

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 27

TERM	NAEGA II	GAFTA 27	BEST PRACTICE APPROACH
<p>EXTENSION OF DELIVERY/ SHIPMENT PERIODS</p>	<p>It is not possible to extend the contractually agreed delivery period. Any failure to present a vessel before the end of the delivery period is a breach of contract.</p> <p>However, where there is a delay in delivery of the vessel the seller may carry the goods for the account and risk of the buyer (an effective extension – but at the seller’s option). During this time, the 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 at the loadport.</p> <p><i>(Clause 18)</i></p> <p>The parties will agree a defined delivery window. There is no provision entitling the seller to continue to load outside of the contractual period.</p> <p><i>(Clause 8)</i></p>	<p>If the contract shipment period is 31 days or less this can be extended if the seller serves a notice claiming an extension. Where this occurs the seller must make an allowance to the buyer to be deducted from the contract price, based on the number of days by which the original shipment period is exceeded.</p> <p>If, after having served a notice claiming an extension, the seller fails to make shipment within eight days of the original shipment period, this is a default.</p> <p><i>(Clause 11)</i></p>	<p>The party in the middle should agree back-to-back terms for the extension of the delivery/shipment periods to avoid any issues in the event of delays.</p> <p>Alternatively, the party in the middle should ensure that the vessel is presented before the end of the agreed delivery period in the purchase contract (subject to any extension agreed by its seller under the purchase contract). That party should also be aware of the price reduction that will apply under its sale contract based on the number of days by which the original shipment period is exceeded.</p>
<p>STRIKES/OTHER SIMILAR CAUSES RESULTING IN DELAY TO DELIVERY/ SHIPMENT</p>	<p>The seller is to give notice to the buyer no later than two business days after the date of commencement of the cause of delay, or no later than two business days after the first day of the delivery period, whichever is the later.</p> <p><i>(Clause 20)</i></p>	<p>The seller is to give notice to the buyer no later than two business days after the last day of the guaranteed time for shipment.</p> <p><i>(Clause 21)</i></p>	<p>The difference in respect of the applicable notice periods is helpful: the requirement on the seller under the purchase contract is stricter than on the seller under the sale contract.</p>

TERM	NAEGA II	GAFTA 27	BEST PRACTICE APPROACH
QUALITY/ CONDITION	<p>The quality and condition of the goods is final at loading. The parties are allowed to appeal an inspection result at any time prior to or during loading. The seller is under no warranty that the goods are free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination.</p> <p><i>(Clause 7)</i></p>	<p>The quality of the goods is final at loading. The goods are to be in a good condition when shipped. The buyer has no right to reject in respect of a difference in quality except where permitted under an arbitration award.</p> <p><i>(Clause 5)</i></p>	<p>The party in the middle should ensure that it has back-to-back provisions in the two contracts regarding the quality and condition of the goods (e.g. quality should be final as per the certificate issued by loadport superintendents with no right of appeal against an inspection result).</p>
PAYMENT/ DOCUMENTS	<p>Payment is to be made by letter of credit or cash against documents, as agreed. There is no provision entitling delivery or payment against a letter of indemnity if the seller fails to present shipping documents on arrival at destination. Shipping documents consist of the bills of lading or mate's receipts (at the seller's option) plus weight and inspection certificates.</p> <p><i>(Clauses 11 & 12)</i></p>	<p>Payment is to be made by cash against documents. In case of non-availability of documents when called for by the buyer or on arrival at destination, buyer shall take delivery and payment shall be made upon the seller providing other documents or an indemnity. Similarly, payment is to be made against a guarantee in case of presentation of an incomplete set of documents. Shipping documents consist of the invoice, bills of lading and/or ship's delivery order plus the insurance policy and/or certificate.</p> <p><i>(Clause 13)</i></p>	<p>The party in the middle should ensure that payment obligations (and the documents required), as well as method of delivery at destination in the absence of a full set of documents, are on back-to-back terms.</p>
WEIGHT	<p>Weight is final at loading in accordance with customary weight certificates.</p> <p><i>(Clause 5)</i></p>	<p>Unless otherwise agreed, weight is final at discharge and any deficiency in the bill of lading weight is to be paid for by the seller. If weight is agreed to be final at loading, it is final as per a GAFTA registered superintendents' certificate, at the seller's choice and expense.</p> <p><i>(Clause 16)</i></p>	<p>The party in the middle should agree an amendment to the sale contract so that weight is final at loading.</p>
INSURANCE	<p>The insurance policy is to be confirmed by insurance companies/underwriters to the seller at least five days prior to the date of the expected readiness of the vessel. If this confirmation is not received by the seller by such time, the seller may place such insurance for the buyer's account and at the buyer's risk and expense.</p> <p><i>(Clause 14)</i></p>	<p>The seller is to provide all policies and/or certificates and/or letters of insurance to the buyer.</p> <p><i>(Clause 19)</i></p>	<p>The party in the middle should ensure that a confirmation of the insurance cover is sent to the seller by the deadline in the purchase contract. Otherwise, there is a potential for that party to be required to pay for insurance placed by its seller under its purchase contract.</p>
DAMAGES FOR DEFAULT	<p>The amount of damages payable for a party's default is based on the market value of the goods on the tenth day following the notice of default.</p> <p><i>(Clause 22)</i></p>	<p>The amount of damages payable for a party's default is based on the estimated value of the goods on the date of default.</p> <p><i>(Clause 21)</i></p>	<p>The terms of either the sale or the purchase contract need to be varied so that the same date of default applies to both contracts. Otherwise there exists a potential for different damages to be claimed by the respective claimant that cannot be passed through the string.</p>

TERM	NAEGA II	GAFTA 27	BEST PRACTICE APPROACH
GOVERNING LAW	The contract is governed by New York law. <i>(Clause 28)</i>	The contract is governed by English law. <i>(Clause 27)</i>	The terms of either the sale or the purchase contract need to be varied so that the same governing law applies to both contracts. Otherwise there is a potential for conflict of laws, different outcomes and increased costs of obtaining legal advice in both jurisdictions.
ARBITRATION	Disputes are to be referred to AAA arbitration. <i>(Clause 30)</i>	Disputes are to be referred to GAFTA arbitration. <i>(Clause 25)</i>	The terms of either the sale or the purchase contract need to be varied so that the same arbitration forum applies to both contracts. Otherwise, there is the potential for different outcomes as well as increased costs as the claims cannot be consolidated or passed up/down the string easily.

NAEGA II vs FOSFA 24

Term	NAEGA II	FOSFA 24	BEST PRACTICE APPROACH
EXTENSION OF DELIVERY/ SHIPMENT PERIODS	It is not possible to extend the contractually agreed delivery period. Any failure to present a vessel before the end of the delivery period is a breach of contract. However, where there is a delay in delivery of the vessel the seller may carry the goods for the account and risk of the buyer (an effective extension – but at the seller’s option). During this time, the 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. <i>(Clause 18)</i> The parties will agree a defined delivery window. There is no provision entitling the seller to continue to load outside of the contractual period. <i>(Clause 8)</i>	If the contract shipment period is 31 days or less this can be extended if the seller serves a notice claiming an extension. Where the seller serves such a notice it must make an allowance to the buyer to be deducted from the contract price, based on the number of days by which the original shipment period is exceeded. If, after having served a notice claiming an extension, the seller fails to make shipment within eight days of the original shipment period, this is a default. <i>(Clause 7)</i>	The party in the middle should agree back-to-back terms regarding extension of the delivery/shipment periods to avoid any issues in the event of delays. Alternatively, the party in the middle should ensure that the vessel is presented before the end of the agreed delivery period in the purchase contract (subject to any extension agreed by its seller under the purchase contract). That party should also be aware of the price reduction that will apply under its sale contract based on the number of days by which the original shipment period is exceeded.
STRIKES/OTHER SIMILAR CAUSES RESULTING IN DELAY TO DELIVERY/ SHIPMENT	The seller is to give notice to the buyer no later than two business days after the date of commencement of the cause of delay, or no later than two business days after the first day of the delivery period, whichever is the later. <i>(Clause 20)</i>	The seller is to give notice to the buyer no later than on the first business day following the last day of the contract shipment period. <i>(Clause 21)</i>	The difference in respect of the applicable notice periods is helpful: the requirement on the seller under the purchase contract is stricter than on the seller under the sale contract.

Term	NAEGA II	FOSFA 24	BEST PRACTICE APPROACH
QUALITY/ CONDITION	<p>The quality and condition of the goods is final at loading. The parties are allowed to appeal an inspection result at any time prior to or during loading. The seller is under no warranty that the goods are free from any defect rendering them unmerchantable which would not be apparent on reasonable examination.</p> <p><i>(Clause 7)</i></p>	<p>The quality of the goods is final at loading. The goods are to be shipped in good condition. The goods are not warranted free from any defect rendering them unmerchantable which would not be apparent on reasonable examination.</p> <p><i>(Clauses 3 & 4)</i></p>	<p>The contracts are back-to-back.</p>
PAYMENT/ DOCUMENTS	<p>Payment is to be made by letter of credit or cash against documents, as agreed. There is no provision entitling delivery or payment against a letter of indemnity if the seller fails to present shipping documents on arrival at destination. Shipping documents to consist of the bills of lading or mate's receipts (at the seller's option) plus weight and inspection certificates.</p> <p><i>(Clauses 11 & 12)</i></p>	<p>Payment is to be made by letter of credit or cash against documents, as agreed. Payment is to be made against a guarantee if an incomplete set of bills of lading is presented. Further, the buyer shall take delivery under a guarantee acceptable to shipowners if the seller has failed to present shipping documents on arrival at the destination. Shipping documents are to consist of the invoice, bills of lading and/or ship's delivery order, insurance policy and/or certificate and/or letter of insurance and certificate of inspection.</p> <p><i>(Clause 12)</i></p>	<p>The party in the middle should ensure that payment obligations (and the documents required), as well as method of delivery at destination in the absence of a full set of documents, are on back-to-back terms.</p>
WEIGHT	<p>Weight is final at loading in accordance with customary weight certificates.</p> <p><i>(Clause 5)</i></p>	<p>Weight is final at discharge and any deficiency in the bill of lading weight is to be paid for by the seller.</p> <p><i>(Clause 2)</i></p>	<p>The party in the middle should agree an amendment to the sale contract so that weight is final at loading.</p>
INSURANCE	<p>The insurance policy is to be confirmed by insurance companies/ underwriters to the seller at least five days prior to the date of the expected readiness of the vessel. If this confirmation is not received by the seller by such time, the seller may place such insurance for the buyer's account and at the buyer's risk and expense.</p> <p><i>(Clause 14)</i></p>	<p>The seller to effect the insurance, to be accepted by the buyer.</p> <p><i>(Clauses 8 & 9)</i></p>	<p>The party in the middle should ensure that confirmation of the insurance cover is sent to the seller by the deadline in the purchase contract. Otherwise, there is a potential for that party to be required to pay for insurance placed by its seller under its purchase contract.</p>
DAMAGES FOR DEFAULT	<p>The amount of damages payable for a party's default is based on the market value of the goods on the tenth day following the notice of default.</p> <p><i>(Clause 22)</i></p>	<p>The amount of damages payable for a party's default is based on the estimated value of the goods on the date of default.</p> <p><i>(Clause 25)</i></p>	<p>The terms of either the sale or the purchase contract need to be varied so that the same date of default applies to both contracts. Otherwise there exists a potential for different damages to be claimed by the respective claimant that cannot be passed through the string.</p>

Term	NAEGA II	FOSFA 24	BEST PRACTICE APPROACH
GOVERNING LAW	The contract is governed by New York law. <i>(Clause 28)</i>	The contract is governed by English law. <i>(Clause 26)</i>	The terms of either the sale or the purchase contract need to be varied so that the same governing law applies to both contracts. Otherwise there is a potential for conflict of laws, different outcomes and increased costs of obtaining legal advice in both jurisdictions.
ARBITRATION	Disputes are to be referred to AAA arbitration. <i>(Clause 30)</i>	Disputes are to be referred to FOSFA arbitration. <i>(Clause 28)</i>	The terms of either the sale or the purchase contract need to be varied so that the same arbitration forum applies to both contracts. Otherwise, there is the potential for different outcomes as well as increased costs as the claims cannot be consolidated or passed up/down the string easily.