



# Port Terminal Rules

## 1 Interpretation

### 1.1 Definitions

In these Port Terminal Rules unless the context otherwise requires:

**Access Agreement** means either a Grain Services Agreement, a Port Terminal Services Agreement or a Negotiated Agreement relating to the provision of Port Terminal Services by the Port Operator (as the case requires).

**Accumulation Plan** means a cargo accumulation plan agreed in accordance with **rule 8.1(b)**.

**Advised Harvest Capacity** is defined in **rule 5.1(b)**

**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 Season.

**Assembly Window** is defined in **rule 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** has the meaning given in the Access Agreement.

**Auction Premium** has the meaning given in the Access Agreement.

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

**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 50 tonnes of wheat.

**Capacity** means the capacity, measured in tonnes, to put grain on board a vessel at a Port Terminal Facility during a Shipping Window.

**Cargo Request Form** has the meaning given in an Access Agreement.

**Customer** means a GSA Customer, a PTSA Customer and a Negotiated Agreement Customer of the Port Terminal Operator (as the case requires).

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

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

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

**First Phase Auction** has the meaning set out in the Auction Rules.

**Forecast Submission Period** means [1 September] to [10 September] within each Year.

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

**Grade** has the meaning given to it in an Access Agreement.

**Grain** means all grains, pulses and oil seeds received into the Port Terminal Facility and held by CBH pursuant to an Access Agreement on behalf of the Customer and includes Bulk Wheat.

**Grain Entitlement** has the meaning given to it in an Access Agreement.

**Grain Services Agreement (GSA)** means an agreement of that name entered into by a GSA Customer and the Port Operator.

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

**GSA Customer** means a customer of the Port Operator who is party to a GSA who uses the Port Operator's upcountry facilities, transport and logistics services and Port Terminal Facilities.

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

**Harvest Period EOI** is defined in rule 5.1(c)(i).

**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 Season.

**Lost Capacity** has the meaning given to it in rule 7.

**Negotiated Agreement** means an agreement entered into by a Customer and the Port Operator that is not a GSA or a PTSA and relates to the provision of Port Terminal Services by the Port Operator.

**Negotiated Agreement Capacity** means Capacity acquired or sought to be acquired by a Negotiated Agreement Customer under a Negotiated Agreement.

**Negotiated Agreement Customer** means a Customer of the Port Operator who is party to a Negotiated Agreement, other than a GSA Customer or a PTSA Customer. **Nominated Vessel** has the meaning given in an Access Agreement.

**Notice of Readiness** or **NOR** has the meaning given in an Access Agreement.

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

**Port Terminal Service Charges** means the charges payable by a PTSA Customer or a Negotiated Agreement Customer for Port Terminal Services provided by the Port Operator under an Access Agreement.

**Port Terminal Services Agreement (PTSA)** means an agreement of that name entered into between a PTSA Customer and the Port Operator for the use of the Port Terminal Facilities.

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

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

**PTSA Customer** means a Customer of the Port Operator who is a party to a PTSA and includes a person receiving services under a PTSA in respect of Grain other than Bulk Wheat.

**Relevant Surveys** has the meaning given in an Access Agreement.

**Season** has the meaning given in an Access Agreement.

**Second Phase Auction** has the meaning set out in the Auction Rules.

**Secondary Market** has the meaning set out in the Auction Rules.

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

**Shipping Stem Policy** means the policy prescribed in **rule 11**.

**Shipping Window** means a half month period of between 14 and 16 days within which a Customer may nominate a vessel to arrive at a Port Terminal Facility for loading of a cargo.

**Spare Capacity** has the meaning given in **rules 5.1(f)** or **6.1(f)** in relation to the Harvest Shipping Period or the Annual Shipping Period respectively (as the case requires).

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

**TBA** means to be advised.

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

**Undertaking** means the Undertaking 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)*.

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

**Website** means the website operated by the Port Operator from time to time and at the commencement of these rules means [www.cbh.com.au](http://www.cbh.com.au).

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

## 1.2 Interpretation

- (a) Other defined terms have the meanings given to them in the Undertaking, unless the context otherwise requires.
- (b) Reference to a **rule** is a reference to a rule contained within these Port Terminal Rules.

## 2 Objects

### 2.1 Primary Objects

The primary objects of these Rules are to:

- (a) ensure that all Customers are provided with access to Port Terminal Facilities in a fair, equitable and transparent manner;
- (b) ensure that the manner and timing for booking Shipping Windows for all Customers are non-discriminatory;
- (c) achieve and maintain the optimum operational efficiency of the Product supply chain and the Port Terminal Facilities, by maximising the throughput of Products and minimising demurrage at the Port Terminal Facilities over a given period;
- (d) to provide a basis for decisions relating to the prioritisation of one vessel over another vessel; and

- (e) ensure compliance by Customers and the Port Operator with their respective obligations under the provisions of the Port Terminal Rules.

## 2.2 Efficiency of Operation

- (a) The key components of a successful Grain export accumulation program are ample notice of nominations, accurate scheduling and working together with Customers, transport service providers and shipping related third parties.
- (b) The Port Operator is committed to providing fair access to Port Terminal Facilities for all Customers. Considerable Grain export accumulation challenges arise daily due to the liquid nature of Grain, the potential presence of insects and the complexity of balancing the service demands of and amongst multiple Customers. The more notice that individual Customers can provide, the higher the probability of prompt loading of their vessels upon Arrival.
- (a) As Customers acquire capacity within a Shipping Window there is a potential for multiple Customers to seek to book a vessel to be loaded on the same day. These Port Terminal Rules endeavour to provide transparency over the order in which vessels will be loaded.

## 2.3 Variation

- (a) The Port Terminal Rules may be varied by the Port Operator provided that The Port Operator must:
  - (i) consult with all Customers, Applicants and Users to deal with technical and operational matters that arise under or in connection with these Port Terminal Rules;
  - (ii) comply with the consultation process set out in **rule 2.3 (d)**;
  - (iii) undertake consultation with all Customers in good faith;
  - (iv) use its reasonable endeavours to accommodate any reasonable requests that may be made by a Customer during the consultation process in respect of the proposed variation; and
  - (v) ensure that the Port Terminal Rules remain consistent with the terms of the Undertaking.
- (b) Subject to **rule 2.3(a)**, the Customer acknowledges and agrees that the Port Terminal Rules may include provisions that are necessary for, or reasonably required by, the Port Operator to comply with:
  - (i) the requirements of the Undertaking;
  - (ii) changed or unforeseen technical or operational circumstances; and
  - (iii) obligations arising under contractual or other operational arrangements with third parties on which the provision of the Port Terminal Services are dependent.
- (c) Any variation to the Port Terminal Rules:
  - (i) must be consistent with the requirements of the Undertaking and in particular, clauses 2 and 6.4 of the Undertaking;
  - (ii) forms part of the Port Terminal Rules and is binding on the Port Operator and Customers; and
  - (iii) may be further varied from time to time, subject to clauses 2.3(a) and 2.3(b).
- (d) Where the Port Operator proposes to make a variation under clause 2.3, the Port shall:

- (i) Publish the details of the proposed variation;
  - (ii) Provide copies of the proposed variation to all Customers, Applicants and Users;
  - (iii) Arrange for and request written responses and consultation meetings;
  - (iv) Publish copies of responses received; and
  - (v) In case of amendment to the proposed variation, the Port Operator shall seek further written responses and consultation meetings before confirming or withdrawing the proposed variation.
- (e) No variation shall take effect:
- (i) unless a period of no less than 30 days has elapsed from the date of publication of the proposed variation under clause 2.3(d)(i);
  - (ii) during the period from 1 November to the following 15 January in each Year.
- (f) All acts done in accordance with the superseded Port Terminal Rules will be treated as validly done in accordance with the current Port Terminal Rules.
- (g) Vessels nominated under superseded Port Terminal Rules will continue to be governed in accordance with the superseded Port Terminal Rules unless the Customer and the Port Operator agree otherwise.
- (h) Vessels nominated after the Port Terminal Rules have been varied in accordance with **rule 2.3** will be required to be nominated under the Port Terminal Rules as varied.

### 3 Customer's General Obligations

- (a) The Port Operator must discharge its obligations to Customers exporting under these Port Terminal Rules in accordance with the terms of its Access Agreements, and subject, in the case of Bulk Wheat Exports under the Port Terminal Services Agreement to the Port Operator's obligations under the Undertaking.
- (b) Upon request, all Customers must provide the Port Operator with relevant, complete and accurate information in a timely manner.

### 4 Services Forecast

In each Year, within the Forecast Submission Period each Customer must submit to the Port Operator a forecast of the Customer's exporting requirement for the current Year, including the following details:

- (a) anticipated gross tonnage of Bulk Wheat;
- (b) anticipated gross tonnage of other grains;
- (c) anticipated tonnage to be shipped by Customers under each GSA, PTSA and Negotiated Agreement; and
- (d) anticipated shipping programme.

All information provided by the Port Operator and the Customer under these rules will be treated in accordance with the confidentiality provisions of the relevant Access Agreement.

## 5 Harvest Shipping Period Port Terminal Services

### 5.1 Acquiring Harvest Capacity

- (a) A Customer may apply under this **rule 5.1** for Harvest Capacity.
- (b) A Customer must declare at the time of making any application in respect of each tonne of Harvest Capacity or Spare Capacity whether the Capacity it is applying for is:
  - (i) GSA Capacity;
  - (ii) PTSA Capacity; or
  - (iii) Negotiated Agreement Capacity; andonce made, the declaration shall be irrevocable.
- (c) From 15 September until 30 September in each Year:
  - (i) Customers should provide the Port Operator with their expressions of interest containing all specified information to request to export Grain cargoes during the Harvest Shipping Period from a nominated Port Terminal Facility (**Harvest Period EOI**); and
  - (ii) the Port Operator will allocate Harvest Capacity (**Advised Harvest Capacity**) to Customers during the Harvest Shipping Period thereby allowing them to secure access to Port Terminal Facilities for Grain export accumulation and export capacity in advance of obtaining Grain Entitlement.
- (d) Where Customers provide Harvest Period EOIs that exceed the Advised Harvest Capacity, the Port Operator will allocate the Harvest Capacity in a manner that is consistent with **clause 6.4** of the Undertaking and the objectives set out in **clause 2** of the Undertaking, which for the purposes of the 2009/10 Season will be to proportionally reduce the relevant Harvest Period EOIs until they meet the Advised Harvest Capacity. If the demand for Harvest Capacity in the 2009/10 Season significantly exceeds the Advised Harvest Capacity in a majority of Shipping Windows then the Port Operator may extend the Auctions to cover the Harvest Shipping Period.
- (e) The Port Operator may accept all or part of a Harvest Period EOI before 1 October in each Year, or such later date as the Port Operator may determine.
- (f) Where, in any Shipping Window during the Harvest Period the Harvest Period EOIs awarded do not exceed the Advised Harvest Capacity (in this **rule 5.1(f) Spare Capacity**), Customers may submit a Spare Capacity Booking Form to the Port Operator. Subject to the Spare Capacity Booking Form being correctly completed and the Harvest Capacity requested being less than or equal to the Spare Capacity, the Port Operator shall accept the Spare Capacity Booking Form and allocate Harvest Capacity to the Customer.
- (g) Where the Port Operator allocates Harvest Capacity to a Customer (either in accordance to a Harvest Period EOI or a Spare Capacity Booking Form):
  - (i) the Port Operator shall give notice of that acceptance to the Customer;
  - (ii) the Customer must pay the Port Operator in accordance with the Access Agreement in respect of which the Customer will receive the Capacity; and
  - (iii) subject to **rule 5.1(h)**, the Port Operator must provide Port Terminal Services in accordance with the relevant Access Agreement at the relevant Port Terminal Facility.
- (h) The Port Operator's obligation under **rule 5.1(g)(iii)** is subject to:

- (i) the Customer obtaining or delivering the relevant Grain Entitlement;
- (ii) the Customer complying with the notice requirements under **rule 7**; and
- (iii) the Arrival of the Customer's Nominated Vessel, within the Shipping Window for the relevant Port Terminal Facility and that vessel passing the Relevant Surveys.

## 5.2 Trading Harvest Capacity

- (a) Where a Customer does not expect to accumulate sufficient Grain Entitlement for any booked Port Terminal Services under their Access Agreement then
 

not less than seven days prior to the start of the Shipping Window for the Customer's vessel nominated under **rule 7.1** and with the consent of the Port Operator (which must not be unreasonably withheld or delayed), the Customer may transfer its Harvest Capacity entitlement to another Customer provided that:

  - (i) where a Customer has secured Harvest Capacity the following transfers or trades of Harvest Capacity only are permitted:
    - (A) GSA Capacity for the Harvest Shipping Period may only be traded with or transferred to another Customer that has a current GSA in place with the Port Operator;
    - (B) PTSA Capacity for the Harvest Shipping Period may only be traded with or transferred to another Customer that has a current PTSA in place with the Port Operator ;
    - (C) Negotiated Agreement Capacity for the Harvest Shipping Period may only be traded with or transferred to another Customer that has a current Negotiated Agreement in place with the Port Operator; and
  - (ii) in the case of a PTSA Customer: the PTSA Customer has:
    - (1) agreed to sell to the transferee the grain that the PTSA Customer has accumulated at the Port Terminal Facility; or
    - (2) PTSA Customer has made arrangements to Outload any Grain accumulated at the Port Terminal Facility, and pay the relevant charge under their Access Agreement, and there is sufficient time for the transferee to accumulate sufficient Grain in the assembly window (as may be modified with the consent of the Port Operator, such consent not to be unreasonably withheld
  - (A) in the case of a Negotiated Agreement Customer, the Negotiated Agreement Customer has:
    - (1) agreed to sell to the transferee the grain that the Negotiated Agreement Customer has accumulated at the Port Terminal Facility; or
    - (2) Negotiated Agreement Customer has made arrangements to Outload any Grain accumulated at the Port Terminal Facility, and pay the relevant charge under their Access Agreement, and there is sufficient time for the transferee to accumulate sufficient Grain in the assembly window (as may be modified with the consent of the Port Operator, such consent not to be unreasonably withheld)
- (b) For the avoidance of doubt, any purported trade or transfer by a Customer of Harvest Capacity that does not comply with **rule 5.2(a)** shall be of no effect.

- (c) The transferee of the Harvest Capacity entitlement must comply with this **rule 5**, and in particular the transferring Customer's Vessel Nomination if one has been provided prior to the transfer under **rules 7.1** or **7.2**; and
- (d) All transfers must be:
  - (i) proposed using the Transfer of Shipping Capacity Form,
  - (ii) accurately filled out and complete in all material regards; and
  - (iii) signed by the transferor and transferee,prior to submission to the Port Operator.
- (e) Subject to the transferor and transferee complying with their obligations under **rule 5.2(a)** to **(d)** and the Port Operator's approval, the Port Operator shall sign a copy of the Transfer of Shipping Capacity Form and provide a copy to the transferor and transferee and amend the Shipping Capacity Register to record the details of the transfer.
- (f) The Customer transferring Harvest Capacity must pay the Port Operator a fee of a \$50 for each 1000 tonnes of Harvest Capacity transferred for the Port Operator's administrative costs associated with the transfer.
- (g) For the avoidance of doubt, no transfer shall be effective until approved by the Port Operator under **rule 5.2(e)**.

## 6 Annual Shipping Period Port Terminal Services

### 6.1 Acquiring Capacity in Annual Shipping Period

- (a) In addition to applying for Capacity during the Harvest Period, a Customer may apply under this **rule 6.1** for Capacity during the Annual Shipping Period.
- (b) Shipping during the Annual Shipping Period (that is, for a period other than the Harvest Shipping Period) is allocated using a market based Auction process. All Customers may participate in the Auction process in order to acquire Capacity. Grain Entitlement is not required to acquire Capacity.
- (c) Auctions shall be held in stages to assist in the efficient planning and allocation of Capacity for the shipment year. The First Phase Auction will be held in September in order to allocate the majority of Capacity over the Annual Shipping Period. The Port Operator will publish the dates each Auction is scheduled to be held and a schedule of the Capacity on offer at each Auction not less than seven days prior to the date of commencement of the Auction.
- (d) Each Auction will be held in accordance with the Auction Rules under which each prospective Customer will have the opportunity to acquire Shipping Windows for a defined tonnage at each Port Terminal Facility regardless of whether the Customer is a GSA Customer, a PTSA Customer or a Negotiated Agreement Customer.
- (e) Any Capacity that is passed in at the First Phase Auction will be re-auctioned in the Second Phase Auctions together with any remaining Capacity. The Second Phase Auctions will be held on a monthly basis in accordance with the Auction timeline published by the Port Operator from time to time and offer Capacity for shipment for the Shipping Window that commences two months from the date of each Second Phase Auction.
- (f) A Customer must declare in respect of each tonne of Capacity acquired by Auction whether the Capacity it is applying for is GSA Capacity, PTSA Capacity, or Negotiated



Agreement Capacity and once made, the declaration shall be irrevocable. The Customer must make this declaration:

- (i) in the case of a First Phase Auction prior to 1 November; and
  - (ii) in the case of a Second Phase Auction within 7 days of the end of the Second Phase Auction in which the Capacity was acquired.
- (g) Where:
- (i) A period of not less than 7 days has passed after the end of the last Second Phase Auction prior to the commencement of the Shipping Window; and
  - (ii) the Capacity awarded at Auction does not exceed the advised Capacity for that Shipping Window during the Annual Shipping Period (in this **rule 6.1(f)** “**Spare Capacity**”)

Customers may submit a Spare Capacity Booking Form to the Port Operator at any time up to 22 days before the first day of the relevant Shipping Window. A Customer must declare at the time of making any application for Spare Capacity during the Annual Shipping Period whether the Capacity it is applying for is GSA Capacity, PTSA Capacity or Negotiated Agreement Capacity and once made, the declaration shall be irrevocable.

- (i) Subject to the Spare Capacity Booking Form being correctly completed and the Capacity requested being less than or equal to the Spare Capacity the Port Operator shall accept the Spare Capacity Booking Form and allocate Capacity to the Customer.
- (h) When a Customer is successful in securing Capacity in a Shipping Window at an Auction held under the Auction Rules  
the Port Operator shall confirm the Capacity secured by the Customer at that Auction;
  - (i) the Customer must pay the Port Operator in accordance with the Access Agreement in respect of which the Customer will receive Capacity; and
  - (ii) subject to **rule 6.1(i)**, the Port Operator shall provide Port Terminal Services in accordance with the relevant Access Agreement at the relevant Port Terminal Facility.
- (i) The Port Operator’s obligation under **rule 6.1(h)(ii)** is subject to:
  - (i) the Customer obtaining or delivering the relevant Grain Entitlement;
  - (ii) the Customer complying with the notice requirements under **rule 7**; and
  - (iii) the Arrival of the Customer’s Nominated Vessel, within the Shipping Window for the relevant Port Terminal Facility and that vessel passing the Relevant Surveys.
- (j) Upon the later of the allocation of Spare Capacity following acceptance of the Spare Capacity Booking Form 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 Trading Annual Shipping Period Capacity

- (a) Customers may transfer Annual Shipping Period Capacity that they have acquired from the Port Operator (whether in the Auctions, by a Spare Capacity Booking Form or purchased from another Customer in the Secondary Market) provided that:
  - (i) Harvest Capacity secured under a GSA may only be traded with or transferred to another Customer that has a current GSA in place with the Port Operator;
  - (ii) Harvest Capacity secured under a PTSA may only be traded with or transferred to another Customer that has a current PTSA in place with the Port Operator and

- (iii) Harvest Capacity secured under a Negotiated Agreement may only be traded with or transferred to another Customer that has a current Negotiated Agreement in place with the Port Operator.
- (b) For the avoidance of doubt, any purported trade or transfer by a Customer of Harvest Capacity that does not comply with **rule 6.2(a)** shall be of no effect.
- (c) All transfers must be:
  - (i) proposed using the Transfer of Shipping Capacity Form,
  - (ii) accurately filled out and complete in all material regards; and
  - (iii) signed by the transferor and transferee,
 prior to submission to the Port Operator.
- (d) All transfers of Annual Shipping Period Capacity must be completed no later than 30 days prior to the first day of the Shipping Window.
- (e) Subject to the transferor complying with their obligations under **rule 6.2(a) to (c)**, and the Port Operator's approval, the Port Operator shall sign a copy of the Transfer of Shipping Capacity Form and provide a copy to the transferor and transferee and amend the Shipping Capacity Register to record the details of the transfer.
- (f) The Customer transferring Capacity must pay the Port Operator a fee of a \$50 for each 1000 tonnes of Capacity transferred for the Port Operator's administrative costs associated with the transfer.
- (g) For the avoidance of doubt, no transfer shall be effective until approved by the Port Operator under **rule 6.2(e)**.

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

### 7.1 PTSA and Negotiated Agreement Customers

- (a) Vessel Nominations must be made no later than 22 days prior to the Nominated Vessel's ETA which must be no later than the last day of the Grace Period and in accordance with the rules outlined in **rule 8.1**.
- (b) No later than 48 hours prior to the ETA the Grain cargo must be fully accumulated in order for it to be loaded.
- (c) During Harvest, Customers will experience greater delays in deliveries at the Port Terminal Facilities of Albany, Esperance and Geraldton, as vehicles will queue along with Grower deliveries. PTSA and Negotiated Agreement Customers should note that this will place additional time constraints on the cargo accumulation process.
- (d) The Port Operator may waive compliance with **rules 8.1(c)** and **8.1(g)** during the Harvest Period provided that the PTSA or Negotiated Agreement Customer makes a declaration contained in the Direct to Port Delivery Declaration Form in respect of each load of Grain delivered to the Port Terminal Facility.

### 7.2 GSA Customers

- (a) Vessel Nominations must be made no later than 22 days prior to the Nominated Vessel's ETA which must be no later than the last day of the Grace Period and in accordance with the rules outlined in **rule 8.1**.

- (b) No later than 48 hours prior to the ETA, a GSA Customer must have Grain Entitlement equivalent or greater than the Nominated Tonnage for each Grade to be loaded onto the Nominated Vessel.

## 8 Nominating Vessels for Shipping Windows in the Annual Shipping Period

### 8.1 Direct to Port Process

#### (a) Shipping Notification

Following receipt of a notice from the PTSA Customer or Negotiated Access Customer of an intended shipment (a **Cargo Request Form**) within a Shipping Window allocated in accordance with **rule 6.1**, the Port Operator must:

- (i) agree an Accumulation Plan with the PTSA Customer or Negotiated Access Customer; and
- (ii) allocate the PTSA Customer or Negotiated Access Customer a shipping date in accordance with the Shipping Stem Policy.

A Cargo Request Form in relation to a Shipping Window must be given no later than 30 days prior to the ETA of the vessel actually nominated to be loaded in the Vessel Nomination.

The PTSA Customer or Negotiated Access Customer must submit with the Cargo Request Form:

- (iii) a pre-delivery sample of grain from each source of grain; and
- (iv) a Declaration that the pre-delivery sample is a representative sample of the grain to be delivered and is not misleading as well as to treatment of the Grain.

#### (b) Accumulation Plan

- (i) The PTSA Customer or Negotiated Access Customer and the Port Operator must agree an Accumulation Plan detailing:
  - (A) whether deliveries of Grain to a Port Terminal Facility for export are to be made by road or rail, subject to the capabilities of the Port Terminal Facility to receive such deliveries;
  - (B) the agreed timetable for deliveries to the Port Terminal Facility; fitting in with pre-planned deliveries;
  - (C) where deliveries are made by road, all loads must comply with the requirements of the Heavy Vehicle Mass Management Scheme.
- (ii) For the avoidance of doubt, the Port Operator is not required to allow a PTSA Customer or Negotiated Access Customer access to rail access train paths utilised by the Port Operator.

#### (c) Pre-delivery testing

The PTSA Customer or Negotiated Access Customer must coordinate the collection and delivery to the Port Operator of pre-delivery samples and the Port Operator must coordinate the testing of pre-delivery samples from the PTSA Customer or Negotiated Access Customer, prior to the delivery of Grain to the Port Terminal Facilities, so as to:

- (i) confirm the grain type and other characteristics of the Grain to be delivered;
- (ii) check for the presence of chemicals and other contaminants; and

- (iii) check for the presence of insect activity and live insects,

to minimise the risk of cross contamination whilst the Grain is held by the Port Operator at the Port Terminal Facilities.

**(d) 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 PTSA Customer or Negotiated Access Customer with a record of the results of the sampling.

- (ii) The purpose of the sampling of loads of Grain is to:
  - (A) confirm the grain type and other characteristics of the Grain being delivered;
  - (B) check for the visible evidence of chemicals and other contaminants; and
  - (C) check for the visible evidence of insect activity and live insects,to minimise the risk of cross contamination whilst the Grain is held by the Port Operator at the Port Terminal Facilities.

**(e) Unloading**

Subject to **rule 14**:

- (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 PTSA Customers or Negotiated Access 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); and
- (iii) where vehicles containing the PTSA Customer's or Negotiated Access 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 PTSA Customer's or Negotiated Access Customer's Nominated Vessel to be loaded at its ETA, but not greater than the maximum receival rating of the relevant grid.

**(f) 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 PTSA Customer or Negotiated Access 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 PTSA Customer's or Negotiated Access Customer's Direct to Port Declaration Form provided to the Port Operator at or prior to the delivery of each load of Grain at the Port Terminal Facility.

**(g) Fumigation**

The PTSA Customer or Negotiated Access Customer must provide the Port Terminal Operator with a Fumigation Certificate detailing:

- (i) all chemicals applied to the Grain prior to delivery at the Port Terminal Facility, in relation to:
- (ii) all Grain delivered after 1 February in a Season; and
- (iii) all Grain that is not of the current Season.

**(h) Storage of Grain**

- (i) All storage and handling of Grain delivered by a PTSA Customer or Negotiated Access Customer at the Port Terminal Facilities must be segregated from all other grain stored or handled at the Port Terminal Facilities.
- (ii) 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.
- (iii) Any excess Grain following loading of PTSA Customer's or Negotiated Access Customer's Nominated Vessel must be segregated from all other Grain stored or handled at the Port Terminal Facilities.

**8.2 GSA Customers**

- (a) GSA Customers must provide a Vessel Nomination to the Port Operator no later than 22 days prior to the last day of the Grace Period.
- (b) The ETA of the Nominated Vessel must be no later than the last day of the Grace Period.
- (c) All Vessel Nominations will be input into the Port Operator's shipping interface contained on LoadNet® for Marketers™ system.
- (d) At the time the Vessel Nomination is provided to the Port Operator, the GSA 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;
  - (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;
  - (xiii) vessel name; and
  - (xiv) Capacity Contract Reference number.
- (b) All Vessel Nominations must:
- (i) provide a vessel ETA that is within the relevant Grace Period for the Capacity the Customer is attempting to utilise; and
  - (ii) provide Laycans less or equal to 14 days, have ownership of cargo and provide port, grades, quality and tonnage details.
- (c) The Port Operator recognises it may not be possible to provide a named vessel with over 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 15 days before the ETA.

## **9.2 Amendment of Vessel Nominations**

- (a) The Port Operator may permit the amendment of a Vessel Nomination for operational reasons where, in its reasonable opinion, accepting the amendment:
- (i) would not constitute a departure from the principles outlined in clauses 6.4, 6.5 and 9.2 of the Undertaking entered into by the Port Operator;
  - (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 materially alter the outcome or adversely affect Customers participating in the Harvest Period EOI or Annual Shipping Period Auctions;
  - (iv) would not result in other Customers incurring materially greater demurrage than would be the case if the amendment had not been accepted.

## **9.3 Additional Charges**

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

## 10 Lost Capacity

### 10.1 Harvest Shipping Period

- (a) Where, following acceptance by the Port Operator of a Vessel Nomination in respect of Harvest Capacity:
- (i) a Customer's vessel Arrives outside of the Shipping Window but within the Grace Period; or
  - (ii) the Customer acquires or accumulates Grain Entitlement sufficient to load the vessel within the Grace Period and the Customer's Vessel has Arrived,
- the Port Operator will use its reasonable endeavours to load the vessel.
- (b) Where following acceptance by the Port Operator of a Vessel Nomination in respect of Harvest Capacity:
- (i) a Customer's vessel has not Arrived within the Grace Period; or
  - (ii) the Customer does not have full Grain Entitlement within 48 hours of the ETA of the Nominated Vessel,
- the Harvest Capacity shall be treated as Lost Capacity and the Customer shall 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 Harvest Capacity more than 22 days before the last day of the Grace Period; or
  - (ii) the Customer does not ship all acquired Harvest Capacity within the Harvest Shipping Period, then:
- the Customer will be regarded as not to have shipped the Grain in the relevant Shipping Window, the Harvest Capacity shall be treated as Lost Capacity and the Customer shall pay the fees specified as payable for Lost Capacity in the Access Agreement.

### 10.2 Annual Shipping Period

- (a) Where, following acceptance by the Port Operator of a Vessel Nomination in respect of Annual Shipping Period Capacity:
- (i) a Customer's vessel Arrives outside of the Shipping Window but within the Grace Period; or
  - (ii) the PTSA Customer or Negotiated Agreement 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 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 Customer, 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 PTSA Customer or Negotiated Agreement Customer, the PTSA Customer or Negotiated Agreement Customer (as the case may be) 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 in accordance with **rule** and the Grain Capacity shall be treated as Lost Capacity and the Customer shall pay the fees specified as payable for Lost Capacity in the Access Agreement.

## 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 shall 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 Customer or departures from an agreed Accumulation Plan for PTSA Customers or Negotiated Agreement Customers; 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 adjust the Shipping Stem to cater for extraordinary or unusual circumstances including, but not limited to:

- (a) Customer's requests to defer Vessels;
- (b) Customer's requests to bring Vessels forward;
- (c) accepting a Vessel Nomination with less than the required notice having been provided by the Customer,

where the Port Operator is reasonably of the opinion that to do so will not cause any material detriment to the Port Operator or other Customers and is in accordance with the principles outlined in clauses 6.4, 6.5 and 9.2 of the Undertaking provided by the Port Operator.

Adjustments to the Shipping Stem will be at the sole discretion of the Port Operator acting in accordance with the Port Terminal Rules.

### 11.3 Discretion to Accept Vessel Nominations

Notwithstanding that the Port Operator may in its reasonable discretion accept a Vessel Nomination that does not comply fully with the requirements of **rule 9.1**:

- (a) for the purposes of assessing the priority for **rule 11.11** the Port Operator reserves the right to adjust the ETA by taking the Customer to have provided 22 days notice from the date the Vessel Nomination was accepted under this **rule 11.3**; and
- (b) a Vessel Nomination accepted under this **rule 11.3** shall in all cases have a lower priority than a Vessel Nomination that does comply fully with the requirements of **rule**



**9.1** unless the loading of the Vessel Nomination accepted under this **rule 11.3** is necessary to ensure the continued operation of the Port Terminal

#### **11.4 Other Information**

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

## **12 Storage Priority Policy**

The Port Operator shall allocate the use of storage Capacity in a Port Terminal in order to meet the order of vessels contained in the Shipping Stem from time to time having regard to the Objects contained in **rule 2.1** of the Port Terminal Rules.

## **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; and
  - (ii) the time of Arrival of a vessel and its relationship to the Shipping Window of the Vessel Nomination;
- (c) The Port Operator will not call a vessel in to berth until the full cargo is ready for loading at the Port Terminal Facility and the Customer has full Grain Entitlement for the cargo unless it is necessary in the reasonable opinion of the Port Operator for the efficient operation of the Port Terminal Facility.

### **13.2 Non compliant vessels**

- (a) Customers' vessels must pass all Relevant Surveys within **[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 **rule 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 retains its original priority once it has passed the Relevant Surveys .

### **13.3 Two porting**

The Port Operator recognises vessels which have received part grain cargo from a previous call (two 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 PTSA Customer and Negotiated Agreement Customer will be allocated an assembly window once they have a confirmed Vessel Nomination and ETA, during which time the PTSA Customer or Negotiated Agreement 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 Objects contained in **rule 2.1** of the Port Terminal Rules.
- (c) Assembly Windows will be allocated at Kwinana all Year round and at Geraldton, Albany and Esperance outside of the Harvest Period. During the Harvest Period at Geraldton, Albany and Esperance, PTSA Customer's and Negotiated Agreement Customer's Grain delivery vehicles will be required to queue for services along with other vehicles seeking access.
- (d) PTSA Customers and Negotiated Agreement Customer's 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 PTSA Customer or Negotiated Agreement Customer arrives at the relevant Port Terminal Facility within their Assembly Window, the PTSA Customer's or Negotiated Agreement Customer's priority in the delivery queue will be determined by the time that they arrived.
- (f) The Port Operator may require Customers to move a vehicle of theirs from a delivery queue if the vehicle breaks down or is rejected in accordance with the terms and conditions of the Access Agreement or these Port Terminal Rules and the non-compliant vehicle is holding up the delivery queue for other vehicles.

## 15 Dispute Resolution

### 15.1 Contractual

- (a) Any dispute over the application of these rules or the exercise of discretion by the Port Operator, except in relation to the Auction Rules, will be dealt with in accordance with the provisions of the relevant Access Agreement.
- (b) Any dispute over the application of the Auction Rules shall be dealt with in accordance with the terms of the Auction Rules.

# Schedule 1

## Timetable for booking a PTSA Customer Vessel

[insert a PTSA Customer process map]

# Schedule 2

## Direct to Port Delivery Declaration Form

The PTSA Customer warrants and represents that:

- (a) grain being tendered at the Port will not:
  - (i) include any Contaminant
  - (ii) be in breach of the Bulk Handling Act 1967 (WA) or Bulk Handling Act Regulations 1967 (WA);
- (b) it owns any grain tendered for delivery by it or on its behalf;
- (c) 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:
  - (i) not contained any grain product prior to containing grain of this current season and are free from insects and vermin; or
  - (ii) previously contained a grain product, but have been freed of all such grain product and is free from insects and vermin;
- (d) any vehicle that has previously transported non-grain or contaminated grain products:
  - (i) is clean, dry and free of remaining materials and odours from previous loads;
  - (ii) has been washed under high pressure prior to delivering any grain; and
  - (iii) has the details of previous loads disclosed on the relevant form;
- (e) 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;
- (f) 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);
- (g) 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
- (h) in the case of grain delivered during the Harvest Period and without a pre-delivery sample being tendered by the PTSA Customer, all of the grain in a delivery was grown between the May and September immediately prior to the Current Season.

# Schedule 3

## Direct to Port Sample Declaration form

The PTSA 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.

# Schedule 4

Auction Timeline