



Port Terminal Rules – 2014/2017

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Part A - Structure

1. STRUCTURE OF RULES

1.1 These Port Terminal Rules are structured in 6 parts as follows:

- (a) Part A - Structure
- (b) Part B - Long Term Capacity Allocation
- (c) Part C - Near Term Capacity Allocation
- (d) Part D - Nominations and Stem handling
- (e) Part E - General and Interpretation
- (f) Part F - Auction Rules

2. CAPACITY ALLOCATION

2.1 Capacity allocation mechanisms

The Port Operator will allocate Capacity to Customers in the following manner:

- (a) Long Term Capacity allocation may take place in accordance with the processes set out in Part B below whereby no more than 66% of Total Capacity will be allocated to Customers under this process;
- (b) Near Term Capacity allocation will take place in accordance with the processes set out in Part C below by Auctions in the first instance under clause 4 below with no less than 34% of Total Capacity allocated under to Customers under this process and with any remainder in accordance with Spare Capacity Allocation process under clause 4.3.

2.2 Criteria and process for estimating available Total Capacity

- (a) The Port Operator must determine Total Capacity to be allocated under these Port Terminal Rules on the basis of a conservative estimate of the theoretical average capability of the Port Terminal Facility to load vessels in any given half month operating period. In calculating Total Capacity to be allocated under these rules, the Port Operator will take into account:
 - (i) the historical performance of the Port Terminal Facilities in loading vessels under usual operating conditions;
 - (ii) the efficient deployment of labour and other resources in Port Terminal Facilities over the Year based on standard resourcing levels (weekday and daylight working hours only);
 - (iii) the availability of quarantine inspection services by DAFF (Biosecurity Australia);
 - (iv) the number of rainy days / hours that are normally expected in a month;
 - (v) the amount of berth time lost due to vessels failing survey and either being cleaned or being pushed off the berth to allow another vessel to berth;

- (vi) average vessel deballasting rate;
 - (vii) the likely mix of grain types at the Port Terminal Facilities;
 - (viii) the ability of the port authority to provide relevant services; and
 - (ix) the undesirability of long vessel queues forming off CBH's Western Australian ports.
- (b) The Port Operator may, in its discretion, determine additional Capacity to be allocated over and above the Total Capacity under these Port Terminal Rules. In determining such additional Capacity, the Port Operator will consider the following:
- (i) the estimated size and characteristics (including geographic distribution) of the upcoming harvest;
 - (ii) 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 Terminal Facilities;
 - (iii) the likely distribution of the transport task between road and rail in each port zone;
 - (iv) the optimal deployment and utilisation of the available rail and road resources;
 - (v) the amount of planned maintenance down time required in a month (including a contingency for unplanned maintenance downtime);
 - (vi) the number of segregations that may be required;
 - (vii) the extent to which Capacity in excess of Total Capacity may be made available if supply chains deliver grain at a more accelerated pace than would be expected in normal operating conditions; and
 - (viii) 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 Publication of information concerning Capacity

The Port Operator must publish on its Website on or before 1 August each year:

- (a) the Total Capacity it will offer for each of its Port Terminal Facilities for the following Year during the Harvest Shipping Period and the Annual Shipping Period which will be not less than the Total Capacity determined for the purpose of calculating Long Term Capacity offered in respect of Long Term Agreements; and
- (b) the proposed dates of Auctions and other significant events in the Capacity allocation process including the dates on which Long Term Capacity applications must be received (**Capacity Timetable**); and
- (c) no later than five Business Days before any Auction, the proposed amount of additional Capacity it intends to offer for each of its Port Terminal Facilities by Shipping Window.

Part B Long Term Capacity Allocation

3. LONG TERM CAPACITY ALLOCATION

3.1 Determination of Long Term Capacity

- (a) Subject to this clause 3.1, the Port Operator may allocate a proportion of Total Capacity to eligible customers as Long Term Capacity in advance of Capacity Auctions.
- (b) The Port Operator must ensure that the following two conditions are met:
 - (i) not less than thirty four percent (34%) of its declared Total Capacity in any Year is to be offered by way of the Auctions; or
 - (ii) not less than thirty four percent (34%) of the Capacity in each Shipping Window published under clause 2.3 at each Port Terminal is to be offered by way of the Auctions.
- (c) The Long Term Capacity offered by the Port Operator in accordance with clauses 3.1(a) and 3.1(b) may be varied from time to time by the Port Operator, provided the aggregate Long Term Capacity amount does not increase by more than 2% in any one month. In exercising this discretion, nothing will derogate from the Port Operator's obligation to comply with clause 3.1(b).

3.2 Eligibility to acquire Long Term Capacity

- (a) Subject to clause 3.3(s), the Port Operator will offer the opportunity to acquire Long Term Capacity to Customers once in respect of each three (3) year period.
- (b) To acquire Long Term Capacity a Customer must:
 - (i) have stated in writing to the Port Operator that it is willing to enter into an agreement for the long term supply of Port Terminal Services with the Port Operator;
 - (ii) have a forecast shipment schedule in excess of six hundred thousand (600,000) metric tonnes in each of the next three Years, setting out the following:
 - (A) the amount of Long Term Capacity requested in aggregate per Year of the LTA and broken down into the amounts per Quarter and Month at each Port Terminal Facility;
 - (B) the amount that the Customer considers a minimum shippable quantity that it would accept;
 - (iii) not request more than:
 - (A) fifty percent (50%) of the Customer's aggregate Long Term Capacity demand for any Year in any Quarter of that Year; and
 - (B) thirty percent (30%) of the Customer's aggregate Long Term Capacity demand for that same Year in any of the other Quarters in that Year;
 - (iv) not request more Long Term Capacity in any Year than an amount representing fifty percent (50%) of aggregate Long Term Capacity

offered by the Port Operator for that Year;

- (v) not have a forecast shipment schedule which requests more than fifty percent (50%) of the Long Term Capacity offered by the Port Operator in any Month at any Port; and
- (vi) represent and warrant to the Port Operator that it intends to use, and has a reasonable basis to believe that it can use, the Long Term Capacity,
(a “**Long Term Capacity Offer**”);
- (c) Each Long Term Capacity Offer made by a Customer must satisfy clause 3.2(b) so that it is capable of acceptance by the Port Operator and capacity can be allocated pursuant to clause 3.3.

3.3 Long Term Capacity allocation process

- (a) On the date specified in the Capacity Timetable, and subject to the limitations in these Port Terminal Rules, the Port Operator will allow Customers to offer to acquire a quantity of Long Term Capacity (a **Long Term Capacity Offer**).
- (b) All Long Term Capacity Offers must:
 - (i) be received by the cut-off date specified in the Capacity Timetable; and
 - (ii) meet the requirements set out in clause 3.2(b).
- (c) Following receipt of all Long Term Capacity Offers the Port Operator will:
 - (i) consider whether it can meet all the Long Term Capacity Offers and allocate the requested capacity; and
 - (ii) make a provisional allocation of all Long Term Capacity into individual Shipping Windows within each month having regard where practicable to the amount submitted by the Customer pursuant to clause 3.2(b)(ii)(B).

If the Port Operator can meet all Long Term Capacity Offers submitted, the Port Operator will allocate that Long Term Capacity to each Customer.

- (d) The Port Operator will complete an assessment of each application by no later than ten (10) Business Days following the last day for submission in accordance with the Capacity Timetable.
- (e) If the aggregate of the Long Term Capacity Offers made by all Customers exceeds the total Long Term Capacity offered by the Port Operator for any month or Quarter, the Port Operator has full discretion to either:
 - (i) refuse to allocate any Long Term Capacity in the relevant oversubscribed month or Quarter (as the case requires) and auction that Capacity at the next Auction pursuant to Part C;
 - (ii) consult with each Customer that has applied for Long Term Capacity in the oversubscribed month or Quarter (as the case requires), and invite each relevant Customer to re-submit its Long Term Capacity Offer:
 - (A) with a reduced monthly tonnage at one or more Ports; or
 - (B) moving some of its requested Long Term Capacity into alternative Shipping Windows or Ports,

which the Port Operator will re-assess within twenty (20) Business Days from the last day for the original Long Term Capacity Offer in accordance with the Capacity Timetable under clause 3.3(c) save that the re-submitted Long Term Capacity Offer will not be required to strictly meet all requirements under clause 3.2(b). The Port Operator may cease the process set out in this sub-clause 3.3(e)(ii) as soon as the Port Operator is of the view that it can meet the aggregate Long Term Capacity Offers of all Customers; or

- (iii) accept the application following a variation of the offered Long Term Capacity and Total Capacity in accordance with clause 3.1(c) or as re-submitted by one or more Customers under clause 3.3(e)(i).
- (f) The Port Operator will notify each Customer of the result of the Port Operator's assessment of their Long Term Capacity Offer and the Customer's allocated Long Term Capacity on the date of completion of the assessment in accordance with clause 3.3(d) or the following Business Day.
- (g) The Customer will be required to confirm the Long Term Capacity allocation and enter into a Long Term Capacity Agreement within two (2) Business Days of the Port Operator accepting the indicative Long Term Capacity Offer.
- (h) If a Customer does not:
 - (i) confirm the Long Term Capacity allocated to them;
 - (ii) pay the Long Term Capacity Charge appropriately invoiced to them in any Year; or
 - (iii) unconditionally enter into a Long Term Port Capacity Agreement, within two (2) Business Days of the Port Operator accepting the indicative Long Term Capacity Offer, the Customer will forfeit their Long Term Capacity allocation. This capacity will be made available to Customers via the Near Term Capacity Allocation process in Part C.
- (i) Once a Customer has committed to acquire, and CBH has agreed to supply, Long Term Capacity then the Customer agrees to pay the relevant Long Term Capacity Charge for the next Year. A three (3) year agreement to acquire Long Term Capacity creates a presently existing obligation on a Customer to pay the relevant Long Term Capacity Charge for each Year of the Long Term Capacity Agreement.
- (j) Within five (5) Business Days after the latest date for confirmation by the Customers under clause 3.3(g), the Port Operator will publish the Long Term Capacity that has been acquired by Customers on the Shipping Stem by identifying the:
 - (i) name of the Customer that has acquired Capacity;
 - (ii) Port Zone in which the Customer has acquired Capacity; and
 - (iii) month for which the Customer has acquired Capacity.
- (k) The Port Operator and each Customer must negotiate an agreement for the supply of Port Terminal Services, which must contain the terms and conditions for the acquisition of Long Term Capacity.
- (l) The Port Operator must supply Long Term Capacity at the same price to all Customers.

- (m) The Port Operator must not accept Long Term Capacity Offers that do not meet all requirements under clause 3.2(b) save to the extent of a modification under clause 3.3(e).
- (n) The Port Operator must not allocate Long Term Capacity exceeding 50% of total Long Term Capacity offered by the Port Operator in any Year to any single Customer.
- (o) In offering, negotiating and supplying Long Term Capacity, the Port Operator must comply with the Undertaking.
- (p) All Long Term Capacity Offers and negotiations must be finalised before the release of Auction catalogue for the first Auction of any Year's Capacity.
- (q) Subject to clause 3.3(s), any Capacity not allocated as Long Term Capacity must be allocated by Auction under clause 4.
- (r) For the avoidance of doubt Long Term Customers may participate in acquiring capacity through the Auctions and Spare Capacity Allocation methods.
- (s) If the Port Operator reasonably considers that the number of months and Quarters oversubscribed are such that the allocation of Long Term Capacity in any remaining months or Quarters would be detrimental to the efficient and equitable operation of its Port Terminal Facilities, it may elect not to accept any Long Term Capacity Offers, in which case, all Capacity for the next Year will be allocated via the Near Term Capacity Allocation process in Part C. Nothing in clause 3.2(a) is to be interpreted to prevent the Port Operator re-performing the Long Term Capacity Allocation process again in relation to the following Years for a new three (3) year period.

3.4 Long Term Annual Shipment Schedule

- (a) A Long Term Customer must provide a long term annual shipment schedule (**LTASS**) to the Port Operator together with their Long Term Capacity Offer (or subsequent amended offer) detailing:
 - (i) annual volume estimates by commodity by Port Terminal Facility through the Year;
 - (ii) a preliminary shipping schedule nominating laycans and estimated volume per shipment plus or minus ten (10) percent;
 - (iii) indicative commodity nominations;
 - (iv) expected tonnage of Grain and Bulk Wheat to be delivered to each Port by the Customer pursuant to a GSA; and
 - (v) expected tonnage of Grain and Bulk Wheat to be delivered to each 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.
- (b) A Long Term Customer must provide a revised LTASS on or immediately prior to the last day of each month within the Year detailing the information set out in clause 3.4(a) for the three (3) months after the month immediately following the date of issue of the revised LTASS (for example, a revised LTASS provided on 31 January would set out the required information in respect to the period from 1 March to 30 June of the Year).

- (c) The Port Operator will either accept the revised LTASS within seven (7) days or provide a revised proposal to the Long Term Customer with a short statement of reasons if the Port Operator anticipates detrimental impacts on the operation of the Port Terminal Facilities.
- (d) The Port Operator will only propose changes to a revised LTASS 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.
- (e) A Long Term Customer is not obliged to accept proposed changes put forward by CBH to the LTASS but in doing so acknowledges that a failure to accept such changes may result in operational impacts to the time of Outloading onto a nominated vessel as determined in accordance with clauses 11 to 14 (inclusive) of these Port Terminal Rules.
- (f) If a Long Term Customer fails to:
 - (i) provide a LTASS in accordance with this clause 3.4;
 - (ii) pay the Long Term Capacity Charge in accordance with invoice terms;
or
 - (iii) use or transfer a majority of its acquired Long Term Capacity in any Year (and provided the aggregate harvest amount in that Year has not been smaller than the total Long Term Capacity allocated for that Year),the Port Operator may elect to terminate the Long Term Capacity Agreement, save that nothing will release the Long Term Customer from its obligation to pay the Long Term Capacity Charge.
- (g) Each LTASS must nominate the supply chain to which the Long Term Customer intends to use in relation to acquired Long Term Capacity.

Part C Near Term Capacity Allocation

4. AUCTION CAPACITY ALLOCATION FOR PORT TERMINAL SERVICES

4.1 Acquiring Near Term Capacity

- (a) Near Term Capacity allocation must be conducted in two (2) stages, either:
 - (i) by an Auction; or
 - (ii) by a Spare Capacity Allocation.
- (b) The date and time each Auction is scheduled to be held and a schedule of the Capacity on offer at each Auction must be published by the Port Operator on the Website not less than five (5) 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) Each Auction will be held in accordance with the Auction Rules and the Auction Timetable.
- (d) The Auction Timetable for the next Season:
 - (i) must be published on the Website by the Port Operator no later than 1 August; and
 - (ii) may be varied by the Port Operator after its first publication in accordance with the Auction Rules.
- (e) The Port Operator may make any consequential amendments to the Reposition Matrix resulting from an amendment of the Auction Timetable and any such amendments to the Reposition Matrix will be published at the same time as the amended Auction Timetable.
- (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 (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 Passed-in Capacity:

- (a) Passed-in Capacity will be offered by the Port Operator at the next scheduled Auction unless:
 - (i) the relevant Auction Timetable precludes compliance with these Port Terminal Rules (i.e. time for nomination); or
 - (ii) a Customer has validly repositioned acquired Capacity into it in accordance with clause 5.2.

4.3 Spare Capacity Allocation:

- (a) If there is Spare Capacity for the relevant Shipping Window, the Port Operator 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) Customers may submit a Spare Capacity Booking Form to the Port Operator at any time before the last day of the relevant Shipping Window for which Spare Capacity is available.
- (c) The Customer must nominate the supply chain arrangements to be used in accordance with clause 4.1(f) unless there 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 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).
- (d) Subject to the availability of Spare Capacity and clause 4.3(e), the Port Operator must allocate Spare Capacity to Customers on a first-come first-served basis within two Business Days of receiving the Spare Capacity Booking Form.
- (e) 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) 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) the accumulation of cargo is not reasonably likely to be accomplished within the required time period;
 - (iii) it will detrimentally impact the operation of the Port Terminal;
 - (iv) clause 11.3 will not be breached by the acceptance of the subsequent Vessel Nomination.
- (f) If the Port Operator rejects a Spare Capacity Booking Form it will provide reasons for its decision.
- (g) The notification to the Customer of allocation of Spare Capacity must include details of:
 - (i) the summary and particulars of the Capacity allocated to each Customer for each Shipping Window; and
 - (ii) 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.

Part D Capacity dealing, Nominations and Stem Handling

5. TRADING OR REPOSITIONING CAPACITY

5.1 Trading Capacity

- (a) Customers may trade or transfer Capacity that they have acquired in either the Long Term Capacity Allocation process or the Near Term Capacity Allocation process provided that:
 - (i) the transfer complies with the requirements of clause 5.1(c);
 - (ii) no Long Term Capacity in relation to a Year can be traded until after the first Auction of Near Term Capacity for that Year has finalised and the results have been approved by the Auction Review Committee and announced;
 - (iii) the transferor and transferee of the Capacity has currently in force an Access Agreement with the Port Operator in relation to the usage of the relevant Port Terminal Facility and is not subject to a notice by the Port Operator that it is in breach of that agreement.
- (b) For the avoidance of doubt, any purported trade or transfer of Capacity that does not comply with clause 5.1(a) will be of no effect.
- (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) Subject to the transferor complying with their obligations under this clause, 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) 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) The Customer purchasing capacity should be aware of the requirements of clause 8 and 9 in relation to Vessel Nominations and note that CBH is not under an obligation to accept non-compliant Vessel Nominations.
- (g) For the avoidance of doubt, no transfer will be effective until approved by the Port Operator.

5.2 Repositioning Capacity

- (a) A Customer may reposition any 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 Capacity being repositioned;
 - (ii) in respect of Long Term Capacity in a particular Year, the first Auction of Near Term Capacity for that Year has taken place and the results of that Auction have been approved by the Auction Review Committee and announced;
 - (iii) the Customer's request is provided with:
 - (A) at least sixty (60) days' written notice prior to the last day of the Original Shipping Window and the Target Shipping Window is within the Repositioning Windows described in the Reposition Matrix of the Original Shipping Window; or
 - (B) at least thirty-six (36) days' written notice prior to the last day of the Original Shipping Window and the Target Shipping Window is not more than:
 - (1) two (2) Shipping Windows before; or
 - (2) four (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 Capacity before; and
 - (v) there is sufficient Spare Capacity in the Target Shipping Window for all Capacity being repositioned or there is sufficient Passed-in Capacity in the Target Shipping Window for all Capacity being repositioned.
- (b) The Target Shipping Window does not need to be in the same Port Zone.
 - (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) The Customer repositioning capacity should be aware of the requirements of clauses 8 and 9 in relation to Vessel Nominations and note that CBH is not under an obligation to accept non-compliant Vessel Nominations.
 - (e) For the avoidance of doubt, no reposition will be effective until approved by the Port Operator.
 - (f) Requests to reposition Capacity:
 - (i) within a Year will not be accepted from eight (8) days before any Auction of Capacity until the results of the Auction are approved by the Auction Review Committee and announced in order to provide certainty of Capacity up for auction;
 - (ii) from the last two (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 eight (8) days before the Auction of Capacity for the subsequent Harvest Period until the results of the Auction are approved by the Auction Review Committee and announced in order to provide certainty of Capacity up for auction.

6. PORT OPERATOR'S OBLIGATIONS FOLLOWING ACQUISITION OF CAPACITY

6.1 Port Operator Obligations

- (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 clauses 7 and 8; 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.
 - (iv) 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.

6.2 Acquiring allocated Capacity

- (a) The Port Operator may agree with one or more Customers to acquire allocated Capacity from those Customers provided that:
 - (i) the procedure set out in clauses 6.2(b) to 6.2(l) (inclusive) is complied with;
 - (ii) the Port Operator considers on reasonable grounds that the decision to acquire the allocated Capacity:
 - (A) is for the purpose of conducting preventative maintenance, alterations or capital works at the Port Terminal Facility, which will be likely to significantly impact the operation of the Port Terminal Facility; or
 - (B) be for the purpose of materially reducing forecast congestion at a Port Terminal Facility at a future date; or
 - (C) is based on the operation of a Port Terminal Facility being significantly impacted due to one or more of the following operational factors or supply chain disruptions:
 - (1) the disruption of rail services to a Port Terminal Facility;
 - (2) the closure of a Port Terminal Facility due to mechanical breakdown;
 - (3) a closure of a Port Terminal Facility due to a direction from a Port Authority; or
 - (4) a Port Blockage, and
 - (iii) the Port Operator considers on reasonable grounds that the decisions made under clause 6.2 would not be inconsistent with clause 6 (Non-discriminatory access) and clause 10.8 (No Hindering) of the Undertaking.
- (b) If the Port Operator wishes to acquire allocated Capacity in accordance with clause 6.2(a), and subject to clause 6.2(c), the Port Operator must notify the

ACCC in writing (setting out details in clause 6.2(b)(i) to 6.2(b)(v) (inclusive)) and provide a confidential written proposal to acquire allocated Capacity to each Customer with Capacity in the relevant Shipping Window, which must set out:

- (i) total amount of allocated Capacity that the Port Operator seeks to acquire in the relevant Shipping Window (**Aggregate Target Capacity**);
 - (ii) the amount of allocated Capacity proposed to be acquired from the Customer (**Target Capacity**) in the relevant Shipping Window, which will be based on the allocated Capacity held by the Customer prorated by the ratio the Aggregate Target Capacity bears to the total allocated Capacity in the relevant Shipping Window;
 - (iii) the reason(s) for proposing to acquire the allocated Capacity from Customers; and
 - (iv) the total consideration that the Port Operator would pay the Customer if it were to accept the proposal to acquire all the Target Capacity based on each Customer receiving the same price per tonne; and
 - (v) the average Auction Premium for the auction or auctions in which the Customer acquired the Target Capacity (which would be refunded from the relevant Auction Premium Pool),
(the **Allocated Capacity Proposal**).
- (c) An Allocated Capacity Proposal will not be provided to any Customer that has already provided a Vessel Nomination in relation to the Capacity that is proposed to be acquired by the Port Operator or has indicated in writing that it is not interested in an Allocated Capacity Proposal.
 - (d) Following receipt of an Allocated Capacity Proposal, a Customer will have the greater of two (2) business days and the closing date specified in the Allocated Capacity Proposal in which to notify the Port Operator whether it:
 - (i) will not participate in any Capacity acquisition proposed; or
 - (ii) is making an offer, open for one (1) business day from the closing date specified in the Allocated Capacity Proposal, in the form contained in the Allocated Capacity Proposal specifying the amount of Capacity (not being greater than the Target Capacity) that the Customer is willing to sell back to the Port Operator (the **Customer's offer**) and indicating whether the Customer wishes to provide the Port Operator an option to acquire more than the Target Capacity and the amount of that Capacity (**Option Capacity**).
 - (e) The Port Operator must either accept all Customers offers during the period in clause 6.2(d)(ii) or none. If the Port Operator accepts all offers and if the Aggregate Target Capacity has not been met, the Port Operator may accept any Option Capacity offers, spread pro-ratably amongst the Customers offering Option Capacity;
 - (f) In the event the Port Operator does not accept any of the Customer offers submitted under clause 6.2(d), the Port Operator may provide a revised Allocated Capacity Proposal which sets out:
 - (i) the revised total amount of allocated Capacity that the Port Operator seeks to acquire in the relevant Shipping Window (**Revised Aggregate Target Capacity**), which may be the same as the initial Aggregate Target Capacity;

- (ii) a revised amount of allocated Capacity that the Port Operator seeks to acquire from the Customer in the relevant Shipping Window (**Revised Target Capacity**), which will be based on the allocated Capacity held by the Customer prorated by the ratio the Revised Aggregate Target Capacity bears to the total allocated Capacity in the relevant Shipping Window; or
 - (iii) a revised total consideration that the Port Operator would pay the Customer if it accepted the offer for the Revised Target Capacity based on each Customer receiving the same price per tonne; and
 - (iv) the average Auction Premium for the auction or auctions in which the Customer acquired the Target Capacity (which would be refunded from the relevant Auction Premium Pool),
- (a **Revised Allocated Capacity Proposal**).
- (g) The Port Operator may vary the amount of the price it elects to offer to Customers under clause 6.2(f) providing it would not be inconsistent with clause 6 (Non-discriminatory access) and clause 10.8 (No Hindering) of the Undertaking, such price to be based on each Customer receiving the same price per tonne.
 - (h) Following receipt of a Revised Allocated Capacity Proposal, a Customer will have the greater of one (1) business day and the closing date specified in the Revised Allocated Capacity Proposal in which to notify the Port Operator as required under clause 6.2(d).
 - (i) This process may continue until the Port Operator either accepts the Customer offers in accordance with clause 6.2(e) or declines to make any further revisions to the Revised Allocated Capacity Proposals under clause 6.2(f).
 - (j) If the Port Operator acquires allocated Capacity from a Customer in accordance with this clause 6.2, a Customer will not be liable for Lost Capacity. The Port Operator may, but is not obliged, to agree with a Customer to move any Capacity parcel less than twenty thousand (20,000) tonnes that is uncommercial following acquisition of allocated Capacity to another Shipping Window or Port provided that it would not have the effect of any Customer incurring materially greater demurrage at the relevant Port than would have been the case if that Capacity had not been moved.
 - (k) The Port Operator will not acquire allocated Capacity from a Customer if that Capacity would be considered Lost Capacity under these rules.
 - (l) Following the completion of the acquisition process as set out in this clause 6.2, within five (5) business days from the time the Port Operator either accepts the Customer offers in accordance with clause 6.2(e) or declines to make any further revisions to the Allocated Capacity Proposals under clause 6.2(f), the Port Operator will provide a notice to the ACCC, which will set out the results of the Allocated Capacity Proposals and Revised Allocated Proposals (if any) provided to Customers.

7. NOMINATING VESSELS FOR SHIPPING WINDOWS DURING THE HARVEST SHIPPING PERIOD

7.1 Nominating Vessels for Shipping Windows

- (a) The provisions of this clause 7 apply in relation to nomination of vessels for Shipping Windows during the Harvest Shipping Period in addition to the provisions of clause 8.
- (b) In the case of inconsistency between the provisions of this clause 7 and the provisions of clause 8, the provisions of this clause 7 will apply.

7.2 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) The Port Operator may waive compliance with clauses 8.1(b) and 8.1(f) during the Harvest Shipping Period provided that the Customer makes a declaration in the Direct to Port Delivery Declaration Form in respect of each load of Grain delivered to the Port Terminal Facility.

7.3 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. NOMINATING VESSELS FOR SHIPPING WINDOWS

8.1 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
 - (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 must negotiate in good faith toward an agreed Accumulation Plan.
 - (vi) If an Accumulation Plan cannot be agreed within three (3) Business Days, the Customer may lodge a Compliance Complaint under clause 15.
 - (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) 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 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 while the Grain is held by the Port Operator at the Port Terminal Facilities.
- (c) 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 clause 8.1(c)(i) above.
- (d) 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) 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) 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) 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 GSA Cargo

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

- (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;
- (ii) the ETA of the Nominated Vessel must be no later than the last day of the Shipping Window;
- (iii) all Vessel Nominations will be input into the Port Operator's shipping interface contained on LoadNet® for Marketers™ system; and
- (iv) 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. VESSEL NOMINATIONS

9.1 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 clause 9.1(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 clause 9.1(c)(iii));
 - (xiii) vessel name (subject to clause 9.1(c)(i));
 - (xiv) Capacity Contract Reference number; and
 - (xv) any other details necessary for the Port Operator to process the Vessel Nomination.
- (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) 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 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 clause 9.1 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) 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);
 - (A) has a winding up order made against it or (except for the purposes of a solvent reconstruction) passes a resolution for winding up; or
 - (B) 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) 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 Amendment of Vessel Nominations

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
- (b) it:
 - (i) would not be inconsistent with the Non-discrimination and No Hindering Access provisions of the Undertaking;
 - (ii) 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) does not prejudicially alter the outcome or adversely affect other Customers participating in the Auctions;
 - (iv) would not result in other Customers incurring materially greater demurrage than would be the case if the amendment had not been accepted.

9.4 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. LOST CAPACITY AND TOLERANCE

10.1 Harvest Shipping Period

- (a) Where, following acceptance by the Port Operator of a Vessel Nomination in respect of Capacity during the Harvest Shipping Period:
 - (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) Where following acceptance by the Port Operator of a Vessel Nomination in respect of Capacity during the Harvest Shipping Period:
 - (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 Capacity will be treated as Lost Capacity and the Customer will pay the fees specified as payable for Lost Capacity in the Access Agreement.

- (c) Where:

- (i) the Customer does not submit and have accepted by the Port Operator a Vessel Nomination for Capacity during the Harvest Period more than twenty-two (22) days before the last day of the Grace Period; or

- (ii) the Customer does not ship all relevant acquired 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 Capacity will be treated as Lost Capacity and the Customer must pay the fees specified as payable for Lost Capacity in the Access Agreement, subject to clause 10.3.

10.2 Annual Shipping Period

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

- (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) 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 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 will be treated as Lost Capacity and the Customer must pay the fees specified as payable for Lost Capacity in the Access Agreement, subject to clause 10.3.

10.3 Tolerance

- (a) Subject to clause 10.3(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) Subject to clause 10.3(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) 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 clause 10.3(a) above and the Within Tolerance Lost Capacity percentage in clause 10.3(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.

11. SHIPPING STEM POLICY

11.1 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 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) the Nomination Date of the Vessel Nomination;
- (c) the Nomination Time of the Vessel Nomination;
- (d) 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) 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) loading a vessel whose cargo remains at Port but which failed to Arrive prior to the last day of the Shipping Window.

11.2 Adjustments to the Stem

The Port Operator may amend the Shipping Stem either at the request of a Customer or with the agreement of the Customer only if accepting the request or making the agreement:

- (a) would not be inconsistent with the Non-discrimination and No Hindering Access provisions of the Undertaking;
- (b) is for the purpose of:
 - (i) minimising demurrage at the Port over a given period; or
 - (ii) maximising throughput at the Port over a given period;

- (c) does not prejudicially alter the outcome or adversely affect other Customers participating in the Shipping Stem; and
- (d) would not result in other Customers incurring materially greater demurrage than would be the case if the request had not been accepted.

11.3 Discretion to Accept Vessel Nominations

- (a) The Port Operator may accept a Vessel Nomination that does not comply fully with the requirements of clause 9 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) A Vessel Nomination accepted under this clause 11.3 will in all cases have a lower priority than a Vessel Nomination that does comply fully with the requirements of clause 9.

11.4 Other Information

The Port Operator will publish the Capacity available at each Port Terminal Facility in accordance with clause 12.4 of the Undertaking.

11.5 Publication of Capacity

- (a) Within five (5) Business Days after confirmation that each Auction is complete, the Port Operator will publish the Capacity that has been acquired by Customers on the Shipping Stem by identifying the:
 - (i) name of the Customer that has acquired Capacity;
 - (ii) Port Zone in which the Customer has acquired Capacity; and
 - (iii) month for which the Customer has acquired Capacity.

12. STORAGE PRIORITY POLICY

The Port Operator 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. PORT QUEUE POLICY

13.1 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) Berth priority for vessels is determined by:
 - (i) cargo accumulation status;
 - (ii) status of Relevant Surveys; and
 - (iii) the time of Arrival of a vessel and its relationship to the Shipping Window of the Vessel Nomination.
- (c) The Port Operator reserves the right to request that vessels pass Relevant Surveys prior to berthing in order to maximise throughput of the Port Terminal Facility.
- (d) 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 Non compliant vessels

- (a) Customers' vessels must pass all Relevant Surveys within twenty-four (24) hours of berthing.
- (b) The Port Operator may require Customers to move their vessel from the berth if it fails survey in accordance with clause 13.2(a) and the non-compliant vessel is holding up the berth from another vessel.
- (c) Where a vessel fails any Relevant Surveys it returns to its original priority once it has passed the Relevant Surveys.

13.3 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. 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) 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) 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) 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) 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) The Port Operator may require Customers to move their vehicle 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.

Part E General Matters

15. ACCURACY AND COMPLETENESS OF INFORMATION

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

16. COMPLAINTS AND DISPUTE RESOLUTION

16.1 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) The Compliance Complaint must:
 - (i) be in writing, including by email to 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) A Compliance Complaint must be referred to:
 - (i) the Port Operator's General Manager of Operations;
 - (ii) the Port Operator's General Counsel; or
 - (iii) the Port Operator's Group CEO.
- (d) 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) If the Customer is not satisfied by the Complaint Response, or if the Port Operator fails to respond to the Compliance Complaint within one (1) Business Day of its receipt, the Customer may serve written notice on the Port Operator within one Business Day of receipt of the Complaint

Response, or within one (1) Business Day of when the Complaint Response was due (**Escalation Notice**).

- (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 (2) 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 (2) 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) 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 (1) Business Day of the meeting (**Decision Notice**).
- (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.

17. INTERPRETATION

17.1 Definitions

In these Port Terminal Rules unless the context otherwise requires:

Access Agreement means an agreement between a Customer and the Port Operator under which the Port Operator supplies Port Terminal Services to the Customer.

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.

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.

Assembly Window is defined in clause 14(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 clauses 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.

Auction Timetable means the auction timetable published on the Website.

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 the Port Operator's Port Terminal Facilities to put grain on board a vessel during a 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.

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

DAFF means the Department of Agriculture, Fisheries and Forestry.

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 3**.

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.

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

Grade means the grade of the Grain actually delivered to 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.

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.

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

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 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.

Long Term Capacity Agreement means an agreement between CBH and any Customer who is allocated Long Term Capacity after submitting a Long Term Capacity Offer and as described in clause 3.3(k).

Long Term Capacity Charge means the charge entitled Upfront Marketer Fee for each tonne of Long Term Capacity allocated under the Long Term Capacity Agreement.

Lost Capacity is defined in clause 10.

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

Near Term Capacity means Capacity that is not allocated Long Term Capacity.

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 means a valid notice of readiness served by the owner of the Nominated Vessel pursuant to the 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.

Passed-in Capacity means the Capacity remaining unallocated for the relevant Shipping Window following the most recent Auction.

Port means the ports of:

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

Port Blockage means the situation where a Port Terminal Facility is unable to either receive additional Grain and/or load Grain onto a Nominated Vessel due to a delay in the loading of the previous Vessel, caused by circumstances such as the previous Vessel(s) failing regulatory survey, regulatory impediments to exports, the grain to be loaded fails or likely to fail AQIS requirements or a disruption in the upcountry supply chain.

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

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

including:

- (d) an intake/receival facility;
- (e) a grain storage facility;
- (f) a weighing facility; and
- (g) a shipping belt;

that is:

- (h) at the port; and
- (i) associated with the ship loader; and
- (j) capable of dealing with wheat in bulk.

Port Terminal Services means the services provided by means of the Port Terminal Facilities which enable a User to export Bulk Wheat through the Port Terminal Facilities, including:

- (a) unloading and receipt 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, 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.

Quarter means the respective periods of 1 November to 31 January, 1 February – 30 April, 1 May – 31 July and 1 August to 31 October each Year.

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.

Repositioning Windows has the meaning given to it in the Reposition Matrix.

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

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 clause 11.

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

Shipping Window means a half month period of between fourteen (14) and sixteen (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) Passed-in Capacity that, in accordance with clause 4.2, will not be re-Auctioned; and
- (b) any Capacity that may otherwise become available and where offering it in accordance with the relevant Auction timetable would be reasonably likely to preclude compliance with these Port Terminal Rules.

Spare Capacity Allocation means the allocation of Spare Capacity remaining after allocation of Capacity under clause 4.1.

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

TBA means to be advised.

Total Capacity means the total amount of capacity allocated by the Port Operator to any Year after taking into the considerations listed in clause 2.2.

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

Undertaking means the 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, other than the Port Operator.

Vessel Nomination means a nomination of a vessel to ship the Nominated Tonnage 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) 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 clauses means www.cbh.com.au.

Year means 1 November to 31 October.

17.2 Interpretation

- (a) Other defined terms have the meanings given to them in the Undertaking, unless the context otherwise requires.

- (b) Reference to a clause is a reference to a clause contained within these Port Terminal Rules.
- (c) These Port Terminal Rules apply in relation to all Capacity bookings where the Shipping Window is on or after 1 November 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.

Part F Auction Rules

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. SHIPPING CAPACITY ACCESS AUCTION SYSTEM

In order to participate in an auction, registered bidders must log on to the dedicated Auction System website.

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.

24. AUCTION FORMAT

24.1 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.

24.2 Simultaneous auction format

- (a) 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 will end on the earlier of:
 - (i) the issue of an Auction Closure Notice as determined by the Port Operator in its absolute discretion as modified by this clause; or
 - (ii) when bidding on all lots ends (all lots are at or below capacity).
- (b) Bidders have the opportunity to submit bids on all lots. Subject to clause 7.2(a), all lots stay open until the end of the auction event. When the auction closes, all lots close simultaneously.
- (c) The Port Operator will only issue an Auction Closure Notice set out in clause 7.2(a) if it is reasonably satisfied that the following conditions have been met:
 - (i) the total aggregate demand in the auction must be not more than 10 per cent above the aggregate supply offered in the auction; and
 - (ii) the Auction Closure Notice has been approved by a nominated representative of the operations division of the Port Operator, which may include but not be limited to any one of the following: General Manager of Operations, the Supply Chain Manager, Customer / Export Manager and Logistics Manager (**Nominated Representative**).
- (d) Prior to the commencement of each auction, the Port Operator will notify Tradeslot as to the identity of the Nominated Representative for that auction.
- (e) The Nominated Representative will only approve an Auction Closure Notice where the Nominated Representative, acting reasonably, considers that:
 - (i) it is possible to meet the demand profile and the conduct of the auction, if continued, would not result in a fair, efficient and transparent allocation of capacity to all bona fide bidders;
 - (ii) the decision to approve would not be inconsistent with clause 6 (Non-discriminatory access) and clause 10.8 (No Hindering) of the 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);
 - (iii) the decision to approve would be for the purpose of maximising throughput at the Ports over a given period; and
 - (iv) the decision to approve would not result in Bidders incurring materially greater demurrage than would be the case if the decision was made not to accept the Auction Closure Notice.
- (f) For the avoidance of doubt, in respect to clause 7.2(e), individual circumstances and the positions of Bidders must not be taken into account

by the Nominated Representative in determining whether to approve an Auction Closure Notice.

24.3 Multi round auction format

- (a) 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.
- (b) 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.
- (c) Activity pause periods (or auction breaks) can be scheduled between activity rounds. Unlike activity processing periods, however, auction data will be viewable.

24.4 Ascending clock auction format

- (a) 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.
- (b) 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.
- (c) 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.

24.5 Auction Timetable

- (a) 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 Website.
- (b) CBH will also publish the Auction catalogue of lots to be included in the scheduled auction prior to the auction start.
- (c) 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.

24.6 Event and round timing

- (a) 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.
- (b) 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.

- (c) 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.
- (d) 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).

25. AUCTION PRICING

25.1 Currency and Tax

- (a) All auction pricing is in Australian Dollars for each lot delivered to the specified delivery point for each bidder.
- (b) 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.
- (c) Goods and Services Tax (GST) will be included upon invoicing of the capacity won for that bidder.

25.2 Clock price

- (a) 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.
- (b) 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. Subject to clause 7.2(a)(i), the auction rounds continue until demand in all lots is equal or less than supply.
- (c) 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)
- (d) The clock price will be displayed lot by lot to allow direct comparison between per tonne lot pricing.

25.3 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.

26. 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).

27. AUCTION BIDDING ACTIVITY

27.1 Bids

- (a) Bids on lots can only be submitted during an activity round.
- (b) Bidders can submit multiple bids during each activity round.
- (c) 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.
- (d) Bidders may change their bids between rounds, but:
 - (i) the aggregate total of their bids (in tonnes) must not exceed the aggregate capacity they bid across all lots in the previous round; and
 - (ii) bidders are only permitted to reduce the aggregate capacity they bid across all lots by a maximum of 150,000 tonnes per round.

27.2 Starting the lot bidding period

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

27.3 Valid bid

- (a) 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.
- (b) The minimum increment for a bid is one (1) mt. The system will not allow fractions of the minimum increment.
- (c) Subject to clause 27.1, bidders may alter their bid at any time whilst a round is open.
- (d) 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. Bids will stay open and remain valid until a bidder alters the bid.

- (e) If, at the end of an activity round, the aggregate capacity bid by a bidder across all lots involves a reduction of more than 150,000 tonnes from the aggregate capacity bid in the previous round, each of those reductions in bids will be disregarded (i.e. the bidder will be taken to have bid for the same amount of capacity as in the previous round).

27.4 Activity round length

- (a) 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.
- (b) 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.

27.5 Advancing activity rounds

- (a) 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.
- (b) 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.

(c) Aggregate demand exceeds supply

If the aggregate capacity demanded is greater than the capacity supplied in a lot and the Port Operator has not issued an Auction Closure Notice, the round will advance with the clock price:

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

(d) Aggregate supply exceeds demand

- (i) 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.
- (ii) Activity rounds continue to advance until all lots have aggregate demand less than or equal to aggregate supply or the Port Operator issues an Auction Closure Notice. At this point, the overall auction event closes.
- (iii) If the Port Operator elects to close the auction as per clause 24.2(a)(i) by issuing an Auction Closure Notice, Bidders will be awarded and allocated the demand requested by each relevant Bidder at the last concluded Round and Premium applicable at the time the Auction Closure Notice is received by Tradeslot as auction manager.

27.6 Lot Award

- (a) A given capacity volume within each lot is awarded to one or more winning bidders at the close of the auction event.
- (b) The clock price per lot at the end of the auction determines the payable price per tonne.

- (c) The award of a lot may be subject to grievance proceedings.

27.7 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:

- (a) the volume that has been bid for will be allocated at the uniform price reached for the given lot;
- (b) the excess supply or Passed-in Capacity (the volume that has not been assigned) may be repositioned into, offered at a subsequent auction or allocated through the Spare Capacity procedure in accordance with the Port Terminal Rules.

27.8 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 repositioned into, offered at a subsequent auction or through booking spare capacity in accordance with the Port Terminal Rules.

27.9 Disruption to an auction

- (a) 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.
- (b) 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.

27.10 Auction Member Queries

- (a) A Query is where an Auction Member seeks clarification of a rule or process in connection with the Auction.
- (b) All queries from a Bidder are to be directed to the Tradeslot helpdesk.

27.11 Auction Member Grievance

- (a) A Grievance is where an Auction Member wishes to lodge a formal complaint with respect of the Auction.
- (b) A Bidder must indicate the intent to lodge a grievance with the Tradeslot helpdesk during the execution of the Auction.
- (c) Grievances lodged after the auction has ended will not be considered.

28. POST AUCTION

28.1 Invoicing

- (a) Following the auction end, confirmation to winning bidders, of lot award and corresponding charges are included into the Invoice and issued electronically.
- (b) Bidders are normally notified of the lot award via email within two (2) business days after the end of the auction.

28.2 Publication of results

- (a) 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.
- (b) 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.

28.3 Grievance procedure

- (a) 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.
- (b) The grievance shall be determined having regard to the following factors only:
 - (i) the application of the auction rules;
 - (ii) the bidder agreement between the aggrieved bidder and Tradeslot;
 - (iii) the aggrieved bidder's participation in the online auction;
 - (iv) the operation of the technical auction system;
 - (v) any oral submissions made by the aggrieved bidder related to the above factors;
 - (vi) any recommendations made by the Auction Review Committee; and
 - (vii) 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).
- (c) 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:
 - (i) Electronically at: auctionmanager@tradeslot.com.
 - (ii) By facsimile at: (03) 9621 1811.
- (d) Grievances will be determined the Auction Review Committee.
- (e) 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.

- (f) 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.

29. AUCTION REVIEW COMMITTEE

29.1 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.

29.2 Structure

- (a) The voting members of the Auction Review Committee will comprise a mix of risk oversight skills, auction knowledge, understanding of market demand mechanisms and independence as follows:
 - (i) CBH Group Chief Risk Officer (or representative) – Chairman;
 - (ii) Representative of Tradeslot;
 - (iii) One independent representative.
- (b) For the purposes of clause 13.2(c), ‘independent’ means an individual who is not affiliated or associated with, or employed by, a Bidder or a Related Body Corporate (as defined in the *Corporations Act 2001 (Cth)*) of a Bidder but excluding a contract between the Port Operator and the member in his/her capacity as a member of the Auction Review Committee.
- (c) The Chairman’s powers are administrative only and will include but not be limited to the power to convene meetings and to co-ordinate the provision of any required notices. For the avoidance of doubt the Chairman does not hold any additional voting power compared to other Auction Review Committee members.
- (d) The Port Operator will put forward a minimum of 3 independent representatives as candidates for the position identified in clause 13.2(c).
- (e) Each entity that participated in an Auction in the previous applicable season (**Voter**) will have one vote for the purposes of electing the independent representative in clause 13.2(c).
- (f) A candidate put forward pursuant to clause 13.2(c) must poll an absolute majority of the total formal votes cast (i.e. in excess of 50%) in order to be elected to the vacancy and the Port Operator will employ the same ‘preferential voting system’ used by the Legislative Assembly in Western Australia and as described on the Western Australia Electoral Commission website to determine the successful candidate. Therefore, each Voter will be required to indicate a preference for each candidate when voting. In the event of a deadlock, the Port Operator will run another poll.

- (g) The successful candidate will be elected as the independent representative of the Auction Review Committee and may be provided with remuneration as reasonably determined by the Port Operator as compensation for their time. This remuneration will be deducted from the Auction Premium before the Auction Rebate is calculated.

29.3 Meeting procedures

- (a) A quorum is established when all voting members (or their representatives) are present.
- (b) A representative of CBH Operations may be invited to attend but does not carry a vote.
- (c) 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.

29.4 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.

29.5 Powers

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

- (a) Monitoring and overseeing the compliance by Bidders with these Auction Rules;
- (b) Investigating and making determinations on any allegations by any person that a Bidder has breached these Auction Rules, and for this purpose, requesting information reasonably relevant to that investigation or determination;
- (c) Imposing binding orders and sanctions on any Bidder for a breach of this Code;
- (d) Enforcing a trading halt to the Auction process;
- (e) Querying Bidders regarding trading activity, outcomes and auction participation generally;
- (f) Cancelling auction trades during the auction and prior to validation;
- (g) Suspend/cancel Bidder registration;
- (h) Validating the Auction;
- (i) Recommending improvements to the Auction process;
- (j) Giving written and verbal warnings to the Bidders;
- (k) Publishing the name of a Bidder(s) who is found not to have complied with the Auction Rules or ignored the Auction Review Committee's request to

provide information or remedy a breach (or failed to do so within a reasonable period of time).

29.6 Requests for information

- (a) Bidders must respond to any reasonable query or request from the Auction Review Committee within the time specified unless:
 - (i) a reasonable person would not expect the information to be disclosed;
 - (ii) the information is confidential and the Auction Review Committee has not formed the view that the information has ceased to be confidential or refused to undertake to keep the information confidential; or
 - (iii) one or more of the following applies:
 - (A) it would be a breach of a Legislative Requirement to disclose the information; or
 - (B) the information is a trade secret.
- (b) If a Bidder considers that the information requested falls within the grounds described above it must set out in writing to the Auction Review Committee why the information requested falls within each ground that the Bidder intends to claim protection under.
- (c) If a Bidder fails to respond to any query or request from the Auction Review Committee or fails to claim an exemption listed above, the Auction Review Committee may, in the circumstances draw an adverse inference from the failure to respond or validly claim an exemption and the Auction Review Committee will have the power to exercise any of the powers given to it under clause 13.5.

30. 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.

31. LIMITATION OF LIABILITY AND INDEMNITY

31.1 Limitation of liability

Each individual member of the Auction Review Committee, 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:

- (a) for failure of the system prior to the auction start;
- (b) for failure of the system during the lot bidding period;
- (c) for failure by the system to accept a valid bid;
- (d) for errors in the reserve price for a lot;

- (e) for any capacity limit of a bidder, whether such limits are nominated by a bidder or otherwise;
- (f) for interruption of any other kind to access to the online auction website;
- (g) for loss or delay in the receipt by a bidder of any electronic notification from CBH;
- (h) for loss or delay in the receipt by CBH of any electronic notification from a bidder;
- (i) 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;
- (j) 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
- (k) contributed to directly or indirectly by the bidder's acts or omissions,

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.

31.2 Indemnity

Each bidder indemnifies each individual member of the Auction Review Committee, CBH and Tradeslot, their 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:

- (a) breach by the bidder of these auction rules; or
- (b) 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 Receipts

Original Duplicate	Carter Carter	Triplicate Quadruplicate	District Office Book Copy	GPO Box L886 Perth WA 6842	Date
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Customer Information Owner: Customers Title: Address:	Transporter Details Transporter: Sub - Transporter:
Grower Details Grower Title:	

Commodity Details		
Season	Grain	Grade

Storage	Stack Number
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Weights			
Vehicle ID	Gross Tonnes	Tare Tonnes	Net Tonnes
Total			

Quality Information	Result

Vehicle Regulation Limit (VRL) VRL:	Ship Identifier	Is this grain coming directly off farm? Yes <input type="checkbox"/> No <input type="checkbox"/>
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Mass Management Scheme	
≤ 42.5 Permit NA <input type="checkbox"/>	CWMS <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	

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.

Weighed Time	Discharge Details
In:	Date:
Out:	24hr Time In:

Load Details entered into Computer? Yes <input type="checkbox"/> No <input type="checkbox"/>	Grid Number
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Customer or their Representative (Transporter)	
Name (Please Print in Block Letters)	
*Signature	

***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
<p style="margin: 0; font-size: x-small;">TREATMENTS</p> <p style="margin: 0; font-size: x-small;">i. if the Grain has been treated with substances for the control of insects, such substances are listed above.</p> <p style="margin: 0; font-size: x-small;">ii. 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.</p>			

Direct to Port Sample Declaration

The Customer warrants and represents that:

- (a) 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
- (b) 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		Quality Information	Result
Date Received	Date Deliverer Notified		
Date Sample Tested	Advise Intended Receiving Site, Customer Account Manager and Shipping Manager		
Comments			

Date: 25/08/04

Schedule 4

[NOT USED]

Schedule 5

The Reposition Matrix and Timeline is published on the Website.



