

## Schedule 5 – Loading Protocol

Melbourne Port Terminal

Port Loading Protocols



## Introduction

1. These Port Loading Protocols provide information on how the Port Operator will allocate and provide ship loading services at Melbourne Port Terminal (MPT) and how vessels will be managed for loading.
2. The Port Operator has limited port storage, and operates on a just-in-time cargo accumulation basis. At all times the Port Operator's overriding objectives are to maximise terminal export throughput and operational efficiencies.
3. These protocols apply for all commodities, including wheat. The protocols must be read in conjunction with the current Indicative Access Agreement or the Port Terminal Storage and Handling Agreement to which the Client is a party or is otherwise bound ("**Storage & Handling Agreement**"). Capitalised terms take their meaning from the Storage and Handling Agreement. If anything in this protocol is in conflict with terms and conditions in the Storage and Handling Agreement, the terms and conditions in the Storage and Handling Agreement will prevail.
4. In order to have the Port Operator load vessels an exporter must become or continue to be a Client of the Port Operator by entering into a current Storage and Handling Agreement each year. If the Port Operator provides services to an exporter without a signed Storage and Handling Agreement the terms and conditions contained in the Port Operator's then current Indicative Access Agreement as published on its web site shall apply.
5. These protocols are at all times subject to the rules and regulations of the Port of Melbourne Corporation (POMC) and Clients must ensure that they comply with all requirements of the POMC, including contractual and regulatory.

## Shipping Stem

6. By a notice on its website the Port Operator will provide at least 10 business days' notice of the opening of its shipping stem for each year together with a statement of projected available capacity by month for such year.
7. The Port Operator will post its shipping stem on its website, currently <http://www.emeraldgrain.com>. It will be updated each business day.
8. MPT's berth is located at Appleton Dock F Berth. Although, it is a common user berth, the Port Operator has a 24 hour priority window for its vessel operations.
9. Therefore, the Port Operator's shipping stem may not include other shipping allocated to the berth by the POMC. Clients are urged to check the POMC website - <http://www.portofmelbourne.com/shipping/shippingmovements.asp> - for other shipping allocations and to contact MPT's Terminal Manager on (03) 9680 6200 to check other terminal operations which may impact ship-loading operations.

## Intent to Ship

10. To request elevation and monthly shipping capacity at MPT a Client must:
  - complete and lodge an Intent to Ship Advice (Annexure 1) and
  - pay the Booking Fee in accordance with the terms of the Storage and Handling Agreement.
11. By the close of business on the next business day after receipt of a valid Intent to Ship Advice the Port Operator will make a record of this intent on its Shipping Stem as "pending". The Port Operator will accept or reject the Intent to Ship Advice within 5 Business Days of receipt.
12. In deciding to accept or reject an Intent to Ship Advice the Port Operator may consider:
  - Existing shipping intentions
  - Un-allocated capacity at MPT
  - Whether the Client has executed a Storage and Handling Agreement

{0002927-1 } Other matters which the Port Operator reasonably

considers to be relevant, including, without limitation matters going to the efficiency and timeliness of cargo accumulation at port and of loading.

13. Subject to clause 12, Intent to Ship Advices will be dealt with in the order that they are received.
14. If the Port Operator accepts the Intent to Ship Advice it will:
  - Forward an acceptance notice to the Client
  - Forward an invoice for the applicable Booking Fee to the Client
  - Change the status on its Shipping Stem
15. A "Booking" is made upon communication of acceptance by the Port Operator of the Intent to Ship Advice. An Intent to Ship Advice which is rejected is deemed to have lapsed, and no Booking Fee shall be payable in respect thereof.
16. If the Client does not pay the Booking Fee within contractual terms the Booking will lapse.
17. If a Booking remains unused by the end of the nominated month it lapses and the Booking Fee is forfeited.
18. If the nominated or actual tonnage loaded exceeds that initially nominated then an additional Booking Fee is payable by the Client. The Client will be invoiced for the additional Booking Fee immediately after it is known that the tonnage to be loaded or that has been actually loaded is higher than the original Booked tonnes.
19. If the nominated or actual tonnage loaded is lower than that initially nominated then the Port Operator will allocate the unused nominated capacity to the nearest month with spare capacity but no later than 30 September of that calendar year. Unused nominated capacity that is re-allocated to a later time in accordance with this Clause 19 shall be deemed to be a discrete Booking for the purposes of Clauses 17 and 18 ie it is not an extension of the Booked Tonnes of another Booking that the Client may have in the month.
20. The Port Operator may, at its sole discretion, allow the deferral or splitting of a Booking. At least 3 months written notice prior to the vessel's ETA is required to defer or split a Booking. In determining acceptance or rejection of such changes to a Booking the Port Operator will consider, amongst other matters:
  - Existing shipping intentions/nominations
  - Un-allocated capacity at MPT.

The Port Operator may, at its sole discretion, consider requests of less than 3 months' notice. In such circumstances, the Port Operator's General Manager's (or his/her authorised representative's) determination is final.

21. The Client must make a written request for **Shipping Windows** when completing the Intent to Ship Advice. The **Shipping Window** will include the period within which the Client vessel ETA will occur and be either:
  - Between the 1st and 15th of the month; or
  - Between the 16th and the last day of the month.

The purpose of the Shipping Windows is to spread the shipping task evenly across the month. The Port Operator will make the final allocation of Shipping Windows at its sole discretion taking into account all other provisions of these protocols and especially clause 2.

## Vessel Nomination

22. Written nomination of a vessel name must be received at least 30 business days prior to the vessel's ETA in the form of the Vessel Nomination (Annexure 2). Vessel Nomination must be complete. Vessel nominations must be accompanied by a complying cargo assembly plan detailing the supply chain arrangements to be used to deliver the relevant Grain to the Port Terminal Facility and must include load sites, load grade, quality specifications and associated tonnages. In the absence of a complying cargo assembly plan, the

Port Operator shall consult with the Client. If the non-compliances are not then redressed by the Client in a timely manner, and, on reasonable grounds are likely to impact adversely on the efficiency and timeliness of loading at MPT, the Port Operator may at its discretion do any of the following:

- Arrange for the transport of client grain from any of its upcountry storage sites to the terminal to complete the cargo using Road or rail freight, the full cost of which will be to the client account, or;
  - Reject the nomination, in which case the Booking fee will be forfeited.
23. The Port Operator may, at its sole discretion, consider Vessel Nominations received on less than 30 business days' notice.
24. Upon receipt of the Vessel Nomination the Port Operator may, at its sole discretion, accept or reject the nomination. The Port Operator will accept or reject the Vessel Nomination within 5 Business Days of receipt.
25. The Port Operator reserves the right to reject a Vessel Nomination where its estimated time of arrival (ETA) is up to one week earlier than an existing vessel nomination without the approval of the person responsible for the existing vessel nomination.

#### **Estimated Load Dates**

26. Upon acceptance of a Vessel Nomination the Client will be notified of any vessel queuing and an estimate of load dates based on:
- Other vessels nominated to be loaded
  - Site accumulation and transport plan, including transport availability
  - Nominated vessel ETA
  - Ownership of stock
  - Impact on terminal efficiencies
27. Determination of estimated load dates is also based on MPT operating shipping and intake on a 24/7 basis (excluding closed port days) provided sufficient notice is received.
28. Estimated load dates are approximate only and are not fixed or final. Estimated load dates may change due to:
- Changes to cargo
  - Delays in cargo accumulation
  - Delays in loading prior vessels
  - Weather
  - AQIS instructions
  - Cargo quality problems
  - POMC instructions

#### **Cargo Accumulation**

29. In order to maximize the efficiency and throughput capacity of the port, accumulation at port of a significant proportion (target minimum 50%) of the cargo by rail will be expected to be an important component of the cargo assembly plan.
30. Cargo accumulation will not commence prior to payment of the Booking Fee by the Client, or Vessel Nomination.
31. As a general rule cargo accumulation will commence not more than two weeks before vessel ETA.
32. As Melbourne Port Terminal has limited storage capacity the Port Operator will determine, at its sole discretion, the order of cargo accumulation taking into account:
- Vessel ETA
  - Date Vessel Nomination received by the Port Operator
  - Grain availability at MPT
  - Site accumulation and transport plan
  - Ownership of stock and agreed stock swaps between

clients

- Impact on terminal efficiencies
33. Only Grain that is owned by the Client will be accepted for accumulation. The Port Operator may accept Grain for accumulation that is not owned by the Client if the owner of the Grain provides the Port Operator with written confirmation from the Seller of its intention to either:
- Sell the Grain to the Client in port prior to vessel ETA or
  - Swap the Grain with the next exporter to use MPT.
34. The Port Operator reserves the right not to fully accumulate a cargo in order to maximise all client vessel turnarounds where multiple vessels are arriving in a short time frame.
35. Grain accumulated at MPT will be commingled with stock of the same grade regardless of ownership.
36. Where grain remains at MPT after completion of ship-loading and the Client retains ownership of the grain, the Client must remove it within 2 business days. If the Port Operator reasonably considers that the presence of the grain may interfere with the receipt of grain for the next due shipment, the Port Operator may remove the residual grain to another the Port Operator site and all costs of transport and further storage will be to the Client's account.

#### **Vessel loading**

37. The order of vessel loading will generally be determined in accordance:
- Clause 2
  - Vessel ETA
  - Date Vessel Nomination received by the Port Operator
  - Date Vessel passed Surveys
  - Grain availability at MPT
  - Site accumulation and transport plan
  - Ownership of stock and stock swaps between clients
  - Impact on terminal efficiencies.
38. The Port Operator may, at its sole discretion, determine that loading a vessel the subject of the Vessel Nomination received later or with a later ETA is in the interests of terminal efficiency.
39. Where necessary to facilitate the efficient loading of clients' ships, the Client agrees to the use of Stored Grain for efficient port loading.
40. Specific terminal and supply chain efficiencies, including an ability to fully utilise available resources and the ability to fully position stock, may result in vessels loading out of arrival order.
41. Clients may negotiate changes to accumulation and estimated load dates between them. The Port Operator may or may not, at its sole discretion, agree to implement such changes.
42. Prior to commencement of loading a vessel must have passed a Marine, AQIS or any other survey required by law.
43. Should a vessel fail such survey (or be made the subject of a detention order) the Port Operator may, at its sole discretion, change the order of loading or order the vessel removed from the berth.
44. The Port Operator reserves the right to seek costs from the client in relation to a vessel failing surveys. Such costs may include but are not limited to:
- Cancelled labour costs
  - Treatment costs
  - Opportunity costs where the terminal is blocked and causes other clients to experience delays
45. If the Port Operator determines, at its sole discretion, that a vessel has a high risk of failing surveys it may require at the Client's cost that an "in transit" marine surveyor's report be provided prior to allowing the vessel to berth.
46. The Port Operator will not commence loading without prior written instructions from the Client to do so and without receipt from the Client of a Notice of Intention to Export Prescribed Goods.

## **Vessel Substitution or Delay**

47. In the event that a vessel is:

- Substituted, or
- Delayed,

and the substituted vessel ETA or revised ETA is greater than 5 days from the original ETA the Booking Fee may, by the issue of a notice, be forfeited to the Port Operator if, in the reasonably held opinion of the Port Operator the delay would cause significant disruption to the shipping stem. In the event of forfeiture a new Vessel Nomination, and Booking Fee, will be required and be treated accordingly.

48. The Port Operator reserves the right to seek costs from the client in relation to the cancellation of a vessel within 14 days of the original ETA, or if a substituted vessel ETA varies by more than 5 days. Such cost may include but are not limited to:

- Repositioning costs
- Storage costs
- Treatment costs
- Opportunity costs where the terminal is blocked and causes other clients to experience delays.

49. The Port Operator will use its best endeavours to mitigate such costs. However, the Client will remain ultimately responsible for such costs.

## **Dispute Resolution**

50. In the event that the Client disputes the Port Operator's adherence to these protocols (including, without limitation the acceptance or rejection of a vessel nomination, or re-prioritisation of terminal services), the following procedures will apply:

- The Client must notify the Port Operator in writing of the dispute, the reasons for the dispute and the resolution which the Client requests.
- In the case of a dispute regarding rejection of an intent to Ship or Vessel Nomination, the dispute notice must be received by the Port Operator by 16:00 Australian Eastern Standard Time on the next business day following receipt of the notice from the Port Operator of the rejection.
- The Port Operator must use its best endeavours to respond to the Client within 2 Business Days following receipt of the dispute notice. The Port Operator response must notify the Client whether the Port Operator will change its decision and, if not it must provide an explanation or basis for the Port Operator's decision.
- If the Client is not satisfied by the Port Operator's response, or if the Port Operator fails to respond to the dispute notice within one business day of its receipt, the Client may serve written notice to the Port Operator within one business day of receipt of the Port Operator's response, or within one business day of when the Port Operator's Response was due.
- Upon receipt of this escalation notice, the Port Operator must use all reasonable endeavours to arrange a meeting between the Port Operator's General Manager and the Client within two business days of receipt of the escalation notice. Where the Port Operator's General Manager is unavailable for such a meeting within the timeframe specified, the Port Operator will make available a suitable alternative authorised representative to meet with the Client within two business days of receipt of the escalation notice. To facilitate the expeditious resolution of disputes, the meeting can take place either face to face or by telephone.

- At the meeting, the Port Operator's General Manager (or appointed representative) and the Client will discuss the subject of the dispute notice and the Port Operator's response and use all reasonable endeavours to reach an agreed outcome. Where such agreed outcome cannot be achieved, given the need for clarity, efficiency and certainty in this dispute resolution process, the Port Operator's General Manager (or appointed representative) will make a final decision in relation to the dispute notice and (within 10 business days after the meeting) notify that decision and the reasons for that decision in writing to the Client.
- In reaching the final decision, the Port Operator's General Manager (or appointed representative), acting on behalf of the Port Operator, must take into account the circumstances of the dispute and details set out in the dispute notice and, acting reasonably and in good faith, reach a decision that is consistent with the wording, or if that is unclear, the intent of these Protocols (and, in the case of Bulk Wheat, the Access Undertaking). the Port Operator's General Manager (or appointed representative) may also have regard to the objectives of:
  - maximising the efficient operation of MPT;
  - maximising export throughput at the MPT;
  - ensuring the non-discriminatory treatment of clients; and
  - ensuring consistency of decisions.

**Annexure 1 - Intent to Ship Advice**

**Load details**

Projected Load Ports		
Total tonnage		
Tolerance		
Shipping month		
Shipping Window (FH / LH)		

**Quality parameters/comments**

Load Grade	Quality Specifications	Parcel 1	Parcel 1

Name.....

Signature.....

Date.....

**Annexure 2 - Vessel Nomination**

**Vessel details**

Vessel name			
Owner		Hatches	
Authority to load		Year built	
Gross tonnage		Holds	
Net tonnage		Laycan	
Vessel type		DWT	
Flags		LOA	
Draft		Beam	

**Load details**

Load ports	
Date	
Total tonnage	
Tolerance	
Contract grades	

Stowage factor	
Client reference	
Contract number	
Destination	
Discharge port	
Exporter	
Export Inspection charge	

**Quality parameters**

Load Grade	Quality Specifications	Parcel 1	Parcel 1

**Site accumulation plan**

Originating Site	Grade	Tonnes



Total		

Name.....

Signed.....

Date.....