



# Port Terminal Rules

~~Draft at 3pm 14 September 2010~~  
31 March 2011

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# Port Terminal Rules

## Interpretation

### 1.1 Definitions

In these Port Terminal Rules unless the context otherwise requires:

**Access Agreement** means an agreement ~~entered into~~ between a Customer and the Port Operator ~~containing provisions relating to the supply of~~ under which the Port Operator supplies Port Terminal Services to ~~a~~ the Customer ~~by the Port Operator~~.

**Accumulation Plan** means a plan for the delivery of Grain to a Port Terminal Facility in order to accumulate a cargo for shipping.

**Annual Capacity** means the tonnage of grain capable of being exported through the Port Operator's grain terminals during a year from November to October, as determined by the Port Operator, taking into account the efficient deployment of resources (including fixed assets and labour) over the year.

**Advised Harvest Capacity** ~~means the total Harvest Capacity estimated by the Port Operator to be available pursuant to rule 4.3~~ is defined in rule 3.3(a).

**Annual Shipping Period** means the period 16 January to the next 31 October as modified from the Port Operator from time to time prior to 31 August for the coming Year.

**Annual Shipping Period Capacity** means Capacity during the Annual Shipping Period.

**AQIS** means the Australian Quarantine Inspection Services.

**Assembly Window** ~~has the meaning given~~ is defined in rule ~~4.6~~ 15(a).

**Arrived** means the time at which a vessel arrives at the waiting area designated from time to time by the relevant port authority for the Port Terminal Facility (whether or not it sets anchor), is ready to proceed to berthing and has presented a Notice of Readiness. **Arrives** and **Arrival** have a corresponding meaning.

**Auction** means the sale by auction of Capacity for the Harvest Shipping Period or Annual Shipping Period.

**Auction Capacity** means Capacity allocated at Auction.

**Auction Premium** means any additional amount paid by the Customer for Capacity which is in excess of the start price for Capacity within a Lot in the Auction.

**Auction Rules** means the rules of that name published by the Port Operator from time to time. The current Auction Rules are attached as **Schedule 1** to the Port Terminal Rules .

**Auction System Website** means the auction system website at [www.portcapacity.com](http://www.portcapacity.com).

**Auction Timetable** means the auction timetable published on the Auction System Website.

**Base Load Capacity** means capacity that the Port Operator makes available for acquisition to eligible Customers using the process in [rule 4](#).

**Bulk Wheat** means wheat for export from Australia other than wheat that is exported in a bag or container that is capable of holding not more than [fifty \(50\)](#) tonnes of wheat.

**Business Day** means a day that is not a Saturday, Sunday or gazetted public holiday in Western Australia.

**Capacity** means the [tonnage](#) capacity of ~~at the Port Operator's Port Terminal Facility, Facilities~~ to put grain on board a vessel ~~at a Port Terminal Facility~~ during a ~~Shipping Window, measured in tonnes~~ [defined period](#).

**Capacity Reposition Fee** means the fee of that name prescribed in an Access Agreement or GSA.

**Capacity Transfer Fee** means the fee of that name prescribed in an Access Agreement or GSA.

**Charter Party** means the agreement between the owner of a vessel and the party hiring the vessel for use of the vessel in transporting a cargo.

**Core Capacity** means the Capacity of each Port Terminal Facility calculated in accordance with the process set out in [rule 4.2\(a\)](#).

**Core Lots** means Lots that are available at Auction to all Customers, but excluding Surge Lots.

**Customer** means a customer of the Port Terminal Operator that has entered into an Access Agreement or GSA ~~with the Port Operator~~ and includes a User.

**Demurrage** means the defined level of damages paid to a vessel owner for the delays in loading or discharging the vessel after the Laytime has expired. It is customarily expressed in US dollars per day or portion thereof.

**Direct to Port Delivery Declaration Form** means the form substantially in the form attached at **Schedule 2**.

**Direct to Port Sample Declaration Form** means the form substantially in the form attached at **Schedule 33**.

**ETA** means the estimated time of Arrival.

**ETC** means estimated time of commencement of loading.

**Export Fee** means the fee of that name prescribed in an Access Agreement or GSA.

**Forecast Submission Period** means ~~1 September~~ [15 August](#) to ~~10~~ [14](#) September ~~within~~ [immediately prior to](#) each Year.

**Grace Period** means a period of fourteen (14) days that commences on the day following the last day of the Shipping Window.

**Grade** means ~~in relation to Grain~~, the grade of the Grain actually delivered to ~~the~~ a Port Terminal Facility.

**Grain** means all grains (including Bulk Wheat), pulses and oil seeds.

**Grain Entitlement** means the Customer's entitlement under the Bulk Handling Act or an Access Agreement or GSA to the possession of Grain in the Port Operator's custody .

**Grower** means a grower of grain who as part of their farming business delivers Grain to a Port.

~~**Grain Services Agreement (GSA)**~~ means an agreement between an exporter, trader or marketer of Grain and the Port Operator that includes provisions for the supply of storage ~~&~~ and handling services in relation to any Grain but does not include Port Terminal Services in relation to Bulk Wheat.

~~**Grower** means a grower of grain who as part of their farming business delivers Grain to a Port.~~

**GSA Capacity** means Capacity acquired or sought to be acquired by a ~~GSA~~ Customer under a GSA.

**Harvest Capacity** means Capacity during the Harvest Shipping Period.

**Harvest Mass Management Scheme** means the scheme of that name published by Main Roads WA from time to time.

**Harvest Shipping Period** means 1 November to 15 January as modified from the Port Operator from time to time prior to 31 August for the coming Year.

**Laycan** means the earliest date on which Laytime can commence and the latest date ~~7~~ after which the charterer can opt to cancel the Charter Party.

**Laytime** means the amount of time that a charterer has to load a vessel before the vessel is deemed to be on Demurrage.

**Lost Capacity** ~~has the meaning given to it~~ is defined in rule ~~12.11~~.

**Lot** means the Capacity within a Shipping Window at a Port that is offered to Customers at Auction.

**Nominated Tonnage** means the tonnage of Grain to be shipped in a particular Nominated Vessel and notified to the Port Operator in accordance with these Port Terminal Rules.

**Nominated Vessel** means a vessel nominated by the Customer and notified to the Port Operator in accordance with these Port Terminal Rules.

**Notice of Readiness** ~~or NOR~~ means a valid notice of readiness served by the owner of the Nominated Vessel pursuant to the ~~Nominated Vessel~~ Charter Party stating, amongst other things, that the Nominated Vessel is ready to load in all respects (including physically and legally).

**Outload** means to remove Grain from a Port Facility to another location by means other than Outturning to a vessel.

**Outturning** means to cause Grain to physically leave the Port Operator's custody at a Port Terminal Facility and is deemed to occur when the Grain exits the delivery spout into a Grain shipping vessel at which point physical possession of the Grain passes from the Port Operator to the Customer or a third party authorised by the Customer.

**Port** means the ports of:

- (a) Albany;
- (b) Esperance;
- (c) Geraldton; and
- (d) Kwinana.

**Port Terminal Facility** means a ship loader and associated infrastructure that is:

- (a) ~~(i)~~ at a Port;
- (b) ~~(ii)~~ capable of handling Bulk Wheat; and
- (c) ~~(iii)~~ owned, operated or controlled by the Port Operator,

including:

- (a) ~~(iv)~~ an intake/receival facility;
- (b) ~~(v)~~ a grain storage facility;
- (c) ~~(vi)~~ a weighing facility; and
- (d) ~~(vii)~~ a shipping belt;

that is:

- (a) ~~(viii)~~ at the port; and
- (b) ~~(ix)~~ associated with the ship loader; and
- (c) ~~(x)~~ capable of dealing with wheat in bulk.

**Port Terminal Services** means the services provided by means of the Port Terminal Facilities which enable an Accredited Wheat Exporter to export Bulk Wheat through the Port Terminal Facilities, including:

- (a) unloading and receival by the Port Operator of a User's Bulk Wheat at the Port Terminal Facilities, for the purpose of loading onto a vessel scheduled to arrive at the Port Terminal Facility;
- (b) sampling by the Port Operator of a User's Bulk Wheat received and Outturned, to check for visible evidence of the presence of chemical residue, insect activity ~~and~~ live insects or other contaminants, and providing the User with a composite shipping sample of the User's Bulk Wheat;



- (c) weighing by the Port Operator of a User's Bulk Wheat received and Outturned, using the Port Operator's weighing facilities, and providing the User with a weighbridge ticket or other statement certifying the weight and quantity of Bulk Wheat delivered;
- (d) storage by the Port Operator of a User's Bulk Wheat at the Port Terminal Facility for the purpose of export accumulation in a restricted time period and loading onto vessels at the Port Terminal Facility; and
- (e) fumigation in response to evidence of insect infestation;
- (f) accumulating and assembling Bulk Wheat for the purpose of loading cargo onto a vessel scheduled to arrive at the Port Terminal Facility;
- (g) administrative and logistics services required for shipping nomination, acceptance, booking and cancellation;
- (h) access to inspectors from the AQIS, for inspection of the User's Bulk Wheat received and held at the Port Terminal Facilities; and
- (i) Outturning by the Port Operator of a User's Bulk Wheat received at the Port Terminal Facility, and loading onto the User's nominated vessel.

**Port Terminal Service Charges** means the charges payable for Port Terminal Services provided by the Port Operator under an Access Agreement.

**Product** means all Grain or other commodities or materials handled by the Port Operator through the Port Terminal Facilities.

**Relevant Surveys** means all relevant surveys required to be conducted on the Nominated Vessel before it can be loaded with Grain, including, but not limited to a structural survey of the Nominated Vessel and surveys conducted by AQIS.

**Reposition Matrix** means the Reposition Matrix and Timeline published on the Port Operator's Website.

**Reposition of Shipping Capacity Form** means the form of that name published by the Port Operator from time to time.

**Season** means the period between 1 October of one year and the next 30 September.

**Services Forecast** ~~has the meaning given~~ is defined in rule ~~3.4.3.~~ 3.4.3.

**Shipping Capacity Allocation Register** means the register maintained and held by the Port Operator in order to record allocations of and entitlement to Capacity.

**Shipping Stem Policy** means the policy prescribed in rule ~~13.12.~~ 13.12.

**Shipping Slot** means the nominal dates for loading of vessels during a Shipping Window.

**Shipping Window** means a half month period of between 14 and 16 days within which a Customer may nominate a vessel to arrive at a Port Terminal Facility for loading of a cargo for which the Customer has been allocated Capacity under these Port Terminal Rules.

**Spare Capacity** means:

- (a) ~~(i)~~ for the Harvest Shipping Period, the ~~additional~~ Capacity remaining unallocated for the relevant Shipping Window following the relevant Auction;
- (b) ~~(ii)~~ for the Annual Shipping Period, the Capacity remaining where Capacity awarded at Auction does not exceed the Capacity for the relevant Shipping Window forecast by the Port Operator in accordance with **rule 4.23.2**; and
- (c) any Capacity that may otherwise become available.

**Spare Capacity Allocation** means the allocation of Spare Capacity remaining after allocation of Capacity under **rule 65**.

**Spare Capacity Booking Form** means the form of that name published by the Port Operator from time to time.

**Supply Chain Agreement** means an agreement between the Port Operator and an eligible Customer for the allocation of Base Load Capacity and the supply of services to that Customer.

**Surge Capacity** means the Capacity of each Port Terminal Facility calculated in accordance with the process set out in **rule 4.23.2(b)**.

**Surge Lots** means Lots:

- (a) ~~(i)~~ available at Auction to all Customers; and
- (b) ~~(ii)~~ which utilise the Port Operator's receipt, storage and handling resources other than and in addition to the Port Terminal Services.

**TBA** means to be advised.

**Transfer of Shipping Capacity Form** means the form of that name published by the Port Operator from time to time.

**Undertaking** means the ~~Undertaking~~undertaking offered by CBH in favour of the Australian Consumer and Competition Commission in accordance with the provisions of the *Wheat Export Marketing Act 2008 (Cth)*.

**User** means a person who has entered into an Access Agreement ~~with a, other than the~~ Port Operator ~~in relation to Bulk Wheat~~.

**Vessel Nomination** means a nomination of a vessel to ship the Nominated Tonnage ~~on a Nominated Vessel~~ within a Shipping Window held by the Customer under the Access Agreement or GSA.

**Vessel Nomination Form** means the form which can be obtained either:

- (a) from the Port Operator directly; or
- (b) ~~(b)~~ via the Port Operator's Website through the LoadNet® for Marketers™ platform,

on which all bulk export requests are to be made.

**Website** means the website operated by the Port Operator from time to time and at the commencement of these rules means www.cbh.com.au.

**Year** means 1 November to 31 October.

## 1.2 Interpretation

- (a) Other defined terms have the meanings given to them in the Undertaking, unless the context otherwise requires.
- (b) ~~(b)~~ Reference to a **rule** is a reference to a rule contained within these Port Terminal Rules.
- (c) ~~(c)~~ These Port Terminal Rules apply in relation to all Capacity bookings where the Shipping Window is on or after 1 November ~~2010~~-2011. The prior version of Port Terminal Rules applies in relation to all Capacity bookings where the Shipping Window is on or before 31 October 2010.

## Accuracy and completeness of information

- ~~(a)~~ Information provided by a Customer under these Port Terminal Rules must be accurate and complete in all material regards.

## ~~3~~ **Services Forecast**

- ~~(a)~~ ~~Prior to the commencement of each Year, within the Forecast Submission Period each Customer must submit to the Port Operator a forecast of the Customer's exporting requirements for the following Year, including the following details:~~
    - ~~(i)~~ ~~expected gross tonnage of Bulk Wheat;~~
    - ~~(ii)~~ ~~expected gross tonnage of Grain other than Bulk Wheat;~~
    - ~~(iii)~~ ~~expected tonnage of Grain to be delivered to the Port by the Customer pursuant to a GSA;~~
    - ~~(iv)~~ ~~expected tonnage of Bulk Wheat to be delivered to the Port by the Customer pursuant to storage & handling or supply chain arrangements other than those supplied by the Port Operator pursuant to a GSA; and~~
    - ~~(v)~~ ~~expected shipping programme~~
- ~~for each Access Agreement or GSA, as the case may be (~~**Services Forecast**~~).~~

## 2 ~~4~~Capacity Allocation

### ~~4.1~~

#### 2.1 Capacity ~~Lots~~allocation mechanisms

- (a) The Port Operator ~~shall~~may allocate Capacity ~~in Lots of a specified number of tonnes in a particular Shipping Window to Customers in the following processes:~~
- (i) Eligible Customers will be offered the opportunity to acquire Base Load Capacity under the process outlined in rule 4 below; and
  - (ii) Customers may acquire all remaining Capacity in the Auction process under rule 5 below.

#### 2.2 ~~4.2~~Criteria and process for estimating available Capacity

- (a) In calculating the ~~Capacity and Core~~ Capacity to be allocated under these rules, the Port Operator ~~shall~~must:
- (i) estimate the size and characteristics (including geographic distribution) of the upcoming harvest;
  - (ii) review the past performance of the Port Terminal Facilities in loading vessels in high demand periods;
  - (iii) consider the efficient deployment of labour and other resources in Port Terminal Facilities over the Year;
  - (iv) take into account the Services Forecast in order to estimate:
    - (A) the likely shipping requirements of Customers; and
    - (B) the supply chain arrangements likely to be used to get Grain to the Port Operator's Port Terminal Facilities;
  - (v) estimate the likely distribution of the transport task between road and rail in each port zone; and
  - (vi) take into account the risk of unforeseen events such as transport shortages, breakdowns or accidents reducing the speed with which Grain is delivered to the Port Terminal Facilities.
- (b) ~~(b)~~ In calculating the Surge Capacity to be allocated under these rules, the Port Operator ~~shall~~must:
- (i) estimate the extent to which Capacity in excess of Core Capacity may be made available if supply chains deliver Grain at a more accelerated pace than would be expected in normal operating conditions; and
  - (ii) assess the likelihood that supply chains will deploy additional resources to deliver Grain at a more accelerated pace than would be expected in normal operating conditions.

#### 2.3 ~~4.3~~Publication of ~~available~~information concerning Capacity

The Port Operator ~~shall~~must publish on its Website:

- (a) on or before 15 August each year:
  - (i) the proposed amount of Base Load Capacity available to eligible Customers for the following November to October year;
  - (ii) the date/s on which Base Load Capacity will be offered;
- (b) on or before 15 September each year.
  - (i) ~~(a) On or before 15 September each year,~~ the proposed amount of Harvest Capacity it intends to offer for each of its Port Terminal Facilities for the following Harvest Shipping Period (**Advised Harvest Capacity**); and
  - (ii) the proposed dates of Auctions and other significant events in the Capacity allocation process (**Capacity Timetable**);
- (c) ~~(b) On~~ or before 15 October each year, the amount of Base Load Capacity taken up and the proposed amount of Core Capacity it intends to offer for each of its Port Terminal Facilities for the following Annual Shipping Period; and
- (d) ~~(e) No~~ later than 5 five Business Days before each Auction, the proposed amount of Surge Capacity it intends to offer for each of its Port Terminal Facilities by Shipping Window during the Annual Shipping Period.

~~5 Not used~~

### 3 Allocation of Base Load Capacity

#### 3.1 Determination of Base Load Capacity

- (a) Subject to this clause, the Port Operator may allocate a proportion of Annual Capacity to eligible customers as Base Load Capacity in advance of Capacity Auctions.
- (b) The Port Operator may determine the amount of Base Load Capacity it will offer based on its assessment of the Western Australian harvest size and in accordance with rules 3.2 and 4.2.
- (c) The Port Operator may not allocate more than sixty percent (60%) of Annual Capacity in any Year as Base Load Capacity.

#### 3.2 Eligibility to acquire Base Load Capacity

- (a) The Port Operator may offer the opportunity to acquire Base Load Capacity to eligible Customers.
- (b) To be eligible to acquire Base Load Capacity a Customer must:
  - (i) have stated in writing to the Port Operator that it is willing to enter into a PTSA with the Port Operator;

- (ii) have a forecast shipment schedule in excess of eight hundred thousand (800,000) metric tonnes in the next Year;
- (iii) have provided the Port Operator with a forecast in accordance with **rule 4.3** below; and
- (iv) have reasonable grounds to represent to the Port Operator that it has the intention and ability to use Base Load Capacity;
- (c) The Port Operator may determine whether a Customer has the reasonable grounds referred to in **rule 4.2(b)(iv)** above with reference to:
  - (i) the Customer's forecast of export requirements;
  - (ii) whether the Customer:
    - (A) has either shipped more than eight (8) percent of the total grain exports from Western Australia; or
    - (B) has accumulated more than eight percent of the grain produced in Western Australia in the preceding twelve month period;
  - (iii) the Customer's past use of Capacity and capacity in other States of Australia.

### **3.3 Forecast of export requirements**

Within the Forecast Submission Period any Customer intending to acquire Base Load Capacity must submit to the Port Operator a forecast of the Customer's exporting requirements for the coming Year, including the following details:

- (a) expected gross tonnage of Bulk Wheat;
- (b) expected gross tonnage of Grain other than Bulk Wheat;
- (c) expected tonnage of Grain to be delivered to the Port by the Customer pursuant to a GSA;
- (d) expected tonnage of Bulk Wheat to be delivered to the Port by the Customer pursuant to storage and handling or supply chain arrangements other than those supplied by the Port Operator pursuant to a GSA; and
- (e) expected shipping programme by tonnage by month by port.

### **3.4 Base Load Capacity Allocation process**

- (a) On the date specified in the Capacity Timetable, and subject to the limitations in these Rules, the Port Operator may offer to eligible Customers the opportunity to acquire a quantity of Capacity (Base Load Capacity Offer).
- (b) The Port Operator and each eligible Customer must then negotiate a Supply Chain Agreement, which must contain the terms and conditions for the acquisition of Base Load Capacity.

- (c) The Port Operator must supply Base Load Capacity at the same price to all eligible Customers and that price must not exceed the price for Auction Capacity (excluding any Auction Premium).
- (d) The Port Operator must offer Base Load Capacity in lots of not less than five hundred thousand (500,000) tonnes per Year.
- (e) The Port Operator must not allocate Base Load Capacity exceeding 20% of Annual Capacity in any Year to any single Customer or allow a Customer to allocate more than 10% of their Base Load Capacity into a given Month prior to the completion of the Auctions for that Year.
- (f) In offering, negotiating and supplying Base Load Capacity, the Port Operator must comply with the Undertaking.
- (g) All Base Load Capacity Offers and negotiations must be finalised before the close of business on 14 September.
- (h) Any Capacity not acquired as Base Load Capacity before the close of business on 14 September must be allocated by Auction under rule 5.
- (i) Base Load Customers may participate in acquiring capacity through the Auctions and Spare Capacity Allocation methods.

### **3.5 Base Load Annual Shipment Schedule**

- (a) A Base Load Customer must provide a Base Load annual shipment schedule (**BLASS**) to the Port Operator together with their acceptance of the Base Load Capacity Offer (or subsequent amended proposal) detailing:
 
  - (i) annual volume estimates by commodity through the Year;
  - (ii) preliminary Shipping schedule nominating thirty (30) day laycans and estimated volume per shipment plus or minus ten (10) percent;
  - (iii) indicative commodity nominations; and
  - (iv) preliminary indications of export port.
- (b) Each preliminary thirty (30) day laycan is not required to be within a calendar month but the estimated shipment date should be the midpoint of the laycan spread.
- (c) A Base Load Customer must provide a revised BLASS on or immediately prior to the following dates within the Year:
 
  - (i) 1 Dec;
  - (ii) 1 Feb;
  - (iii) 1 May; and
  - (iv) 1 August.
- (d) The Port Operator will either accept the revised BLASS within seven (7) days or provide a revised proposal to the Base Load Customer with a short statement of reasons if the Port Operator anticipates detrimental impacts on the operation of the Port Terminal Facilities.

- (e) The Port Operator will only propose changes to a revised BLASS if CBH would incur additional operational costs to comply or there is an undue impact on a previously nominated vessel or Capacity of another Customer.

### **3.6 Shipment size**

Shipments using Base Load Capacity must be in the range of twenty thousand (20,000) to fifty thousand (50,000) tonnes per vessel, unless otherwise agreed in writing by the Port Operator.

### **3.7 Revision of Laycans**

- (a) The Base Load Customer must narrow each laycan in the BLASS from a thirty (30) day period to a ten (10) day period (which is within the original thirty (30) day period) (a **narrowed laycan**) no later than twenty-one (21) days prior to the first day of the laycan and provide the final cargo quantity, commodity and loading port with a plus or minus ten (10) percent tolerance, subject to **rule 11.3**.
- (b) The Port Operator may reject the narrowed laycan within two (2) Business Days of receipt if the Port Operator would incur additional operational costs to comply or there is an undue impact on a previously nominated vessel or Capacity of another Customer. For the avoidance of doubt, the Port Operator and Customer may agree the additional operational costs required to allow the narrowed laycan to proceed if it will not be likely to have an undue impact on the previously nominated Vessel or Capacity of another Customer.
- (c) If the Port Operator accepts the narrowed laycan, that laycan will be final and the Port Operator will post the laycan on the shipping stem.
- (d) Not later than ten (10) days prior to the first day of the laycan, the Customer must provide the Port Operator with all relevant details of the performing vessel. All other nomination requirements for a vessel shall be completed in accordance with **rules 9.2 and 10**.

## **4** ~~6-Auction~~ Capacity allocation for Port Terminal Services

### **4.1** ~~6.1-Acquiring~~ Auction Capacity in the Harvest Shipping Period or the Annual Shipping Period

- (a) Auction Capacity allocation in the Harvest Shipping Period and the Annual Shipping Period ~~shall~~must be conducted in 2 stages, either:
- (i) by an Auction; or
  - (ii) by a Spare Capacity Allocation.
- (b) ~~(b)~~ The date and time each Auction is scheduled to be held and a schedule of the Capacity on offer at each Auction ~~shall~~must be published by the Port Operator on the Auction System Website not less



than ~~5~~five Business Days prior to the date of commencement of the Auction. The scheduling of a particular number of Auctions does not represent that Capacity for any period will be available at any Auction after the first Auction scheduled for Capacity in that period because it is possible that all Capacity for that period may be acquired in the first Auction.

- (c) ~~(e)~~ Each Auction will be held in accordance with the Auction Rules and the Auction Timetable.
- (d) ~~(e)~~ The Auction Timetable for the next Season:
  - (i) must be published on the Auction System Website by the Port Operator no later than 31 August; and
  - (ii) may be varied by the Port Operator after its first publication in accordance with the Auction Rules.
- (e) ~~(e)~~ The Port Operator may make any consequential amendments to the Reposition Matrix resulting from an amendment of the Auction Timetable and ~~must~~any such amendments to the Reposition Matrix will be published at the same time as the amended Auction Timetable.
- (f) ~~(f)~~ By no later than 30 Days prior to the first day of a Shipping Window, a Customer must nominate the supply chain arrangements to be used to deliver the relevant Grain to the Port Terminal Facility (~~ie~~i.e., whether serviced under a GSA or another supply chain solution not provided under a GSA). In the absence of a positive nomination of an alternative supply chain, CBH will record a default nomination that the capacity will be serviced by a GSA.

## 4.2 ~~6.2~~ Spare Capacity Allocation:

- (a) ~~(i)~~ If:
  - (i) ~~(A)~~ a period of not less than ~~5~~five Business Days has passed from the end of the relevant Auction prior to the commencement of the relevant Shipping Window; and
  - (ii) ~~(B)~~ there is Spare Capacity for the relevant Shipping Window, the Port Operator ~~shall~~must publish on its Website a statement of the total Spare Capacity available in the relevant Shipping Windows. Schedule 4 may detail the relevant Shipping Windows in which Spare Capacity (if any) will become available after an Auction.
- (b) ~~(ii)~~ Customers may submit a Spare Capacity Booking Form to the Port Operator at any time before the last day of the relevant Shipping Window ~~that~~for which Spare Capacity is available ~~for~~.
- (c) ~~(iii)~~ The Customer must nominate the supply chain arrangements to be used in accordance with ~~rule 6.4~~rule 5.1 ~~(ef)~~, unless there ~~is~~are less than 30 days before the first day of a Shipping Window, in which case the Customer must nominate at the time of making an application for Spare Capacity ~~during the Annual Shipping Period~~ the supply chain

arrangements to be used to deliver the relevant Grain to the Port Terminal Facility ~~(in order to use the Spare Capacity applied for, (i.e.,~~ whether serviced under a GSA or another supply chain solution not provided under a GSA) ~~in order to use the Spare Capacity applied for.~~

- (d) ~~(iv)~~ Subject to the availability of Spare Capacity and **rule 6-25.2**~~(ve)~~, the Port Operator ~~shall~~must allocate Spare Capacity to Customers on a first-come first-served basis within 2two Business Days of receiving the Spare Capacity Booking Form.
- (e) ~~(v)~~ If there are less than 22 days prior to the last day of the relevant Shipping Window, the Customer must provide a Vessel Nomination (or an amended Vessel Nomination if the Customer wishes to load additional tonnes on a vessel) in conjunction with the Spare Capacity Booking Form. The Port Operator may reject the request contained in the Spare Capacity Booking Form if it considers that:

  - (i) ~~(A)~~ allowing the booking on short notice will prejudice the execution of Capacity already booked in the relevant Shipping Window or the following Shipping Window; or
  - (ii) ~~(B)~~ the accumulation of cargo is not reasonably likely to be accomplished within the required time period;
  - (iii) ~~(C)~~ it will detrimentally impact the operation of the Port Terminal;
  - (iv) ~~(D)~~ rule ~~13.3~~12.3 will not be breached by the acceptance of the subsequent Vessel Nomination.

If the Port Operator rejects a Spare Capacity Booking Form it will provide reasons for its decision.

- (f) ~~(vi)~~ The notification to the Customer of allocation of Spare Capacity ~~shall~~must include details of:

  - (i) ~~(A)~~ the summary and particulars of the Capacity allocated to each Customer for each Shipping Window;
  - (ii) ~~(B)~~ in each case whether the Capacity is Core Capacity or Surge Capacity; and
  - (iii) ~~(C)~~ the sum payable by the Customer to the Port Operator in accordance with the Access Agreement or GSA in respect of which the Customer will receive the Capacity.

## 5 ~~7~~ Trading or Repositioning Capacity

### 5.1 ~~7.1~~ Trading Capacity

- (a) Customers may not trade or transfer ~~Capacity~~Base Load Capacity. Customers may trade or transfer Capacity (other than Base Load Capacity) that they have acquired at Auction or through the Spare Capacity Allocation methods provided that:

  - (i) the transfer complies with the requirements of **rule 7-16.1**~~(c)~~;

- (ii) each Customer has currently in force an Access Agreement or GSA with the Port Operator in relation to the usage of the relevant Port Terminal and is not subject to a notice by the Port Operator that it is in breach of that agreement.
- (b) ~~(b)~~ For the avoidance of doubt, any purported trade or transfer of Capacity that does not comply with **rule 7 (a)** ~~shall~~will be of no effect.
- (c) ~~(c)~~ All transfers must be:
  - (i) proposed using the Transfer of Shipping Capacity Form; and
  - (ii) signed by the transferor and transferee,
 prior to submission to the Port Operator.
- (d) ~~(d)~~ Subject to the transferor complying with their obligations under this rule, the Port Operator shall immediately sign a copy of the Transfer of Shipping Capacity Form and provide a copy to the transferor and transferee and amend the Shipping Capacity Allocation Register to record the details of the transfer.
- (e) ~~(e)~~ The Customer transferring Capacity must pay the Port Operator the Capacity Transfer Fee in accordance with the Access Agreement or GSA under which the Capacity is to be transferred.
- (f) ~~(f)~~ The Customer purchasing capacity should be aware of the requirements of **rules 109 and 110** in relation to Vessel Nominations and note that CBH is not under an obligation to accept non-compliant Vessel Nominations.
- (g) ~~(g)~~ For the avoidance of doubt, no transfer ~~shall~~will be effective until approved by the Port Operator.

## 5.2     **7.2 Repositioning Capacity other than Base Load Capacity**

- (a) A Customer may reposition any Capacity (except for Base Load Capacity) acquired in a Shipping Window (the **Original Shipping Window**) to a new Shipping Window (the **Target Shipping Window**) provided that:
  - (i) A vessel nomination has not been provided in relation to the Auction Capacity being repositioned;
  - (ii) the Customer's request is provided with at least 36 days' written notice prior to the last day of the Original Shipping Window;
  - (iii) the Target Shipping Window is not more than:
    - (A) 2 Shipping Windows before; or
    - (B) 4 Shipping Windows after,
 the Original Shipping Window and, in any event, is within the Repositioning Windows described in the Reposition Matrix for the Original Shipping Window;

- (iv) the Customer has not attempted to reposition the [Auction](#) Capacity before; and
- (v) there is sufficient Spare Capacity in the Target Shipping Window for all Capacity being repositioned.
- [\(b\)](#) ~~(b)~~ The Target Shipping Window does not need to be in the same Port Zone.
- [\(c\)](#) ~~(c)~~ A Customer repositioning Capacity must complete the Reposition of Shipping Capacity Form, provide it to the Port Operator and pay the Port Operator the Capacity Reposition Fee in accordance with the Access Agreement or GSA under which the Capacity is to be repositioned.
- [\(d\)](#) ~~(d)~~ The Customer repositioning capacity should be aware of the requirements of **rules 109 and 110** in relation to Vessel Nominations and note that CBH is not under an obligation to accept non-compliant Vessel Nominations.
- [\(e\)](#) ~~(e)~~ For the avoidance of doubt, no reposition ~~shall~~[will](#) be effective until approved by the Port Operator.
- [\(f\)](#) ~~(f)~~ Requests to reposition Capacity in the last 2 Shipping Windows of the Annual Period (i.e. 1-15 Oct and 16-31 Oct) into the first Shipping Window of the subsequent Harvest Period (i.e. 1-15 Nov) will not be accepted from ~~8~~[eight](#) days before the Auction of Capacity for the subsequent Harvest Period until the results of the Auction are announced in order to provide certainty of Capacity up for auction.

### 5.3 Repositioning Base Load Capacity

A Customer may reposition Base Load Capacity in excess of the limit prescribed in rule 4.4(e) if there is sufficient Spare Capacity in the Target Shipping Window under the process for revising the BLASS provided that the Auction programme for the Year has completed.

## 6 ~~8~~ Port Operator's Obligations following acquisition of Capacity

- (a) The Port Operator is not obliged to load Grain onto a vessel if:
  - (i) the Customer has not obtained or delivered the relevant Grain Entitlement; [or](#)
  - (ii) the Customer has not complied with the requirements under **rules 98 and 109**; ~~and~~[or](#)
  - (iii) the Customer's Nominated Vessel:
    - (A) has not arrived within the Shipping Window for the relevant Port Terminal Facility; or
    - (B) has not passed the Relevant Surveys.

- (b) ~~(b)~~ Upon the later of the allocation of Spare Capacity or the allocation of a Shipping Window, Customers will be required to nominate vessels into those Shipping Windows in accordance with these Port Terminal Rules.

## 7 ~~9~~ Nominating Vessels for Shipping Windows during the Harvest Shipping Period

### 7.1 ~~9.1~~ Nominating Vessels for Shipping Windows

- (a) The provisions of this **rule 98** apply in relation to nomination of vessels for Shipping Windows during the Harvest Shipping Period in addition to the provisions of **rule 40.9**.
- (b) ~~(b)~~ In the case of inconsistency between the provisions of this **rule 98** and the provisions of **rule 40.9**, the provisions of this **rule 9** ~~shall~~ **will** apply.

### 7.2 ~~9.2~~ Nomination prior to ETA

- (a) Vessel Nominations must be made no later than twenty-two (22) days prior to the Nominated Vessel's ETA which must be no later than the last day of the Shipping Window.
- (b) ~~(b)~~ The Port Operator may waive compliance with **rules 40.19.1(b)** and **40.19.1(f)** during the Harvest Shipping Period provided that the Customer makes a declaration ~~contained~~ in the Direct to Port Delivery Declaration Form in respect of each load of Grain delivered to the Port Terminal Facility.

### 7.3 ~~9.3~~ Readiness of cargo

No later than forty-eight (48) hours prior to the ETA, the Customer must have physically accumulated or obtained Grain Entitlement equivalent to or greater than the Nominated Tonnage for each Grade to be loaded onto the Customer's Nominated Vessel.

## 8 ~~10~~ Nominating Vessels for Shipping Windows

### 8.1 ~~10.1~~ Non-GSA Cargo

- (a) **Cargo Accumulation**
- (i) Following receipt of a notice from a Customer of an intended shipment (a **Vessel Nomination Form**) within a Shipping Window that is nominated to be serviced by a supply chain other than under a GSA (**Non-GSA Cargo**), the Port Operator must:
- (A) request an Accumulation Plan from the Customer; and
- ~~and~~
- (B) allocate the Customer a shipping date in accordance with the Shipping Stem Policy.

- (ii) A Vessel Nomination Form in relation to a Shipping Window must be provided no later than twenty-two (22) days prior to the ETA of the vessel actually nominated to be loaded in the Vessel Nomination.
- (iii) The Customer must at the time of submitting the Vessel Nomination Form for a Non-GSA Cargo provide to the Port Operator:
  - (A) a pre-delivery sample of grain from each source of grain to be delivered to the Port Terminal Facility ; and
  - (B) a declaration that the pre-delivery sample is a representative sample of both the Grain to be delivered and the treatment of the Grain, and is not misleading.
- (iv) The Customer must propose an Accumulation Plan in relation to a Non-GSA Cargo detailing:
  - (A) whether deliveries of Grain to a Port Terminal Facility for export are to be made by road or rail, subject to the operational capabilities of the Port Terminal Facility to receive such deliveries; and
  - (B) the timetable for deliveries to the Port Terminal Facility; fitting in with pre-planned deliveries.
- (v) The Port Operator and the Customer ~~shall~~must negotiate in good faith toward an agreed Accumulation Plan.
- (vi) If an Accumulation Plan cannot be agreed within ~~3~~three Business Days, the Customer may lodge a Compliance Complaint under **rule 17**.
- (vii) If deliveries are made by road from a farm during the Harvest Shipping Period (or such other period as published by Main Roads WA), all loads must comply with the requirements of the Harvest Mass Management Scheme in force for the relevant Year.
- (viii) All road vehicles delivering Grain to a Port must be registered with the Port Operator and the Port Operator is not obliged to receive Grain from a road vehicle in excess of its relevant mass limits prescribed by the Harvest Mass Management Scheme.

(b) ~~(b)~~ **Pre-delivery testing**

- (i) The Customer must collect and deliver to the Port Operator pre-delivery samples of any Non-GSA Cargo~~;~~.
- (ii) The Port Operator must receive pre-delivery sample test results for Non-GSA Cargo ~~prior to~~before the delivery of Grain to the Port Terminal Facilities, so as to:
  - (A) confirm the Grain type and other characteristics of the Grain to be delivered;
  - (B) check for the presence of chemicals and other contaminants; and

(C) check for the presence of insect activity and live insects, to minimise the risk of cross contamination ~~whilst~~while the Grain is held by the Port Operator at the Port Terminal Facilities.

(c) ~~(e)~~ **Sampling**

- (i) The Port Operator will sample Grain delivered at the Port Terminal Facility, using Port Operator sampling facilities operated by personnel of the Port Operator who will:
  - (A) visually inspect the Grain for obvious signs of contaminants as it exits the vehicles; and
  - (B) sample the Grain unloaded into the grid as it is elevated on the way to storage,and in all cases, the Port Operator will provide the Customer with a record of the results of the sampling.
- (ii) The Port Operator will not sample Grain for Grade or quality or on any other basis except as set out in ~~rule 10.19.1~~rule 19.1(c)(i) above.

(d) ~~(e)~~ **Unloading**

- (i) The Port Operator will provide access to the Port Terminal Facilities to road vehicles and rail vehicles (where such facilities exist at the Port Terminal Facilities) for the purpose of Customers unloading deliveries of Grain from the vehicles, for Grain export accumulation.
- (ii) Access to the Port Terminal Facilities for unloading Grain will be provided by way of:
  - (A) road or rail vehicle access (where such facilities exist at the Port Terminal Facilities) including access to roadways, rail track, passing loops and sidings located within the Port Terminal Facilities; and
  - (B) unloading through a grid capable of accepting deliveries by road or rail (where such facilities exist at the Port Terminal Facilities).
- (iii) Where vehicles containing the Customer's Grain arrive at the Port Terminal Facilities as scheduled (or within a reasonable time before or after the scheduled time, so that it can be unloaded to comply with the scheduled time) the Port Operator must use all reasonable endeavours to ensure that the vehicles are unloaded at a rate (commensurate with the type, condition and volumes of the Grain) that enables the Customer's Nominated Vessel to be loaded at its ETA, but not greater than the maximum receival rating of the relevant grid.

(e) ~~(e)~~ **Weighing**

All Grain delivered to the Port Terminal Facilities for unloading must be weighed using the Port Operator's weighing facilities operated by personnel of the Port Operator who must:



- (i) record the gross and tare weights of the road vehicles containing the loads of Grain; or
- (ii) at the Port Operator's discretion where the Port Terminal Facilities have such facilities, batch weigh the Grain unloaded from rail vehicles into the grid,

and in all cases, the Port Operator must provide the Customer with a weighbridge ticket or other statement certifying the weight and quantity of Grain delivered, and confirming the name of the person in whose name the Grain is delivered based on the information contained in the Customer's Direct to Port Delivery Declaration Form and Direct to Port Sample Declaration Form provided to the Port Operator at or prior to the delivery of each load of Grain at the Port Terminal Facility.

(f) ~~(f)~~ **Fumigation**

The Customer must provide the Port Terminal Operator with a Fumigation Statement detailing all chemicals applied to the Grain for a Non-GSA Cargo prior to delivery at the Port Terminal Facility, in relation to:

- (i) all Grain delivered after 1 February in a Season; and
- (ii) all Grain that is not of the current Season.

(g) ~~(g)~~ **Grain handling**

All delivery and unloading points, including any discharge grids, storage locations, and the movement of Grain following discharge will be nominated and determined by the Port Operator in its sole discretion, acting in accordance with the Port Terminal Rules.

**8.2 ~~10.2~~ GSA Cargo**

~~(a)~~ — In accumulating a cargo of Grain except Bulk Wheat serviced under a GSA (**GSA Cargo**):

- (a) ~~(i)~~ Customers must provide a Vessel Nomination to the Port Operator no later than twenty-two (22) days prior to the last day of the Shipping Window~~;~~
- (b) ~~(ii)~~ ~~The~~the ETA of the Nominated Vessel must be no later than the last day of the Shipping Window~~;~~
- (c) ~~(iii)~~ ~~All~~all Vessel Nominations will be input into the Port Operator's shipping interface contained on LoadNet® for Marketers™ system~~;~~ and
- (d) ~~(iv)~~ ~~At~~at the time the Vessel Nomination is provided to the Port Operator, the Customer must have full Grain Entitlement for the cargo outlined in the Vessel Nomination.



## 9 ~~11~~ Vessel Nominations

### 9.1 ~~11.1~~ Details

- (a) When making a Vessel Nomination, Customers must provide the following vessel nomination and handling instruction details to the Port Operator by entry into the Port Operator's shipping interface in LoadNet® for Marketers™:
- (i) maximum nominated tonnage (including Master's discretion);
  - (ii) destination details;
  - (iii) product description (commodity type and other characteristics);
  - (iv) ETA;
  - (v) discharge port;
  - (vi) shipping agency;
  - (vii) vessel part loading;
  - (viii) de-ballasting requirements;
  - (ix) ship loading sequence plan (subject to **rule ~~11.1~~10.1(c)(ii)**);
  - (x) vessel details (including beam, Arrival and departure drafts, dry-weight, vessel type/class, hold and hatch details, net and gross capacities);
  - (xi) cargo details (including batch reference, load tolerance range, total load tonnage);
  - (xii) stevedore details (subject to **rule ~~11.1~~10.1(c)(iii)**);
  - (xiii) vessel name (subject to **rule ~~11.1~~10.1(c)(i)**);
  - (xiv) Capacity Contract Reference number; and
  - (xv) any other details necessary for the Port Operator to process the Vessel Nomination.
- (b) ~~(b)~~ All Vessel Nominations must:
- (i) provide a vessel ETA that is within the relevant Shipping Window for which the Customer has Capacity of the relevant type; and
  - (ii) provide Laycans less than or equal to fourteen (14) days~~;~~
  - (iii) have ownership of cargo; and
  - (iv) provide port, grades, quality and tonnage details.
- (c) ~~(c)~~ The Port Operator recognises it may not be possible to provide:
- (i) a named vessel with over twenty-two (22) days lead time, so a TBA nomination will be acceptable as long as the above criteria have been met and a vessel name is provided by no later than fifteen (15) days before the ETA;

- (ii) a ship loading sequence plan with over twenty-two (22) days lead time, so a TBA response for this category will be acceptable until no later than forty-eight (48) hours before the ETA; and
- (iii) stevedore details with over twenty-two (22) days lead time, so a TBA response for this category will be acceptable until no later than 48 hours before the ETA.

## 9.2 ~~11.2~~ Acceptance of Vessel Nominations

- (a) The Port Operator will, within two (2) Business Days of receiving a Vessel Nomination, notify the Customer whether it accepts or rejects a Vessel Nomination that contains all the information required in **rule ~~11.1~~10.1** provided that:
  - (i) the ETA of the Nominated Vessel is within a Shipping Window for which the Customer has Capacity of the relevant type;
  - (ii) in the case of GSA Cargo, the Customer has full Grain Entitlement for the cargo outlined in the Vessel Nomination; and
  - (iii) the Customer is not in Material Breach of its Access Agreement.
- (b) ~~(b)~~ A Material Breach by a Customer of its Access Agreement is a breach which:
  - (i) in the reasonable opinion of the Port Operator, is not capable of being remedied; or
  - (ii) the Customer has failed to remedy after being given at least fourteen (14) days written notice by the Port Operator to do so if the Customer:
    - (A) does not pay its debts as and when they fall due;
    - (B) commits an act of bankruptcy;
    - (C) enters into a composition or arrangement with its creditors or calls a meeting of creditors with the view to entering into a composition or arrangement;
    - (D) has execution levied against it by creditors, debenture holders or trustees under a floating charge;
    - (E) takes or has taken or instituted against it any actions or proceedings, whether voluntary or compulsory, which have the object of or which may result in the winding up or bankruptcy of the Customer (except, in the case of a corporation, for the purposes of a solvent reconstruction);
    - (F) has a winding up order made against it or (except for the purposes of a solvent reconstruction) passes a resolution for winding up; or
    - (G) is a party to the appointment of or has an administrator, official manager, receiver, receiver/manager, provisional

liquidator or liquidator appointed to the whole or part of its property or undertaking; or

(iii) repudiates the Access Agreement.

(c) ~~(e)~~ If the Port Operator rejects a Vessel Nomination it will provide details of the reasons behind the rejection of the Vessel Nomination at the time it notifies the Customer of the rejection.

### 9.3

#### ~~11.3~~ Amendment of Vessel Nominations

~~(a)~~ — The Port Operator may permit the amendment of a Vessel Nomination by a Customer if :

(a) the Customer:

- (i) provides written details including reasons justifying the requested amendment; and
- (ii) those reasons relate solely to matters beyond the reasonable control of the Customer and were not contributed to by the Customer; and

~~and:~~

(b) it:

- (i) ~~(iii)~~ would not be inconsistent with the Non-discrimination and No Hindering Access provisions of the Undertaking;
- (ii) ~~(iv)~~ is to assist achievement of:
  - (A) minimising demurrage at the Port over a given period; or
  - (B) maximising throughput at the Port over a given period;
- (iii) ~~(v)~~ does not prejudicially alter the outcome or adversely affect other Customers participating in the Harvest Shipping Period ~~EQI~~ or Annual Shipping Period Auctions;
- (iv) ~~(vi)~~ would not result in other Customers incurring materially greater demurrage than would be the case if the amendment had not been accepted.

### 9.4

#### ~~11.4~~ Additional Charges

Additional charges may be payable to the Port Operator to cover the Port Operator's reasonable costs incurred where a Customer requests amendments to the Vessel Nomination.

## 10

### ~~12~~ Lost Capacity and Tolerance

#### 10.1

##### ~~12.1~~ Harvest Shipping Period

- (a) Where, following acceptance by the Port Operator of a Vessel Nomination in respect of Harvest Capacity:

- (i) a Customer's vessel Arrives outside of the Shipping Window but within the Grace Period; or
- (ii) the Customer acquires or accumulates Grain Entitlement sufficient to load the vessel within the Grace Period and the Customer's Vessel has Arrived,

the Port Operator will use its reasonable endeavours to load the vessel.

(b) ~~(b)~~ Where following acceptance by the Port Operator of a Vessel Nomination in respect of Harvest Capacity:

- (i) a Customer's vessel has not Arrived within the Grace Period; or
- (ii) the Customer does not have full Grain Entitlement within forty-eight (48) hours of the ETA of the Nominated Vessel,

the Harvest Capacity ~~shall~~will be treated as Lost Capacity and the Customer ~~shall~~will pay the fees specified as payable for Lost Capacity in the Access Agreement.

(c) ~~(c)~~ Where:

- (i) the Customer does not submit and have accepted by the Port Operator a Vessel Nomination for Harvest Capacity more than twenty-two (22) days before the last day of the Grace Period; or
- (ii) the Customer does not ship all acquired Harvest Capacity within the Harvest Shipping Period, then ~~;~~.

the Customer will be regarded as not to have shipped the Grain in the relevant Shipping Window and the Harvest Capacity ~~shall~~will be treated as Lost Capacity and the Customer ~~shall~~must pay the fees specified as payable for Lost Capacity in the Access Agreement, subject to ~~rule 12.3.~~rule 11.3.

## 10.2 ~~12.2~~ Annual Shipping Period

(a) Where, following acceptance by the Port Operator of a Vessel Nomination in respect of Annual Shipping Period Capacity:

- (i) a Customer's vessel Arrives outside of the Shipping Window but within the Grace Period; or
- (ii) the Customer acquires or accumulates Grain Entitlement sufficient to load the vessel within the Grace Period and the Customer's Vessel has Arrived,

the Port Operator will use its reasonable endeavours to load the vessel.

(b) ~~(b)~~ Where:

- (i) the Customer does not submit and have accepted by the Port Operator a Vessel Nomination more than twenty-two (22) days before the last day of the Grace Period; or
- (ii) the Customer's Nominated Vessel does not Arrive within the Grace Period; or

- (iii) in the case of a GSA Cargo, the GSA Customer does not obtain the full Grain Entitlement for the cargo at the time of Vessel Nomination; or
- (iv) in the case of a Non-GSA Cargo, the ~~PTSA~~ Customer does not obtain the full Grain Entitlement for the cargo at the time of Arrival of the Nominated Vessel,

the Customer will be regarded as not to have shipped the Grain in the relevant Shipping Window and the Capacity ~~shall~~will be treated as Lost Capacity and the Customer ~~shall~~must pay the fees specified as payable for Lost Capacity in the Access Agreement, subject to ~~rule 12.3.~~rule 11.3.

### 10.3 ~~12.3~~ Tolerance

- (a) Subject to ~~rule 12.3~~rule 11.3(c) below, the Port Operator will permit a ten per cent (10%) more or less tolerance on all Capacity acquired. Reconciliation of whether or not there is any Lost Capacity will occur on an individual Shipping Window basis for each Port.
- (b) ~~(b)~~ Subject to ~~rule 12.3~~rule 11.3(c) below, ~~if~~ the Customer has Lost Capacity equal to or less than ten percent (10%) of the Capacity acquired in a Shipping Window for a given Port (**Within Tolerance Lost Capacity**), the Port Operator will waive Lost Capacity charges for the Within Tolerance Lost Capacity under the relevant Access Agreement or GSA. Any Lost Capacity in excess of the Within Tolerance Lost Capacity will accrue Lost Capacity charges.
- (c) ~~(c)~~ If, prior to the harvest in any Year, the Port Operator estimates that the likely volume of Grain to be harvested in Western Australia in that upcoming harvest season will exceed ten (10) million tonnes, the Port Operator may reduce the tolerance percentage in ~~rule 12.3~~rule 11.3(a) above and the Within Tolerance Lost Capacity percentage in ~~rule 12.3~~rule 11.3(b) above, provided that it publishes on its Website a notice to that effect not less than five (5) Business Days prior to the date scheduled for the first Auction in the Auction Timetable for that ~~year~~Year.

## 11 ~~13~~ Shipping Stem Policy

### 11.1 ~~13.1~~ Prioritising Loading of Vessels

The Shipping Stem is ordered by the Estimated Time of Commencement of Loading (**ETC**). In allocating or adjusting an ETC to a Customer the Port Operator ~~shall~~will have regard to (in order of decreasing importance):

- (a) the ETA of a vessel if the ETA is within the Shipping Window for which Capacity is being utilised and the Vessel actually Arrived within its Shipping Window;
- (b) ~~(b)~~ the Nomination Date of the Vessel Nomination;
- (c) ~~(c)~~ the Nomination Time of the Vessel Nomination;

- (d) ~~(e)~~ changes in the ETA of a vessel (including those that would take it outside of the Shipping Window for which Capacity is being utilised);
- (e) ~~(e)~~ changes in the expected Accumulation Plan of a vessel for a GSA Cargo or departures from an agreed Accumulation Plan for a Non-GSA Cargo; and
- (f) ~~(f)~~ loading a vessel whose cargo remains at Port but which failed to Arrive prior to the last day of the Shipping Window.

## 11.2 ~~13.2~~ Adjustments to the Stem

~~(a)~~ — The Port Operator may amend the Shipping Stem at the request of a Customer only if accepting the request:

- (a) ~~(i)~~ would not be inconsistent with the Non-discrimination and No Hindering Access provisions of the Undertaking;
- (b) ~~(ii)~~ is for the purpose of:
  - (i) ~~(A)~~ minimising demurrage at the Port over a given period; or
  - (ii) ~~(B)~~ maximising throughput at the Port over a given period;
- (c) ~~(iii)~~ does not prejudicially alter the outcome or adversely affect other Customers participating in the Shipping Stem; and
- (d) ~~(iv)~~ would not result in other Customers incurring materially greater demurrage than would be the case if the request had not been accepted.

## 11.3 ~~13.3~~ Discretion to Accept Vessel Nominations

- (a) The Port Operator may accept a Vessel Nomination that does not comply fully with the requirements of **rule 11.10** provided that such an action:
  - (i) would not be inconsistent with the Non-discrimination and No Hindering Access provisions of the Undertaking;
  - (ii) is for the purpose of:
    - (A) minimising demurrage at the Port over a given period; or
    - (B) maximising throughput at the Port over a given period;
  - (iii) does not prejudicially alter the outcome or adversely affect other Customers participating in the Shipping Stem; and
  - (iv) would not result in other Customers incurring materially greater demurrage than would be the case if the request had not been accepted.
- (b) ~~(b)~~ a Vessel Nomination accepted under this **rule 11.3** ~~shall~~ will in all cases have a lower priority than a Vessel Nomination that does comply fully with the requirements of **rule 11**.

#### 11.4 ~~13.4~~ Other Information

The Shipping Stem ~~shall~~will provide information about the total Capacity in relation to a Shipping Window and the amount of Capacity currently allocated.

#### 12 ~~14~~ Storage Priority Policy

The Port Operator ~~shall~~will allocate the use of storage capacity in a Port Terminal to meet the order of vessels contained in the Shipping Stem from time to time having regard to the Shipping Stem Policy.

#### 13 ~~15~~ Port Queue Policy

##### 13.1 ~~15.1~~ Allocating Priority

- (a) The port queue is the berthing priority for each vessel that has Arrived at a Port Terminal Facility and is waiting to be loaded.
- (b) ~~(b)~~ Berth priority for vessels is determined by:
  - (i) cargo accumulation status; and
  - (ii) the time of Arrival of a vessel and its relationship to the Shipping Window of the Vessel Nomination~~;~~.
- (c) ~~(c)~~ The Port Operator will not call a vessel in to berth until the full cargo is ready for loading at the Port Terminal Facility and the Customer has full Grain Entitlement for the cargo~~.~~. unless it is necessary in the reasonable opinion of the Port Operator for the efficient operation of the Port Terminal Facility.

##### 13.2 ~~15.2~~ Non compliant vessels

- (a) Customers' vessels must pass all Relevant Surveys within twenty-four ~~(24)~~ hours of berthing.
- (b) ~~(b)~~ The Port Operator may require Customers to move their vessel from the berth if it fails survey in accordance with **rule ~~15.2~~14.2(a)** and the non-compliant vessel is holding up the berth from another vessel.
- (c) ~~(c) where~~Where a vessel fails any Relevant Surveys it returns to its original priority once it has passed the Relevant Surveys .

##### 13.3 ~~15.3~~ Multi porting

The Port Operator recognises vessels which have received part Grain cargo from a previous call (multi port) at another Western Australian port. If this is applicable, then the actual Arrival date at the first port of call is used to establish its priority in the port berthing queue.

#### 14 ~~16~~ Delivery Queue Policy

- (a) Each Customer will be allocated an Assembly Window for Non-GSA Cargo once they have a confirmed Vessel Nomination and ETA, during

which time the Customer will be permitted to deliver loads of Grain to the Port Terminal Facility for the purposes of Export Accumulation (**Assembly Window**).

- (b) ~~(b)~~ The Port Operator allocates Assembly Windows in order to meet the facilitated order of vessels contained in the Shipping Stem from time to time having regard to the Shipping Stem Policy.
- (c) ~~(c)~~ Assembly Windows will be allocated at Kwinana all Year round and at Geraldton, Albany and Esperance outside of the Harvest Shipping Period. During the Harvest Shipping Period at Geraldton, Albany and Esperance, Customer's Grain delivery vehicles will be required to queue for services along with other vehicles seeking access.
- (d) ~~(d)~~ Customers delivering Bulk Wheat for a non-GSA Cargo may not access a delivery queue at a Port Terminal Facility until it has been provided with an Assembly Window by the Port Operator.
- (e) ~~(e)~~ Provided that a Customer arrives at the relevant Port Terminal Facility within their Assembly Window, the Customer's priority in the delivery queue will be determined by the time that they arrived at and joined the delivery queue.
- (f) ~~(f)~~ The Port Operator may require Customers to move ~~a~~their vehicle ~~of theirs~~ from a delivery queue if the vehicle breaks down or is rejected in accordance with the terms and conditions of the Access Agreement or these Port Terminal Rules and the non-compliant vehicle is holding up the delivery queue for other vehicles.

## 15 ~~17~~ Complaints and Dispute Resolution

### 15.1 ~~17.1~~ Complaints Resolution process

- (a) If a Customer considers that the Port Operator has not complied with any provisions of the Port Terminal Rules, they may lodge a complaint with the Risk and Compliance Coordinator of the Port Operator (**Compliance Complaint**).
- (b) ~~(b)~~ The Compliance Complaint must:

  - (i) be in writing, including by email to [compliance@cbh.com.au](mailto:compliance@cbh.com.au) or by facsimile to (08) 9322 3942 addressed to the Risk and Compliance Coordinator;
  - (ii) be notified promptly and in any event by no later than 4.00 pm Western Australian Standard Time on the next business day following the day on which the circumstances giving rise to the complaint occurred;
  - (iii) contain details of:

    - (A) the facts and reasons relied upon by the Customer as the basis of the complaint, including the anticipated or actual loss, cost or expense and time or operational impacts of the



non-compliance and the names of any representatives, agents or employees of the Customer and Port Operator involved;

(B) the provisions of the Port Terminal Rules relevant to the alleged non-compliance; and

(C) the proposed terms of the decision that the Customer seeks.

(c) ~~(e)~~ A Compliance Complaint must be referred to:

(i) the Port Operator's General Manager of Operations;

(ii) the Port Operator's General Counsel; ~~and/or~~

(iii) the Port Operator's Group CEO.

(d) ~~(e)~~ The Port Operator must use its best endeavours to respond to the Customer within one business day following receipt of the Dispute Notice (**Complaint Response**). The Complaint Response must notify the Customer whether the Port Operator will change its decision and, if not, it must provide written reasons for the Port Operator's decision.

(e) ~~(e)~~ If the Customer is not satisfied by the Complaint Response, or if the Port Operator fails to respond to the Compliance Complaint within one Business Day of its receipt, the Customer may serve written notice on the Port Operator within one ~~business day~~ Business Day of receipt of the Complaint Response, or within one ~~business day~~ Business Day of when the Complaint Response was due (**Escalation Notice**).

(f) ~~(f)~~ Upon receipt of the Escalation Notice, the Port Operator must use all reasonable endeavours to arrange a meeting between the Port Operator's General Manager of Operations and the Customer within two Business Days of receipt of the Escalation Notice. Where the Port Operator's General Manager of Operations is unavailable for such a meeting within the timeframe specified, the Port Operator will make available a suitable alternative authorised representative (**Alternate**) to meet with the Customer within two Business Days of receipt of the Escalation Notice. The meeting may take place either face to face or by telephone to assist in expediting the determination of the complaint.

(g) ~~(g)~~ At the meeting, the Port Operator's General Manager of Operations (or Alternate) and the Customer will discuss the subject of the Compliance Complaint and Complaint Response and use all reasonable endeavours to reach an agreed outcome. Where an agreed outcome cannot be reached, the Port Operator's General Manager of Operations (or Alternate) will make a final written decision including reasons for the decision in relation to the Complaint Notice and notify the decision to the Customer within one Business Day of the meeting (**Decision Notice**).

(h) ~~(h)~~ In considering the Compliance Complaint and providing the Complaint Response and any Decision Notice, the Port Operator must take into account the circumstances of the complaint and the details set

out in the Complaint Notice and, acting reasonably and in good faith, reach a decision that is consistent with the Port Terminal Rules and the Undertaking.

## Schedule 1



# SHIPPING CAPACITY ACCESS ALLOCATIONS

## AUCTION RULES

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## Preamble

The following auction rules govern the obligations of parties in the conduct of an online auction. The auction rules for a specific auction are those rules located on the auction system website at the time of the auction. It is the responsibility of the individual bidder to ensure they understand and/or seek appropriate legal advice on the auction rules.

### 16 ~~2~~ Tradeslot registered bidder agreement

Upon completion and submission of the Registered Bidder Agreement (and for all bidding conducted by the bidder while certified/authorised under those details), bidders are deemed to have accepted, and are bound by, the auction rules, as amended and varied in accordance with the Undertaking.

### 17 ~~3~~ Bidder qualification

All entities wishing to participate in the auction (potential bidders) are required to apply for and be assessed as qualified bidders. To qualify as a bidder, entities are required to have signed an Access Agreement.

### 18 ~~4~~ Bidder registration

Qualified bidders will be set up by Tradeslot as users of the auction system. Application to become a registered bidder requires acceptance of the terms and conditions of the Tradeslot Registered Bidder Agreement and participation in the training sessions provided by Tradeslot.

### 19 ~~5~~ Training and system testing

To enable qualified bidders to participate in the auction process, Tradeslot and CBH shall provide training, including the running of “mock” auctions for qualified bidders to familiarise themselves with the auction system. Tradeslot shall also assist with system testing for qualified bidders prior to commencement of the Auctions.

### 20 ~~6~~ Shipping capacity access auction system

In order to participate in an auction, registered bidders must log on to the dedicated auction system website, [www.portcapacity.com.au](http://www.portcapacity.com.au).

Registered bidders are issued a single system account user name and password via email, with which to access the system for purposes of the Auction. Registered bidders provide their account log on details to others entirely at their own risk. Bids entered by parties or advisors who have been granted access by a registered bidder are deemed to be bids of that bidder and are binding on that bidder.

The auction system website server is hosted within a secure third party hosting facility. Tradeslot independently manages the auction.

Tradeslot provides a telephone based help desk service during the auction. The Tradeslot help desk number is +61 3 8624 0000.

## 21 ~~7~~-Auction format

### 21.1 ~~7.1~~-Online auction

All bids in the auction are submitted electronically via the internet during the lot bidding period. The auction is conducted in a simultaneous, multi-round, ascending clock auction format.

### 21.2 ~~7.2~~-Simultaneous auction format

All lots in the auction catalogue for the auction are contested simultaneously. Bidding on all lots commences at the date and time of the auction start (lot bidding period start) and ends when bidding on all lots ends (all lots are at or below capacity). Bidders have the opportunity to submit bids on all lots. All lots stay open until the end of the auction event. When the auction closes, all lots close simultaneously.

### 21.3 ~~7.3~~-Multi round auction format

Lots are offered for bidding over a series of separate, pre-scheduled activity rounds. The auction can span multiple days with scheduled breaks between days.

Activity processing periods are scheduled after each activity round end and prior to the start of the activity pause period. These periods serve to aggregate bids from all bidders and determine whether the auction continues into another round. During activity processing periods all bidding activity is suspended.

Activity pause periods (or auction breaks) can be scheduled between activity rounds. Unlike activity processing periods, however, auction data will be viewable and proxy bids for future rounds can be set.

### 21.4 ~~7.4~~-Ascending clock auction format

In the ascending clock auction format capacity in one lot is being offered at a per tonne uniform price across all bidders. Bidders indicate how much capacity they would purchase in that lot at that uniform price per tonne.

The first round uniform price begins at a start price defined as the upfront marketers fee plus auction premium (the auction premium typically starts at \$0.00). As long as total demand for one lot is higher than total supply, the uniform price increases by one increment each round. With every new round bidders are asked to submit a new volume bid at the new price per tonne.

Bidders may change their bid at any time during the round. The submitted bid current at the time the round finishes is the bid processed for that round.

### 21.5 ~~7.5~~-Auction timetable

The auction timetable, including the date and time of all auction phases is determined by CBH who will publish the auction timetable prior to the auction start on the auction system website, accessed at [www.portcapacity.com](http://www.portcapacity.com).

CBH will also publish the auction catalogue of lots to be included in the scheduled auction prior to the auction start.

CBH may alter the auction timetable by notifying qualified bidders of the revised auction timetable, and publishing the revised auction timetable prior to the previously published auction start.

## 22 ~~8~~-Event and round timing

The server time on the auction system website is the official time clock for all activities associated with the auction. Australian Western Standard time (WST) will be displayed.

The time remaining in each round, known as the round time, will be displayed during bidding periods. In each round, the round timer counts backwards towards zero. When zero is reached, bidding is stopped and the system processes all bids of the closed round activity processing period and may start an activity pause period. During an activity pause period the system displays the time remaining till the live bidding process resumes.

Round length can be flat (all rounds have the same duration) or can be set round by round. CBH will advise bidders prior to the auction event of the round timing.

The auction does not have a scheduled end time but CBH anticipates the auction to run no longer than five business days. If necessary, the auction timetable will include breaks without bidding activity (activity pause period).

## 23 ~~9~~-Auction pricing

All auction pricing is in Australian Dollars for each lot delivered to the specified delivery point for each bidder.

All auction and bid pricing is exclusive of Goods and Services Tax (GST), per tonne of capacity. The system will display total committed dollars and total confirmed capacity.

Goods and Services Tax (GST) will be included upon invoicing of the capacity won for that bidder.

### 23.1 ~~9.1~~ Clock price

The clock price for each lot will be displayed as an exact price per tonne. As long as total demand exceeds total supply the clock price will increase by one bid increment (as defined prior to the auction) at the beginning of each new round. Bidders will express bids in terms of capacity (minimum increment one (1) mt) requested at that price per tonne. Round-by-round price increments can be flat (same increments for all rounds) or can differ between rounds. CBH will inform bidders about bid increments prior to the auction event.

If at the end of a round, total demand matches total supply or falls below total supply, the clock price stays constant in the next round. Other lots with total demand exceeding total supply increase in price by one increment. The auction rounds continue until demand in all lots is equal or less than supply.

The payable amount per tonne is a uniform price – when capacity of one lot is awarded, all successful bidders will pay the same (uniform) price per tonne of capacity (mt). The uniform price is determined as follows:

Upfront Marketers fee + Auction bid price + Surge fee (if applicable)



The clock price will be displayed lot by lot to allow direct comparison between per tonne lot pricing.

## 23.2 ~~9.2~~ Start prices

The opening clock price per lot is based on the Upfront Marketers Fee plus any Surge Fees (if applicable) set by CBH prior to the auction.

## 24 ~~10~~ Registration period

The registration period is the period before the first activity round where bidders are able to log in to the system and update contact details and email addresses online on the bidder profile page. They are also able to view the auction catalogue (lot information) and submit proxy bids (see next section).

## 25 ~~11~~ Auction bidding activity

### 25.1 ~~11.1~~ Bids

Bids on lots can only be submitted :

- during an activity round; or
- as a proxy bid during an activity round or during the registration period.

Bidders can submit multiple bids during each activity round.

Valid bids submitted in previous activity rounds during the auction cannot be withdrawn by the bidder under any circumstances. The last valid bid placed in the previous activity round is binding on the bidder.

### 25.2 ~~11.2~~ Starting the lot bidding period

The lot bidding period for all lots commences at the date and time of the auction start. The lot bidding period continues subject to the scheduling of activity rounds.

The lot bidding period for a given lot ends at the end of the overall auction and lot award.

### 25.3 ~~11.3~~ Valid bid

Bidders can bid for up to 100% of the total capacity in a given lot. The system will reject bids for more than 100% of the lot volume.

The minimum increment for a bid is one (1) mt. The system will not allow fractions of the minimum increment.

Total capacity requested across all lots in a round cannot exceed the total capacity requested in the previous round (total capacity rule). The system does not accept a bid that would bring the total capacity to exceed last round's total capacity. This means that the aggregate capacity bid represents the maximum aggregate capacity that may be bid in following rounds. As the auction progresses Bidders may change the way that they allocate their maximum aggregate capacity between lots but may not exceed the aggregate capacity bid for in the first round.

## 25.4 ~~11.4~~ Activity round length

Activity rounds last for a given duration of time, which is set by CBH before the auction begins. Activity round time can be flat (uniform across all rounds) or can be set round-by-round.

The time remaining to adjust bids in each current activity round is indicated on the screen by the round timer. Activity rounds are advanced when the round timer reaches zero.

## 25.5 ~~11.5~~ Advancing activity rounds

At the end of each activity round there will be a round processing period. During this period the system will calculate the aggregate demand for each lot by adding together the capacity demanded by all valid bids and proxy bids.

The aggregate demand of the previous round will be displayed in the system. Past round data can also be viewed and downloaded from the Bid History section of the system.

### (a) **Aggregate demand exceeds supply**

If the aggregate capacity demanded is greater than the capacity supplied in a lot, the round will advance with the clock price:

- remaining at \$0.00 (from round 1 to round 2);
- increased by one price increment (from round 2 to 3 and following).

### (b) ~~(b)~~ **Aggregate supply exceeds demand**

If the aggregate demand for a lot is less than or equal to the aggregate supply for that lot and the auction event is not closing, the lot progresses into the next round without increasing the price per tonne.

Activity rounds continue to advance until all lots have aggregate demand less than or equal to aggregate supply. At this point, the overall auction event closes.

## 25.6 ~~11.6~~ Lot Award

A given capacity volume within each lot is awarded to one or more winning bidders at the close of the auction event.

The clock price per lot at the end of the auction determines the payable price per tonne.

The award of a lot may be subject to grievance proceedings.

## 25.7 ~~11.7~~ Overshoot

When, at the end of the auction event aggregate demand in one lot is less than supply it creates left over capacity, or overshoot. In the case of overshoot:

- the volume that has been bid for will be allocated at the uniform price reached for the given lot;
- the excess supply (the volume that has not been assigned) may be offered at a subsequent auction.

## 25.8     ~~11.8~~ **Passing in capacity**

If a lot is not awarded as there have been no bids for the lot at the end of the entire auction event, the capacity within that lot will be passed in and may be offered at a subsequent auction or through booking spare capacity after the relevant phase 2 auction.

## 25.9     ~~11.9~~ **Disruption to an auction**

If the auction system fails at the server, or there is any unexpected disruption to services prior to auction start, the auction will be re-scheduled. All qualified bidders will be notified of the rescheduling of the auction.

If the system fails, or there is any unexpected disruption to services after the auction start and during the lot bidding period, the status of competition for all lots, reverts to that existing at the end of the activity round immediately prior to the disruption. The auction recommences as soon as the problem is rectified, and as scheduled by CBH.

If a given bidder is disconnected from the system during the lot bidding period due to individual system or connection failure, the bidder can continue to participate in the auction indirectly if proxy bids have been submitted. The Tradeslot help desk is not authorized or technically able to submit bids on behalf of bidders.

## 26        ~~12~~ **Placement of Proxy Bids**

Proxy bids are bids placed before the beginning of an activity round or before the beginning of the auction during the registration period. Bidders can but are not obliged to, set volume bids in anticipation of round clock prices. Proxy bids can be deleted or over-written during the registration period and at any time during activity rounds.

Proxy bidding is highly recommended as a safety net to ensure bidders stay in the bidding process even if they are temporarily disconnected from the system. This is particularly important as the auction rules prohibit the Tradeslot help desk from placing bids or proxy bids on behalf of bidders even in the case of internet connection issues.

### 26.1     ~~12.1~~ **Proxy bids and activity rules**

Proxy bids are subject to activity rules. Proxy bids will not be accepted by the system if a volume bid is higher than the bid of the previous round.

### 26.2     ~~12.2~~ **Over-writing proxy bids during the auction**

During the auction round, a bidder may elect to replace a pre-determined proxy bid with a lower volume (or higher provided that the total aggregate capacity limit is not exceeded) live bid.

The bidder will be asked to confirm or cancel this decision. Should they confirm to overwrite their pre-determined proxy bid, all existing proxy bids for that given lot that are greater than the overwriting live bid will be reduced to the volume of the overwriting live bid. Existing proxy bids for the given lot that are less than the overwriting live bid will remain unchanged.

If the live bid that overwrites an existing proxy bid is higher than the proxy, the bid will be accepted for that round without affecting the proxy setting for future rounds.

### 26.3     ~~12.3~~ Auction Member Queries

A Query is where an Auction Member seeks clarification of a rule or process in connection with the Auction.

All queries from a Bidder are to be directed to the Tradeslot helpdesk.

### 26.4     ~~12.4~~ Auction Member Grievance

A Grievance is where an Auction Member wishes to lodge a formal complaint with respect of the Auction.

A Bidder must indicate the intent to lodge a grievance with the Tradeslot helpdesk during the execution of the Auction.

Grievances lodged after the auction has ended will not be considered.

## 27       ~~13~~ Post auction

### 27.1     ~~13.1~~ Invoicing

Following the auction end, confirmation to winning bidders, of lot award and corresponding charges are included into the Invoice and issued electronically.

Bidders are normally notified of the lot award via email within two (2) business days after the end of the auction.

### 27.2     ~~13.2~~ Publication of results

CBH will publish the end price and % capacity sold within each lot at the end of the auction. The results of the auction will not disclose winning bidders or information allowing the identification of individual bidders.

If a grievance is submitted, winning bidders will be notified that their lot award is provisional until the grievance is determined by the Auction Review Committee. Confirmation of lot award to winning bidders will be made after determination of the grievance by the Auction Review Committee.

### 27.3     ~~13.3~~ Grievance procedure

The grievance procedure aims to provide a framework for raising and dealing with grievances which arise from the relevant online auction. It aims to provide an efficient, clear, fair and accessible mechanism for dealing with problems which arise and for ensuring that the determination of any grievances, and the online auction itself, has been conducted properly.

The grievance shall be determined having regard to the following factors only:

- the application of the auction rules;
- the bidder agreement between the aggrieved bidder and Tradeslot;
- the aggrieved bidder's participation in the online auction;
- the operation of the technical auction system;
- any oral submissions made by the aggrieved bidder related to the above factors;

- any recommendations made by the Auction Review Committee; and
- any other factor that the Auction Review Committee considers appropriate in its absolute discretion, provided that notice of such consideration is given to the relevant aggrieved bidder(s).

If a bidder indicated their intent to lodge a grievance during the auction with the Tradeslot helpdesk, the grievance and any supporting documentation must be lodged by 5.00 pm on the first business day following the auction end. Bidders are to submit grievances to the Tradeslot auction manager either electronically or by facsimile as follows:

- Electronically at: [auctionmanager@tradeslot.com](mailto:auctionmanager@tradeslot.com) .
- By facsimile at: (03) 9621 ~~4844~~ [1811](tel:1811).

Grievances will be determined the Auction Review Committee.

CBH, Tradeslot and each aggrieved bidder have the right to maintain as confidential the grievance, application of the grievance procedure and the determination of the grievance.

Each bidder authorises and consents to the use of any personal information provided in connection with these auction rules for the purposes set out herein, subject only to the *Privacy Act 1988 (Cth)* and any other applicable legislation. Without limiting the forgoing, such information may be used by the Auction Review Committee as reasonably necessary to determine any grievance.

## 28 ~~14~~ Auction Review Committee

### 28.1 ~~14.1~~ Responsibility

The Auction Review Committee is responsible for the oversight of the Auction process. Its primary goal is to ensure the Auction proceeds in an orderly and fair manner. As a result of this goal the Auction Review Committee is charged with investigating any outcomes that it believes may contravene the operations of a fair and equitable market.

### 28.2 ~~14.2~~ Structure

The voting members of the Auction Review Committee will comprise a mix of risk oversight skills, auction knowledge and independence as follows:

- CBH Group Chief Risk Officer (or representative) – Chairman: [\\_](#)
- Representative of Tradeslot: [\\_](#)
- One representative chosen by the trade from an accounting firm: [\\_](#)

A quorum is established when all voting members (or their representatives) are present.

A representative of CBH Operations may be invited to attend but does not carry a vote.

Auction Review Committee Meetings shall be held at the end of each auction and as required during each auction. Minutes shall be recorded and where necessary reports presented to the meeting.

### 28.3     ~~14.3~~ Responsibility

The Auction Review Committee is responsible for the oversight of the Auction process. Its primary goal is to ensure the Auction proceeds in an orderly and fair manner. As a result of this goal the Auction Review Committee is charged with investigating any outcomes that it believes may contravene the operations of a fair and equitable market.

### 28.4     ~~14.4~~ Powers

The powers of the Auction Review Committee will include but are not limited to:

- Enforcing a trading halt to the Auction process;
- Querying Bidders regarding trading activity and outcomes;
- Cancelling auction trades during the auction and prior to validation;
- Suspend/cancel Bidder registration;
- Validating the Auction;
- Recommending improvements to the Auction process.

## 29     ~~15~~ Communication of Decisions

The Auction Review Committee will make available its decisions and the background to its decisions to the party that lodged the grievance. The decisions of the Auction Review Committee will be made publicly available where that information is not market sensitive, confidential or in breach of relevant regulations. Where necessary the decisions will also be communicated to the ACCC with supporting rationale and information.

## 30     ~~16~~ Limitation of liability and indemnity

### 30.1     ~~16.1~~ Limitation of liability

CBH and Tradeslot hereby exclude, to the fullest extent permitted by law, all liability to bidders arising out of or otherwise in connection with the participation by bidders in the auction including, without limiting the foregoing, any liability:

- for failure of the system prior to the auction start;
- for failure of the system during the lot bidding period;
- for failure by the system to accept a valid bid;
- for errors in the submission of proxy bids;
- for errors in the reserve price for a lot;

- for any capacity limit of a bidder, whether such limits are nominated by a bidder or otherwise;
- for interruption of any other kind to access to the online auction website;
- for loss or delay in the receipt by a bidder of any electronic notification from CBH;
- for loss or delay in the receipt by CBH of any electronic notification from a bidder;
- for indirect, incidental, special or consequential damages whether or not the bidder knows of the possibility of such damage or such damage was otherwise foreseeable;
- for loss of profits or savings (actual or anticipated) and loss of goodwill, whether or not the bidder knows of the possibility of such damage or such damage was otherwise foreseeable; and
- contributed to directly or indirectly by the bidder's acts or omissions<sup>±</sup>.

except to the extent that such liability arises from acts or omissions of CBH that are negligent or unlawful or which amount to wilful misconduct.

## **30.2 ~~16.2~~ Indemnity**

Each bidder indemnifies CBH and Tradeslot, its officers, employees and agents, from and against any claim, action, liability, loss, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character arising directly or indirectly from any:

- Breach by the bidder of these auction rules; or
- Acts or omissions (including any negligence, unlawful conduct or wilful misconduct) by the bidder arising out of or otherwise in connection with the bidder's participation in the online auction.

## Schedule 2

### Direct to Port Delivery Declaration Form



## Direct Port Access Receivals

Original	Carter	Triplicate	District Office	GPO Box L886	Date
Duplicate	Carter	Quadruplicate	Book Copy	Perth WA 6842	

Customer Information				Transporter Details			
Owner:				Transporter:			
Customers Title:				Sub - Transporter:			
Address:				OPTIONAL			
Commodity Details				Grower Details			
Season		Grain		Grade		Grower Title:	
Storage		Stack Number		Deliverer Number (8 characters)		Property Number (6 characters)	
				<div style="display: flex; justify-content: space-between;"> <span>[ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]</span> <span>[ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]</span> </div>		<div style="display: flex; justify-content: space-between;"> <span>[ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]</span> <span>[ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]</span> </div>	
Weights				Quality Information		Result	
Vehicle ID	Gross Tonnes	Tare Tonnes	Net Tonnes	OPTIONAL			
Total							
Vehicle Regulation Limit (VRL)			Ship Identifier		Is this grain coming directly off farm? Yes <input type="checkbox"/> No <input type="checkbox"/>		
VRL:							

<b>Mass Management Scheme</b>	
≤ 42.5 Permit NA	<input type="checkbox"/> CWMMS <input type="checkbox"/>
STD	<input type="checkbox"/> CLS <input type="checkbox"/>
Permit Number	
GCM <input type="checkbox"/> or GVM <input type="checkbox"/>	
Acceptable Vehicle Mass	
<b>Weighed Time</b>	<b>Discharge Details</b>
In:	Date:
Out:	24hr Time In:
Load Details entered into Computer? Yes <input type="checkbox"/> No <input type="checkbox"/>	Grid Number
<b>Customer or their Representative (Transporter)</b>	
Name (Please Print In Block Letters)	
*Signature	

**Direct to Port Delivery Declaration**  
The Customer warrants and represents that:

- (i) grain being tendered at the Port will not:
  - (A) include any Contaminant
  - (B) be in breach of the Bulk Handling Act 1967 (WA) or Bulk Handling Act Regulations 1967 (WA);
- (ii) it owns any grain tendered for delivery by it or on its behalf;
- (iii) all of the grain in a Delivery has been or is only contained in equipment, bags, farm implements, farm storages and bulk grain motor bodies that have:
  - (A) not contained any grain product prior to containing grain of this current Season and are free from insects and vermin; or
  - (B) previously contained a grain product, but have been freed of all such grain product and is free from insects and vermin;
- (iv) any vehicle that has previously transported non-grain or contaminated grain products:
  - (A) is clean, dry and free of remaining materials and odours from previous loads;
  - (B) has been washed under high pressure prior to delivering any grain; and
  - (C) has the details of previous loads disclosed on the relevant form;
- (v) if any of the grain has been treated with substances for the control of insects, details of the substances and application of those substances has been provided in writing to CBH and the use of any other chemical in the process of planting, growing and storage of the grain has been in accordance with the levels prescribed in any relevant legislation and also in accordance with the usage instructions;
- (vi) none of the grain in a delivery is a Genetically Modified Organism (unless declared in writing to, and approved in writing by, CBH before the Delivery enters the Port Terminal Facility);
- (vii) any information provided to CBH in a delivery form is true and correct and not misleading or deceptive or likely to mislead or deceive; and
- (viii) in the case of grain delivered during the Harvest Shipping Period and without a pre-delivery sample being tendered by the Customer, all of the grain in a delivery was grown between the May and September immediately prior to the Current Season.

**\*I have checked the Delivered NET Quantity of Grain**

CBH Representative		
ENTERED BY Signature	ENTERED BY Name (Please Print in Block Letters)	Date
CHECKED BY Signature	CHECKED BY Name (Please Print in Block Letters)	Date

## Schedule 3

### Direct to Port Sample Declaration Form



## Direct Port Access Pre-delivery Sample Analysis

Telephone: (08) 9416 1340  
Fax: (08) 9454 9001

Australian Grain Centre  
700 Abernethy Road  
Forrestfield WA 6058

### 1.0 Customer Information

Company Name:

Address:

Phone:

Fax:

Mobile:

### 2.0 Grain Details

Grain Type:

Season Grown:

Variety:

### 3.0 Intended Delivery Details

Intended Site for Delivery:

Intended Date of Delivery:

### 4.0 Storage Details

Storage Description	Storage Capacity	Approximate Tonnes for Delivery	Sample Reference for Enclosed Samples

Note: samples should be a 1kg sample per source of grain.

### 5.0 Treatment Details

Name and Nature of Substance	Date Used	Rate of Application	Method Used

#### TREATMENTS

- if the Grain has been treated with substances for the control of insects, such substances are listed above.
- the application of the substances listed and the use of any other chemical in the process of planting, growing and storage of grain has been in accordance with the levels prescribed in any relevant legislation and also in accordance with the usage instructions.

### Direct to Port Sample Declaration

The Customer warrants and represents that:

- grain being provided as a pre-delivery sample is a true and correct representative sample that has not been manipulated or created in order to produce an misleading or deceptive assessment of the quality of the grain to be delivered to the Port Operator; and
- the grain is representative of all storages from which grain to be delivered to the Port Terminal Facility will be drawn.

### 6.0 Deliverer Signatory - I hereby declare the above information is correct and accurate and represents the grain intended for delivery.

Signature	Print Name (Please use block letters)	Date

### 4.0 CBH Use Only

Date Received	Date Deliverer Notified
Date Sample Tested	Advise Intended Receiving Site, Customer Account Manager and Shipping Manager
Comments	

Quality Information	Result

Date: 25/06/04

## Schedule 4

[NOT USED]

## Schedule 5

The Reposition Matrix and Timeline is published on the Auction System Website ([www.portcapacity.com](http://www.portcapacity.com)).

Document comparison by Workshare Professional on Friday, 1 April 2011  
10:55:24 AM

Input:	
Document 1 ID	file://C:/Documents and Settings/70755/Desktop/CBH_DMS_PROD-#786927-v17-CBH_-_Port_Terminal_Rules.DOC
Description	CBH_DMS_PROD-#786927-v17-CBH_-_Port_Terminal_Rules
Document 2 ID	PowerDocs://CORRSDMS/5766047/5
Description	CORRSDMS-#5766047-v5-2011_CBH_Port_Terminal_Rules
Rendering set	standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	548
Deletions	558
Moved from	13
Moved to	13
Style change	0
Format changed	0
Total changes	1132