomes and increased costs of obtaining legal advice in both jurisdictions.
Arbitration	AAA arbitration (Clause 30)	FOSFA arbitration (Clause 32)	Potential for disputes in different forums and very different outcomes for the party in the middle of the string; increased costs as claims cannot be consolidated or passed up/down the string easily.