

# MemberUpdate

UPDATE 10 OF 15 • 22 May 2015

**TOPIC: Review - GTA Voyage Charter, AusGrain 2013 & GTA Contract No.1 Grain & Oilseed in Bulk FOB Terms**

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

## 1. Issue

Feedback and submissions requested - proposed changes to the GTA Voyage Charter – AusGrain 2013 & GTA Contract No.1 Grain & Oilseed in Bulk FOB Terms.

## 2. Background

Throughout 2014, the GTA Commerce Committee undertook a review into the GTA Contract No.1 Grain & Oilseed in Bulk FOB Terms (FOB Contract) and the GTA Voyage Charter - AusGrain 2013 (CharterParty Contract) calling for submissions on two occasions via Member Updates 12 of 14 and 29 of 14.

A number of submissions were received in both rounds regarding the GTA FOB Contract however none in relation to the Voyage Charter – AusGrain 2013.

Subsequently a revised draft of the FOB Contract was finalised however these amendments were not reflected in the CharterParty Contract given no submissions were received. This meant that the two contracts could not be used in tandem, no longer being complimentary to one another.

At this time it was also identified by the Commerce Committee that the GTA Voyage Charter – AusGrain 2013 was not broadly used by industry therefore a consultation and review process was approved. This was to be conducted by Holding Redlich to identify reasons for this and possible amendments.

## 3. Amendments to GTA FOB Contract to date

Following extensive industry consultation as outlined above, the following amendments are proposed to the GTA No.1 FOB Contract.

### a) Clause 9–Nomination of Vessels

This clause has been amended to better reflect local practices. Clause 9(b) has been included to make clear that there is no express right to extend the period for delivery.

Clause 9(c) now includes reference to relevant Port Protocols. The nomination must be as per the relevant Protocol subject to a minimum notice period of 22 days

### b) Clause 13 – Substitution of Vessels

Clause 13 has been amended to specify that a substitute vessel must meet the same conditions as the previously accepted nomination, and not have an earlier ETA, unless agreed by the Seller.

### c) Clause 15 – Loading

Time for loading (and therefore laytime) is now calculated with reference to actual cargo loaded and not the mean loaded quantity.

The clause has been further amended to exclude Saturday from weather working days, to bring the contract into line with the GTA AusGrain CharterParty.

#### **d) Clause 19 – Authorisations**

This clause has been amended to reflect local export practices whereby local authorities may have regard to import country requirements before allowing export.

The clause now makes clear that Buyers must give clear instructions to Sellers including provision of any documents needed to facilitate export.

The clause is careful NOT to shift responsibility for import requirements to the Seller.

#### **e) Clause 22 – Prevention of Delivery**

GTA has adopted the new GAFTA Prevention of Delivery clause which replaces the previous Strikes and Prohibitions clauses. While it is important that the GTA FOB Contract reflect local conditions, GTA recognises that conflict with GAFTA Contracts should be avoided to the extent possible.

### **4. Outcomes of Recent Consultation Process**

The recent consultation and review completed by Holding Redlich engaged a number of Ship Brokers, Operators and Chartering businesses. There was also some consultation with FOB Sellers however there was significant input from this group when the CharterParty Contract was developed in 2013. Input from this sector will also be achieved through this process and review by the Commerce Committee.

Those approached by Holding Redlich identified a number of common themes being:

- Notice of Readiness
- Vessel Questionnaire
- Load Rates

Other smaller issues raised included liability, BIMCO approval and Arbitration.

### **5. Proposed Contract Amendments & Submissions**

As per the feedback received regarding these issues, amendments are proposed to the CharterParty Contract and further amendments to the FOB Contract as can be seen in the attached documents.

At this stage we seek feedback from members and industry on these and other issues/clauses of concern by **COB Monday 15 June 2015**.

All submissions should be forwarded to [submissions@graintrade.org.au](mailto:submissions@graintrade.org.au)

Submissions will be reviewed by the GTA Commerce Committee at the end of June and a final draft of both contracts put to the GTA Board for approval ahead of release to industry.

### **6. Notice of Readiness**

A controversial aspect of the current AusGrain form is that it provides that a NOR is void if the vessel is not in fact ready when the NOR is tendered, and time does not start to count until the vessel is in fact made ready.

While this may have been a factor in improving the cleanliness of vessels arriving at Australian ports, it also works an injustice as it has the potential to penalise shipowners for congestion at ports.



**GTA FOB Contract No 1**  
**CONTRACT FOR GRAIN AND OILSEEDS IN BULK FOB TERMS**

**DATE:**

**SELLERS:**

**BUYERS:**

**BROKERS:**

Have this day entered into a Contract on the following terms and conditions:

1. **QUANTITY:** Sellers have agreed to sell and Buyers have agreed to buy \_\_\_\_\_ tonnes of 1,000 kilos. Buyers to specify if this is in one or multiple cargoes. *(Refer to Note 1)*
2. **COMMODITY:**  
\_\_\_\_\_
3. **GRADE AND SPECIFICATIONS:**  
\_\_\_\_\_
4. **PACKAGING:** In Bulk.
5. **WEIGHTS:** Weights to be final at port(s) of loading in Australia, as per Independent Superintendent Company certificates, at Sellers' option and cost. Buyers right to appoint their own superintendent at load at their cost.
6. **TOLERANCE:** ( )% more or less at Buyers' option, at contract price.
7. **PRICE:** Priced at \_\_\_\_\_ per metric tonne.
8. **PRICE BASING POINT:** Delivered FREE ON BOARD, stowed and spout trimmed at \_\_\_\_\_.

**9. DELIVERY PERIOD AND NOMINATION**

- (a) DELIVERY PERIOD: Vessel to arrive and tender valid NOR at first loading port between \_\_\_\_\_, ("Delivery Period") both dates inclusive.
- (b) EXTENSION OF DELIVERY PERIOD: For the avoidance of doubt, any extension to or variation of the Delivery Period must be agreed by the parties and confirmed in writing.
- (c) NOMINATION: Buyers to give Sellers notice of vessel nomination within the time specified in any applicable Port Protocol but no fewer than 22 consecutive days before the first day of the Delivery Period, declaring the vessel's laytime-cancelling range ("laycan") (which laycan must fall wholly within the Delivery Period), together with vessel ETA, vessel name, ships agent, vessel details, approximate loading tonnage, demurrage/despatch rate (if applicable) and destination. Final Loading tonnage as per stow plan to be confirmed 10 days prior to vessel ETA. Should a trade string exist, proof of string to be provided, if required, by either party. All Notices as per clause 20. (Refer to Note 2)

- 10. QUALITY:** Quality and condition to be final at port(s) of loading in Australia, as per Independent Superintendent Company certificates, at Sellers' option and expense. Buyers' right to appoint their own superintendent at load at their cost.

**11. SAMPLING AND ANALYSIS:**

- (a) Representative samples of the goods shall be drawn during loading by the port terminal in accordance with standard protocols as employed at the port terminal to satisfy the sampling requirements of the Commonwealth Department of Agriculture and to obtain a representative sample of the entire contract/shipment (*refer Note 3*)
- (b) Final determination of quality shall be established on the composite sample drawn on loading by the nominated surveyor/laboratory in accordance with clause 10.

- 12. FREIGHT AND CLASSIFICATION:** Buyers undertake to provide the freight to permit shipment to be made in accordance with this contract. Vessel's classification to be first-class power-engine ship (excluding Tankers, Tween Deckers and Vessels which are either classified in Lloyd's Register or described in Lloyd's Shipping Index as "Ore/Oil Vessels") classed in accordance with the Institute Classification Clause of the International Underwriting Association in force at the time of shipment and at all times acceptable to the Australian Maritime Safety Authority. Buyers are to ensure that Vessel(s) holds(s) are clean, easily accessible and if necessary cargo duly protected. Buyers must include the following clause in or as an addendum to any charterparty or freight arrangement related to this contract:

"The Owners of the Vessel guarantee that the minimum terms and conditions of employment of the crew of the Vessel are now or will be prior to presentation of the Vessel for loading and will remain for the period of the Charterparty covered by an I.T.F. [International Transportworker's Federation] Agreement or a bona fide trade union agreement acceptable to the I.T.F."

13. **SUBSTITUTION OF VESSEL:** Buyers are allowed to substitute the nominated Vessel(s) provided that (i) the substitute Vessel is able to load the same nominated quantity within the same laycan as the original Vessel; (ii) the Buyers notify the Sellers of such substitution as soon as possible before the expected arrival of the original Vessel(s) (*Refer note 4*). A substituted vessel must meet all terms and conditions of the accepted original vessel nomination, unless agreed by Seller. ETA of substituted vessel must not be before original vessel's ETA unless it is ~~agreed~~accepted by the Seller.

14. **NOTICE OF READINESS:**

When the Vessel is ready in all respects to load at any berth ordered by the Sellers, the Master may give written notice (Notice of Readiness).

Notice of Readiness may only be given from Monday to Friday, except holidays at the loading port, between 0900 hours and 1700 hours local time.

Notice of Readiness may be given whether in berth or not provided that the vessel is ready in all respects. The Sellers may give orders for a loading berth after receiving notice of the vessel's arrival in the Port.

At the first Port the time for loading starts to count 24 hours after the receipt of a valid Notice of Readiness save that time will not start to count before the commencement of the Delivery Period unless actual loading commences in which case time starts to count from commencement of loading.

Notice of Readiness is only to be given at the first loading port or place.

If the loading berth is ~~occupied~~congested on the vessel's arrival at or off the first loading port (or so near as the vessel is permitted to approach), the master will be entitled to give Notice of Readiness upon arrival ~~at~~in the port or waiting place.

If so, laytime counts as if the vessel was in berth and in all respects ready for loading. Time spent moving from the waiting place to the loading berth is not to count as laytime or demurrage, even if on demurrage.

A Notice of Readiness is invalid if the vessel is not, at the time a Notice of Readiness is given, in fact ready in all respects. If an invalid Notice of Readiness is given, a fresh valid Notice of Readiness must be given by the master when the vessel is in fact ready in all respects and laytime does not begin to count until 24 hours after a fresh valid Notice of Readiness has been received. Any further Notice of Readiness must comply with the procedures set out in above clause.

At the second or subsequent loading port (if any) the time for loading is to count from 1200 hours on the day of arrival at the port (or so near as the vessel is permitted to approach if the vessel arrives before 1200 hours), and from 0900 hours on the following day if the vessel arrives at or after 1200 hours, unless loading is commenced earlier, in which case the time is to count from the commencement of loading. In either case, time only so commences if on arrival the vessel is in fact ready in all respects.

In the case of multiple loading ports, time changing ports is not to count as laytime or demurrage, even if on demurrage. Time changing ports means time from the completion of loading at a port, time sailing from a port to the next loading port, and until laytime starts to count again as per above clause.

If separations are required the cost of such separations must be paid by the Buyers.

The Sellers may send the cargo alongside continuously (Saturday, Sundays and holidays included) and if the Sellers so direct the Buyers must procure that the vessel loads continuously (Saturdays, Sundays and holidays included).

All overtime costs incurred through working outside customary port working hours must be paid by the party ordering that working, except officers' and /or crew's overtime which are always for the Buyers account.

Should the Buyers nominated Vessel(s) fail to present valid notice of readiness to load within the Delivery Period, the Sellers may at their option declare the Buyers in default and claim damages for costs directly incurred as a result of the buyers default or in their absolute discretion affirm this contract or the Sellers may carry the goods for the Buyers' account at the rate for storage, interest and insurance current at the time of the Vessel's presentation. Such carrying charges (*refer note 5*) shall accrue from the day following the expiration of the Delivery Period until the day that goods are loaded and must be paid by the Buyers upon the Sellers' invoice.

- 15. —LOADING:** The cargo shall be loaded within the time allowed at a loading rate of \_\_\_\_\_, or 10,000 mt per day if no rate is stated, ~~as stipulated below based on the mean cargo quantity provided that the Vessel can receive at the appropriate pro-rata rate.~~
- 16. —**~~For an actual cargo quantity up to 10,000 tonnes the time allowed for loading shall be 3 days;~~
- 17. —**~~For an actual cargo quantity above 10,000 tonnes up to 25,000 tonnes the time allowed for loading shall be 4 days;~~
- 18. —**~~For an actual cargo quantity above 25,000 tonnes up to 60,000 tonnes the time allowed for loading shall be 5 days;~~
- 19. —**~~For an actual cargo quantity above 60,000 tonnes the time allowed for loading shall be 6 days;~~

aAll weather working days of 24 consecutive hours (except Saturdays, Sundays and holidays). Any time lost on a working day owing to weather conditions shall not count provided work is actually stopped or prevented thereby. The Sellers must appoint and pay for the stevedores at the loading port(s).

### **Survey at Loading Port:**

Before loading is commenced, and at each loading port, the vessel must pass the customary survey of a) Commonwealth Department of Agriculture (or substitute successor body) any relevant Australian government quarantine and inspection agency authorised officer/surveyor and b) an independent —recognised Mmarine sSurveyor appointed by the Buyers and acceptable to the Sellers. The cost of the surveys are for the Buyers account. Time spent for all surveys not to count as time used, even if the vessel is on demurrage.

### **Fumigation**

Buyers have the option to fumigate subsequent to loading, in which case all costs, consequences and liabilities resulting there from are solely for Buyers account.



**ISPS Clause**

Buyers warrant, represent and undertake that the vessel complies fully with all the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS and all amendments from time to time in force (ISPS Code). Upon request, Buyers shall, inter alia, provide the relevant International Ship Security Certificate (ISSC) Notwithstanding any prior acceptance of the vessel by Sellers, if at any time prior to or during the vessel's stay at the loading port the vessel is found not to be compliant with the ISPS Code or the MTSA or ceases to be so, Sellers have the right not to berth such nominated vessel and any and all damages/costs/expenses including, but not limited to demurrage, carrying charges, levies or taxes shall be for the account of the Buyers.

Buyers are, accordingly, obliged to substitute such nominated vessel with a vessel complying with the requirements of the ISPS Code.

**20.15. DEMURRAGE / DESPATCH:** The rate of demurrage/despatch provided shall be as per charter party, with \_\_\_\_\_ maximum rates of \_\_\_\_\_ per running day, and pro-rata for any part of a day for the relevant cargo quantity. Information relating to Demurrage/Despatch from the charter party, must be communicated to the sellers. Demurrage/despatch to be settled within 30 days of the last day of loading. *Refer Note 6*

**21.16. PAYMENT:**

- (a) The Buyers shall pay 100pct of the invoice by electronic transfer within 1 working day after presentation of following original shipping documents including faxed or electronic copies of shipping documents.
- (b) Payment against:
  - Commercial Invoice for the Cargo
  - Weight Certificate (as per clause 4)
  - Quality Certificate (as per clause 9)
  - Origin Certificate
  - Bill of Lading or Mates Receipt*(Refer note 7)*
- (c) If payment against faxed/electronic copies then Sellers will not release any bill of lading that has been issued in respect of cargo to the Buyers unless the Sellers have received confirmation from the Sellers' bank that payment for such cargo has been received into the Sellers' Account in accordance with these terms.
- (d) If any payment is not made on or before the due date for payment, interest shall be payable. Interest will be paid on any amount owing from the day after it falls due until the day on which it is paid. Interest accrues daily at a compound annual interest rate of the Australian 90-day bank bill rate (or US Prime Rate, for contracts denominated in US-dollars) plus 5%. Nothing in this clause shall affect a party's rights to invoke the provision of the Default Clause in a case where a failure to effect timely payment could give rise to a claim under that clause.
- (e) Documentary instructions to be forwarded to the seller minimum of 5 business days prior the vessel ETA.

No obvious clerical error in the shipping documents shall entitle the Buyers to reject or delay them or delay payment, but the Sellers shall be responsible for all proven loss or expense caused to the Buyers by reason of such error, and the Sellers shall on request of the Buyers furnish a guarantee acceptable to Buyers in respect thereto. Debit Notes for additional charges originated at loading port for reasons not attribute to Sellers must be settled within 2 business days.

In the event of the Vessel and/or cargo being lost before completion of loading or if loading be stopped for any reason beyond the Sellers' control, the Buyers to pay the Sellers for any quantity loaded, on presentation of bill(s) of lading or mate's receipt or other proof of shipment which Buyers shall accept as final.

**22.17. DUTIES, TAXES, LEVIES, ETC:** All export duties, taxes, levies, licenses, etc., in the state of origin where the port or ports of shipment are situated, shall be for Sellers' account All taxes, levies, licences, imposts of any nature on freight and cargo outside Australia are for the Buyers' account.

**23.18. AUTHORISATIONS:**

- (a) Unless otherwise agreed, Sellers must obtain at their own risk and expense any export licence or other official authorisation and carry out, where applicable, all administrative formalities necessary for the export of the cargo.
- (b) Sellers and Buyers acknowledge and agree that regulations in place at the Load Port may require that the Vessel and cargo comply with import permits and regulations in place at the intended place of import/destination. Buyers undertake to use best endeavours to provide Sellers as soon as practicable with all information and documentation which Sellers may reasonably require to obtain permits necessary to facilitate loading and shipment.
- (c) For the avoidance of doubt, Buyers must obtain at their own risk and expense any import licence or other official authorisation and carry-out all customs formalities for the import of the goods. Save that Sellers warrant that the goods on shipment meet the specifications set out in this contract, the Sellers give no warranty that the goods comply with import requirements at the place of import/destination.

**24.19. 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 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 EST on a business day shall be deemed to have been received on the business day following. A notice to a party's Brokers or Agent shall be deemed a valid notice under this contract. In case of resale, all notices shall be passed on without delay by Buyers to their respective Sellers or vice versa. Should the notice be received after 1600 hours EST on the last business day permissible under this contract, the Sellers shall pass it on as soon as practical, but no later than 1000 hours EST on the next business day thereafter. Upon request, the Sellers shall provide the Buyers with documentary evidence of Sellers' receipt of notice.



**25.20. 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. The contract delivery period is not affected by this clause.

**26.21. 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 port or ports named herein is/are situate, 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) act of God, or
- (k) unforeseeable and unavoidable impediments to transportation or navigation, or
- (l) 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.

**27.22. INSURANCE:** Cargo to be at Buyers' risk upon delivery over the ship's rail, and the Buyers shall insure the cargo placed on board, or in custody of the Master, from the commencement of loading until payment in accordance with this contract. Buyers to produce evidence of insurance cover at Seller's request.

**28.23. BANKRUPTCY/INSOLVENCY:** If before the fulfilment of this contract the Buyers or the Sellers suspend payment of debts, notifies any of their creditors that they are unable to meet debts, or convenes or holds a meeting of creditors, or commits an act of bankruptcy, or being a company shall be made subject to external administration or shall have a receiver appointed, or hold a meeting for the purpose of considering a resolution that the company be wound up or go into liquidation, such Buyers or Sellers shall forthwith notify by means of rapid written communication the other party within two business days of the occurrence and shall be deemed to be in Default hereunder.

(a) Such contract shall be closed out at market price on the business day following the giving of the notice. If notice is not given as aforesaid, the other party, on learning of the occurrence of the act of insolvency, shall have the option of declaring this contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the act of insolvency or at market price ruling on the first business day after the date of the act of insolvency occurred.

(b) In all cases the party in Default shall have the option to ascertain the settlement price on the closing out of this contract by repurchase or resale, and the difference between the contract price and the repurchase or resale price shall be the amount payable or receivable under this Clause.

Should either party be dissatisfied with the price ascertained by re-purchase or re-sale, then the matter shall be referred to GTA for arbitration. If no re-purchase or re-sale takes place and if the parties cannot agree to a closing-out price, then on application of either party, the closing-out price shall be fixed by a sole arbitrator appointed by GTA.

**29.24. CIRCLE:** Where Sellers re-purchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same description, from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for delivery from the same port(s) of loading during the same period of delivery). Different currencies shall not invalidate the circle.

If the circle is established before the goods are shipped, or if the goods are not shipped, invoices based on the mean contract quantity, or if the goods have been shipped invoices based on the shipped quantity, shall be settled by all Buyers and their Sellers in the circle by

payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after the last date for shipment, or should the circle not be ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained.

Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the market price on the first day for contractual delivery and invoices shall be settled between each Buyer and his Seller in the circle by payment of the differences between the market price and the relative contract price in the currency of the contract.

All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained in accordance with this clause same shall be binding on all parties to the circle. As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract.

Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price and the contract price.

**30-25. DEFAULT:** If a party defaults on any of its obligations under this contract the party not in default may at its discretion and upon giving the defaulter notice of default elect to either cancel this contract, or to sell or purchase, as the case may be, against the defaulter who shall on demand make good the loss, if any, on such sale or purchase. If the party liable to pay shall be dissatisfied with the price of such sale or purchase or if neither of the above rights is exercised the damages if any shall be determined by arbitration, failing amicable settlement. The damages awarded against the defaulter shall be limited to the difference between the contract price and the actual or estimated market price on the day of default. Damages are to be calculated on the mean contract quantity. The arbitrators may at their absolute discretion award damages on different quantity and/or award additional damages if they consider it justified by the circumstances of the default.

Prior to the last day of the contract delivery period either party may notify the other party of its inability to deliver or take delivery but the date of such notice shall not become the default date without the agreement of the other party. If, for any other reason, either party fails to fulfil this contract and is declared to be in default by the other party and default is either agreed between the parties or subsequently found by arbitrators to have occurred, then the day of the default shall, failing amicable settlement, be decided by arbitration. Except as otherwise specifically provided for in this contract, no party to this contract shall be liable in an event of default for the other party's indirect, consequential or special losses, loss of profits or other general damages.

**31.26. CHOICE OF LAW:** This contract shall be interpreted according to and governed by the laws in force in New South Wales with specific reference to the Sale of Goods Act 1923 and the Warehouseman's Liens Act 1935. Performance of this contract is subject to orders, rules, and regulations of all government agencies.

**32.27. INTERNATIONAL CONVENTIONS AND FOREIGN STATUTE:** The following shall not apply to this contract:

- (a) the Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967
- (b) the United Nations Convention on Contract for the International Sale of Goods of 1980, which was given effect by the Sale of Goods (Vienna Convention) Act 1987 (NSW)
- (c) the United Nations Convention of Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980

**33.28. RULES OF TRADE:** This contract is subject to and operates in accordance with Incoterms 2010 except that this contract prevails to the extent of any inconsistency therewith, but no further.

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

**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 GTA Dispute Resolution Rules in force at the commencement of the arbitration 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. Notice of appointment of an arbitrator must be given in writing by the party commencing arbitration within 6 months of the Vessel's arrival at the first discharge port named in this contract, otherwise all claims shall be deemed to be waived and no proceedings whatsoever whether by way of arbitration or litigation shall be commenced.

**-End-**



## GTA Voyage Charter - AusGrain 2015

Grain Trade Australia Voyage Charter 2015 - AusGrain 2015	
Part I	
1. Shipbroker	2. Place and Date
3. Owners/Place of business (Cl. 1)	4. Charterers/Place of business (Cl. 1)
5. Vessel's name (Cl. 1)	6. GT/NT (Cl. 1)
7. DWT all told on summer load line in metric tons (abt) (Cl. 1)	8. Present position (Cl. 1)
9. Shipment Period (Cl. 9)	
10. Loading range, port or place (Cl. 1)	11. Discharging port or place (Cl. 1)
12. Cargo (also state quantity and margin in Owners' option, if agreed; if full and complete cargo not agreed state "part cargo") (Cl. 1)	
13. Shippers (Cl. 2)	14. Nomination (Cl. 9) a) Length of Final Laycan: b) No. of days' notice of Final Laycan prior to first day of Final Laycan: c) No. of day notice of nomination of carrying Vessel prior to first day of Shipment Period:
15. Freight rate (also state whether freight prepaid or payable on delivery) (Cl. 1)	16. Freight payment (state currency and method of payment; also beneficiary and bank account) (Cl. 7)
17. Maximum Age of Vessel (Cl. 16.12(d))	18. Laytime (Cl. 19) a) Loading Rate b) Laytime for discharging c) Total laytime for loading and discharging
19. [left intentionally blank]	
20. Agents (loading) (Cl. 18)	
21. Agents (discharging) (Cl. 18)	
22. Demurrage rate and manner payable (loading and discharging) (Cl. 21)	23. General Average to be adjusted (Cl. 345)
	24. Brokerage commission and to whom payable (Cl. 378)
25. Additional clauses covering special provisions, if agreed	
Signature (Owners)	Signature (Charterers)

## GTA Voyage Charter - AusGrain 2015

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charterparty which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

<b>1. Introduction</b>	1	Charterers for loading port orders 96 hours before	70
The Owners (in Box 3) of the Vessel (in Box 5), of the	2	arriving in the loading area in Box 10 and orders for	71
GT/NT indicated in Box 6 and with the number of tonnes of	3	loading port shall be given by the Charterers within 48	72
deadweight capacity all told on summer loadline stated in	4	hours of receipt of the Owners' application.	73
Box 7, now in position as stated in Box 8 and the	5	<b>9.2</b> The Charterers to give notice as stated in Box 14	74
Charterers (Box 4) agree that:	6	narrowing the Shipment Period in Box 9 to a Final	75
As soon as her prior commitments have been completed	7	Laycan of at least the number of days specified in	76
the said Vessel being in every way fitted for the voyage will,	8	Box 14 (all within the Shipment Period in Box 9). The	77
as directed by the Charterers, proceed with all convenient	9	Final Laycan will only be varied by written consent of	78
speed to the loading range, ports(s) or place(s) stated in	10	both the Owners and the Charterers.	79
Box 10 (from the range of ports listed in clause <del>333</del> ) or so	11	<b>9.3</b> Where Box 5 is completed "TBN" or equivalent, the	80
near thereto as she may safely get and lie always afloat,	12	Owners shall nominate a Vessel as required in Box	81
and there load a cargo of grain in bulk as stated in Box 12	13	14 before the first day of the Shipment Period in Box	82
(grades to be naturally separated to fit the Vessel's holds, if	14	9, such notice to be given to the Shippers and the	83
more than one grade) which the Charterers bind	15	Charterers within the Charterers' normal office hours	84
themselves to ship, and being so loaded, the Vessel shall	16	(Monday to Friday 0900hrs to 1700 hours local time,	85
proceed with all convenient speed to the discharging port(s)	17	holidays excluded). Any nomination received outside	86
or place(s) stated in Box 11 as ordered on completion of	18	these hours will be deemed to be received at 0900 on	87
loading, or so near thereto as she may safely get and lie	19	the next working day.	88
always afloat, and having been paid freight at the rate	20	<b>9.4</b> The Charterers <u>may within 24 of receipt have the</u>	89
specified in Box 15 there deliver the cargo.	21	<u>option in their sole discretion to accept or reject any</u>	90
		<u>nomination within 24 hours</u> that includes the words	91
		"or substitute" or "to be nominated" or words of similar	92
		intent.	
<b>2. Shippers</b>	22	<b>9.5</b> <u>The Charterers may in their absolute</u>	93
In this Charterparty <b>Shippers</b> means the party named in	23	<u>discretion accept or reject a late nomination with</u>	94
Box 13.	24	<u>reservation of all rights.</u>	95
<b>3. Loading Port Range</b>	25	<b>9.6</b> <u>Any rejection by the Charterers of the Owners'</u>	96
Fremantle, Geraldton, Albany, Esperance (in Western	26	nomination shall not affect the Owners' obligation to	97
Australia), Port Giles, Wallaroo, Port Lincoln, Port Adelaide,	27	comply with this Charterparty. The Owners <del>shall</del> <u>must</u>	98
Theravard (in South Australia), Geelong, Portland,	28	re-nominate promptly, such re-nominated vessel	99
Melbourne (in Victoria), Port Kembla, Newcastle (in New	29	being in all respects fitted and suitable to perform the	100
South Wales), Brisbane, Gladstone, Mackay (in	30	voyage, to arrive, ready in all respects to load the	101
Queensland).	31	cargo and perform this voyage as per the terms and	102
		conditions of this Charterparty before the last day of	103
		the Final Laycan.	104
<b>4. Shifting of Vessel</b>	32	<b>10. Substitution</b>	105
The Charterers have the option of ordering the Vessel to	33	<b>10.1</b> Without affecting the Owners' obligations or the	106
shift loading berths at the Owners' expense on one	34	Charterers' rights under this Charterparty the Owners	107
occasion at each loading port. All time used for shifting	35	may nominate a substitute vessel if:	108
between first and any subsequent loading berths counts as	36	(a) the proposed substitute vessel arrives ready in all	109
laytime or demurrage, if on demurrage. If the Vessel is	37	respects to load the cargo and perform this voyage as	110
ordered to shift by any port authority all costs of and in	38	per the terms and conditions of this Charterparty	111
connection with such orders must be paid by the Owners	39	before the last day of the Final Laycan of the original	112
and all time used is not to count as laytime or time on	40	vessel and otherwise complies with the requirements	113
demurrage, even if on demurrage.	41	and procedures contained in clause <del>202020</del> , subject	114
<b>5. Capacity and tolerance</b>	42	always to the Charterers' rights set out in that clause;	115
The Owners warrant that the Vessel is able to load the	43	and	116
Cargo with a tolerance stated in Box 12 more or less at the	44	(b) the proposed substitute vessel has been	117
Owners' option.	45	nominated to Shippers and the Charterers at least	118
<b>6. Cargo Responsibility</b>	46	twelve (12) clear days before commencement of the	119
<b>6.1</b> The Charterers shall at their expense procure the	47	lay-can period; and	120
delivery of Cargo from the silo at the loading port, into	48	(c) the Charterers' agreement in writing has been	121
the Vessel's holds, loaded, stowed and spout	49	given to such substitution, such agreement not to be	122
trimmed.	50	unreasonably withheld.	123
<b>6.2</b> Loading and discharging of Cargo (including covering	51	The Owners warrant that any substitute vessel	124
and uncovering of hatches) will at all times be under	52	nominated under clause <del>10.140-140.1</del> will comply in	125
the direction and supervision of the Master and the	53	all respects with the requirements of this	126
Owners.	54	Charterparty.	
<b>7. Freight</b>	55	<b>10.2</b> The Charterers <u>have 24-business hours from receipt</u>	127
Freight is payable at the rate in Box 15 per tonne of 1,000	56	<u>of Owners' nomination in which to may</u> reject any	128
kilos according to Bill of Lading weight (refer to clause	57	proposed substitute vessel that does not meet the	129
<del>22222 and Schedule No. 1</del> ) in accordance with the	58	requirements of this Charterparty; <u>within one</u>	130
particulars in Box 16.	59	<u>business day of receipt of its nomination by the</u>	
		<u>Owners.</u>	
<b>8. Deadfreight</b>	60	<b>11. The Owners' Obligations</b>	131
Bill of Lading weight is to be determined by silo weight	61	<b>11.1</b> The Owners shall at all times:-	132
figures, which are to be final and binding for the purposes of	62	(a) ascertain the applicable physical and operational	133
clauses <del>777</del> and <del>22222</del> . No deadfreight is ever payable in	63	requirements for loading and discharging port(s); and	134
respect of any voyage performed under this Charterparty	64	(b) procure that the Vessel complies at all times with	135
provided the Charterers make available the Cargo specified	65	such requirements.	136
in Box 12 including tolerance at the Owners' option as	66	<b>11.2</b> If the Owners or the Master cause or permit the	137
specified in Box 12.	67	Vessel to be loaded so that the Vessel has on arrival	138
		at any discharging port a draft in excess of the	139
		permissible entry draft at that port the Owners must	140
<b>9. Nomination</b>	68	promptly notify the Charterers in writing and:-	141
<b>9.1</b> If proceeding in ballast the Owners shall apply to the	69	(a) the Charterers have the right (acting reasonably)	142



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	to require the Vessel to proceed to that port, or to any other port or place, for the purpose of lightening and/or to discharge (including part discharge); and	143	government agency so directs.	217
	(b) the Owners must promptly pay the costs of lightening and all other additional costs incurred because of the Vessel's excess draft. Time spent due to the Vessel having excess draft does not count as laytime or demurrage, even if on demurrage.	144	15.2 The cost of surveys (excluding costs of transporting an inspector and/or surveyor to and/or from the Vessel at anchorage) under clause <del>15.115.415.4</del> are for the Owners' account. Time spent for all surveys under clause <del>15.115.415.4</del> is not to count as laytime or demurrage if on demurrage. An officer/surveyor appointed under clause <del>15.115.415.4</del> is to attend on board at anchorage within 24-hours after the Vessel's arrival weather permitting or otherwise as soon as is practical after weather permits or if attendance at anchorage is otherwise not possible then as soon as possible after berthing of the Vessel.	218
11.3	The Owners indemnify and hold the Charterers harmless against any loss or damage resulting from a breach by the Owners of any obligation under this clause <del>11.411.4</del> .	145		219
11.4	This clause does not affect and is not affected by clause <del>242.424</del> .	146		220
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<b>12. Notices</b>		157	<b>16. Vessel Requirements</b>	231
12.1	Notices and any other communications from the Owners to the Charterers or to the Shippers must be by email or fax.	158	<del>16.1</del> Vessel will present for loading free from loose rust, scale, infestation and/or contamination by previous cargoes and suitable in every respect for the loading, carriage and discharge of the permissible cargoes under this Charterparty.	232
12.2	At loading, any NOR must also be sent to the Shippers' agent at the relevant loading port by email or fax.	159	<del>16.216.1</del> The Owners warrant that the Vessel is, when nominated, and will remain at all times throughout the performance of this Charterparty:-	233
12.3	At discharging, any NOR must be sent to the Receivers (or their nominated agents) at the relevant discharging port by email or fax.	160	(a) seaworthy, tight, staunch and strong and in every way fitted for the voyage and to safely enter, berth, lay alongside, load and discharge and depart always safely afloat from the loading and discharging ports;	234
		161	(b) entered with a Protection & Indemnity Association a member of the International Group for full coverage (including pollution liability to the extent required in clause <del>363.637</del> ) and the Vessel's hull and machinery are fully insured;	235
<b>13. Notices by Master</b>		162	(c) complies with the requirements of the Protection of the Sea (Civil Liability) Act 1981 (Australia), the Protection of the Seas (Civil Liability for Bunker Oil Pollution Damage) 2008 (Australia) and the Navigation Act, Marine Orders and the Maritime Labour Convention 2006;	236
13.1	Loading Port(s)	163	(d) not more than the number of years in Box 17 old, single deck, with engine/accommodation aft, non-twin hatch, each hatch being without longitudinal centre line bulkheads;	237
	The Master must notify the Shippers and the Charterers as follows:	164	(e) classed highest Lloyds or equivalent in accordance with the Institute Classification Clause of the Institute of London Underwriters dated 1/1/2001 or any subsequent version of that clause;	238
	(a) Of the Vessel's estimated time of arrival at the first loading port ( <b>ETA</b> ) once in every twenty four (24) hours from the time of nomination.	165	(f) acceptable to all relevant authorities and conforming with all laws, regulations and requirements in force at or applicable from time to time at the loading and discharging ports;	239
	(b) Within twenty four (24) hours after acceptance of the Vessel, giving the Vessel's ETA, current position, intended route to the loading area and providing his arrival draft and stowage plan to include quantity of Cargo to be loaded on deepest departure draft and any cargo permitted in accordance with clause <del>393.940</del> to be loaded for other shippers	166	(g) well maintained in all accommodation, equipment, fixtures and fittings;	240
	(c) Forty eight (48) hours and twenty four (24) hours prior to the Vessel's ETA confirming any change to expected fore and aft drafts on arrival.		(h) of such draft, aircraft and other dimensions as represented by the Owners to the Charterers;	241
13.2	Discharging Port(s)		(i) capable of loading cargo in all holds or alternate holds as required;	242
	The Master must notify the Charterers and the Receivers (or their nominated agents) as follows:		(j) fully compliant with the Codes of the International Maritime Organisation in force from time to time including without limitation <b>ISTCW</b> (International Convention on Standards of Training, Certification and Watchkeeping), <b>ISM</b> (International Safety Management) and <b>ISPS</b> (in accordance with clause <del>41.4142</del> ); and	243
	(a) Upon departure from the loading port, confirming the sailing date, quantity loaded, estimated time of arrival at discharging port(s) and fore and aft drafts.		(k) compliant with any other requirements specified by the Charterers on fixing the Vessel	244
	(b) Once in every twenty four (24) hours thereafter updating the estimated time of arrival at discharging port(s).		<del>16.3</del> At the time of nomination the Owners to provide the Charterers with a completed Vessel Questionnaire (if requested by the Charterers) signed by the Master, the accuracy of which the Owners warrant.	245
	(c) Forty eight (48) and twenty four (24) hours prior to arrival at each discharging port of any change to fore and aft drafts expected on arrival.		<del>16.416.2</del> If the Vessel is found not to comply with any of the warranties contained in clause <del>16.12</del> or <del>16.3</del> the Charterers may at their sole discretion reject or conditionally accept the Vessel.	246
<b>14. Orders for Loading Port</b>			An acceptance under this clause <del>16.216.216.4</del> :-	247
14.1	Unless the Charterers have already given orders for a second and/or subsequent loading port (if any), such orders must be given by the Charterers within 24 hours after the commencement of loading at the first loading port.		(a) must be in writing;	248
14.2	The Master must inform the Charterers in writing by e-mail or fax if the Vessel is delayed for 48 or more hours after the Charterers' orders for loading port have been given.		(b) does not in any event relieve the Owners or the Charterers of any obligation under this Charterparty.	249
				250
<b>15. Survey at Loading Port</b>				251
15.1	Before loading is commenced, and at each loading port, the Vessel must pass the customary survey of:-			252
	(a) Any relevant Australian government quarantine and inspection agency authorised officer/surveyor; and			253
	(b) an independent Marine Surveyor appointed by the Charterers and acceptable to the Owners (acting reasonably)			254
	provided that such survey(s) shall not be required at any second or subsequent loading port unless			255
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A rejection under <del>this</del> clause <del>16.216.216.4</del> must be in writing and any such rejection is always without prejudice to the Charterers' rights.	293	given by the Master when the Vessel is in fact ready	366
<del>16.516.3</del> No act, conduct, statement or omission of the Charterers prejudices any right or remedy available to the Charterers under clause <del>161616</del> .	294	in all respects and laytime only begins to count upon receipt of such fresh valid NOR. To avoid doubt, any time incurred by the Vessel prior to receipt of a fresh valid NOR (including time at anchorage) will not count as laytime or time on demurrage.	367
	295		368
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<b>17. Stevedores</b>	299	19.9 At the second or subsequent loading port (if any) the time for loading is to count:-	372
17.1 The Charterers must appoint and pay the stevedores at the loading port(s). The Receivers must appoint and pay the stevedores at the discharging port(s).	300	(a) if NOR is, pursuant to clause <del>19.519.519.5</del> , required at that port, from receipt of a valid NOR; or in all other cases	373
17.2 Stevedore damage if any, whether at any loading or discharging port(s), must be settled directly between the Owners and stevedores, but the Charterers will provide all reasonable assistance to the Owners in relation to any such claim.	301	(b) from 1200 hours on the day of arrival at the port (or so near as the Vessel is permitted to approach) if the Vessel arrives before 1200 hours, and from 0900 hours on the following day if the Vessel arrives at or after 1200 hours	374
	302	unless loading is commenced earlier, in which case the time is to count from the commencement of loading.	375
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<b>18. Agents</b>	308	19.10 In the case of a second or subsequent loading port (if any), time changing ports is not to count as laytime or demurrage, even if on demurrage. In this clause <del>19.1019.1019.10</del> "time changing ports" means time from the completion of loading at a port, time sailing from that port to the next loading port, and until laytime starts to count again under clause <del>19.919.919.9</del> .	383
18.1 At the loading port(s) the agents for the Vessel will be appointed by the party in Box 20.	309		384
18.2 At the discharging port(s) the agents for the Vessel will be appointed by the party in Box 21.	310		385
	311		386
	312		387
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<b>19. Loading</b>	313		389
19.1 The Cargo is to be loaded <del>within the laytime allowed below, or at the rate specified in Box 18, or if no rate specified 10,000mt per day</del> , based on the quantity specified in Box 12, provided that the Vessel can receive at the appropriate pro rata rate. <del>In this clause a reference to a "mean Cargo quantity" is a reference to the quantity specified in Box 12 without regard to tolerance:</del>	314	19.11 The Shippers may send the Cargo alongside continuously (Saturdays, Sundays and holidays included) and if the Shippers so direct the Owners must procure that the Vessel loads continuously (Saturdays, Sundays and holidays included).	390
(a) <del>For a mean Cargo quantity up to 10,000 tonnes the time allowed for loading is three (3) days;</del>	315		391
(b) <del>For a mean Cargo quantity above 10,000 tonnes up to 25,000 tonnes the time allowed for loading is four (4) days;</del>	316		392
(c) <del>For a mean Cargo quantity above 25,000 tonnes up to 60,000 tonnes the time allowed for loading is five (5) days; and</del>	317		393
(d) <del>For a mean Cargo quantity above 60,000 tonnes, the time allowed for loading is six (6) days.</del>	318		394
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19.2 Laytime is to be calculated in weather working days of 24 consecutive hours Saturdays, Sundays and holidays excluded even if used.	331	<b>20. Commencement of Loading and Cancelling Dates (Laycan)</b>	402
19.3 When the Vessel is ready in all respects to load at any berth ordered by the Charterers, the Master must <del>tender give Shippers and the Charterers</del> written notice of readiness (NOR) <del>to the Shippers and Charterers</del> . <del>Valid NOR must be received by the Shippers and the Charterers from between</del> Monday to Friday, except holidays at the loading port, between 0900 hours and 1700 hours local time.	332	20.1 The time for loading shall not commence before the first day of the Shipment Period in Box 9 and if the Vessel is not ready to load at all hatches at first loading berth by 2400 hours on the last day of the Final Laycan the Charterers shall have the option of cancelling this charter, which shall be declared upon NOR being given.	403
	333		404
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	340		411
19.4 At the first loading port the laytime starts to count 24-hours after the Charterers have received valid NOR unless loading commences earlier in which case time spent loading to count.	341	20.2 Cancellation of this Charterparty under clause <del>20.120.120.1</del> shall be entirely without prejudice to the Charterers' rights. No act, conduct, statement or omission of the Charterers affects the Charterers' right of cancellation under this Charterparty.	412
	342		413
	343		414
	344		415
19.5 NOR is only to be given at the first loading port or place except when any survey under clause <del>15.115.115.1</del> has been directed at a second or subsequent loading port, in which case NOR must also be given at that second or subsequent loading port and clause <del>19.319.319.3</del> applies.	345	20.3 <del>The Owners and Charterers may agree but are The Charterers are permitted but</del> not obliged to begin loading earlier than first the day of the Shipment Period specified in Box 9.	416
	346		417
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19.6 This is a berth-charter. If the loading berth is occupied when the Vessel arrives at or off the first or only loading port (or so near as the Vessel is permitted to approach), the Master will be entitled to give NOR upon arrival at the port. Laytime will count as if the Vessel was in berth. Time spent moving from the waiting place to the loading berth is not to count as laytime or demurrage, even if on demurrage.	351	<b>21. Demurrage and Despatch (Loading)</b>	419
	352	21.1 If the Cargo is not loaded within the time stipulated in clause <del>191919</del> , demurrage is payable at the rate specified in Box 22 per running day, and pro rata for any part of a day (unless expressly excluded by this Charterparty). The Owners must provide their signed statement of facts and laytime calculation within 5 business days of the completion of loading. The Charterers must pay the Owners any demurrage due under clause <del>212121</del> within thirty (30) business days after:-	420
	353	(a) receipt of the Owners' statement in accordance with clause <del>21.121.121.1</del> ; and	421
	354	(b) the Owners and the Charterers reaching agreement on the calculation.	422
	355		423
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	359		427
19.7 A NOR is invalid and time does not start to count if the Vessel was not, at the time NOR is given, in fact ready in all respects. To avoid doubt, the Vessel will not be ready if the result of any survey or inspection under clause <del>15.115.1</del> is that the Vessel is not ready and available for immediate loading.	360	21.2 Upon expiry of laytime payment of demurrage will be Owners' sole remedy for delay unless the circumstances of the delay lawfully permit the Owners (on notice to the Charterers) to treat the Charterparty as repudiated and/or claim damages and/or detention.	428
	361		429
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19.8 If an invalid NOR is given, a fresh valid NOR must be	365		433
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21.3	For all laytime saved at the loading port(s) despatch is due by the Owners to the Charterers on completion of loading and must be paid within 30 business days following completion of loading at the rate of one half of the rate of demurrage specified in Box 22.	440 441 442 443 444	specified in Box 22 per running day and pro rata for any part of a day. The Owners must provide their signed statement of facts and laytime calculation within 5 business days of the completion of discharge.	511 512 513 514
21.4	<del>If despatch due under clause 21.3 is not paid within 14 business days, the Charterers may set off and deduct the unpaid amount of despatch from other amounts due to the Owners other than freight.</del>	445 446 447 448	24.2 Subject to the laytime allowed in this Charterparty, to the relevant laytime exceptions in this Charterparty (including the express circumstances in which demurrage is not to accrue) and to the Charterers' rights under this Charterparty or at law, after acceptance of the Owners' NOR, the demurrage rate will apply to any time spent waiting at the discharging port(s) unless:-	515 516 517 518 519 520 521 522
22. Bills of Lading		449	(a) the circumstances of the delay lawfully permit the Owners to treat the Charterers as having repudiated this Charterparty and the Owners have validly served written notice on the Charterers to that effect. Otherwise the payment of demurrage is the Owners' sole remedy for such delay.	523 524 525 526 527 528
22.1	Without prejudice to this Charterparty, the Master shall either sign Bills of Lading for the Cargo on the "Ausgrain Bill" Bill of Lading form, (in the form of Schedule No. 1 to this Charterparty) or authorise the agents (in the form of the authorisation set out in Schedule No. 2 to this Charterparty) at each loading port to sign and issue and release such Bills of Lading on his behalf, always in accordance with Mates' Receipts.	450 451 452 453 454 455 456 457	24.3 For all laytime saved at discharging port(s), despatch is due and must be paid by the Owners at the rate of one-half of the rate of demurrage in Box 22.	529 530 531
22.2	All such Bills of Lading shall be for Cargo weights as determined by silo weight figures and must be clausal expressly to the effect that freight and all terms, conditions, clauses, exclusions, limitations and exceptions including the arbitration clause of this Charterparty are incorporated into each such Bill of Lading.	458 459 460 461 462 463 464 465	24.4 Any despatch at discharging port(s) must be calculated on the basis of a weather working day of 24 consecutive hours but any time lost on a working day due to weather conditions is not to count unless work is actually stopped or prevented.	532 533 534 535 536
22.3	The Master or the agents shall issue and release signed Bills of Lading to the Shippers immediately upon completion of loading and, if required by the Shippers, at each loading port.	466 467 468 469	24.5 Any demurrage or despatch at discharging port(s) must be paid within thirty (30) business days of the completion of discharge. If any despatch due is not paid in full, the Charterers have the right to deduct the unpaid amount of despatch from the freight due to the Owners.	537 538 539 540 541 542
23. Time for Discharging		470	24.6 Laytime at loading and discharging ports is non-reversible.	543 544
23.1	When the Vessel is in all respects ready for discharging the Master must give written notice (NOR). Valid NOR must be received by the Charterers and Receivers (or their nominated agents) on a working day and during ordinary office hours local time, whether the Vessel is in berth or not at the first (or only) discharging port and on arrival at each subsequent discharging port, or so near as the Vessel may be permitted to approach. Time for discharging is not to commence until twenty-four (24) hours after Notice of Readiness has been received, unless discharging is commenced earlier. Cargo is to be discharged free of expense to the Vessel at the average tonnage rate specified in Box 18 per weather working day of twenty-four consecutive hours Saturdays Sundays and holidays excluded even if used.	471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487	25. Lighterage at Discharging Port	545
23.2	If the discharging berth is <u>occupied congested</u> on the Vessel's arrival at or off the first or only discharging port (or so near as the Vessel is permitted to approach), the Master will be entitled to give valid NOR on arrival there. If so, laytime counts as if the Vessel was in berth. Time spent moving from the waiting place to the discharging berth is not to count as laytime or demurrage even if on demurrage.	488 489 490 491 492 493 494 495	If lightening takes place at a discharging port, time occupied in moving from the point of lightening to the place of discharge is not to count as laytime or demurrage, even if on demurrage.	546 547 548 549
23.3	<del>If after berthing the Vessel is found not to be ready in all respects to discharge, the actual time lost between the time of this discovery and the time that she is in fact ready to discharge shall not count as laytime. NOR is invalid if the Vessel is not in fact ready in all respects at the time NOR is tendered. If an invalid NOR is given, a fresh valid NOR must be given by the Master when the Vessel is in fact ready in all respects and laytime does not begin to count until 24 hours after a fresh valid NOR has been received. Any further NOR must comply with the procedures set out in clause 23.1.</del>	496 497 498 499 500 501 502 503	26. Multiple Charters	550
23.4	The Charterers have the option (despite clause <u>24.124.124.4</u> ) to accept NOR under this clause <u>23.23.23</u> on a day that is not a working day and/or outside ordinary office hours local time.	504 505 506 507	26.1 Owners shall obtain Charterers' written consent for the Owners to load and carry other cargo pursuant to any separate contract of carriage whether concluded before or after this Charterparty.	551 552 553 554
24. Demurrage/Despatch (Discharging)		508	26.2 The loading, discharging or carriage of other cargo must not hinder the loading, discharging or carriage of the Cargo. Any other cargo must always be segregated at the Owners' risk and expense and any time spent in the Vessel positioning for loading or discharging of other cargo does not count as laytime or demurrage even if on demurrage.	555 556 557 558 559
24.1	If the Vessel is not discharged at the rate stipulated in clause <u>24.24.24</u> , demurrage is payable at the rate	509 510	26.3 Whenever this clause <u>26.26.26</u> applies, and if so requested by the Charterers, the Owners must provide separate laytime calculations in respect of Cargo and other cargo.	560 561 562 563 564 565 566
			27. Supervising Cargo	567
			The Charterers, Shippers, Receivers or their respective surveyors or agents have the right to be on board the Vessel whilst at loading port(s) and/or discharging port(s) for the purpose of inspecting the Cargo, checking the weight(s), and supervising their interests.	568 569 570 571 572
			28. Exceptions, etc	573
			The provisions of Section 17 of the Australian Carriage of Goods by Sea Act 1991 (Act) and of Articles 3 (except Article 3(8)), 4, 4A, 4 Bis, 6A, 8 and 9 of Schedule 1A to the Act are incorporated into and form part of this Charterparty as if they were set out in full. To this extent only (and no further), this Charterparty is to be deemed to be a contract for the carriage of goods by sea to which those incorporated provisions apply. No regard is to be had to Article 1 of Schedule 1A to the Act (except to the extent required to give effect to this clause). Nothing in clause 28	574 575 576 577 578 579 580 581 582 583

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affects clauses 6, 29, 31, 32, 33, 34, 35, 36, 37 or 43.4(b) of this Charterparty.	584 585		
<b>29.28. Strikes and Civil Blockades</b>	586		
29.28.1 In this clause 28.9 Industrial Action means a strike, work ban, go-slow or lock-out of or concerning any class or group of workers who would usually be engaged in the berthing of the Vessel or in the loading or discharging of Cargo and includes any stop work meeting not included in the relevant industrial award (or other registered or certified industrial agreement covering such workers) and any picket or blockade of the port or berth or stevedoring or associated storage facility (not being a blockade arising directly as a result of war). If Cargo (or any part of it) cannot be loaded or discharged, or is unavailable for loading or discharge by reason of Industrial Action any time lost due to that Industrial Action does not count as laytime or demurrage even if on demurrage.	587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602		proceed through any canal or waterway, or to proceed to or remain at any port or place whatsoever, where it appears, either after the loading of the cargo commences, or at any stage of the voyage thereafter before the discharge of the cargo is completed, that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo (or any part thereof), crew or other persons on board the Vessel (or any one or more of them) may be, or are likely to be, exposed to War Risks. If it should so appear, the Owners may by notice request the Charterers to nominate a safe port for the discharge of the cargo or any part thereof, and if within 48 hours of the receipt of such notice, the Charterers shall not have nominated such a port, the Owners may discharge the cargo at any safe port of their choice (including the port of loading) in complete fulfilment of this Charterparty. The Owners shall be entitled to recover from the Charterers the extra expenses of such discharge and, if the discharge takes place at any port other than the loading port, to receive the full freight as though the cargo had been carried to the discharging port and if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route, the Owners having a lien on the cargo for such expenses and freight.
29.28.2 Further, the Owners may not make any claim for damages for delay by reason of Industrial Action under this Charterparty or at law.	603 604 605		
<b>30.29. Liberties</b>	606		
The Vessel has liberty to assist vessels in distress as part of the contract voyage.	607 608		
<b>31.30. War Risks Clauses (VOYWAR 2004)</b>	609		
31.30.1 For the purpose of this clause, the words:	610	31.430.4	If at any stage of the voyage after the loading of the cargo commences, it appears that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo, crew or other persons on board the Vessel may be, or are likely to be, exposed to War Risks on any part of the route (including any canal or waterway) which is normally and customarily used in a voyage of the nature contracted for, and there is another longer route to the discharging port, the Owners shall give notice to the Charterers that this route will be taken. In this event the Owners shall be entitled, if the total extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route.
(a) "Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel;	611 612 613 614		
(b) "War Risks" shall include any actual, threatened or reported:	615 616		
War; act of war; civil war; hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; acts of piracy; acts of terrorists; acts of hostility or malicious damage; blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever); by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.	617 618 619 620 621 622 623 624 625 626 627 628 629		
31.230.2 If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or the Owners, performance of this Charterparty, or any part of it, may expose, or is likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Contract of Carriage, or may refuse to perform such part of it as may expose, or may be likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks; provided always that if this Contract of Carriage provides that loading or discharging is to take place within a range of ports, and at the port or ports nominated by the Charterers the Vessel, her cargo, crew, or other persons on-board the Vessel may be exposed, or may be likely to be exposed, to War Risks, the Owners shall first require the Charterers to nominate any other safe port which lies within the range for loading or discharging, and may only cancel this Contract of Carriage if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.	630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652	31.530.5	(a) The Owners may effect war risks insurance in respect of the Hull and Machinery of the Vessel and their other interests (including, but not limited to, loss of earnings and detention, the crew and their Protection and Indemnity Risks), and the premiums and/or calls therefore shall be for their account. (b) If the Underwriters of such insurance should require payment of premiums and/or calls because, pursuant to the Charterers' orders, or in order to fulfil the Owners' obligation under this Contract of Carriage, the Vessel is within, or is due to enter and remain within, or pass through any area or areas which are specified by such Underwriters as being subject to additional premiums because of War Risks, then the actual premiums and/or calls paid shall be reimbursed by the Charterers to the Owners within 14 days after receipt of the Owners' invoice. If the Vessel discharges all of her cargo within an area subject to additional premiums as herein set forth, the Charterers shall reimburse the Owners for the actual additional premiums paid which may accrue from completion of discharge until the Vessel leaves such area or areas referred to above. The Owners shall leave the area as soon as possible after completion of discharge.
31.330.3 The Owners shall not be required to continue to load cargo for any voyage, or to sign Bills of Lading for any port or place, or to proceed or continue on any voyage, or on any part thereof, or to	653 654 655 656	31.630.6	The Vessel shall have liberty: (a) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery or in any way whatsoever which are given by the Government



of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government which so requires, or anybody or group acting with the power to compel compliance with their orders or directions;	733	Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.	811
(b) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;	734		812
(c) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;	735		813
(d) to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;	736		814
(e) to call at any other port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment or other sanctions;	737		815
(f) where cargo has not been loaded or has been discharged by the Owners under any provisions of this clause, to load other cargo for the Owners' own benefit and carry it to any other port or ports whatsoever, whether backwards or forwards or in a contrary direction to the ordinary or customary route;	738		816
(g) if in compliance with any of the provisions of sub-clauses (b) to (f) of this clause anything is done or not done, such shall not be deemed to be a deviation, but shall be considered as due fulfilment of the Contract of Carriage.	739		817
	740	32-331.3 This clause shall be incorporated into any bill of lading issued pursuant to this Charterparty. The Charterers shall indemnify the Owners against all consequences or liabilities that may arise from the Master signing bills of lading as presented to the extent that the terms of such bills of lading impose or result in the imposition of more onerous liabilities upon the Owners than those assumed by the Owners under this clause.	818
	741		819
	742	32-431.4 If in compliance with this clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charterparty. In the event of a conflict between the provisions of this clause and any implied or express provision of the Charterparty, this clause shall prevail to the extent of such conflict, but no further.	820
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	758	33-32. Cesser Clause	833
	759	The Owners have a lien on Cargo for freight, <u>deadfreight</u> and demurrage at discharging port(s) for an amount not exceeding the value of the freight, <u>deadfreight</u> and demurrage then due. The Charterers' liability under this Charterparty ceases <u>when the Cargo is shipped</u> , except as regards clause <u>777</u> (payment of freight), <u>deadfreight, demurrage and except for all other matters provided for in this Charterparty where the Charterers' responsibility is specified, -when the Cargo is shipped-</u> .	834
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32-31. BIMCO Piracy Clause	769	34-33. Bunkering	840
32-431.1 If after entering into this Charterparty, in the reasonable judgement of the Master and/or the Owners, any port, place, area or zone, or any waterway or canal (hereinafter "Area") on any part of the route which is normally and customarily used on a voyage of the nature contracted for becomes dangerous, or the level of danger increases, to the Vessel, her cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter "Piracy"), the Owners shall be entitled to take a reasonable alternative route to the discharging port and, if they so decide, immediately give notice to the Charterers that such route will be taken. Should the Vessel be within any such place as aforesaid which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, she shall be at liberty to leave it.	770	The Owners may order the Vessel to bunker at any usual bunkering port in Australia including the loading port(s). The Vessel has liberty to proceed to any port at which bunker oil is available for the purpose of bunkering at any stage of the voyage and whether such ports are on or off the direct and/or customary route(s) between any of the loading or discharging ports for this Charterparty. The Vessel may take oil bunkers in any quantity in the discretion of the Owners, whether or not such oil bunkers are required for the chartered voyage. This clause <u>333334</u> does not affect Owners' obligation under clause <u>111111</u> or in clause <u>000</u> to proceed to the discharging port(s) with all reasonable despatch.	841
32-231.2 In any event, if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners shall have the liberty:	771		842
(a) to take reasonable preventative measures to protect the Vessel, her crew and cargo including but not limited to re-routing within the Area, proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel on or about the Vessel;	772		843
(b) to comply with the orders, directions or recommendations of any underwriters who have the authority to give the same under the terms of the insurance;	773		844
(c) to comply with all orders, directions, recommendations or advice given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group, including military authorities, whatsoever acting with the power to compel compliance with their orders or directions; and	774		845
(d) to comply with the terms of any resolution of the	775		846
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	784	35-34. General Average and the New Jason Clause	854
	785	General average (if any) is payable according to the York-Antwerp Rules, 2004 or any later modification of those Rules and shall be adjusted in the place stated in Box 23, but where the adjustment is made in accordance with the law and practice of the United States of America, the following clause applies:	855
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	793	"NEW JASON" CLAUSE	861
	794	In the event of accident, danger, damage or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.	862
	795	If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special	863
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charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.	878 879 880	suitable replacement vessel).	950
<b>36-35. Both to Blame Collision Clause</b>	881	<b>40-39. Reletting, Subletting, Subcontracting and Assigning</b>	951
If the liability for any collision in which the Vessel is involved while performing this Charterparty falls to be determined in accordance with the laws of the United States of America, the following clause applies:	882 883 884 885	<b>40-439.1</b> No cargo other than that provided by the Charterers may be carried without the Charterers' written consent which must be obtained prior to the Owners entering into any separate contract of carriage for such cargo, but this clause <del>39.139.140.1</del> does not apply if the Vessel is sublet by the Charterers. The Charterers may sublet the whole or part of the Vessel, but remain responsible for the due fulfilment of this Charterparty.	952 953 954 955 956 957 958 959 960
<b>"BOTH TO BLAME COLLISION CLAUSE"</b>	886	<b>40-239.2</b> The Owners may not sublet, subcontract or assign any of their rights, duties or obligations or provide a substitute vessel without the Charterers' prior written agreement. The Charterers' agreement under this subclause does not relieve the Owners of their responsibility for the performance of this Charterparty.	961 962 963 964 965 966
If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.	887 888 889 890 891 892 893 894 895 896 897 898 899	<b>40-339.3</b> If the Owners fail to perform their obligations under this Charterparty, the Charterers may at their option perform those obligations. Any additional costs incurred by the Charterers, including obtaining replacement vessel(s) and any rates of freight and demurrage exceeding the applicable Charterparty rates of freight and demurrage must be paid by the Owners to the Charterers on demand.	967 968 969 970 971 972 973 974
The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.	900 901 902 903		
<b>37-36. Oil Pollution Clause</b>	904	<b>44-40. Port Charges, Dues and Taxes</b>	975
The Owners agree to indemnify the Charterers, Shippers, Receivers, their agents, or any other party against any liability for or arising out of oil pollution (whatever the basis of liability may be) by reason of any act or omission of the Vessel, the Master or any servant or agent of the Owners provided that the incident giving rise to such liability has not been caused or contributed to by the party seeking to be indemnified under this Charterparty and provided that the facts and matters giving rise to the contravention would not constitute a defence under Article 3 Section 2 of the International Convention on Civil Liability for Oil Pollution Damage 1969 if the Vessel were a ship carrying oil in bulk as cargo. The Owners warrant that the Vessel is entered in a Protection and Indemnity Association with cover for liabilities arising under clause <del>363637</del> .	905 906 907 908 909 910 911 912 913 914 915 916 917 918 919	<b>44-140.1</b> Any taxes, dues, port charges or other charges levied against the Vessel and/or freight are payable by the Owners. Any taxes, dues or other charges levied against the Cargo are payable by the Charterers at the loading port and by the Receivers at the discharging port.	976 977 978 979 980 981
The Charterers are never liable for demurrage due to any delay or loss of time to the Vessel at the loading and/or discharging ports arising in connection with any such act or omission even if on demurrage; any time lost as a result of any such act or omission never counts as laytime.	920 921 922 923 924	<b>42-41. BIMCO ISPS/MTSA Clause</b>	982
Nothing in this clause <del>363637</del> prejudices or deprives the Owners of their rights of limitation or exclusion of liability under any applicable law.	925 926 927	<b>42-141.1</b>	983
The Charterers hold the benefit of this clause <del>363637</del> on behalf of themselves, the Shippers, the Receivers and their agents.	928 929 930	(a) The Owners shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code relating to the Vessel and "the Company" (as defined by the ISPS Code). If trading to or from the United States or passing through United States waters, the Owners shall also comply with the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the "Owner" (as defined by the MTSA).	984 985 986 987 988 989
		(b) Upon request the Owners shall provide the Charterers with a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) and the full style contact details of the Company Security Officer (CSO).	990 991 992 993 994
		(c) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Owners or "the Company"/"Owner" to comply with the requirements of the ISPS Code/MTSA or this clause shall be for the Owners' account, except as otherwise provided in this Charterparty.	995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007
<b>38-37. Brokerage</b>	931	<b>42-241.2</b>	1008
Brokerage at the rate in Box 24 is due upon shipment of Cargo.	932 933	(a) The Charterers shall provide the Owners and the Master with their full style contact details and, upon request, any other information the Owners require to comply with the ISPS Code/MTSA.	1009 1010 1011
<b>39-38. ITF Clause</b>	934	(b) Loss, damages or expense (excluding consequential loss, damages or expense) caused by failure on the part of the Charterers to comply with this clause shall be for the Charterers' account, except as otherwise provided in this Charterparty, and any delay caused by such failure shall count as laytime or time on demurrage.	1012 1013 1014 1015 1016 1017 1018
The Owners warrant that the Vessel complies with all the requirements of the International Transport Workers' Federation (ITF) or any successor organisation during the currency of this Charterparty and must provide evidence to the Charterers of such compliance at the time of nomination. If the Vessel does not possess a current ITF certificate or equivalent acceptable to the ITF, or if the Vessel's certificate lapses at any material time, the Owners must take all reasonable steps to comply or restore compliance with this clause <del>383839</del> forthwith, in default of which the Charterers may cancel this Charterparty. The Owners must keep the Charterers indemnified against any consequences of a breach by the Owners of their obligations under clause <del>383839</del> (including without limitation any delay and the Charterers' costs of providing a	935 936 937 938 939 940 941 942 943 944 945 946 947 948 949	<b>42-341.3</b> Provided that the delay is not caused by the Owners' failure to comply with their obligations under the ISPS Code/MTSA, the following shall apply:	1019 1020 1021



(a) Notwithstanding anything to the contrary provided in this Charterparty, the Vessel shall be entitled to tender Notice of Readiness even if not cleared due applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code/MTSA.

(b) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code/MTSA shall count as laytime or time on demurrage, unless such measures result solely from the negligence of the Owners, Master or crew or the previous trading of the Vessel, the nationality of the crew or the identity of the Owners' managers.

42.41.4 Notwithstanding anything to the contrary provided in this Charterparty, any costs or expenses whatsoever solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, vessel escorts, security fees or taxes and inspections, shall be for the Charterers' account, unless such costs or expenses result solely from the negligence of the Owners, Master or crew or the previous trading of the Vessel, the nationality of the crew or the identity of the Owners' managers. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.

42.51.5 If either party makes any payment which is for the other party's account according to this clause, the other party shall indemnify the paying party.

## 42. Arbitration and Disputes

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### BIMCO/LMAA Arbitration Clause (2009)

42.1 This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

42.2 The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

42.3 The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

42.4 Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

42.5 In cases where neither the claim nor any counterclaim exceeds the sum of USD 50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

42.6 In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure and neither the claim nor any counterclaim exceeds the sum of US\$400,000.00 (or such other sum as the parties may agree) the arbitration shall be

conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceedings are commenced.

42.7 Where the reference is to three arbitrators the procedure for making appointments shall be in accordance with the procedure for full arbitration stated above.

42.8 Notwithstanding the above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract.

42.9 In the case of a dispute in respect of which arbitration has been commenced under the above, the following shall apply:

(a) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.

(b) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.

(c) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.

(d) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.

(e) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(f) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.

(g) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)

## 43.

43.1 To the extent that this Charterparty is not compulsorily subject to Australian law or held to be subject to Australian law, this Charterparty is governed by English law.

43.2 Any dispute arising under this Charterparty from events which occur in Australia is to be settled by arbitration under the Dispute Resolution Rules of Grain Trade Australia Ltd (GTA) and in accordance with the provisions of the Commercial Arbitration Act 2010 (New South Wales) or the International Arbitration Act 1974 (Cth) as appropriate and any statutory modification or re-enactment thereof for the time being in force.

43.3 Any dispute arising under this Charterparty or any Bill of Lading issued under it other than as provided for in paragraph 43.2 must be referred to arbitration in London in accordance with

GTA Voyage Charter - AusGrain 2015

~~the Arbitration Act 1996 (UK) or any statutory modification or re-enactment thereof for the time being in force. Each party may appoint an arbitrator. On receipt by a party of the nomination in writing of the other party's arbitrator, that party must appoint its arbitrator within fourteen days, failing which the decision of the single arbitrator so appointed is to apply. If the arbitrators do not agree they must appoint an umpire whose decision is to be final and binding.~~

~~43.4 For any disputes and whether clause 43.2 or 43.3 applies:-~~

~~(a) the arbitrators and umpire must be persons normally engaged in the shipping and/or commodities industries and may be qualified legal practitioners; and~~

~~(b) other than for any claim in respect of loss, damage or delay to goods (and which is subject to clause 28) any other claim must be made in writing and the claimant's arbitrator appointed within six months of the Vessel's arrival at the final discharging port, otherwise all claims are deemed to be waived.~~

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~~43.5 Despite clauses 43.2 and 43.3, if the amount in dispute is less than US\$100,000.00, the dispute shall be determined by a sole arbitrator in Sydney subject to the LMAA Rules for Small Claims (except to the extent those Rules conflict with this clause 43), the sole arbitrator to be agreed between the parties, but if not agreed to be appointed by the President for the time being of the Law Institute of Victoria.~~

~~43.6 Despite clauses 43.2 and 43.3 if the amount in dispute is more than US\$100,000.00 but is not more than US\$400,000.00, the dispute shall be determined in Sydney subject to the LMAA Intermediate Claims Procedure 2009 (except to the extent that Procedure conflicts with clause 43).~~

~~43.7 Any rights under the Contracts (Rights of Third Parties) Act 1999 (UK) or any Statutory modification or re-enactment thereof for the time being in force are expressly excluded.~~

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THIS CHARTERPARTY INCLUDING SCHEDULES ONE AND TWO IS EXECUTED

By the parties on the date written on the first page

.....  
Signature (Owners)

.....  
Signature (Charterers)

**GRAIN TRADE AUSTRALIA VOYAGE CHARTER 2013**

**SCHEDULE NO.1**

**"AUSGRAIN-BILL"**

Shippers

Consigned To

or \_\_\_\_\_ Assigns, he or they paying Freight  
for the same as per the below mentioned Charterparty.

Notify address

Vessel

Port(s) of loading

Port(s) of discharge—direct or via other Ports as per Charterparty  
Dated

Shippers' description of goods

\_\_\_\_\_ in bulk of

— [insert Wheat or name of other commodity]

being the weight ascertained or accepted by the Silo Authority  
under the custom of the trade, weight shipped unknown, and to be  
delivered in the like apparent good order and condition at the  
aforesaid port(s) of discharge.

**Silo Authority's Weights—**

Weight shipped unknown, but said to weigh:

\_\_\_\_\_

**BILL OF LADING**

SHIPPED at the Port(s) of Loading in apparent good order and condition on board the Vessel for carriage to the Port(s) of Discharge specified above  Weight, and quality, unknown.  IN WITNESS whereof the Master or Agent of the said Vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void.		FOR CLAUSES SEE OVERLEAF  All the terms, conditions, clauses, exclusions, limitations and exceptions of the Grain Trade Australia Voyage Charter 2012 (with any amendments) dated _____, including clause 34 (Arbitration) are herewith incorporated.
	Place and date of issue	
	Number of original Bs/L	Signature  Master/Agent

~~is if undated standard Grain Trade Australia Voyage Charter 2012 including clause 34 (Arbitration)~~

~~This Bill of Lading is to have effect subject to the provisions of the Rules contained in Schedule 1A to the Australian Carriage of Goods by Sea Act 1991, as applied by that Act, and any subsequent amendment thereto. The Shippers are to be entitled to the benefit of the privileges, rights and immunities conferred upon the Shippers, and the Shipowners are to be entitled to the benefit of the privileges, rights and immunities conferred upon the carrier, by such Act, and the said Schedule 1 thereto, as if the same were herein specifically set out. General Average (if any) shall be settled according to the York Antwerp Rules, 2004.~~

#### ~~WAR RISKS CLAUSE~~

~~As per Charterparty~~

#### ~~GENERAL AVERAGE AND THE NEW JASON CLAUSE~~

~~General average shall be payable according to the York/Antwerp Rules, 2004, or any modification thereof for the time being in force, but where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply:-~~

#### ~~NEW JASON CLAUSE~~

~~In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.~~

~~If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.~~

**BOTH TO BLAME COLLISION CLAUSE**

If the liability for any collision in which the Vessel is involved while performing this Bill of Lading falls to be determined in accordance with the Laws of the United States of America, the following clause shall apply:-

**BOTH TO BLAME COLLISION CLAUSE**

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

**GRAIN TRADE AUSTRALIA VOYAGE CHARTER 2013**

**SCHEDULE NO.2**

**LETTER OF AUTHORISATION UNDER  
GRAIN TRADE AUSTRALIA VOYAGE CHARTER 2013**

To: —

Dated: —

Dear Sir,

I hereby authorise \_\_\_\_\_

[\*insert name of ship's agent at loading port]

on my behalf to sign original Bill(s) of Lading for my cargo of bulk grain and to sign new Bill(s) of Lading if required by Shippers.

The new Bill(s) of Lading are only to be issued to Shippers in exchange for original Bill(s) of Lading signed by you which Bill(s) are then to be cancelled.

.....

Master

M.V. \_\_\_\_\_

[\*insert name of Vessel]