

Member Update

UPDATE 19 of 18 • 14 August 2018

TOPIC: No 4 – Delivered Container Terminal (DCT) Contract Review

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

1. Purpose

The purpose of this Member Update is to provide information to Members on the review of the GTA Contract No 4 – Delivered Container Terminal (DCT), and to seek further Member input and submissions on the Sub-Committee’s proposed changes to this Contract.

2. Background

Following submissions from Members the GTA Commerce Committee resolved to appoint a Sub-Committee to review the GTA No 4 – DCT Contract.

The Sub-Committee members are representative of DCT buyers and sellers, container packers, exporters and independent brokers. The members of the DCT Contract sub-committee are:

Table 1. DCT Sub-Committee Members

Sub-Committee Members	
Geoff Farnsworth – Chair – GTA Counsel	Craig Dennis - Network Grains
Joseph Panuccio – ADM Trading Australia	Sabrina Eichhorn – GrainCorp Operations
Oliver Van Heusden – Glencore Agriculture	Matt Kelly – KM & WM Kelly & Sons
Sam Sloan – IKON Commodities	Michelle Kerr – Riordan Grain Services

3. Issues Considered and Proposed Amendments

The Sub-Committee has met and considered several issues including those outlined in Table 2. Table 2 also includes the Sub-Committee’s comments and proposed changes for consideration. GTA is seeking further comment and submission from GTA Members on these as follows:

Table 2. DCT Review – Issues Considered

Issue	Clause	Comment / Proposed change
Order of Precedence	Sale Confirmation Page	<ul style="list-style-type: none"> Proposed the DCT contract should clearly state order of precedence, i.e. <ol style="list-style-type: none"> Broker/Contract Note and specific notes, DCT #4 Contract, then GTA Trade Rules
Pre-Advice Period	2.(a)	<ul style="list-style-type: none"> Proposed to amend DCT contract to 15 days pre-advice period in-line with Buyers Call as defined in the Trade Rules

Issue	Clause	Comment / Proposed change
Clarity on Buyers Call	2.(a) & Sale Confirmation Page	<ul style="list-style-type: none"> Proposed to include specific reference to Buyers Call. This is to assist with general understanding of the rights under this contract.
Weight Tolerance	Sale Confirmation Page	<ul style="list-style-type: none"> Proposed amendment to the tolerance, to be similar to: <ul style="list-style-type: none"> <i>x,xxx mt +/-5 pct in Seller's option in xx x(xx ft. containers, each with an approx.net weight of xx mt.</i>
Variation to Delivery Date	Sale Confirmation Page	<ul style="list-style-type: none"> Proposed not to alter the existing position as outlined in the contract (to a position in line with the GAFTA contract).
Force Majeure	17	<ul style="list-style-type: none"> Proposed to make changes to the Force Majeure clause to ensure balance between Buyer and Seller. Proposed to be explicit that Trade Rule 21 (Force Majeure) will not apply to the DCT contract
Default Provisions	Trade Rule 17	<ul style="list-style-type: none"> Proposed for no change to existing Contract or Trade Rule
Determining Fair Market Value	Trade Rules	<ul style="list-style-type: none"> Proposed for no change to existing Contract or definition in Trade Rules
Packing Instructions	2 & 3	<ul style="list-style-type: none"> Proposed to change to prescribed number of days prior to delivery (10) to provide clarity in the contract, noting parties may make alternate agreements
Collection of Containers	2.(d)	<ul style="list-style-type: none"> Proposed to include an express obligation on the seller to collect the boxes from the CT as soon as possible
Inspection of Container	3.(b)	<ul style="list-style-type: none"> It is noted it is impractical and unsafe to inspect containers anywhere but at the Packer, at the Packer's metropolitan depot or at Empty Container Parks.
Non – Business Days	16.	<ul style="list-style-type: none"> Proposed to capture issues around weekends and public holidays, potentially <u>bring forward (rather than extending)</u> obligations within the contract and clarify not applicable to CI 2a (delivery period)
Container Issues in the Port terminal	8.(a)	<ul style="list-style-type: none"> Proposed to include amendments to clarify who is in charge of the container during the transport and gating process
VGM	7.(c)	<ul style="list-style-type: none"> Proposed to include a VGM clause
Late Payment	10.(e)	<ul style="list-style-type: none"> Proposed to bring in penalties for late payment into alignment with the No 2 - Track Contract.

A marked-up version of the proposed [GTA No 4 – DCT Contract is attached for review.](#)

As with all GTA standard form contracts it is noted parties are free to agree to changes to suit their own needs and circumstances.

4. Calling for Industry Submissions:

Comments and submissions are sought from GTA Members and other interested parties.

Submissions should be lodged by emailing submissions@graintrade.org.au and title your email – DCT Contract Review 2018.

Submissions should be received by COB Friday 31st August, 2018.

A proforma for lodging submissions can be accessed [here](#), noting that submissions do not need to be supported by other GTA Members, however, if they are supported, please indicate on the form.

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

5. Further Details

Visit the GTA website for full details. <http://www.graintrade.org.au>