

# MemberUpdate

UPDATE 07 **OF 17** • 05 May 2017

TOPIC: Trade Rules ‘Buyers Call’ Default Period – Calling for Industry Submission

DISTRIBUTION: GTA Members – primary contact list. Please circulate to all appropriate internal parties.

## 1. Issue

The issue that has arisen around “Buyer’s Call” is that the 15-day period has (apparently) been more observed in the breach than the observance.

The GTA Commerce Committee (Committee) has recently met to discuss this issue and are now calling for industry feedback.

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## 2. Process for Industry Feedback

The Committee is seeking industry comments on the issues outlined in this document.

Submissions should be received by COB **Friday 26th May 2017**.

Please lodge your submissions by sending to [submissions@graintrade.org.au](mailto:submissions@graintrade.org.au) and title your email – Buyers Call Default Period.

Industry is encouraged to provide supporting evidence for any change proposed in GTA Trade Rules, Buyers Call. Preference is for industry to use the proforma for lodging submissions located on the GTA website at <http://www.graintrade.org.au/committees>.

Unless marked “confidential” and appropriate supporting reasons are provided, all submissions will be placed on the GTA website for industry review.

### 3. Background - Buyer's Call

"Buyer's Call' is defined in the GTA Trade Rules as follows;

"Buyer's Call means that the Seller shall have fifteen [15] calendar days or such other time specified in the contract after receipt of instructions from the Buyer in which to make Delivery or Shipment."

This is relevant under Trade Rule 13 which provides that;

"Unless otherwise agreed, the Seller shall have the right of conveyance."

This is developed in Trade Rules 13.1 and 13.2 which state that it is up to the Seller to give 5-days' notice of commencement of delivery and the Buyer within 2-days to give delivery or consigning instruction to the Seller shall have the right of conveyance."

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A "Buyer's Call" contract term reverses the presumption under Rule 13.

### 4. Buyer's Call – Recent Arbitration Outcome

This was tested recently in an GTA arbitration where a Buyer's Call contract provided a Delivery Period of (say) 1-30 June. The Buyer gave notice to the Seller on (say) 20 June. This meant that **if** the Seller had a **right** to deliver **up to** 15 days after receipt of notice, the Seller would be out of the Delivery Period. The Seller called the Buyer in default on the basis that the notice was invalid, which was upheld in the arbitration.

### 5. Buyer's Call - Potential Solutions

The 15-day period is probably too long and could be shortened to mirror the notice in Trade Rule 13. It has also been suggested that Buyer's Call should move from the Definitions section of the Trade Rules to (say) Rule 13 with better commentary around how Buyer's Call is to operate.

END.