

# MemberUpdate

**Title:** DCT Contract – amendments regarding Contract Verified Gross Mass (VGM)  
**Update No** 09 of 16  
**Date of Issue** 27 May 2016  
**Distribution** GTA Members – primary contact list. Please circulate to all appropriate internal parties

## 1. Issue

As a result of amendments to the Safety of Life at Sea Convention (SOLAS), from 1 July 2016 exporters of grain in containers will be required to provide Shipping Lines with certification evidencing the gross mass of containers before shipment.

To accommodate the above requirements, the GTA Commerce Committee have proposed amendments to **Clause 7 CERTIFICATION OF WEIGHT OF CONTAINER AND CONTENTS** of the **GRAIN TRADE AUSTRALIA CONTRACT No 4 DELIVERED CONTAINER TERMINAL (DCT Contract)** and are now seeking GTA Member comment on the proposed changes. The Draft contract is attached.

Refer attached:

1. Container Weight Verification -just the facts you need to know, Shipping Australia Limited
2. Patrick Container Terminals SOLAS Fact Sheet v1. May 2016

## 2. Submissions close

Due to time imperatives, i.e. SOLAS comes into force on 1st July 2016; the Committee will receive submissions up to COB Friday 10 June 2016.

## 3. Additional information

The certification to be provided must also state whether it was obtained by weighing the container, or by weighing its contents (including dunnaging and packaging).

A container will not be shipped if the declared VGM is found to be inaccurate.

These requirements will affect the GTA DCT Contract and it is appropriate that that contract be amended to require the Seller to provide the Buyer with VGM, and to indemnify the Buyer if that VGM proves to be inaccurate.

Given the requirement is legally mandated, it is appropriate that as a default the cost be borne by the DCT Seller. Accordingly the wording of Clause 7 of the Contract has been amended.

It is likely that the Container Packer will be responsible for ascertaining the VGM, whether the packer is the DCT Seller or not.

It is also appropriate that each DCT Seller in a string certify the accuracy of the VGM even if they do so on the basis of the certificate originally issued by or on behalf of the Packer.

It is possible in some circumstances that the Packer will be unable or unwilling to certify the VGM in which case the container/s may need to be weighed at a Public Weighbridge, in which case the Weighbridge Certificate will be evidence of the VGM and any recourse may ultimately be against that Weighbridge Operator.

Unless that situation is widespread for simplicity the DCT Contract has been amended to provide only for certification by the DCT Seller. It remains open to parties to the contract to make their own amendments if necessary to better reflect their particular circumstances.

# Container Weight Verification - just the facts you need to know

In accordance with **IMO Circular MSC. 1/Circ. 1475**, from 1 July 2016 a packed container should not be loaded onto a ship unless the master or his representative and the terminal representative have obtained, **in advance of vessel loading, the verified gross mass (VGM) of the container.**

## WHO IS RESPONSIBLE FOR OBTAINING THE VGM?

The shipper is responsible for obtaining and documenting the verified gross mass of a packed container.

## WHO IS THE SHIPPER?

As per IMO Circular 1475, 'shipper' means a legal entity or a person named on the bill of lading, or equivalent transport documentation, as shipper and/or who (or in whose name or on whose behalf) a contract of carriage has been concluded with a shipping company. The shipper may also be known as the sender or consignor.

## WHAT ARE THE VGM REQUIREMENTS?

As per the IMO Circular and AMSA Marine Order 42, the verified gross mass can be obtained using one of two methods.

**Method 1:** Weighing the Packed Container

**Method 2:** Weigh all the packages and cargo items including the pallet dunnage and other packaging materials and then adding the tare mass of the container.

## WHAT IS THE RECOGNISED WEIGHING EQUIPMENT AND IT'S ACCURACY?

Based on information received from the Australian Maritime Safety Authority (AMSA), the Marine Order 42 will prescribe the equipment and relevant accuracy standards that will be acceptable and recognised for determining the weight of a container.

The Order will approve the use of measurements obtained in accordance with the national legislation for trade measurement and any other standard of accuracy approved by AMSA and these will be available on AMSA's website.

## WHERE THE OBTAINED VGM SHOULD BE DECLARED?

Once a shipper has verified the weight of the container (using one of the two methods) this weight must then be specified on the shipping documents and signed by the shipper or a person duly authorised by the shipper. It can be an electronic signature or the name of the authorised person.

The Pre-Receive Advice (PRA) is the most commonly used document by shippers to provide the gross weight of the container. The new look PRA reflects the new SOLAS requirements and has been amended

### Verified Weight Declaration

The form is titled 'Verified Weight Declaration'. It has two radio buttons for 'Method 1' and 'Method 2'. Below these are three input fields for 'Verified Gross Weight \*', 'Ctr Tare Weight', and 'Cargo Gross Weight', each followed by a 'kg' unit. The 'Date verified' field shows '22/01/2016' with a calendar icon and a note 'Defaults to today's date'. The 'Name of Declarant \*' field has a dropdown menu. Below it are fields for 'Company \*', 'Phone \*', and 'Email \*', each with a dropdown menu. The 'Weight Certificate Details' section includes fields for 'Name of Issuer', 'Street', 'City', and 'Country' (which is pre-filled with 'Australia').

**FIGURE 1: IMAGE OF REVISED 1- STOP PRA**

STOP PRESS

## TRANSITIONAL ARRANGEMENTS FOR TRANSHIPMENTS

Shipping lines should advise their global customers that containers shipped before 1 July but arrive at a discharge port for transshipment after 1 July 2016 must have a VGM declaration.

accordingly (see figure 1).

## WHEN SHOULD THE VGM BE DECLARED?

The shipper must ensure the VGM is communicated in shipping documents **sufficiently in advance** to be used by the ship's master or his representative and the terminal representative in the preparation of the ship stowage plan.

Timing for the provision by the shipper of the verified weight of container will be governed by the requirements of the relevant terminals which will need to be prior to the container arriving at the terminal gate.

## CONSEQUENCES OF NOT DECLARING THE VGM AND ASSOCIATED INFORMATION

Should a shipper not provide the mandatory information (on the PRA) as mentioned above, the container will not be processed

## WHAT MANDATORY INFORMATION IS REQUIRED BEFORE A CONTAINER CAN BE PROCESSED FOR LOADING?

1. Verified Gross Mass of Container;
2. The method used to obtain the VGM; and
3. The name and contact details of the shipper or person authorised by the shipper to make the declaration

for loading on to a ship. Further, should a container arrive at the gate of a terminal with shipping documentation that does not include the mandatory information, such a container must not be granted access for loading on to a ship.

As per the revised Marine Order 42, penalties may apply for non-compliance with the requirements.

**The accuracy of the VGM obtained for a container is solely the responsibility of the shipper and could be monitored by the relevant regulatory authority.**

**For further information on:**  
**Regulatory Compliance**

Contact your local AMSA office,

**Shipping Documentation**

Contact your shipping line.

## Mandatory Verification of the gross mass of a packed container from 1 July 2016

From 1 July 2016 the International Maritime Organisation (IMO) will implement revisions to the Safety of Life at Sea (SOLAS) convention. The changes to the SOLAS convention will require shippers to provide 'Verified Gross Mass' (VGM) of a container before it can be loaded on-board a vessel.

Patrick Container Terminals welcomes the new SOLAS regulation which will assist in promoting Safety across our terminals for our employees, customers and communities.

No container will be shipped without a Verified Gross Mass (VGM) validated prior to arrival at the terminal as part of the Pre-receipt Advice (PRA) process.

PRA's are conducted through 1-stop, more details on how to PRA a container can be found here: <https://www.1-stop.biz/news/the-vgm-and-what-it-means-for-you/>

To ensure full compliance from 1<sup>st</sup> July 2016, 1-Stop will enforce the inclusion of the VGM in the PRA from *Wednesday 22<sup>nd</sup> June 2016*.

### Who is responsible for providing the VGM?

The shipper is responsible for obtaining, documenting and providing the verified gross mass of a packed container, this could be monitored by the relevant regulatory authority.

### Patrick's response to the new SOLAS regulations

Patrick has been working closely with 1-stop in Australia to develop additional mandatory fields to the PRA process to ensure the information being captured from the Shipper is accurate and supports the requirements from the regulator. There are 2 methods a shipper can use to provide a VGM of a Container;

- Method 1 – Weigh the loaded container; or
- Method 2 – Weigh all contents of the container and add it to the tare weight

### Exports:

Once a PRA has been submitted, the existing verification process will still be undertaken, including verification of the new mandatory fields. If any of the mandatory fields are missing information or cannot be verified then the PRA will be rejected.

Shippers can alter the PRA prior to arrival at the terminal however the PRA must be re-submitted with the Verified Gross Mass weight.

**Patrick Container Terminals will not amend any container weights.** If a shipper wishes to amend a weight after the container has been received at the terminal, the container will be placed on 'hold' and moved into storage. The container must then be taken out of the terminal via B959 Customs Release process, and a new PRA is to be submitted with the new VGM.

## Break-Bulk

Break Bulk cargo, also has to be PRA'd and verification will be undertaken as for any other export cargo.

## Empty Containers

The empty container weight code table in 1-Stop will be altered to reflect an accurate weight for the particular ISO code types i.e. 20'GP, 40'HC, 40'RQ etc.

## Tran-shipments

All countries fall under the IMO SOLAS Regulations. All transhipments will be taken as verified at the point of Origin with the original weights declared at the Port of Load deemed as the verified weights for transhipment containers.

## Imports:

**Patrick Terminals will not amend any verified gross mass.** Weights declared at the Port of Load as reflected on the inbound EDI bayplan will be deemed as the verified gross mass.

## For further information:

- Regulatory Compliance: contact your local AMSA office.
- Patrick Representative: Adam O'Keeffe  
Customer Service Delivery Manager  
[a.okeeffe@patrick.com.au](mailto:a.okeeffe@patrick.com.au)  
+61 3 9248 7451





**GRAIN TRADE AUSTRALIA CONTRACT No 4.  
DELIVERED CONTAINER TERMINAL (DCT CONTRACT)**

Sale Contract Number: [insert number]

Date:

**SELLER:** [insert Seller's full name and address and company number, if known] ("Seller")

**BUYER:** [insert Buyer's full name and address and company number, if known] ("Buyer")

**BROKER:** [insert Broker's full name and address and company number, if known] ("Broker")

**GOODS:** [insert eg Australian Origin Wheat]

**QUANTITY:** [insert weight]MT, +/-5% at Seller's option

**QUALITY/SPECIFICATION:** [insert grade eg APH; % moisture, protein, screenings]

**PACKING:** In bulk, in containers (20/40ft)/in bags, in containers (20/40ft).

**PRICE:** \$[insert price and currency]MT, DCT (insert load port(s))

**DELIVERY PERIOD:** [insert date range and load port(s)], both dates inclusive.

**COMMERCIAL DOCUMENTS:** [list Commercial Documents and any documents specified in Import Permit, required for export compliance and to facilitate import at port of destination]

**OTHER TERMS:** This contract incorporates the Grain Trade Australia Trade and Dispute Resolution Rules (including arbitration).

This Sale Confirmation and the accompanying GTA Standard DCT Terms for Grain Delivered Container Terminal, which both the Seller and the Buyer acknowledge that they have read, understood and agreed, constitute the entire contract between the Buyer and Seller.

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Signed by Seller

Date:

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Signed by Buyer

Date:

## **GTA STANDARD TERMS FOR GRAIN DELIVERED CONTAINER TERMINAL (DCT)**

### **1. BROKERAGE (if applicable):**

- (a) Brokerage shall be deemed to be earned on the issuance of a Broker's Note.
- (b) Brokerage shall be credited when the deliveries or shipments are invoiced or when the contract is otherwise performed or terminated.
- (c) Brokerage commission shall be paid by the Seller on the mean contract quantity. Such brokerage or commission shall be due upon presentation of proper invoice.

### **2. PACKING INSTRUCTIONS**

- (a) The Buyer warrants that it will give the Seller written Packing Instructions (including last permissible day for delivery to terminal gate ("Delivery Date")) at least 14 calendar days prior to the Delivery Date.
- (b) For the avoidance of doubt, the Delivery Date must fall within the Delivery Period.
- (c) Unless otherwise agreed, Packing Instructions must specify: Terminal Gate; container yard and empty container release number; Customs and Quarantine clearance details inc RFP and EDN; bag weights and printing details; Import Permit; vessel name, voyage no, and ETD; port(s) of destination.
- (d) Unless otherwise agreed, the Buyer warrants that the required number of shipping containers will be made available at least 14 calendar days prior to the Delivery Date at a collection region nominated by the Seller. The Buyer warrants that the containers will comply with the Commonwealth Department of Agriculture Plant Export Operations Manual (Vol 11).
- (e) The Buyer may vary the Delivery Date at any time prior to the Delivery Date provided that the new date falls within the Delivery Period and all other provisions of this Contract are met. All reasonably unavoidable costs or expenses incurred by the Seller as a result of the variation of the Delivery Date are for the account of the Buyer.

### **3. PACKING**

- (a) In shipping containers in bulk with bulkheads at the Seller's cost or new bags. If bags, state type of bag, printing/bag markings if required, and weight. The Seller is to provide a one colour, one side standard brand. Additional cost of 2 or more colours or non-standard artwork for the Buyer's account.
- (b) Unless otherwise agreed, shipping container condition standards as per applicable Department of Agriculture Plant Export Operations Manual and regulatory guidelines.

### **4. FUMIGATION**

The goods will be fumigated by the Seller (at the Seller's cost) and the Seller will certify same. Independent fumigation and/or certification are for Buyer's account. Any specific fumigation requirements to be declared in Packing Instructions (see Clause 2) and (unless mutually agreed otherwise) shall be at the Buyer's expense.

## 5. SAMPLING AND ANALYSIS

- (a) Unless mutually agreed otherwise, representative samples of the Goods shall be drawn during packing by the container packer in accordance with standard protocols as employed at the packing facility to satisfy the sampling requirements of government agencies and to obtain a representative sample of the entire contract/shipment.
- (b) Final determination of quality shall be established on the composite sample drawn on packing.

## 6. CERTIFICATION OF QUALITY, GRADE AND CONDITION

- (a) Subject to clause 6(b) quality, grade and condition will be finally and conclusively determined by certificate issued by container packer.
- (b) Any requirement for an independent quality inspection and/or certificate to be declared in Packing Instructions and be for the Buyer's account unless otherwise stated. Such certificate to be final evidence of quality, grade and condition.

## 7. CERTIFICATION OF WEIGHT OF CONTAINER AND CONTENTS

- (a) Bulk weights and net bagged weights shall be certified as accurate by the Seller by the Seller's packing list.
- (b) Any requirement for an independent weight certificate will be declared in Packing Instructions and be for the Buyer's account unless otherwise stated.
- (c) The Seller will also certify (for the Seller's account) in writing for the purposes of Marine Order 42 the Verified Gross Mass (**VGM**) of each container stating whether the VGM has been obtained by weighing the packed container (**Method 1**) or by weighing all packages and cargo items including the mass of pallets, dunnage and other packaging and securing material to be packed in the container (**Method 2**).
- (d) The Seller will indemnify and keep the Buyer indemnified against the consequences of any intentional or unintentional inaccuracy or error in the certificates referred to in clauses 7(a) or 7(c) above.

## 8. DELIVERY

Containers are to be delivered to terminal gate as declared by the Buyer in the Packing Instructions. All costs/charges to terminal gate are for the account of the Seller, unless otherwise stated. All costs/charges after terminal gate are for the account of the Buyer unless otherwise stated. Insurance up to and including terminal gate for Seller's care and account. Insurance after terminal gate for the Buyer's account.

## 9. COMMERCIAL DOCUMENTS

The Seller will provide the Buyer with the Commercial Documents (initially by email) no later than the date of Vessel sailing.

## 10. PAYMENT

This contract is specified on page 1 to be one of TT/EFT; Prepayment, Open Account or CAD. The payment terms for each contract are:

- (a) T/T

- (i) Buyer shall pay 100% of the invoice by telegraphic or electronic funds transfer within one working day after presentation of emailed copy of the following original commercial documents:
  - Packing Certificate
  - Invoice
  - Fumigation and/or Weight Certificates
- (ii) Buyer must pay Seller interest at the Australian 90-day bank bill rate/LIBOR\* plus 5% on any outstanding amount of the commercial invoice for every day that payment is not made in accordance with these terms. No obvious clerical error in the shipping documents shall entitle Buyer to reject or delay them or delay payment.
- (b) Pre-Payment

Full Payment must be received by Seller prior to Commodity being delivered.
- (c) Cash Against Documents (CAD)
  - (i) Buyer to provide name and address of bank to which collection is to be sent.
- (d) Open Account
  - (i) Seller to send complete set of documents by courier to Buyer.
  - (ii) Payment 14 days from delivery at container terminal, unless expressly agreed otherwise.
  - (iii) Seller to indicate on their invoice banking details so that Buyer can arrange remittance direct to that account.

## **11. RISK, OWNERSHIP AND PASSING OF TITLE:**

- (a) Risk in the Goods passes from the Seller to the Buyer on delivery.
- (b) Title to the Goods will remain with the Seller until full payment received by the Seller.
- (c) In the period after delivery but before payment, the Buyer (including its servants and agents) hold the Goods as bailee only.
- (d) If in the ordinary course of the Buyer's business the Buyer on-sells the goods to a 3<sup>rd</sup> party prior to payment to the Seller, it does so as agent only for the Seller. If the Buyer fails to make payment within the time stipulated in this contract, the Buyer authorises the Seller to take possession and title in the Goods. Any associated costs are for the Buyer's account.
- (e) This clause creates a Purchase Money Security Interest for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPSA").
- (f) To the extent permitted by the PPSA, the parties contract out of the provisions listed in sub-clauses 115(1)(a)-(r) of the PPSA. The parties agree and undertake (including for the purposes of section 275(6) of the PPSA) that the terms of this contract shall be kept confidential to the parties at all times other than as required by law.



## **12. IMPORT PERMITS:**

- (a) The Buyer is to obtain at its own risk and expense any import licence or other official authorisation and carry out all customs formalities for the import of the Commodity and for their transport through any country.
- (b) The Buyer is to declare any requirements relating to import certification in the Packing Instructions.
- (c) The Buyer may advise the Seller of any additional requirements (at Buyer's cost) relating to import certification (including providing a copy of an appropriate Import Permit for the total contract quantity including tolerance) up to 4 days prior to the Delivery Date but no later. If the Seller cannot comply with Buyer's additional import requirements the Seller must notify the Buyer as soon as practicable that unless the additional requirement is abandoned, the Seller will terminate the contract and claim damages for any losses incurred as a result of the termination.

## **13. DUTIES, TAXES, LEVIES, ETC:**

All taxes, levies, licences, imposts of any nature on freight and cargo outside Australia (including but not limited to Terminal Handling Charges, container demurrage and detention) are for Buyer's account.

## **14. ADDITIONAL CERTIFICATES:**

Any Certificates required pursuant to the Terms of the Contract, other than Phytosanitary, Origin, and Weight and Grade Certificates, shall be supplied by and at the expense of the Buyer.

## **15. NOTICES:**

Notices given under this contract are to be dispatched by written letter delivered by hand on the day of writing, or by facsimile, or by email (return receipt acknowledging the message has been received is required) or by other method of rapid written communication, subject to the burden of proof of successful transmission to be with the sender. All notices shall be under reserve for errors in transmission. Any notices received after 1600 hours Sydney time on a business day shall be deemed to have been received on the business day following. In case of resale, all notices shall be passed on without delay by the Buyer to Seller. Should the notice be received after 1600 hours Sydney time on the last business day permissible under this contract, Seller shall pass it on as soon as practical, but no later than 1000 hours Sydney Time on the next business day thereafter. Upon request, Seller shall provide the Buyer with documentary evidence of Seller's receipt of notice.

## **16. NON-BUSINESS DAYS:**

Should the time limit for doing any act or giving any notice expire on a Saturday, Sunday or any public holiday the time so limited shall be extended until the first business day thereafter. All business days shall be deemed to end at 1700 hours Mondays to Fridays inclusive.

## **17. PREVENTION OF DELIVERY**

"Event of Force Majeure" means:

- (a) prohibition of export or other executive or legislative act done by or on behalf

of the government of the country of origin or of the territory where the load port or ports named herein is/are situated, restricting export, whether partially or otherwise, or

- (b) blockade, or
- (c) acts of terrorism, or
- (d) hostilities, or
- (e) strike, lockout or combination of workmen, or
- (f) riot or civil commotion, or
- (g) breakdown of machinery, or
- (h) fire, or
- (i) ice, or
- (j) extreme weather event, or
- (k) act of God, or
- (l) unforeseeable and unavoidable impediments to transportation or navigation (including but not limited to congestion at the export container terminal), or
- (m) any other event comprehended in the term "force majeure".

Should Sellers' performance of this contract be prohibited or prevented, whether partially or otherwise, by an Event of Force Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure, provided that Sellers shall have served a notice on buyers within 7 consecutive days of the occurrence or not later than 21 consecutive days before commencement of the period of delivery, whichever is later, with the reasons therefor.

If the Event of Force Majeure continues for 21 consecutive days after the end of the period of delivery, then Buyers have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than the first business day after expiry of the 21 day period.

If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract shall be automatically cancelled.

If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers shall notify Buyers without delay that the Event of Force Majeure has ceased. The period of delivery shall be extended, from the cessation, to as much time as was left for delivery under the contract prior to the occurrence of the Event of Force Majeure. If the time that was left for delivery under the contract is 14 days or less, a period of 14 consecutive days shall be allowed.

The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory evidence justifying the delay or non-fulfilment.

**18. CHOICE OF LAW:**

This contract shall be interpreted according to and governed by the laws in force in New South Wales, Australia.

**19. TIME**

Time is of the essence in relation to the performance of this contract.

**20. ARBITRATION:**

Any dispute arising out of this contract, including any question of law arising in connection therewith shall be referred to arbitration in accordance with the Dispute Resolution Rules of Grain Trade Australia ("GTA") in force at the date of this contract and of which both parties hereto shall be deemed to be cognizant except that this contract prevails to the extent of any inconsistency but no further. Neither party hereto, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other of them in respect of any such dispute until such dispute shall first have been heard and determined by the arbitration in accordance with the Dispute Resolution Rules of GTA, and it is hereby expressly agreed and declared that the obtaining of an Award from the arbitrators shall be a condition precedent to the right of either party hereto or of any person claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute.