



Port Terminal Rules

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Part A – Structure and effect

1. STRUCTURE OF RULES

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

- (a) Part A – Structure and effect
- (b) Part B – Long Term Capacity Allocation
- (c) Part C – Secondary Capacity Allocation
- (d) Part D – Capacity dealing, Nominations and Stem handling
- (e) Part E – General and Interpretation

1.2 Commencement and effect

These Port Terminal Rules:

- (a) come into effect on and from 1 July 2024; and
- (b) upon taking effect, supersede and replace any previous form of port terminal rules provided by the Port Operator to Customers or published on the Website.

1.3 Amendment

- (a) If these Port Terminal Rules are amended by the Port Operator, the amended Port Terminal Rules shall apply and be binding (a) if the amendment is related to fees in these Port Terminal Rules, 7 days after the Port Operator's notification in accordance with clause 1.3(b), or (b) otherwise immediately upon the Port Operator's notification in accordance with clause 1.3(b).
- (b) If the Port Operator amends these Port Terminal Rules, the Port Operator will notify the Customer of the relevant amendment by indicating the amendment that has been made or providing the amended Port Terminal Rules (at the Port Operator's discretion) on the Website and notifying the Customer by email or post (at the Port Operator's discretion).

1.4 Discretionary powers

In exercising any discretionary power provided under these Port Terminal Rules, the Port Operator may take into account the following factors:

- (a) the efficiency of port operations in Western Australia;
- (b) the efficiency of and ability to export from CBH Port Terminals; and
- (c) the potential effects on upstream and downstream markets.

Part B Long Term Capacity Allocation

2. LONG TERM CAPACITY

2.1 Total Capacity

- (a) The Port Operator will determine the Total Capacity to be allocated to Customers in a Season.
- (b) The Port Operator may, in its discretion, determine Seasonal Capacity to be allocated over and above the Total Capacity.

2.2 Applications

- (a) In assessing whether to grant Capacity to customers, the Port Operator may require the Customer to provide the Port Operator with such information as is reasonably necessary for the Port Operator to properly consider the grant of Capacity to the Customer.
- (b) The Port Operator may, by written notice to the Customer, at the Customer's cost, require the customer to demonstrate to the Port Operator's reasonable satisfaction, that:
 - (i) the Customer is Solvent;
 - (ii) the Customer and its Related Bodies Corporate are not currently in, and in the past two years have not been in, Material Default; and
 - (iii) the Customer:
 - (A) has a legal ownership structure with a sufficient capital base and assets of value to meet the actual or potential liabilities under an Access Agreement, including the ability to pay access charges and insurance premiums when they fall due; or
 - (B) an entity provides such Credit Support as the Port Operator considers reasonable in the circumstances.

3. LONG TERM CAPACITY ALLOCATION

3.1 Long Term Capacity allocation process

- (a) The Port Operator will negotiate with each Customer on a commercial basis so as to operate the Port Terminal Facilities efficiently and flexibly and may offer each Customer an opportunity to acquire a quantity of Long Term Capacity (a **Long Term Capacity Offer**).
- (b) When making a Long Term Capacity Offer, the Port Operator will take into account the following:
 - (i) the potential effects on upstream and downstream markets;
 - (ii) the business interests of the Port Operator;
 - (iii) the public interest, including the public interest in having competition for grain produced by growers in Western Australia;
 - (iv) the interest of exporters wanting access to port terminal services;
 - (v) the economically efficient operation, and use of, and investment in port

- terminal facilities; and
 - (vi) any other matters that the Port Operator considers relevant.
- (c) The Port Operator will publish the Long Term Capacity that has been acquired by Customers on the Website 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.

3.2 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 the Long Term Capacity Offer at a date notified by the Port Operator, detailing:
- (i) annual volume estimates by commodity by Port Terminal Facility through a Season;
 - (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 to be delivered to each Port by the Customer pursuant to a GSA (including Direct to Vessel Services); and
 - (v) expected tonnage of Grain 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 (including Direct to Vessel Services).
- (b) A Long Term Customer must provide a revised LTASS on or immediately prior to the last day of each month within a Season detailing the information set out in clause 3.2(a) for any un-nominated Capacity for the three (3) months following the date of issue of the revised LTASS (for example, a revised LTASS provided on 31 January of a Season would set out the required information in respect to the period from 1 February to 30 April of the Season).
- (c) Each LTASS must nominate the supply chain which the Long Term Customer intends to use in relation to acquired Long Term Capacity, but nothing in these Port Terminal Rules requires the Customer providing the LTASS to use a particular supply chain.
- (d) All information provided under this Agreement will be treated as confidential in accordance with the confidentiality provisions set out in the relevant Access Agreement.

Part C Secondary Capacity Allocation

4. SECONDARY CAPACITY ALLOCATION FOR PORT TERMINAL SERVICES

4.1 Spare Capacity allocation

- (a) The Port Operator will publish on its Website a statement of the total Spare Capacity available in the relevant Shipping Windows by no later than 15 August in a Season or by such other date as notified by the Port Operator.
- (b) When publishing that Spare Capacity, the Port Operator may indicate that a portion of this Spare Capacity during the Harvest Period is reserved for specific Grades for the purpose of increasing Port operational efficiency, and may remove that restriction in the event it reasonably forms a different opinion.
- (c) Spare Capacity will become available for booking via the Secondary Capacity Booking Process no less than five (5) clear Business Days (or such other longer time period notified by the Port Operator) after its availability is published on the Website.
- (d) The notification to the Customer of allocation of Spare Capacity will 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 in respect of which the Customer will receive the Capacity.
- (e) If any Spare Capacity made available by the Port Operator under paragraph 4.1(a) is not acquired at least twenty two (22) days before the start of the relevant Shipping Window, that Spare Capacity can no longer be acquired unless the Port Operator (at its discretion) approves the late acquisition of that Spare Capacity.
- (f) Where a Customer acquires Spare Capacity, and is not already shown as holding capacity in a given month and for a given Port pursuant to clause 3.1(c), the Port Operator will publish the Spare Capacity that has been acquired by each relevant Customer on the Website 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.

4.2 Expressions of Interest for Capacity

- (a) At any time during a Season, an Unallocated Customer may submit an Expression of Interest (**EOI**) for one Shipment in that Season.
- (b) The Port Operator will not grant Capacity to the same Unallocated Customer more than once in a Season.
- (c) The Port Operator will assess each EOI and determine whether there is the ability to accommodate the request. In assessing whether there is ability to

accommodate an EOI request, the Port Operator will have regard to the factors set out in clause 3.1(b).

- (d) Within 14 days of the Customer making the EOI request under clause 4.2(a), the Port Operator will notify the Customer whether it can accommodate the request.

4.3 Seasonal Capacity

- (a) The Port Operator may elect, from time to time, in its discretion to release additional Capacity that is specific to a Season for the purpose of increasing Port operational efficiency or by having regard to the discretionary principles referred to in clause 1.4 (**Seasonal Capacity**).
- (b) The Port Operator will publish on the Website details of any Seasonal Capacity that becomes available for booking.
- (c) Seasonal Capacity can be applied for under the Secondary Capacity Booking Process two (2) Business Days (or such other time period notified by the Port Operator) after its availability is published on the Website.
- (d) If any Seasonal Capacity made available by the Port Operator under paragraph (a) is not acquired at least twenty two (22) days before the start of the relevant Shipping Window, that Seasonal Capacity can no longer be acquired unless the Port Operator (at its discretion) approves the late acquisition of that Seasonal Capacity.
- (e) The Port Operator may indicate that some or all of this Seasonal Capacity is reserved for specific Grades for the purpose of increasing Port operational efficiency. The specific Grades must be honoured by the Customer unless the Port Operator removes that restriction in the event it reasonably forms a different opinion.

Part D Capacity dealing, Nominations and Stem Handling

5. SURRENDERING, REPOSITIONING OR MERGING CAPACITY

5.1 Surrendered Capacity

- (a) If, by notice in writing to the Port Operator:
- (i) a Customer surrenders Capacity (**Surrendered Capacity**); and
 - (ii) that notice is given no later than 60 days prior to the last day of the relevant Shipping Window,
- then,
- (iii) the Port Operator will amend the Platform as at the date the Capacity is surrendered; and
 - (iv) following the date that Capacity is surrendered, the Port Operator may update the Website to reflect the increase in Spare Capacity.
- (b) If, following the date that Capacity is surrendered and prior to the last day of the relevant Shipping Window, the Port Operator updates the Platform to reflect the increase in Spare Capacity but does not receive any new request to book Capacity in any Port Zone by a Customer during the Season in which the Surrendered Capacity relates (**Lookback Period**), that is for a quantity of Capacity that is (in whole or in part) the subject of the Surrendered Capacity, then the Customer will:
- (i) not be entitled to any refund of any Deposit in respect of that Surrendered Capacity in whole or in part up to an amount equal to the Lost Capacity Fee in respect of that Surrendered Capacity (and for the avoidance of doubt if the Deposit in respect of the Surrendered Capacity is greater than the Lost Capacity Fee the Customer will be entitled to a refund of the difference between the two amounts); and
 - (ii) will be required to pay the Lost Capacity Fee (less any Deposit applied to pay the Lost Capacity Fee in accordance with clause 5.1(b)(i)) in respect of that Surrendered Capacity.
- (c) If, following the date that Capacity is surrendered and prior to the last day of the relevant Shipping Window, the Port Operator does not update the Platform to reflect the increase in Spare Capacity, then the Customer will be entitled to a refund of any Deposit in respect of that Surrendered Capacity in whole or in part and will not be required to pay the Lost Capacity Fee in respect of that Surrendered Capacity.

5.2 Refund of booking fee where Surrendered Capacity acquired

If, during the Season in which the Surrendered Capacity relates (**Lookback Period**), an amount of Capacity equal to or greater than the amount of Surrendered Capacity is subsequently acquired by another Customer in any Port Zone under the process set out in clause 5.1 or either of the secondary allocation processes set out in clause 4, the Port Operator will refund any Deposit or the Lost Capacity Fee (as the case requires) paid by the Customer in respect of that Surrendered Capacity.

- (a) Where multiple Customers have Surrendered Capacity, the Port Operator will allocate the benefit of new requests for Capacity against the first Surrendered Capacity until that has been fully refunded prior to making any refund against any later in time Surrendered Capacity.

5.3 Repositioning Capacity

- (a) At any time in a Season:
 - (i) before the Spare Capacity has become available in accordance with clause 4.1, any Long Term Customer may reposition any Long Term Capacity acquired in a Shipping Window (the **Original Shipping Window**) within a Season to a new Shipping Window (the **Target Shipping Window**) which must be in the same Season; or
 - (ii) after the Spare Capacity has become available in accordance with clause 4.1 or the Seasonal Capacity in accordance with clause 4.3, the Customer may reposition any Capacity acquired in a Shipping Window (the **Original Shipping Window**) within the Season to a new Shipping Window (the **Target Shipping Window**) which must also be in the same Season; andprovided that:
 - (iii) an Export Nomination has not been provided in relation to the Capacity being repositioned, or if the Export Nomination has been provided, accumulation or accumulation planning has not commenced;
 - (iv) the relevant reposition of Capacity request and detail is received from the Customer via the Platform after the date that the Port Operator notifies repositioning may occur for the Season;
 - (v) the Customer's request is provided with 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 current Season; and
 - (vi) there is sufficient Spare 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 relevant reposition of Capacity request, provide it to the Port Operator via the Platform and pay the Port Operator the Capacity Administration Fee in accordance with the Access Agreement under which the Capacity is to be repositioned.
- (d) The Customer repositioning capacity should be aware of the requirements of clause 8 in relation to Export Nominations and note that the Port Operator is not under an obligation to accept non-compliant Export Nominations.
- (e) Subject to the Customer's request being provided with at least sixty (60) days' written notice prior to the last day of the Original Shipping Window, the Port Operator may permit a Customer to submit an Seasonal request in relation to Capacity that has previously been repositioned. Any Seasonal request must be in accordance with clause 5.3(c).
- (f) For the avoidance of doubt, no reposition will be effective until approved by the Port Operator and the Port Operator may exercise its discretion to approve a reposition, or an Seasonal request in relation to Capacity that has previously been repositioned pursuant to clause 5.3(e), on less than 60 days' notice. In assessing

whether to approve a reposition request under this clause 5.3(f), the Port Operator will have regard to the factors set out in clause 3.1(b).

- (g) Any Capacity that is repositioned into October, November or December and is subsequently declared or deemed as Lost Capacity under the Port Terminal Rules, will be charged the Lost Capacity Fee applicable to the Original Shipping Window.

5.4 Merging Capacity in adjacent Shipping Windows

- (a) If a Customer wishes to apply to merge Capacity in two (2) consecutive Shipping Windows in order to utilise Capacity on a single Vessel, it must provide notice to the Port Operator by no later than forty-five (45) days prior to the end of the earliest of the Shipping Windows that it intends to merge (a **Merge Notice**).
- (b) The Merge Notice must set out the Customer's preferred Shipping Window.
- (c) If the Port Operator accepts the Merge Notice:
 - (i) the Port Operator will merge the Capacity into a single Shipping Slot in the Port Operator's system which will thereafter be treated as a single Shipping Slot for the purposes of these Port Terminal Rules, save that the merged capacity pursuant to this clause 5.4(c) cannot be merged with Capacity in any other Shipping Window; and
 - (ii) the Customer must pay the Port Operator the Capacity Administration Fee in accordance with the Access Agreement under which the Capacity in the Merge Notice relates.
- (d) Customers must not issue a Merge Notice in respect of Capacity that:
 - (i) is across more than one Port; or
 - (ii) has previously been the subject of a Merge Notice.
- (e) For the avoidance of doubt, the acceptance of a Merge Notice by the Port Operator will result in an irrevocable merging of the Capacity, and if the Port Operator rejects a Merge Notice, the Port Operator may still accept an Export Nomination utilising the Shipping Windows referenced in the Merge Notice in accordance with clause 8.2(c).

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.

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

6.2 Acquiring allocated Capacity

The Port Operator may agree with one or more Customers to acquire allocated Capacity from those Customers provided that 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:
 - (i) the disruption of rail services to a Port Terminal Facility;
 - (ii) the closure of a Port Terminal Facility due to mechanical breakdown;
 - (iii) a closure of a Port Terminal Facility due to a direction from a Port Authority; or
 - (iv) a Port Blockage.

7. EXPORT NOMINATIONS FOR SHIPPING WINDOWS

7.1 Nominating Vessels for Shipping Windows

- (a) The provisions of this clause 7 apply in relation to Export Nominations for Shipping Windows 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 CBH Co-ordinated Cargo

- (a) In accumulating a cargo of Grain at a Port Terminal Facility that is serviced under a GSA or CBH Integrated (**CBH Co-ordinated Cargo**):
 - (i) Export 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;
 - (ii) the ETA of the Nominated Vessel must be no later than the last day of the Shipping Window;
 - (iii) all Export Nominations must be input by the Customer into the Port Operator's shipping interface contained on LoadNet® for Marketers™ system; and
 - (iv) at the time the Export Nomination is provided to the Port Operator, the Customer must have full Grain Entitlement for the cargo outlined in the Export Nomination.

- (b) If a Direct to Vessel Service is, or will be, requested by the Customer, the Customer must provide an Accumulation Plan to the Port Operator in accordance with the relevant Schedule of the Access Agreement.

7.3 Customer Co-ordinated Cargo - Accumulation

- (a) If the Customer intends to:
 - (i) accumulate a cargo of Grain at a Port Terminal Facility and nominates to use a Direct to Vessel Service in an Export Nomination via the Platform; and
 - (ii) coordinate the delivery of Grain to Port using its own supply chain (**Customer Co-ordinated Cargo**),

the Customer must comply with the requirements and conditions for managing demand in the relevant Schedule of the Access Agreement.

- (b) An Export Nomination for a Customer Co-ordinated Cargo must be provided via the Platform no later than twenty-two (22) days prior to the ETA of the vessel actually nominated to be loaded in the Export Nomination.
- (c) If a Direct to Vessel Service is, or will be, requested by the Customer, the Customer must provide an Accumulation Plan to the Port Operator in accordance with the relevant Schedule of the Access Agreement.

7.4 Harvest Shipping Period exception

No later than forty-eight (48) hours prior to the earlier of the Fixed ETA Date and the ETC 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. EXPORT NOMINATION DETAIL AND ACCEPTANCE

8.1 Details

- (a) When making an Export 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™ system:
 - (i) the Nominated Shipping Window;
 - (ii) loading Port;
 - (iii) maximum nominated tonnage (including Master's discretion);
 - (iv) vessel's last discharge port and the vessel's estimated time of departure from that port (subject to clause 8.1(c)(i));
 - (v) vessel's last three (3) cargoes (subject to clause 8.1(c)(i));
 - (vi) destination details;
 - (vii) product description (commodity type, grade, quality and other characteristics);
 - (viii) ETA;
 - (ix) the vessel's fixed time of Arrival at the first port of loading within the Nominated Shipping Window for which the Customer has Capacity of the relevant type (**Fixed ETA Date**) (subject to clause 8.1(c)(ii));
 - (x) discharge port;

- (xi) shipping agency (subject to clause 8.1(c)(i));
 - (xii) vessel part loading;
 - (xiii) de-ballasting requirements (subject to clause 8.1(c)(i));
 - (xiv) ship loading sequence plan (**Stow Plan**) (subject to clause 8.1(c)(iii));
 - (xv) vessel details (including beam, arrival and departure drafts, dry-weight, vessel type/class, hold and hatch details, net and gross capacities) (subject to clause 8.1(c)(i));
 - (xvi) cargo details (including batch reference, load tolerance range, total load tonnage);
 - (xvii) vessel name (subject to clause 8.1(c)(i));
 - (xviii) fumigation requirements (No requirement, standard fumigation, detailed fumigation or on-board fumigation);
 - (xix) Capacity Contract Reference number for the Shipping Window to be to be utilised;
 - (xx) any other details necessary for the Port Operator to process the Export Nomination; and
 - (xxi) if a Quarantine Survey will be conducted on the vessel at anchorage prior to berthing (subject to clause 8.1(c)(i)).
- (b) The Customer must have full Grain Entitlement for the cargo outlined in the Export Nomination.
- (c) The Port Operator recognises it may not be possible to provide:
- (i) the following vessel nomination details with over twenty-two (22) days lead time:
 - (A) name;
 - (B) last discharge port and estimated time of departure from that port;
 - (C) last three (3) cargoes;
 - (D) details (including beam, arrival and departure drafts, dry-weight, type/class, hold and hatch details, and net and gross capacities);
 - (E) shipping agency;
 - (F) de-ballasting requirements; and
 - (G) whether a Quarantine Survey will be conducted on the vessel at anchorage prior to berthing,

so a TBA response for these categories will be acceptable until no later than fifteen (15) or more days before the ETA;
 - (ii) the Fixed ETA Date with over twenty-two (22) days lead time, so the ETA will be acceptable until no later than fifteen (15) or more days before the Fixed ETA Date; and
 - (iii) a Stow Plan with over twenty-two (22) days lead time, so a TBA response for this category will be acceptable until no later than five (5) or more clear days before the ETA.
- (d) If the Customer fails to comply with clauses 8.1(c)(i) or (ii), for the purposes of determining shipping stem priority under clauses 10.1 and 12.1, the Port Operator will deem the Customer to have an Effective ETA.

- (e) The Customer must pay the Port Operator an incorrect ETA fee to the extent the Vessel Arrives five (5) or more clear days later than the Fixed ETA Date. That fee will be determined by the Port Operator based on the costs incurred by it as a result of that late Arrival of the Vessel.
- (f) Where, following acceptance by the Port Operator of an Export Nomination, a Customer's vessel Arrives outside of the Shipping Window but within the Grace Period, the Customer must pay the Late Vessel Fee.
- (g) If the Customer seeks to utilise a Direct to Vessel Service, the Export Nomination must specify the specific Direct to Vessel Service requested by the Customer and the information required pursuant to the respective conditions for obtaining the Direct to Vessel Service in accordance with the Access Agreement.
- (h) If the Customer notifies the Port Operator that a Quarantine Survey will be conducted on the Vessel at anchorage pursuant to clause 8.1(a)(xxi), and this survey is not conducted, the Customer will be charged the Berth Delay Fee.

8.2 Acceptance of Export Nominations

- (a) The Port Operator will, within two (2) Business Days of receiving an Export Nomination, notify the Customer whether it accepts or rejects an Export Nomination that contains all the information required in clause 8.1 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 a CBH Co-ordinated Cargo, the Customer has full Grain Entitlement for the cargo outlined in the Export Nomination; and
 - (iii) the Customer is not in Material Breach of its Access Agreement.
- (b) In respect to the loading of a single vessel at a single Port, the Port Operator will not accept the utilisation of Capacity for more than two (2) consecutive Shipping Windows, or where it has merged capacity in accordance with clause 5.4(c), in any other Shipping Window.
- (c) Where the Port Operator accepts an Export Nomination utilising:
 - (i) two (2) Shipping Windows at one (1) port, the Vessel's priority will be determined based on the later Shipping Window. For clarity, to satisfy the requirements of both Shipping Windows, the Vessel must arrive in the first Shipping Window and the Vessel will be loaded in the later Shipping Window; or
 - (ii) two (2) Shipping Windows at two (2) Ports, the Vessel's priority will be determined based on the first Shipping Window at the first Port.

In all other respects, a Customer must satisfy the requirements of each Shipping Window individually and must comply with the requirements of clauses 7 and 8 in respect of each separate Shipping Window.

- (d) A Material Breach by a Customer of its Access Agreement:
 - (i) is a breach of its Access Agreement which in the reasonable opinion of the Port Operator, is not capable of being remedied; or
 - (ii) is a breach of its Access Agreement which the Customer has failed to remedy after being given at least fourteen (14) days written notice by the Port Operator to do so and which does not give the Port Operator the

- immediate right to terminate the Access Agreement;
- (iii) occurs if the Customer:
 - (A) does not pay its debts as and when they fall due;
 - (B) commits an act of bankruptcy;
 - (C) enters into a composition or arrangement with its creditors or calls a meeting of creditors with the view to entering into a composition or arrangement;
 - (D) has execution levied against it by creditors, debenture holders or trustees under a floating charge;
 - (E) takes or has taken or instituted against it any actions or proceedings, whether voluntary or compulsory, which have the object of or which may result in the winding up or bankruptcy of the Customer (except, in the case of a corporation, for the purposes of a solvent reconstruction);
 - (F) has a winding up order made against it or (except for the purposes of a solvent reconstruction) passes a resolution for winding up; or
 - (G) is a party to the appointment of or has an administrator, official manager, receiver, receiver/manager, provisional liquidator or liquidator appointed to the whole or part of its property or undertaking; or
 - (iv) occurs if the Customer repudiates the Access Agreement, (together, the "Material Breach").
 - (e) If the Port Operator rejects an Export Nomination, it will provide details of the reasons behind the rejection of the Export Nomination at the time it notifies the Customer of the rejection.

8.3 Amendment of Export Nominations

The Port Operator may permit a Customer to amend an Export Nomination if:

- (a) the Customer provides a written request to the Port Operator to amend the Export Nomination;
- (b) the Customer:
 - (i) provides written 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, any person acquiring some or all of the cargo the subject of the Export Nomination from the Customer or any person providing services to the Customer; or
- (c) after considering the factors set out in clause 3.1(b), the Port Operator reasonably considers that it:
 - (i) will assist in the objective of:
 - (A) minimising demurrage at the Port over a given period; or
 - (B) maximising throughput at the Port over a given period;
 - (ii) does not materially affect other Customers usage of the Port; or

- (iii) would not result in other Customers incurring materially greater demurrage than would be the case if the amendment had not been accepted.
- (d) If the amendment solely consists of a request by the Customer:
 - (i) for up to one thousand Seasonal tonnes in order to meet a Stow Plan; and / or
 - (ii) to change of any of the vessel nomination details set out in clause 8.1(c)(i),the Port Operator may waive the Customer's requirement to comply with clause 8.3(b).
- (e) If the Port Operator accepts a request to amend an Export Nomination in accordance with this clause 8.3 and has not waived the Customer's requirement to comply with clause 8.3(b), the Port Operator will deem the Customer to have an Effective ETA .

8.4 Effective ETA

- (a) If:
 - (i) the Customer has failed to comply with clauses 8.1(c)(i) or (ii), the Port Operator will deem the Customer to have an effective ETA date that is fifteen (15) days from the date on which the Customer rectifies the non-compliance; or
 - (ii) the Port Operator has accepted a request to amend an Export Nomination in accordance with clause 8.3 and has not waived the Customer's requirement to comply with clause 8.3(b), the Port Operator will deem the Customer to have an effective ETA date that is 22 days from the date on which the Port Operator received the request from the Customer to amend the Export Nomination,(each being an **Effective ETA**), unless the Port Operator reasonably considers the Customer should not have an Effective ETA.
- (b) If by operation of clause 8.4(a) the Customer is deemed to have more than one Effective ETA, the Effective ETA means the later of those Effective ETAs.

8.5 Additional Charges

- (a) 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 Export Nomination.
- (b) The Port Operator will notify the Customer of the additional charges prior to accepting an amendment in accordance with clause 8.4(a). Within a reasonable amount of time following the Port Operators notification under this clause, the Customer must elect to either, pay the charges, or withdraw the request to amend the charges.

8.6 Joint loading

The Port Operator will not process a request to load a Vessel hold with Grain by more than one Customer, unless contractual arrangements to install artificial separation or other measures approved by the Port Operator have been arranged and confirmed prior to the scheduled time for commencement of loading the Vessel.

8.7 Cabotage inspections

The Port Operator will not permit a Vessel to conduct a cabotage inspection alongside a berth within a Port Terminal Facility.

9. LOST CAPACITY AND TOLERANCE

9.1 Harvest Shipping Period

- (a) Where, following acceptance by the Port Operator of an Export 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 an Export Nomination in respect of Capacity during the Harvest Shipping Period:
- (i) a Customer's vessel has not Arrived within the Shipping Window or Grace Period; or
 - (ii) the Customer does not have full Grain Entitlement within forty-eight (48) hours of the earlier of the Fixed ETA Date and the ETC 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 has not submitted an Export Nomination for Capacity during the Harvest Period more than twenty-two (22) days prior to the last day of the Nominated Shipping Period; or
 - (ii) the Port Operator has not accepted an Export Nomination in accordance with clauses 7 and 8; or
 - (iii) the Customer does not ship all relevant acquired Capacity within the Harvest Shipping Period, then,

the Port Operator may regard the Customer to have not utilised the relevant Capacity and if so, 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 9.3.

9.2 Annual Shipping Period

- (a) Where, following acceptance by the Port Operator of an Export 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 has not submitted an Export Nomination for Capacity during the Annual Shipping Period more than twenty-two (22) days prior to the last day of the Nominated Shipping Window; or
 - (ii) the Port Operator has not accepted an Export Nomination in accordance with clauses 7 and 8; or
 - (iii) the Customer's Nominated Vessel does not Arrive within the Grace Period; or
 - (iv) in the case of a CBH Co-ordinated Cargo, the Customer does not have the full Grain Entitlement for the cargo at the time of Export Nomination; or
 - (v) in the case of a Customer Co-ordinated Cargo, the Customer does not deliver the full Grain Entitlement for the cargo by the end of the Grace Period,

the Port Operator may regard the Customer as not having utilised the relevant Capacity and if so, 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 9.3.

9.3 Tolerance

- (a) 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) 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. Any Lost Capacity in excess of the Within Tolerance Lost Capacity will accrue Lost Capacity charges.
- (c) For the avoidance of doubt, if a Customer repositions Capacity pursuant to clause 5 and the Capacity is subsequently deemed as Lost Capacity pursuant to this clause 9, the fee for Lost Capacity will be assessed at the time the Capacity is deemed Lost Capacity.

10. SHIPPING STEM POLICY

10.1 Prioritising Loading of Vessels

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

- (a) if a Quarantine Survey has been conducted on the Vessel at anchorage prior to berthing;
- (b) the actual arrival date of any vessel that has received part Grain cargo from a previous call at another CBH Port (multi-port) in accordance with clause 12.3;
- (c) the later of the Fixed ETA Date and, if applicable, the Effective ETA;
- (d) 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;
- (e) the date the Export Nomination was made;

- (f) the time the Export Nomination was made;
- (g) changes in the ETA of a vessel (including those that would take it outside of the Shipping Window for which Capacity is being utilised);
- (h) changes in the expected Accumulation Plan of a vessel for a CBH Co-ordinated Cargo or departures from an agreed Accumulation Plan for a Customer Co-ordinated Cargo; and
- (i) loading a vessel whose cargo remains at Port but which failed to Arrive prior to the last day of the Shipping Window.

10.2 Adjustments to the Stem

The Port Operator may amend the Shipping Stem or adjust published Capacity:

- (a) at the request or with the agreement of a Customer; or
- (b) if the amendment is in relation to unallocated Spare Capacity,

in each case, only if accepting the request or making the amendment:

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

10.3 Discretion to Accept Export Nominations

- (a) The Port Operator may accept an Export Nomination that does not comply fully with the requirements of clauses 7 and 8 provided that after considering the factors set out in clause 3.1(b), the Port Operator reasonably considers that it:
 - (i) will assist in the objective of:
 - (A) minimising demurrage at the Port over a given period; or
 - (B) maximising throughput at the Port over a given period;
 - (ii) does not materially affect other Customers usage of the Port; or
 - (iii) would not result in other Customers incurring materially greater demurrage than would be the case if the Export Nomination had not been accepted.
- (b) An Export Nomination accepted under this clause 10.3 will in all cases have a lower priority than an Export Nomination that does comply fully with the requirements of clauses 7 and 8.

10.4 Other Information

The Port Operator will publish the Capacity available at each Port Terminal Facility.

10.5 Publication of Capacity

The Port Operator will publish the Capacity that has been acquired by Customers on the Website by identifying the:

- (a) name of the Customer that has acquired Capacity;
- (b) Port Zone in which the Customer has acquired Capacity; and
- (c) month for which the Customer has acquired Capacity.

11. 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.

12. PORT QUEUE POLICY

12.1 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 the factors set out in clause 10.1, including, but not limited to:
 - (i) cargo accumulation status;
 - (ii) status of Relevant Surveys and whether the Vessel has conducted a Quarantine Survey at anchor; and
 - (iii) the time of Arrival of a vessel and its relationship to the later of the Fixed ETA Date and, if applicable, the Effective ETA.
- (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.

12.2 Non-compliant vessels

- (a) Within 24 hours of submitting a Notice of Readiness, and no earlier than 7 days prior to the submission of the Notice of Readiness, a Customer must:
 - (i) ensure an official Marine Survey is undertaken on the Nominated Vessel at anchorage within the limits of a CBH Port;
 - (ii) if berthing at Kwinana, Albany or Esperance during the period of 1 November to 30 June, and provided the Department makes a service available, ensure a Quarantine Survey is conducted on the Nominated Vessel at anchorage within the limits of the port; and
 - (iii) provide confirmation of the marine surveyor's report, or Department clearance, to the Port Operator within 24 hours of completion of the survey, unless the Customer's vessel is currently subject to a relevant Department clearance or has used reasonable endeavours to carry out the survey and has

been unable to facilitate the survey due to matters outside its reasonable control.

- (b) If a Vessel is directed to the berth within 24 hours of the submission of the Notice of Readiness, the Customer may elect to proceed to berth without having to satisfy the requirement for a Relevant Survey as set out in clause 12.2(a). In the event the Customer elects to proceed to berth under this clause 12.2(b) and subsequently fails a survey, the Failed Survey Fee will apply.
- (c) Other than where a Relevant Survey has been conducted at anchorage prior to berthing, a Customers' Vessel must pass all Relevant Surveys within twenty-four (24) hours of berthing.
- (d) The Port Operator may require Customers to move their vessel from the berth if it fails a Relevant Survey in accordance with clause 12.2 and the non-compliant vessel is holding up the berth from another vessel.
- (e) A Customer may apply to the Port Operator to waive the requirement to conduct a Marine Survey at anchor pursuant to clause 12.2(a)(i) by providing written notice prior to submitting a Notice of Readiness. In assessing this request, the Port Operator may request the Customer to provide all information as is reasonably necessary to allow the Port Operator to exercise this discretion.
- (f) Where a vessel fails any Relevant Survey on the CBH Port berth or at anchor, the Port Operator may determine that the Vessel will lose its original priority. The Port Operator will retain the discretion to permit the Vessel to return to its original priority once it has passed the Relevant Surveys and has re-submitted the Notice of Readiness.
- (g) A Failed Survey Fee will apply to the extent a Vessel fails a Relevant Survey on the CBH Port berth. The Failed Survey Fee will apply from the day the Vessel fails survey (Day 1) up to and including the day the Vessel is deemed to have passed the Relevant Surveys by the Department (each day inclusive).
- (h) Where a Vessel passes the Marine Survey conducted under clause 12.2(a)(i) and subsequently fails any Quarantine Survey at the CBH Port berth, the Customer will receive a 50% discount on the Failed Survey Fee for Day 1, with the full rate to apply thereafter.
- (i) For the avoidance of doubt, if at any time after a Notice of Readiness has been served the Nominated Vessel is not ready to load in all respects:
 - (i) that Notice of Readiness and any other Notices of Readiness that have been previously served shall be deemed invalid; and
 - (ii) a new Notice of Readiness must be served after the Nominated Vessel is ready to load in all respects.

12.3 Multi porting

The Port Operator recognises vessels which have received part Grain cargo from a previous call (multi-port) at another CBH 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.

12.4 Vessel loading delay

If a Customer's Vessel is alongside the berth and the Port Operator is ready and willing to load, or has loaded the Vessel, and there any cumulative delays to the loading or departure

of the vessel of a total of more than 4 hours that are caused by, or within the reasonable control of, the Customer, the Port Operator may apply the Berth Delay Fee. The Berth Delay Fee will apply for each 24 hours or part thereof, from the day and time the delay occurs up to and including the day and time the Vessel commences or recommences loading, or departs the berth after loading.

13. DELIVERY QUEUE POLICY

- (a) Each Customer will be allocated an assembly window for a Customer Co-ordinated Cargo once they have a confirmed Export 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 at all times in a Season and during the Annual Shipping Period at Geraldton, Albany and Esperance. 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 Grain for a Customer Co-ordinated 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

14. PUBLICATION OF INFORMATION

The Port Operator will publish on its Website:

- (a) the Total Capacity offered for each of its Port Terminal Facilities for the next Season's Harvest Shipping Period and the Annual Shipping Period on or before 15 August each Season;
- (b) any Seasonal Capacity offered in accordance with clause 4.3;
- (c) the proposed dates for the Capacity allocation process, including the dates by which Long Term Capacity will be allocated and Spare Capacity released, on or before 15 August each Season;
- (d) a statement setting out the Port Operator's policies and procedures, as amended from time to time, for managing demand for CBH port terminal services at each Port Terminal Facility on or before 15 August each Season;
- (e) the Secondary Capacity Booking Process;
- (f) a statement setting out the Port Operator's current standard terms and reference prices for CBH port terminal services at each Port Terminal Facility; and
- (g) the Port Terminal Rules.

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 Manager – Key Accounts of the Port Operator (**Compliance Complaint**).
- (b) The Compliance Complaint must:
 - (i) be in writing addressed to the Manager – Key Accounts;
 - (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) 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.
- (d) 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**).
- (e) Upon receipt of the Escalation Notice, the Port Operator must use all reasonable endeavours to arrange a meeting between the Port Operator's Head of Logistics and the Customer within two (2) Business Days of receipt of the Escalation Notice. Where the Port Operator's Head of Logistics 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.
- (f) At the meeting, the Port Operator's Head of Logistics (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 Chief Operations Officer (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).
- (g) 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 Code.

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 Shipping Period means the period 1 February to the next 15 October as modified by the Port Operator from time to time.

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 at the Port Terminal

Facility and has presented a Notice of Readiness. **Arrives** and **Arrival** have a corresponding meaning.

Assembly Window is defined in clause 13(a).

Associated Entity has the meaning given to that term in section 50AAA of the *Corporations Act 2001* (Cth).

Berth Delay Fee means the fee set out in clauses 8.1(h) and 12.4 as payable and set out in the Access Agreement.

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 Administration Fee means the fee of that name prescribed in an Access Agreement.

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.

Code means the *Port Terminal Access (Grain) Code of Conduct*.

Credit Support means either:

- (a) a Parent Guarantee; or
- (b) Security.

CBH Co-ordinated Cargo has the meaning given to it in clause 7.2.

CBH Integrated means CBH's integrated storage, handling and export supply chain which allows grain growers to transfer title in grain to acquirers of Grain and for those acquirers to obtain Grain Entitlement at Port.

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

Customer Co-ordinated Cargo has the meaning given to it in clause 7.3.

Department means the Department of Agriculture, Fisheries and Forestry of the Commonwealth of Australia, as it may be renamed from time to time.

Deposit means the Spare Capacity Deposit or any Long Term Capacity Deposit required under the relevant Access Agreement (as the case requires).

Direct to Port Delivery Declaration Form means the form which may be obtained from the Port Operator directly upon request.

Direct to Port Sample Declaration Form means the form which may be obtained from the Port Operator directly upon request.

Direct to Vessel Service means the relevant grain receipt, storage and port outturning services described in the Access Agreement and described as Standard Direct to Port, Harvest Direct to Vessel, Post-Harvest Direct to Vessel and High Volume Direct to Vessel.

Direct to Vessel Target Date has the meaning given to it in the Access Agreement.

Effective ETA has the meaning given in clause 8.4(a).

ETA means the estimated time of Arrival of the Nominated Vessel.

ETC means estimated time of commencement of loading of the Nominated Vessel.

Export Nomination means the provision of all relevant details as set out in clause 8 to allow the Port Operator to assess and facilitate the provision of the Port Terminal Services requested by the Customer.

Failed Survey Fee means the fee set out in clause 12.2(g) as payable and set out in the Access Agreement.

Fixed ETA Date has the meaning given to it clause 8.1(a)(viii).

Grace Period means a period of seven (7) 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, pulses and oil seeds handled by the Port Operator from time to time (details of which are available on request).

Grain Entitlement means the Customer's entitlement under the *Bulk Handling Act 1967* (WA) or an Access Agreement to the possession of grain in the Port Operator's custody.

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.

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

Harvest Shipping Period means 16 October to the next 31 January as modified from the Port Operator from time to time.

Incorrect ETA Fee means the fee described in clause 8.1(d)8.1(e) as payable and set out in the Access Agreement.

Late Vessel Fee means the fee described in clause 8.1(f) as payable and set out in the Access Agreement.

Long Term Capacity means Capacity allocated for multiple Seasons in accordance with Part B.

Long Term Capacity Deposit means a deposit for each tonne of Long Term Capacity allocated under an Access Agreement that may be required from time to time in accordance with the Access Agreement.

Long Term Customer means any Customer that has acquired Long Term Capacity.

Lost Capacity is defined in clause 9.

Lost Capacity Fee has the meaning given in the schedule of fees and charges published by the Port Operator on the Website setting out the fees and charges that are due and payable under an Access Agreement.

LTASS means the long term annual shipment schedule as set out in clause 3.2(a).

Marine Survey means an official structural survey to be conducted on the Nominated Vessel before it can be loaded with Grain.

Material Breach is defined in clause 8.2(d).

Material Default means any breach of a fundamental or essential term of, or repeated breaches of any of the terms of:

- (a) an Access Agreement; or
- (b) any agreement for the provision of services by the Port Operator or a Related Body Corporate of the Port Operator.

Merge Notice is defined in clause 5.4(a).

Nominated Shipping Window means the Shipping Window within which the Customer wishes its Vessel to be loaded, and in the event an Export Nomination proposes to utilise Capacity across two Shipping Windows, must be the later Shipping Window.

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 at the Port in all respects (including physically and legally).

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.

Parent Guarantee means a guarantee given by the ultimate holding company of the Customer, or other such body as is acceptable to the Port Operator (acting reasonably), who has an investment grade credit rating or is otherwise acceptable to the Port Operator.

Platform means the web-based platform managed by, or on behalf of, the Port Operator which publishes all relevant detail and information in relation to Capacity under these Port Terminal Rules, which may include details of Secondary Capacity, the Secondary Capacity Booking Process, details of Surrendered Capacity, details of Capacity available for repositioning and the export nomination process, details of which will be published on the Website.

Port or Port Zone means the port or port zones of:

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

as the case requires.

Port Blockage means the situation where a Port Terminal Facility is unable to either receive Seasonal 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 requirements of the Department or a disruption in the upcountry supply chain.

Port Operator means Co-operative Bulk Handling Limited ABN 29 256 604 947.

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

- (a) at a Port;
- (b) capable of handling Grain; 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 Grain through the Port Terminal Facilities, including:

- (a) unloading and receival by the Port Operator of a User's Grain 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 Grain 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 Grain;
- (c) weighing by the Port Operator of a User's Grain 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 Grain delivered;
- (d) storage by the Port Operator of a User's Grain 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 Grain 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 Department or approved by the Department, for inspection of the User's Grain received and held at the Port Terminal Facilities; and
- (i) Outturning by the Port Operator of a User's Grain received at the Port Terminal Facility, and loading onto the User's nominated vessel.

Quarantine Survey means a survey conducted by the Department, or an approved person of the Department, at berth or an approved anchorage, which is required to be conducted before the Nominated Vessel can be loaded with Grain.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

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 the Department or an approved person of the Department.

Season means the period between 1 October of one calendar year and 30 September in the following calendar year.

Seasonal Capacity has the meaning given to it in clause 4.3(a).

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

Secondary Capacity Booking Process means the process and rules determined by the Port Operator to be the approved process and rules for booking Secondary Capacity, details of which will be published on the Website.

Security means an unconditional and irrevocable bank guarantee, letter of credit, performance or insurance bond issued by a bank holding an Australian banking licence or such other reputable person or institution accepted by the Port Operator and which is in a form reasonably satisfactory to the Port Operator.

Shipping Stem means the stem of vessels named by Customers and Capacity for loading as published by the Port Operator.

Shipping Stem Policy means the policy prescribed in clause 10.

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.

Solvent means that, in the last five years:

- (a) the Customer has been able to pay all its debts as and when they become due and has not failed to comply with a statutory demand under section 459F(1) of the *Corporations Act 2001* (Cth);
- (b) a meeting has not been convened to place the Customer in voluntary liquidation or to appoint an administrator;
- (c) an application has not been made to a court for the Customer to be wound up without that application being dismissed within one month;
- (d) a controller (as defined in the *Corporations Act 2001* (Cth)) of any of the Customer's assets has not been appointed; or
- (e) the Customer has not proposed to enter into or entered into any form of arrangement with its creditors or any of them, including a deed of company arrangement.

Spare Capacity means any Capacity in a Shipping Window that is unallocated or spare following the allocation of Long Term Capacity and any other capacity allocation process and includes Capacity that has been surrendered by a Customer and not yet re-allocated.

Spare Capacity Deposit means the fee of that name levied pursuant to an Access Agreement.

Stow Plan has the meaning given in clause 8.1(a)(xiv).

TBA means to be advised.

Total Capacity means, in any given Season, the Long Term Capacity to be allocated or already allocated pursuant to clause 3, and the Spare Capacity to be offered under clause 4.1.

Unallocated Customer means a person, determined by the Port Operator in its absolute discretion, that:

- (a) has entered into an Access Agreement;
- (b) has not acquired Spare Capacity or Seasonal Capacity via the Spare Capacity Booking Process;
- (c) is not:
 - (a) a Related Body Corporate;
 - (b) an Associated Entity;
 - (c) an employee or officer;
 - (d) an entity controlled by an employee or officer, of any Customer.

User means a person who has entered into an Access Agreement, other than the Port Operator.

Website means the website operated by the Port Operator from time to time and at the date of these Port Terminal Rules means www.cbh.com.au.

17.2 Interpretation

- (a) Other defined terms have the meanings given to them in the Code, unless the context otherwise requires.
- (b) Reference to a clause is a reference to a clause contained within these Port Terminal Rules.
- (c) “Including” means “including but not limited to”.