

Monday, 31 May 2010

Inquiry into Wheat Export Marketing Arrangements
Productivity Commission
Locked Bag 2,
Collins St. East,
Melbourne, VIC 8003

**Response to matters raised in the submission to the Commission by Glencore Grain Pty Ltd. dated
5 May 2010**

We wish to rebut a number of assertions contained in the abovementioned submission that are both incorrect and misleading.

1 – Glencore Grain claim (pp12) that they were “...*effectively eliminated from participating in the 2009-2010 harvest accumulation for shipping wheat of (sic) the east coast in any way shape or form because we did not agree to the Port Terminal Services Agreement proposed by GrainCorp...*”

This statement is not correct and completely misrepresents the obligations placed upon GrainCorp to provide port elevator services to wheat exporters.

Under the regulatory arrangements in place at the time, GrainCorp had an obligation to provide Glencore Grain port elevator services under the same terms and conditions offered to other parties.

GrainCorp had no power to withhold the provision of port elevator services from any accredited wheat exporter.

Had GrainCorp done so, we would have been in breach of both our obligations under the Wheat Export Marketing Act 2008 (Access Test) and the provisional access Undertaking in place at the time.

The claim made by Glencore Grain in this instance should be completely discounted.

2 – Glencore Grain claim (pp12) “...*GrainCorp refused to negotiate with us in any form until we initiated the dispute resolution provisions of the access undertaking, after which GrainCorp immediately negotiated a realistic agreement with us.*”

This statement is incorrect and misrepresents the manner in which negotiations over the access Undertaking, Port Terminal Services Agreement and Port Terminal Services Protocols were conducted.

At no time did GrainCorp ‘refuse’ to negotiate with Glencore Grain. A significant number of conversations, and a significant exchange of correspondence, took place between GrainCorp and Glencore Grain prior to the finalisation of the (now signed) service agreement.

The discussions with Glencore Grain were held simultaneously with a number of other parties, all of whom subsequently signed a services agreement for two years. The Undertaking provides for the



GrainCorp

access seeker to receive the retrospective benefit of any pricing or contract terms negotiated with any other party to the Undertaking. In this manner, all access seekers are treated equitably.

The claim made by Glencore Grain in this instance is incorrect and should be completely discounted.

3 – Glencore Grain, in citing the need to have GrainCorp port elevators ‘declared’ by the National Competition Council (NCC) (pp12), is significantly misrepresenting the matters under negotiation at that time.

It is quite disingenuous of Glencore Grain to claim that the matters under negotiation related to ‘access’, and thus required the presence of an Undertaking regulated by the ACCC, or the possible intervention of the NCC, when they actually related to matters *not* covered by the Undertaking.

The matters did not relate to access to port elevators, but to the *prices charged* for particular services and the insistence by Glencore Grain that a ‘*dispatch – demurrage*’ clause be inserted into the service provision contract.

This is not a matter of access port elevator services, but one that relates to the management of commercial risk associated with exporting grain in bulk.

It is also important to note that, at the time referred to in their submission, Glencore Grain executed bulk wheat exports from Western Australia and South Australia, under the same access Undertaking conditions as those offered by GrainCorp.

The conditions for provision of port elevator services imposed by CBH and Viterro at that time did not include the sorts of provisions Glencore Grain were seeking from GrainCorp as part of the negotiation process referred to in their submission.

The claims made by Glencore Grain in these instances are a gross misrepresentation and should be completely discounted.

We are disappointed that parties such as Glencore Grain, and other members of the Australian Grain Exporters Association, continue to use the examination of wheat export regulation as a tool for proposing regulation that provides, or will provide, these companies with a commercial advantage.

Yours sincerely

[Sgd] Nigel Hart

General Manager - Ports

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GrainCorp Operations Limited – Port Terminal Services Protocol

Please find attached advice provided to the Australian Competition and Consumer Commission (ACCC) relating to the following

1. Consultation with interested parties As required by clause 9.3.(a)(iii) of the GrainCorp port terminal access Undertaking, and
2. The published port terminal protocols that resulted from negotiations with customers.

The cover letter to the ACCC provides details of the process of consultation relating to the port terminal protocols, and the results of that consultation.

Of note is the fact that only one party, CBH Grain Pty Ltd, proposed changes to the Port Protocols. The changes are detailed in the attached correspondence.

We have taken the opportunity of providing you this information as it supports, with tangible evidence, the statements made by GrainCorp in evidence and in submission to the Commission.

Should you require any clarification of the attached correspondence, please feel free to contact us at any time.

Yours sincerely

[Sgd] Nigel Hart

General Manager Ports

MALLESON'S STEPHEN JAUQUES

Mr Anthony Wing

21 May 2010

Attention: Ms Sarah Sheppard

Dear Mr Wing

GrainCorp Operations Limited - Port Terminal Services Protocols

We refer to our letter dated 22 April 2010 informing the Commission of GrainCorp's intention to vary its Port Terminal Services Protocols ("**Port Protocols**") under clause 9.3 of the Port Terminal Services Undertaking accepted by the Commission on 29 September 2009 ("**Undertaking**").

1 Purpose of letter

1.1 The purpose of this letter is to:

- (a) inform the ACCC that GrainCorp has:
 - (i) consulted with interested parties as required by clause 9.3.(a)(iii) of the Undertaking; and
 - (ii) on 21 May 2010 published the variation to the Port Protocols on its website as required by clause 9.3(a)(iii)(iv) of the Undertaking; and
- (b) provide the ACCC with a copy of the varied Port Protocols as required by clause 9.3(c) of the Undertaking;

1.2 A copy of the varied Port Protocols in both clean and mark up is attached.

2 Changes to Port Protocols arising from customer consultation

2.1 As required by the Undertaking, on 21 April 2010 GrainCorp provided its proposed varied Port Protocols to interested parties along with an explanation for the changes. GrainCorp allowed Users and Applicants at least 10 Business Days to review and respond to the proposed changes.

2.2 As a result of feedback from CBH Grain Pty Ltd ("**CBH**"), GrainCorp made the following changes to the proposed Port Protocols:

- (a) clause 36.3(a) is amended to read 'on the eleventh day after the ~~original~~ most recent Assigned Load Date';

MALLESONS STEPHEN JAQUES

Australian Competition & Consumer Commission

21 May 2010

- (b) clause 36.3(b) is amended to read 'GrainCorp ~~will~~ may assign a new Assigned Load Date using Clauses 7 and 16'.

2.3 GrainCorp did not receive submissions from any parties other than CBH.

2.4 The varied Port Protocols are now available on GrainCorp's website. Under clause 9.3(a)(iv) of the Undertaking, the varied Port Protocols will come into effect 30 days after they were published on GrainCorp's website.

3 Public register

3.1 This letter and attachments are not for inclusion on the public register.

If you have any questions, or if we can be of further assistance, please contact either Stefanie Benson on (02) 9296 2435 or me.

Yours sincerely

[Sgd] V Ahuja



GRAINCORP OPERATIONS LIMITED

(ABN: 52 003 875 401)

BULK WHEAT and BULK GRAIN PORT TERMINAL SERVICES PROTOCOLS

Document Date: May 2010
Season: 2010/11
Appended as Annexure B to: 2009 / 11 Bulk Wheat Port Terminal Services Agreement
2010 / 11 Bulk Grain Port Terminal Services Agreement (Non-wheat)

These Port Terminal Services Protocols apply to the handling of regulated grain (bulk wheat) and to other non-regulated grains handled through Port Terminals owned by GrainCorp.

Application

If the customer requests GrainCorp to load grain on a vessel at a Port Terminal owned by GrainCorp, the customer must seek to book Elevation Capacity and indicate their Requested Elevation Period by submitting a Cargo Nomination Application (CNA).

The following procedures apply to requesting Elevation Capacity and an Elevation Period, accepting or declining a CNA, modifying a CNA and for managing the allocation of Terminal Elevation Capacity at GrainCorp's Port Terminals.

Applications and Notices - Important directions

All CNA applications, Acknowledgements of Acceptance (AOA), amendments to CNA's, 21 day ETA nominations, 10 day Vessel Nominations, and other related matters and modifications and other relevant notices, must be completed using the GrainCorp Workflow Online Platform. Customers will receive a Workflow online login. The Workflow platform is operated through a web browser. Any notices and applications pursuant to these Protocols and directed to GrainCorp that cannot be completed on the GrainCorp Workflow platform are to be sent to the email addresses for the applicable Port Terminal(s) set out below. GrainCorp will make available on its web site PDF document versions of all forms relevant to these protocols. These forms should only be used if the Workflow platform is not available.

To avoid doubt, notices and applications other than those required to be completed on the GrainCorp Workflow platform are to be directed to the email addresses of any relevant Port Terminal.

Note – vessels requiring two port loading should forward relevant information to BOTH ports.

As a provider of Port Terminal services, GrainCorp is subject to audit by both Wheat Exports Australia and the Australian Competition & Consumer Commission (ACCC). Therefore, GrainCorp must ensure that all actions relating to the provision of port terminal services are recorded and that an 'audit trail' is established.

GrainCorp staff have been instructed not to act on, or confirm, any verbal instruction from customers unless those instructions are confirmed in writing or via the workflow system.

PORT	EMAIL ADDRESS
Mackay	mackayshipping@graincorp.com.au
Gladstone	gladstoneshipping@graincorp.com.au
Fisherman Is	fishermanisshipping@graincorp.com.au
Carrington	carringtonshipping@graincorp.com.au
Port Kembla	portkemblashipping@graincorp.com.au
Geelong	geelongshipping@graincorp.com.au

GrainCorp Bulk Wheat and Bulk Grain Port Terminal Services Protocols

Portland

| portlandshipping@graincorp.com.au

GrainCorp Bulk Wheat and Bulk Grain Port Terminal Services Protocols

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1 Terms and Acronyms

Any terms not defined in this Protocol have the same meaning as those defined in the GrainCorp Bulk Wheat Port Terminal Services Agreement and / or the Bulk Grain Port Terminal Services Agreement (Non-Wheat) for the relevant season.

Acknowledgement of Acceptance (AOA). GrainCorp will forward an AOA to a customer following receipt and approval of a CNA. By sending an AOA to a customer, GrainCorp is making an 'offer' to confirm the booking of Elevation Capacity at a particular terminal during a particular Elevation Period. By accepting an AOA, the customer is agreeing to pay the relevant Booking Fee and assuming responsibility for advising GrainCorp of the manner in which Elevation Capacity is to be supplied.

Booked Elevation Capacity. This is the number of tonnes of grain cargo elevation GrainCorp agrees to provide to a customer at a particular time during the Confirmed Elevation Period, following completion and return to GrainCorp of an AOA. Booked Elevation Capacity can consist of one or more 'lifts' of 'cargos' onto vessels.

Booking Fee. This is the per tonne fee a customer is liable to remit to GrainCorp once they acknowledge and accept an offer of Elevation Capacity by completing and returning an AOA.

CNA. This is the application submitted to GrainCorp via the online workflow platform by customers seeking to book grain Elevation Capacity at one or multiple GrainCorp grain exportPort Terminals.

Confirmed Elevation Period (CEP). This is the period of time in which Elevation Capacity is confirmed as being accepted by a customer, and will be available at a particular Port Terminal. The Confirmed Elevation Period can be a period of one month, commencing on either the first or the fifteenth day of a calendar month, or a 15 day period within the confirmed elevation period, as nominated no less than 28 days prior to the commencement of that confirmed elevation period.

Elevation Capacity. This is the number of tonnes of grain cargo elevation GrainCorp agrees to provide to a customer at a particular time during a particular period.

Elevation Period. This can be a period of one month, commencing on either the first or the fifteenth day of a calendar month, or a 15 day period as defined in a CNA.

ETA Nomination. This has the meaning given in clause 19.1.

Load Port. This has the meaning given in clause 4.1.1.

Nominated Vessel. This has the meaning given in clause 4.1.3.

Requested Elevation Period (REP). This is the period in which a customer has requested Elevation Capacity. The Requested Elevation Period can be a period of one month, commencing on either the first or the fifteenth day of a calendar month or a period of any 15 days within the confirmed elevation period, as nominated no less than 28 days prior to the commencement of the elevation period.

Vessel Nomination. This has the meaning given in clause 20.

2 Shipping Stem

Pursuant to the obligations of wheat export Port Terminal service providers under the Wheat Export Accreditation Scheme 2008 established under the Wheat Export Marketing Act 2008 (Cth) ("Act"), GrainCorp will publish 'Shipping Stem' information on its website www.graincorp.com.au in accordance with Section 24(4) of the Act (Shipping Stem).

3 Cargo Nomination Application Procedure

- 3.1 If a customer requests elevation of grain onto a vessel at a Port Terminal operated by GrainCorp, the customer must submit a **Cargo Nomination Application (CNA)** to GrainCorp via the Workflow Online Platform.

28 Day Rule

- 3.2 A CNA must be submitted to GrainCorp by a date not less than 28 days prior to the commencement date of the **Requested Elevation Period** (Clause 4.1.4).

GrainCorp Bulk Wheat and Bulk Grain Port Terminal Services Protocols

- 3.3 For the avoidance of doubt, the customer is responsible for nominating the Requested Elevation Period.

Variation of the 28 Day Rule

- 3.4 The customer may submit a CNA less than 28 days prior to the commencement date of the Requested Elevation Period, but should only seek to do so after consulting with GrainCorp.
- 3.4.1 Should a client fail to consult with GrainCorp in compliance with Clause 3.4, any CNA submitted within the 28 day period will be automatically rejected.
- 3.5 Acceptance of a CNA is subject to meeting all of the relevant criteria in this Protocol.
-

4 Cargo Nomination Application - Requested Elevation Period, Load Port and Cargo Specification

- 4.1 A CNA submitted under Clause 3 must include the following information.
- 4.1.1 The port or ports at which the cargo is to be loaded (**Load Port**).
- 4.1.2 A separate CNA is required for each port if a customer requires a two port load.
- 4.1.3 The name of the vessel ("**Nominated Vessel**") (if known) (refer to Clause 17).
- 4.1.4 A **Requested Elevation Period** that may consist of either,
- (a) A period of one month, commencing on either the first or the fifteenth day of a calendar month, or
- (b) A 15 day period within the confirmed elevation period as nominated no less than 28 days prior to the commencement of the confirmed elevation period.
- 4.1.5 A cargo specification that outlines the grain(s) and / or grade(s) of the nominated cargo.
- 4.1.6 The proposed cargo tonnage.

Where possible, on lodgement, a CNA should also contain the following.

- 4.1.7 Details of any special or unusual features of the nominated vessel that may affect in any way vessel loading performance. (For the avoidance of doubt, Tween Decker vessels will not be accepted for loading at GrainCorp Port Terminals).
- 4.1.8 Details of the holders of any encumbrances over the commodities that will comprise the cargo and the proposed release of any encumbrances.
- 4.1.9 The intended destination of the cargo.
- 4.1.10 All relevant phytosanitary and other certification or regulatory requirements of the destination country that will ensure the cargo meets all relevant market access requirements.
- 4.2 Where a customer is unable to furnish the information required in Clauses 4.1.7, 4.1.8, 4.1.9 and 4.1.10 on lodgement of a CNA, the customer has until 21 days prior to the estimated time of arrival (Clause 15) of a vessel to provide the information required. **Should the information not be supplied at that time, the Booked Elevation Capacity may be cancelled and any associated Booking Fee will be forfeited.**
-

5 Cargo Nomination Application - Time of Lodgement

- 5.1 A CNA sent to GrainCorp outside business hours (8:00 am to 4:00 pm AEST) Monday to Friday or on public holidays, is taken to have been received at the commencement of the next business day (in the state of Queensland).
- 5.2 GrainCorp will place all CNA's received on the Shipping Stem the next business day following receipt. Each CNA will be noted as 'Pending Assessment'.
-

6 Cargo Nomination Application Assessment Timing

- 6.1 CNAs will be assessed in chronological order of receipt.

GrainCorp Bulk Wheat and Bulk Grain Port Terminal Services Protocols

- 6.2 GrainCorp will complete an Assessment of a CNA within a maximum of five (5) business days following receipt, commencing from 8.00 AM on the first business day following receipt of a CNA.

7 Cargo Nomination Application - Assessment Criteria

The initial CNA assessment will take consideration of the following -

- 7.1 That the customer has used the approved method of lodging a CNA (Clause 3).
- 7.2 Where the assessment of a CNA is for the export of bulk wheat, that the customer is accredited by Wheat Exports Australia to export wheat in bulk.
- 7.3 That, in the case of the export of regulated grain (bulk wheat), the customer has signed and lodged with GrainCorp a *Bulk Wheat Port Terminal Services Agreement*.
- 7.4 That, in the case of the export of non-regulated grain, the customer has signed and lodged with GrainCorp a *Bulk Grain Port Terminal Services Agreement (Non-wheat)*.
- 7.5 Whether GrainCorp has available sufficient intake, grain segregation, storage and grain elevation capacity at the Port Terminal that will allow accumulation of the nominated elevation task / cargo at the Port Terminal, taking into account, other Booked Elevation Capacity previously accepted by GrainCorp that appears as 'accepted' on the GrainCorp Shipping Stem.
- 7.6 Any Regulatory and Market risks (Refer to relevant definition in the GrainCorp Bulk Wheat Port Terminal Services Agreement and / or Bulk Grain Port Terminal Services Agreement (Non wheat)).
- 7.7 Confirmation that the customer will/has contract(ed) sufficient rail and/or road transport prior to the Requested Elevation Period to accumulate the grain tonnage at the Port Terminal for the Booked Elevation Capacity.

8 Notification of a CNA Acceptance or Rejection

- 8.1 If GrainCorp completes the assessment of a CNA and accepts it, on the same day GrainCorp will notify the customer by forwarding to the customer an **Acknowledgement of Acceptance of a CNA (AOA)** (Clause 9).
- 8.2 If GrainCorp completes the assessment of a CNA and rejects the CNA, GrainCorp will, on the day of rejection, notify the customer of the decision to reject and will provide to the customer in writing reason(s) for the decision.

9 Acknowledgement of Acceptance of a CNA, a Requested Elevation Period and Booking Fee

- 9.1 To confirm the booking of Elevation Capacity and the Confirmed Elevation Period, the customer must complete and return to GrainCorp an AOA within two (2) business days of 5.00 pm AEST of the day of notification of acceptance of a CNA (Clause 8).
 - 9.1.1 If a customer fails to submit an AOA within the time specified in Clause 9.1, the CNA will lapse and become invalid as a consequence of not having been confirmed by the customer. The Booked Elevation Capacity related to a lapsed CNA will become available for booking by another customer from the commencement of the first business day following the end of the period specified in Clause 9.1.
- 9.2 A customer is only able to either **accept or reject** the offer of Elevation Capacity and the Confirmed Elevation Period made by GrainCorp. No amendments to the requested Elevation Capacity or Confirmed Elevation Period can be made on an AOA.
- 9.3 Upon returning to GrainCorp an AOA in accordance with clause 9.1, the customer will be liable for the Booking Fee and will agree to the payment terms of Booking Fee invoicing and payment contained within Annexure A of either the *Bulk Wheat Port Terminal Services Agreement* or the *Bulk Grain Port Terminal Services Agreement (Non wheat)*.
- 9.4 On the business day following the receipt of an AOA from the customer, GrainCorp will change the status of any relevant CNA(s) on the Shipping Stem, from 'Pending Assessment' to 'Accepted'.

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- 9.5 The Booking Fee payable upon the return of an AOA to GrainCorp is in addition to any other fees that may be applicable to the receipt, storage, and elevation of grain for the nominated cargo elevation.
- 9.6 Failure to make payment in cleared funds within seven (7) days of receiving a tax invoice for a Booking Fee will cause the customer to lose any allocated Booked Elevation Capacity and Confirmed Elevation Period relevant to the unpaid invoice(s).
- 9.7 In a circumstance where the customer
- (a) provides an AOA but subsequently fails to comply with the requirements of Clauses 9.6, 15, 17, 21, 19, 20, 21, 22, 23, 24 or 37, or
 - (b) cancels the Booked Elevation Capacity;
- the Booked Elevation Capacity and Confirmed Elevation Period may be cancelled by GrainCorp and the customer will forfeit any Booking Fee previously paid, and / or remain liable for any Booking Fee agreed to under Clauses 9.3, 9.5 and 9.9 (even if not yet invoiced).
- 9.8 Where a customer executes Booked Elevation Capacity and the total tonnage elevated is **less** than the booked tonnage for which a Booking Fee has been paid, GrainCorp will rebate to the customer an amount at the relevant Booking Fee rate equivalent to the difference between the booked tonnage and the actual tonnage elevated, up to an amount not exceeding 10% of the original Booking Fee amount.
- 9.9 Where a customer executes Booked Elevation Capacity and the total tonnage elevated is **more** than the booked tonnage for which a Booking Fee has been paid, GrainCorp will invoice the customer an amount at the relevant Booking Fee rate equivalent to the difference between the actual tonnage elevated and the original Booking Fee.
-

10 Execution of Booked Elevation Capacity

- 10.1 Booked Elevation Capacity will not be executed prior to the first day of a Confirmed Elevation Period, and must be executed before the last day of a Confirmed Elevation Period.
- 10.2 If due to factors within the control of the customer, that customer is unable to execute Booked Elevation Capacity within the Confirmed Elevation Period (plus 5 business days from the last day of that Period), or within another elevation period to which Booked Elevation Capacity has been moved, the Booking Fee related to any unused Booked Elevation Capacity will be forfeited.
- 10.3 Elevation Capacity booked between 1st October and 30th September (the shipping year) **must be used** within that shipping year.
- 10.4 Elevation Capacity not executed during a shipping year **cannot be carried** forward into the next shipping year.
- 10.5 Any Booking Fees related to unused Booked Elevation Capacity **will be forfeited** after the end of a shipping year (30th September) and Booking Fees relating to forfeited Booked Elevation Capacity will also be forfeited.
-

11 Request for a change to Load Port and/or Confirmed Elevation Period

- 11.1 A customer may seek to make a Load Port and/or Confirmed Elevation Period change to a CNA shown as 'Approved' on the GrainCorp shipping stem by,
- a. Consulting with GrainCorp Logistics and discussing the details of the change to the Load Port and/or Confirmed Elevation Period required by the customer.
 - b. Amending the relevant CNA in workflow and submitting the request to GrainCorp.
- 11.2 A change to a Confirmed Elevation Period can include a change to the length of the Confirmed Elevation Period from a period of one month to a shorter period of any consecutive 15 days within the Confirmed Elevation Period.
- 11.3 A request to change a Confirmed Elevation Period and/or Load Port must be lodged no later than 21 days prior to the nominated estimated time of arrival (ETA) of a vessel. Refer to Clause 9 and 14 of the Protocols.

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- 11.4 Assessment of a request to make a Load Port or Confirmed Elevation Period change will be made subject to all relevant clauses in these Protocols, including Clause 6.
-

12 Managing Booked Elevation Capacity

- 12.1 Once Elevation Capacity has been booked, the period of time in which the capacity is to be delivered becomes the Confirmed Elevation Period.
- 12.2 A customer that has accepted Elevation Capacity by accepting any or all AOA's sent to them by GrainCorp, has 'Booked Elevation Capacity'.
- 12.3 Booked Elevation Capacity can be divided by the customer into more than one parcel during the Confirmed Elevation Period. For example, if a customer has Booked Elevation Capacity of 50,000 T, in a Confirmed Elevation Period, they can elect to have that capacity delivered as multiple lifts into multiple vessels. Booked Elevation Capacity **cannot be increased by dividing the booked capacity into multiple lifts and adding the +10% cargo elevation allowance to each multiple**. Multiple lifts shall collectively equal no more than the sum of the Booked Elevation Capacity. If a customer wishes to divide Booked Elevation Capacity into multiple lifts, they must,
- Contact GrainCorp shipping operations in Toowoomba and provide advice on their intentions.
 - Amend existing CNA's to reflect the change in vessel tonnes
 - Submit new 'supplementary' CNA's via workflow for the relevant tonnages, making note of the reference number of the existing original CNA that refers to the Booked Elevation Capacity that appears on the shipping stem.
 - Ensure that GrainCorp shipping operations in Toowoomba is aware of the request of the customer.
- GrainCorp will then assess the 'supplementary' CNA(s) against Clause 7.5 of the Protocols. Acknowledgement of Acceptance(s) will be forwarded to the customer after the assessment of the CNA's is complete.
- 12.4 The ability of GrainCorp to divide Booked Elevation Capacity into multiple lifts during the Confirmed Elevation Period will depend upon other elevation bookings during that period.
-

13 Reducing Booked Elevation Tonnage

- 13.1 To **decrease** the elevation tonnage requested for a particular elevation period, a customer must firstly accept an AOA and then submit an amended CNA via the GrainCorp Workflow system to reflect the reduced elevation tonnage required. GrainCorp will then assess the amended CNA against criteria noted in Clause 7 of the Protocols, with particular reference to Clause 7.5.

Note.

Reducing the requested elevation tonnage does not reduce the liability for the Booking Fee applied to the original CNA. The amount that represents the difference between the CNA tonnage accepted by the customer through the submission of an AOA and any subsequent reduction to the requested elevation tonnage made by a customer **will be forfeited**.

Where a customer requests a reduction in the Booked Elevation Tonnage and the actual tonnage elevated to vessel is more than 10% above the Booked Elevation Capacity, the customer will be liable to pay a Booking Fee on the difference between the Booked Elevation Capacity plus 10%, and the actual tonnage elevated to vessel.

14 Increasing Booked Elevation Tonnage

- 14.1 To **increase** the Elevation Capacity requested for a particular elevation period, a customer must firstly submit a CNA, then accept the related AOA and then submit an amended CNA via the GrainCorp Workflow system requesting that additional Elevation Capacity be added to the Booked Elevation Capacity. Customers should consult the GrainCorp shipping stem prior to submitting additional requests for elevation tonnage, to ensure

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that the relevant Port Terminal has sufficient elevation capacity to meet additional demand in the Requested Elevation Period.

- 14.2 GrainCorp will assess an amended CNA against the criteria noted in Clause 7 of the Protocols, with particular reference to Clause 7.5. Should sufficient grain Elevation Capacity be available, GrainCorp will send to the customer an AOA relating to the CNA requesting additional Elevation Capacity.
 - 14.3 If a customer accepts the offered Elevation Capacity, they will be **liable to pay a Booking Fee** equal to the total of the additional elevation tonnage requested (Refer to Clause 9).
-

15 Estimated Time of Arrival (ETA) Nomination – Minimum 21 Day Notice

- 15.1 At any time from the return of an AOA to GrainCorp by a customer (Clause 9), up to, but no later than, 21 days prior to the estimated time of arrival of a vessel, the customer must lodge a formal **ETA Nomination** by updating the original CNA.
 - 15.2 The ETA nominated by the customer must be within the Confirmed Elevation Period.
 - 15.3 Should a customer fail to comply with this minimum notice period, the customer will forfeit their Booked Elevation Capacity and Booking Fee (Clause 9.7).
 - 15.4 An ETA Nomination received by GrainCorp outside business hours (8:00 am to 4:00 pm AEST) Monday to Friday or on public holidays is taken to have been received at the commencement of the next business day.
-

16 Assigned Load Date

- 16.1 Following the nomination of a vessel ETA (Clause 15.1) and within 1 business day of receipt of an ETA Nomination, GrainCorp will notify the customer of an **Assigned Load Date**, which is the date on which GrainCorp has scheduled the commencement of vessel loading. On provision of such advice to a customer, GrainCorp will update the shipping stem with the relevant information.
 - 16.2 Where required and in the order in which CNAs were initially received and with reference to Clauses 15, 21, 22, 23, 24, 35, 36, and 37, GrainCorp will update the Assigned Load Date taking into account:
 - 16.2.1 Other Booked Elevation Capacity previously accepted by GrainCorp that appear as 'accepted' on the GrainCorp shipping stem, and
 - 16.2.2 The sufficiency of capacity to receive and handle the customer's grain at the time of the anticipated commencement of cargo accumulation at the port.
 - 16.3 GrainCorp reserves the right to change the Assigned Load Date and will immediately notify the customer of any such decision, taking into account factors mentioned in sub clauses 16.2.1, 16.2.2 and other relevant factors.
-

17 Vessel Nomination – Minimum 10 Day Notice

- 17.1 At any time from the ETA Nomination (Clause 15.1) up to but no later than 10 days prior to the date of the Nominated ETA, the customer must lodge a **Vessel Nomination** by adding the information required in Clauses 17.1.1 to 17.1.5 to the original CNA.
 - 17.1.1 The name of the Nominated Vessel;
 - 17.1.2 Details of the vessel length, depth, and maximum air draft, or any other vessel characteristic that may inhibit or affect loading performance;
 - 17.1.3 Any variations that may have been applied and accepted to the original CNA,
 - 17.1.4 Details of the last three (3) cargoes carried and the last three (3) ports of call,
 - 17.1.5 Information relating to any preparations made to the vessel to ensure it passes the regulatory Marine and AQIS pre-loading surveys.

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- 17.2 Should a customer fail to comply with this minimum notice period, the customer will forfeit their Booked Elevation Capacity and Booking Fee.
 - 17.3 A Vessel Nomination received by GrainCorp outside business hours (8:00 am to 4:00 pm AEST) Monday to Friday or on public holidays is taken to have been received at the commencement of the next business day.
-

18 Variations to ETA Nomination or Vessel Nomination Notice Periods

- 18.1 At the request of a customer GrainCorp may vary or waive the minimum notice periods noted in Clauses 15 and / or 17 following consultation with a customer.
 - 18.2 GrainCorp will not consider any variation to, or waiving of, the notice periods noted in Clauses 15 and / or 17 unless a customer provides a written request seeking GrainCorp to do so, before the notice period expires.
 - 18.3 The action of submitting a request under sub clause 18.1 does not guarantee that GrainCorp will grant a variation or waiver. In making any decision to vary or waive the minimum notice periods noted in Clauses 15 and / or 17, GrainCorp will consider the extent to which customer's inability to comply with the notice periods is within the customer's control and the impact of the variation on the efficient operation of the Port Terminal and will notify the customer in writing of the relevant decision within one (1) business day of receipt of a request.
-

19 Substituting Nominated Vessels

- 19.1 Subject to Clause 17, the customer may, by submitting amendments to Section 1 of the relevant CNA, substitute a Nominated Vessel with another vessel at the nominated Port Terminal for the Booked Elevation Capacity (+/- 10% tolerance on elevated tonnes), provided the substituted vessel is a 'similar performing' vessel¹.
 - 19.2 The customer will not be required to pay a new Booking Fee, or to submit a new CNA if a vessel substituted under Clause 19.1 will arrive within five (5) days of the most recent Nominated ETA (Clause 15).
 - 19.3 If the customer's substitution involves an increase in Booked Elevation Capacity of more than 10%, commodity or grade substitution, or any alteration to the Site Accumulation Plan that will impact upon the accumulation or elevation of other customers' cargo, the customer, if demand for elevation at the Port Terminal is committed to other customers or if the substitution request requires activities that will decrease the efficiency of grain elevation at the Terminal, may be required to pay a new Booking Fee and / or may be required to submit a new CNA (Clause 4).
 - 19.4 Notification of a request for substitution of a Nominated Vessel received by GrainCorp outside business hours (8:00 am to 4:00 pm AEST) Monday to Friday or on public holidays is taken to have been received at the commencement of the next business day.
-

20 Changing a Load Port

- 20.1 The customer must inform GrainCorp no later than 21 days from the Assigned Load Date of the customer's desire to change the Load Port. If a customer wishes to submit a request to change a Load Port, and to secure a new Assigned Load Date (refer to Clauses 3 through 9) the request can only be processed by updating the relevant CNA by updating the original CNA using the GrainCorp Workflow Online Platform.
- 20.2 Any notification of a change in Load Port must be submitted to GrainCorp during business hours (8:00 am to 4:00 pm AEST). Any notification received outside business hours (as specified elsewhere in this Protocol) will be deemed to have been received at the commencement of the next business day.
- 20.3 Any grain accumulated by a customer that is stored in a Port Terminal for a cargo for which the Load Port has been changed, will accrue storage charges in addition to the standard storage charges detailed in Annexure A

¹ 'Similar performing' is a vessel of similar size and capacity, with similar rates of ballasting and loading capability, as the originally nominated vessel.

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of either the *Bulk Wheat Port Terminal Services Agreement* or the *Bulk Grain Port Terminal Services Agreement (Non wheat)*.

- 20.3.1 Charges mentioned under Clause 20.3 will apply from the sixth day after the original Assigned Load Date, until the grain is either loaded to a vessel, or removed from the Port Terminal. Any additional fees accrued are payable prior to the elevation of the grain to a vessel or to other transport.
- 20.4 If a change in Load Port creates operational efficiencies for GrainCorp, GrainCorp in its sole right and discretion may elect to waive some (or all) of Clauses 20.1 and 20.2, and assign a new Load Date for the new Load Port with the agreement of the customer.
-

21 Vessel Loading Order

- 21.1 Under the circumstances where a customer's vessel is delayed due to late arrival or is cancelled (Clause 37), or where a customer notifies GrainCorp of a requirement to change a Load Port (Clause 20), or where a customer's vessel fails regulatory or related surveys (Clause 36), or where a customer has failed to accumulate sufficient grain at a Port Elevator to complete loading (Clause 26), GrainCorp shall have the right to change the Assigned Load Date (Clause 16) of a vessel or to change the order in which vessels are loaded from the order shown on the shipping stem. GrainCorp will only make changes to the vessel loading order to –
- 21.1.1 Ensure efficient provision of Port Terminal services to all customers.
- 21.1.2 Avoid situations arising where a customer or customers with a vessel or vessels scheduled to load after a vessel that is affected by occurrences noted under Clauses 25, 26, 28, 36, 34,35, 36, or 37 would suffer delays and / or additional costs that could be avoided by changing the order in which vessels are loaded.
- 21.2 In making a change to vessel loading order, GrainCorp shall notify all affected parties in writing, where such notice will contain details of –
- 21.2.1 The specific changes to vessel loading order and the affected parties.
- 21.2.2 The reason(s) for the changes made to vessel loading order.
- 21.3 Where GrainCorp changes an Assigned Load Date, or changes the order in which vessels are loaded, GrainCorp shall make appropriate changes to the shipping stem on the next business day after the notification referred to in Clause 21.2 has been issued.
-

22 Vessels Arriving Outside the Confirmed Elevation Period – No Amendment to Assigned Load Date Requested

- 22.1 If a vessel presents for loading no more than 5 days after the end of either a 15 or 30 day Confirmed Elevation Period, and ***no amendment to the Confirmed Elevation Period or the Assigned Load Date has been requested***, the following will apply.
- a) The customer will forfeit their Assigned Load Date and in the event of there not being available capacity in the subsequent 15 or 30 day elevation period, the Booking Fee may be forfeited if a new Load Date cannot be assigned.
 - b) GrainCorp may assign a new Load Date using Clauses 7.5 and 10.3.
 - c) Loading priority will be given to vessels that have Booked Elevation Capacity in the relevant elevation period.
 - d) GrainCorp will apply the Additional Terminal Storage Fee of \$0.51 / T per day to the total tonnage of an assembled cargo for each day from the first day of the elevation period following the Confirmed Elevation Period until the commencement of vessel loading.
- 22.2 GrainCorp **will not** apply the abovementioned fee where delays caused by rain, elevator mechanical failure or other factors that can reasonably be described as relating to the failure of GrainCorp to meet the Assigned Load Date may be the cause of a vessel rolling-back into a following elevation period.
-

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23 Two Port Loading

- 23.1 Where Booked Elevation Capacity requires loading from two Port Terminals, an Assigned Load Date will be allocated at both Port Terminals after the customer's ETA Nomination (Clause 15) is received.

Two Port Loading Delay – No customer fault

- 23.2 Providing that all cargo tonnage has been accumulated at the second Load Port, Assigned Load Date priority at the second Port Terminal will be retained if a delay during loading at the first Port Terminal is no fault of the customer, where delays may include but are not limited to those caused by weather, mechanical breakdown of Port Terminal equipment, or AQIS rejection of infested grain.

Two Port Load Delay – customer's fault

- 23.3 The Assigned Load Date of a vessel at a second load port will lose priority if, during loading at the first Port Terminal, the vessel is delayed due to the customer's fault, including but not limited to, the customer's vessel being late, the customer's failure to accumulate sufficient cargo tonnage at the first Port Terminal, failure of the customer's vessel to pass relevant Marine, AQIS and any other survey required by regulation.
- 23.4 Should priority at a second port be lost due to circumstances noted in Clause 23.3, GrainCorp will review the original Booked Elevation Capacity and will allocate a new Assigned Load Date in the chronological order in which the CNA was originally received, taking into account other Elevation Capacity booking(s) previously accepted by GrainCorp that appear as 'accepted' on the GrainCorp Shipping Stem and the sufficiency of capacity to receive and handle the customer's grain.
-

24 Cargo Assembly Planning – Site Assembly Plan

- 24.1 The customer will work with GrainCorp Logistics and will be required to compile the detailed content of a **Site Assembly Plan (SAP)** prior to commencement of accumulation of a cargo tonnage at the nominated Port Terminal at any time from the date of return of an AOA to GrainCorp (Clause 9), up to, but no later than, the minimum notice period for an ETA Nomination (Clause 15).
- 24.2 The Site Assembly Plan will contain details of,
- 24.2.1 The location of the commodity(s),
 - 24.2.2 The grade(s) and,
 - 24.2.3 The method of accumulation of the cargo tonnage.
- 24.3 GrainCorp is under no obligation to receive grain at any of its Port Terminals for Booked Elevation Capacity more than 21 days in advance of the Assigned Load Date.
- 24.4 Where both GrainCorp and the customer agree, an SAP may allow for the accumulation of cargo tonnage at a Port Terminal more than 21 days in advance of an Assigned Load Date.
-

25 Cargo Assembly by Road from non GrainCorp Storage

- 25.1 Where a customer intends to accumulate cargo tonnage by road from bulk grain storages not managed by GrainCorp, the customer may request to accept sampling and testing services offered by GrainCorp at a site other than the nominated Port Terminal.
-

26 Insufficient Grain Accumulated to Load Vessel

- 26.1 A customer shall accept full responsibility for the accumulation of all cargo tonnage at a GrainCorp Port Terminal and for procuring all transport for the accumulation of such cargo tonnage.
- 26.2 Recognising the responsibilities of the customer for the accumulation of cargo(s) (Clause 27) GrainCorp is not liable for, and does not guarantee, that individual cargo tonnage will be available at a Port Terminal by the Assigned Load Date, regardless of the date(s) upon which CNA(s) were lodged by the customer.
- 26.3 If a customer has not accumulated sufficient grain to complete loading of the vessel at a Port Terminal by the Assigned Load Date, and the vessel has berthed and passed all required Marine, AQIS or other relevant

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surveys, GrainCorp may commence to load the vessel with any and all applicable grain owned by the customer at the Port Terminal, in such a manner as to comply with the directions of the captain of the vessel and / or stevedore that will ensure the stability of the vessel. GrainCorp may then request the movement of a part loaded vessel off the berth at the customer's expense, if the next vessel on the Shipping Stem is ready to berth and has sufficient cargo tonnage assembled to commence and complete loading.

- 26.4 A relocated vessel may be allowed back on the berth for the recommencement of loading when the balance of the cargo tonnage has been accumulated at the Port Terminal, taking into account:

26.4.1 Other Booked Elevation Capacity

26.4.2 The sufficiency of capacity to receive and handle the customer's grain at the time of the anticipated commencement of cargo tonnage accumulation at the port.

27 Port Terminal Stock Swaps

- 27.1 Should a customer fail to accumulate sufficient cargo tonnage in a timely manner (Clause 29), the customer will be encouraged to 'swap' stock with another customer holding title to suitable grain at the Port Terminal.
- 27.2 When a 'stock swap' occurs, all transactions related to such a swap(s) must be completed prior to completion of elevation of grain to a vessel.
- 27.3 Charges described in Annexure A of either the *Bulk Wheat Port Terminal Services Agreement* or the *Bulk Grain Port Terminal Services Agreement (Non wheat)* will apply to all stock swaps involving the transfer of title of grain held in storage at all GrainCorp Port Terminals.

28 Grain Origination - Ex GrainCorp Storage

- 28.1 If grain arriving at the Port Terminal from a GrainCorp country site cannot be elevated to a nominated vessel due to quality reasons that are no fault of the customer (excluding infestation or where the customers cargo quality / grade specifications vary from the relevant Grain Trade Australia receival standards) GrainCorp will -
- 28.1.1 Replace that grain with grain of the nominated grade and at GrainCorp's cost, or
- 28.1.2 Deem the customers 'Grain Accounting Stock Tonnes' in the GrainCorp storage network for that component of stock outside of the quality requirements referred to in Clause 28.1. to have remained at the originating GrainCorp country site, or
- 28.1.3 'Stock swap' at the Port Terminal the rejected grain with grain of an equivalent quality profile to that specified in the CNA, in doing so, GrainCorp will assume ownership of the rejected grain at the Port Terminal.
- 28.2 If insect infestation is detected in grain arriving at the Port Terminal from a GrainCorp Storage, GrainCorp will comply with its obligations under the *Bulk Wheat Port Terminal Services Agreement* or the *Bulk Grain Port Terminal Services Agreement (Non wheat)*.

29 Grain Origination - Ex Non GrainCorp Storage

- 29.1 GrainCorp will not assume any liability for any losses associated with grain sent to the Port Terminal from non-GrainCorp storage facilities that does not meet the quality specifications specified in an accepted CNA and related SAP.
- 29.2 If grain received from non-GrainCorp storage facilities fails to meet the quality specifications defined by the customer in the relevant CNA and related SAP, or such grain is rejected by AQIS as being unfit for elevation onto a vessel, the customer remains the owner of the grain until it is removed from the Port Terminal in its entirety. Until such grain is removed, the grain will be subject to any applicable storage and related fees detailed in Annexure A of either the *Bulk Wheat Port Terminal Services Agreement* or the *Bulk Grain Port Terminal Services Agreement (Non wheat)*.
-

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30 Treated or Fumigated Grain

- 30.1 The customer must advise, prior to the dispatch of any grain to a Port Terminal, if that grain is to be, or has been, treated or fumigated with any grain protectants or insecticides approved for application to grain.
- 30.2 The customer must also provide advice on the chemical treatment used, or planned to be used on grain, and must not deliver grain to the Port Terminal
- (a) until advised that such treatments are acceptable to GrainCorp, or
 - (b) that poses any significant market risks that may cause AQIS to reject the grain on inspection, or would cause the grain to fail Australian or importing country residue surveillance.

Note - Port Terminals have a nil tolerance for fumigant residues above accepted Maximum Residue Levels.

31 Fumigation Clearance Certificate

- 31.1 Where grain has been fumigated, the customer must provide a '**Clearance Certificate**' stating that the commodity is free from all fumigant residues, issued by a licensed fumigator.
- 31.2 The requirement under this Clause does not apply to grain received from GrainCorp Storages, as all grain treatment and fumigation activities are carried out in a manner that ensures they meet Port Terminal grain receipt requirements.
-

32 Additional Terminal Storage Charge for Residual Grain at the Port Terminal

- 32.1 Any residual grain remaining in the Port Terminal after the completion of vessel loading, or as the result of a vessel cancellation, will accrue an **Additional Terminal Storage Charge** detailed in Annexure A of either the *Bulk Wheat Port Terminal Services Agreement* or the *Bulk Grain Port Terminal Services Agreement (Non wheat)*.
- 32.2 If the customer continues to retain title to residual grain, or is unable to relocate residual grain, the customer acknowledges that GrainCorp may reposition or relocate grain to another (non Port Terminal) site at the customer's cost, including storage, freight and weighing.
- 32.3 Where grain has been delivered to a Port Terminal from non-GrainCorp storage facilities and is rejected as being unfit for loading onto a vessel, GrainCorp will not be liable for any loss relating to the degradation of the quality of that grain. The customer remains the owner of this grain at all times and until the grain is sold or removed from the Port Terminal.
- 32.4 Clause 32.1 will not apply if:
- 32.4.1 Residual stock remaining in the Port Terminal as a result of a rejection to load to vessel by AQIS was moved to the Port Terminal from a GrainCorp country storage, or
 - 32.4.2 The customer has Booked Elevation Capacity with an Assigned Load Date within 14 days of the previous vessel's completion of loading, where previously rejected grain may be included as part of that cargo tonnage, or;
 - 32.4.3 The customer sells residual grain to another customer, or agrees that the grain can be included as a component of the cargo of a vessel of another customer, where cargo tonnage accumulation for that customer commences within 14 days of the completion of loading of the vessel upon which the rejected grain was originally to be loaded.
-

33 Provision of Transport for the Accumulation of Cargo Tonnage

- 33.1 For the avoidance of doubt, the customer is responsible for organising all matters related to the booking and / or provision of transport.
- 33.2 By accepting a CNA, GrainCorp does not undertake to provide to the customer any grain transportation services associated with the accumulation of grain for an accepted CNA.

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- 33.3 Where a customer specifically contracts GrainCorp to provide cargo tonnage accumulation services, or where GrainCorp is specifically contracted to supply grain transportation services to a customer, a contract for the provision of such services will be entered into, and such a contract will be separate to the provision of port Terminal services described under this Protocol.
-

34 Vessel Readiness to Load – In Transit Marine Survey

- 34.1 If GrainCorp assesses that a vessel presents a higher than acceptable risk of failing a Marine, AQIS or related survey required under Regulation, GrainCorp may request that the customer provide assurance of the fitness or readiness of a vessel to load by procuring an 'in transit' marine surveyor report, either at the previous discharge port or at anchor at the Load Port. GrainCorp may refuse to accept a vessel 'alongside' to present for the Marine, AQIS or related survey required under Regulation if such a request is not complied with, within three (3) Business Days.
- 34.2 Any costs incurred in relation to Clause 34.1, shall be the responsibility of the customer.
- 34.3 GrainCorp may record all information relating to the vessel readiness to load performance of the customer, its shipping agents and shipping lines, and may incorporate this information into relevant CNA assessment procedures in the future.
-

35 Vessel Authority to Load

- 35.1 Prior to calling a vessel to the berth and commencing loading, GrainCorp will forward to the customer an **Authority to Load** for the customer's approval. The Authority to Load will include all quality information relating to the customer's cargo.
- 35.2 The customer must approve the Authority to Load and return it to GrainCorp prior to the commencement of elevation of grain to a vessel.
- 35.3 The customer acknowledges that GrainCorp has the right to mitigate dust emissions at the Port Terminal. Such mitigation may include moisture conditioning of grain paths.
- 35.4 Notwithstanding any other provision in this Protocol, the customer understands and accepts that matters and events beyond GrainCorp's control may occur, including but not limited to, changes in vessel scheduling and arrival or departure times, failure of vessels to pass any quarantine requirements or other inspections, grain quality related matters, harbour / port congestion, berth occupation by vessels under the direction of a Port Authority, lack of performance and delays due to freight or other service providers and rain or high winds that prevent vessel loading which means GrainCorp cannot guarantee that cargo tonnage will be ready for loading, or that they can or will be loaded as scheduled. GrainCorp will try to avoid any changes or delays where possible, and will keep the customer informed.
-

36 Vessels Failing Regulatory Survey

- 36.1 The customer is responsible for the condition and state of readiness of vessels presented to GrainCorp for loading and for a vessel passing relevant Marine, AQIS and any other survey required by regulation relating to the export of grain from Australia.
- 36.2 In the event of the customer's vessel failing a Marine, AQIS or other survey that may be required by regulation, GrainCorp reserves the right to give berthing and elevating priority to other vessels on its Shipping Stem, and to assign any vessel that has failed a survey, which is re-presented for loading, a new Assigned Load Date.
- 36.3 Where a vessel fails Marine, AQIS or other survey and loading is delayed until the elevation period following the Confirmed Elevation Period, the following will apply.
- a) On the eleventh day after the ~~original~~ most recent Assigned Load Date, GrainCorp will apply the Additional Terminal Storage Fee of \$0.51 / T per day to the total tonnage of the assembled cargo until the commencement of vessel loading.
 - b) GrainCorp ~~may~~ will assign a new Assigned Load Date using Clauses 7 and 16.
-

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- 36.4 Where a vessel is not able to load until an Elevation Period following the end of a Confirmed Elevation Period, loading priority will be given to vessels that have Booked Elevation Capacity in the relevant elevation period.
-

37 Late or Cancelled Vessels

- 37.1 If a vessel fails to be available for loading within ten (10) days of the Assigned Load Date, or if a vessel has been cancelled by the customer then -
- 37.1.1 The customer forfeits any Booking Fee previously paid and remains liable for any Booking Fee not paid (even if not yet invoiced).
 - 37.1.2 If the customer wishes to make a new Elevation Capacity booking, the customer must submit a new CNA per Clauses 3 through 9 and must pay a new Booking Fee.
- 37.2 All grain in a Port Terminal accumulated for a vessel that is late or cancelled, will accrue additional storage charges (in addition to the standard storage charges detailed in *Annexure A of either the Bulk Wheat Port Terminal Services Agreement or the Bulk Grain Port Terminal Services Agreement (Non wheat)*).
- 37.2.1 Such charges will apply from the eleventh (11th) day after the Assigned Load Date relating to late or cancelled Booked Elevation Capacity (Clause 37.1 and 37.2) until the grain is either elevated to a vessel or removed from the Port Terminal.
- 37.3 Any additional fees accrued are payable prior to the elevation of the relevant grain to a vessel or other transport.
-

38 Dispute Resolution

If a customer wishes to dispute a decision to reject a CNA (refer to Clause 7 for CNA assessment criteria) or to change the vessel loading order (refer to Clause 21), the following procedures will apply:

- 38.1 The customer must notify GrainCorp in writing of their intent to dispute, the reason(s) for the dispute and any requested resolution (**Dispute Notice**) by 4.00 pm AEST of the next business day following issue of a notice of rejection of a CNA or the publication of a change to the vessel loading order.
- 38.2 GrainCorp must respond to the customer raising a dispute within two business days after 4.00 pm AEST of the day of receipt of a Dispute Notice (**Response**).
- 38.3 A Response must set out whether GrainCorp intends to reverse its decision to reject a CNA, or to change the vessel loading order, and if not, must provide a written explanation or basis for GrainCorp's decision.
- 38.4 If the customer is not satisfied with the Response, or GrainCorp fails to respond in the manner set out in Clause 38.3, the customer may serve a notice to escalate (**Escalation Notice**) on GrainCorp no later than two Business Days after 4.00 pm AEST of the day of receipt of a Response or from the last day the Response should have been received.
- 38.5 Upon receipt of an Escalation Notice, GrainCorp must at the request of the customer, arrange a meeting within five (5) business days of receipt of the Escalation Notice between GrainCorp's General Manager, Ports and the customer to discuss and resolve the dispute.
- 38.6 To avoid doubt, Clauses 38.1 to 38.5 do not apply to any other dispute under these Protocols including, to avoid doubt, a dispute relating to the grade, quality, sampling, testing, or classification of grain that accumulated for or has been accumulated for elevation onto a vessel.



GRAINCORP OPERATIONS LIMITED

(ABN: 52 003 875 401)

BULK WHEAT and BULK GRAIN PORT TERMINAL SERVICES PROTOCOLS

Document Date: May 2010
Season: 2010/11
Appended as Annexure B to: 2009 / 11 Bulk Wheat Port Terminal Services Agreement
2010 / 11 Bulk Grain Port Terminal Services Agreement (Non-wheat)

These Port Terminal Services Protocols apply to the handling of regulated grain (bulk wheat) and to other non-regulated grains handled through Port Terminals owned by GrainCorp.

Application

If the customer requests GrainCorp to load grain on a vessel at a Port Terminal owned by GrainCorp, the customer must seek to book Elevation Capacity and indicate their Requested Elevation Period by submitting a Cargo Nomination Application (**CNA**).

The following procedures apply to requesting Elevation Capacity and an Elevation Period, accepting or declining a CNA, modifying a CNA and for managing the allocation of Terminal Elevation Capacity at GrainCorp's Port Terminals.

Applications and Notices - Important directions

All CNA applications, Acknowledgements of Acceptance (**AOA**), amendments to CNA's, 21 day ETA nominations, 10 day Vessel Nominations, and other related matters and modifications and other relevant notices, must be completed using the GrainCorp Workflow Online Platform. Customers will receive a Workflow online login. The Workflow platform is operated through a web browser. Any notices and applications pursuant to these Protocols and directed to GrainCorp that cannot be completed on the GrainCorp Workflow platform are to be sent to the email addresses for the applicable Port Terminal(s) set out below. GrainCorp will make available on its web site PDF document versions of all forms relevant to these protocols. These forms should only be used if the Workflow platform is not available.

To avoid doubt, notices and applications other than those required to be completed on the GrainCorp Workflow platform are to be directed to the email addresses of any relevant Port Terminal.

Note – vessels requiring two port loading should forward relevant information to BOTH ports.

As a provider of Port Terminal services, GrainCorp is subject to audit by both Wheat Exports Australia and the Australian Competition & Consumer Commission (**ACCC**). Therefore, GrainCorp must ensure that all actions relating to the provision of port terminal services are recorded and that an 'audit trail' is established.

GrainCorp staff have been instructed not to act on, or confirm, any verbal instruction from customers unless those instructions are confirmed in writing or via the workflow system.

PORT	EMAIL ADDRESS
Mackay	mackayshipping@graincorp.com.au
Gladstone	gladstoneshipping@graincorp.com.au
Fisherman Is	fishermanisshipping@graincorp.com.au
Carrington	carringtonshipping@graincorp.com.au
Port Kembla	portkemblashipping@graincorp.com.au
Geelong	geelongshipping@graincorp.com.au

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Portland

portlandshipping@graincorp.com.au

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38 Dispute Resolution..... 17

1 Terms and Acronyms

Any terms not defined in this Protocol have the same meaning as those defined in the GrainCorp Bulk Wheat Port Terminal Services Agreement and / or the Bulk Grain Port Terminal Services Agreement (Non-Wheat) for the relevant season.

Acknowledgement of Acceptance (AOA). GrainCorp will forward an AOA to a customer following receipt and approval of a CNA. By sending an AOA to a customer, GrainCorp is making an 'offer' to confirm the booking of Elevation Capacity at a particular terminal during a particular Elevation Period. By accepting an AOA, the customer is agreeing to pay the relevant Booking Fee and assuming responsibility for advising GrainCorp of the manner in which Elevation Capacity is to be supplied.

Booked Elevation Capacity. This is the number of tonnes of grain cargo elevation GrainCorp agrees to provide to a customer at a particular time during the Confirmed Elevation Period, following completion and return to GrainCorp of an AOA. Booked Elevation Capacity can consist of one or more 'lifts' of 'cargos' onto vessels.

Booking Fee. This is the per tonne fee a customer is liable to remit to GrainCorp once they acknowledge and accept an offer of Elevation Capacity by completing and returning an AOA.

CNA. This is the application submitted to GrainCorp via the online workflow platform by customers seeking to book grain Elevation Capacity at one or multiple GrainCorp grain exportPort Terminals.

Confirmed Elevation Period (CEP). This is the period of time in which Elevation Capacity is confirmed as being accepted by a customer, and will be available at a particular Port Terminal. The Confirmed Elevation Period can be a period of one month, commencing on either the first or the fifteenth day of a calendar month, or a 15 day period within the confirmed elevation period, as nominated no less than 28 days prior to the commencement of that confirmed elevation period.

Elevation Capacity. This is the number of tonnes of grain cargo elevation GrainCorp agrees to provide to a customer at a particular time during a particular period.

Elevation Period. This can be a period of one month, commencing on either the first or the fifteenth day of a calendar month, or a 15 day period as defined in a CNA.

ETA Nomination. This has the meaning given in clause 19.1.

Load Port. This has the meaning given in clause 4.1.1.

Nominated Vessel. This has the meaning given in clause 4.1.3.

Requested Elevation Period (REP). This is the period in which a customer has requested Elevation Capacity. The Requested Elevation Period can be a period of one month, commencing on either the first or the fifteenth day of a calendar month or a period of any 15 days within the confirmed elevation period, as nominated no less than 28 days prior to the commencement of the elevation period.

Vessel Nomination. This has the meaning given in clause 20.

2 Shipping Stem

Pursuant to the obligations of wheat export Port Terminal service providers under the Wheat Export Accreditation Scheme 2008 established under the Wheat Export Marketing Act 2008 (Cth) ("Act"), GrainCorp will publish 'Shipping Stem' information on its website www.graincorp.com.au in accordance with Section 24(4) of the Act (Shipping Stem).

3 Cargo Nomination Application Procedure

- 3.1 If a customer requests elevation of grain onto a vessel at a Port Terminal operated by GrainCorp, the customer must submit a **Cargo Nomination Application (CNA)** to GrainCorp via the Workflow Online Platform.

28 Day Rule

- 3.2 A CNA must be submitted to GrainCorp by a date not less than 28 days prior to the commencement date of the **Requested Elevation Period** (Clause 4.1.4).

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- 3.3 For the avoidance of doubt, the customer is responsible for nominating the Requested Elevation Period.

Variation of the 28 Day Rule

- 3.4 The customer may submit a CNA less than 28 days prior to the commencement date of the Requested Elevation Period, but should only seek to do so after consulting with GrainCorp.
- 3.4.1 Should a client fail to consult with GrainCorp in compliance with Clause 3.4, any CNA submitted within the 28 day period will be automatically rejected.
- 3.5 Acceptance of a CNA is subject to meeting all of the relevant criteria in this Protocol.
-

4 Cargo Nomination Application - Requested Elevation Period, Load Port and Cargo Specification

- 4.1 A CNA submitted under Clause 3 must include the following information.
- 4.1.1 The port or ports at which the cargo is to be loaded (**Load Port**).
- 4.1.2 A separate CNA is required for each port if a customer requires a two port load.
- 4.1.3 The name of the vessel ("**Nominated Vessel**") (if known) (refer to Clause 17).
- 4.1.4 A **Requested Elevation Period** that may consist of either,
- (a) A period of one month, commencing on either the first or the fifteenth day of a calendar month, or
- (b) A 15 day period within the confirmed elevation period as nominated no less than 28 days prior to the commencement of the confirmed elevation period.
- 4.1.5 A cargo specification that outlines the grain(s) and / or grade(s) of the nominated cargo.
- 4.1.6 The proposed cargo tonnage.
- Where possible, on lodgement, a CNA should also contain the following.
- 4.1.7 Details of any special or unusual features of the nominated vessel that may affect in any way vessel loading performance. (For the avoidance of doubt, Tween Decker vessels will not be accepted for loading at GrainCorp Port Terminals).
- 4.1.8 Details of the holders of any encumbrances over the commodities that will comprise the cargo and the proposed release of any encumbrances.
- 4.1.9 The intended destination of the cargo.
- 4.1.10 All relevant phytosanitary and other certification or regulatory requirements of the destination country that will ensure the cargo meets all relevant market access requirements.
- 4.2 Where a customer is unable to furnish the information required in Clauses 4.1.7, 4.1.8, 4.1.9 and 4.1.10 on lodgement of a CNA, the customer has until 21 days prior to the estimated time of arrival (Clause 15) of a vessel to provide the information required. **Should the information not be supplied at that time, the Booked Elevation Capacity may be cancelled and any associated Booking Fee will be forfeited.**
-

5 Cargo Nomination Application - Time of Lodgement

- 5.1 A CNA sent to GrainCorp outside business hours (8:00 am to 4:00 pm AEST) Monday to Friday or on public holidays, is taken to have been received at the commencement of the next business day (in the state of Queensland).
- 5.2 GrainCorp will place all CNA's received on the Shipping Stem the next business day following receipt. Each CNA will be noted as 'Pending Assessment'.
-

6 Cargo Nomination Application Assessment Timing

- 6.1 CNAs will be assessed in chronological order of receipt.

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- 6.2 GrainCorp will complete an Assessment of a CNA within a maximum of five (5) business days following receipt, commencing from 8.00 AM on the first business day following receipt of a CNA.

7 Cargo Nomination Application - Assessment Criteria

The initial CNA assessment will take consideration of the following -

- 7.1 That the customer has used the approved method of lodging a CNA (Clause 3).
- 7.2 Where the assessment of a CNA is for the export of bulk wheat, that the customer is accredited by Wheat Exports Australia to export wheat in bulk.
- 7.3 That, in the case of the export of regulated grain (bulk wheat), the customer has signed and lodged with GrainCorp a *Bulk Wheat Port Terminal Services Agreement*.
- 7.4 That, in the case of the export of non-regulated grain, the customer has signed and lodged with GrainCorp a *Bulk Grain Port Terminal Services Agreement (Non-wheat)*.
- 7.5 Whether GrainCorp has available sufficient intake, grain segregation, storage and grain elevation capacity at the Port Terminal that will allow accumulation of the nominated elevation task / cargo at the Port Terminal, taking into account, other Booked Elevation Capacity previously accepted by GrainCorp that appears as 'accepted' on the GrainCorp Shipping Stem.
- 7.6 Any Regulatory and Market risks (Refer to relevant definition in the GrainCorp Bulk Wheat Port Terminal Services Agreement and / or Bulk Grain Port Terminal Services Agreement (Non wheat)).
- 7.7 Confirmation that the customer will/has contract(ed) sufficient rail and/or road transport prior to the Requested Elevation Period to accumulate the grain tonnage at the Port Terminal for the Booked Elevation Capacity.

8 Notification of a CNA Acceptance or Rejection

- 8.1 If GrainCorp completes the assessment of a CNA and accepts it, on the same day GrainCorp will notify the customer by forwarding to the customer an **Acknowledgement of Acceptance of a CNA (AOA)** (Clause 9).
- 8.2 If GrainCorp completes the assessment of a CNA and rejects the CNA, GrainCorp will, on the day of rejection, notify the customer of the decision to reject and will provide to the customer in writing reason(s) for the decision.

9 Acknowledgement of Acceptance of a CNA, a Requested Elevation Period and Booking Fee

- 9.1 To confirm the booking of Elevation Capacity and the Confirmed Elevation Period, the customer must complete and return to GrainCorp an AOA within two (2) business days of 5.00 pm AEST of the day of notification of acceptance of a CNA (Clause 8).
 - 9.1.1 If a customer fails to submit an AOA within the time specified in Clause 9.1, the CNA will lapse and become invalid as a consequence of not having been confirmed by the customer. The Booked Elevation Capacity related to a lapsed CNA will become available for booking by another customer from the commencement of the first business day following the end of the period specified in Clause 9.1.
- 9.2 A customer is only able to either **accept or reject** the offer of Elevation Capacity and the Confirmed Elevation Period made by GrainCorp. No amendments to the requested Elevation Capacity or Confirmed Elevation Period can be made on an AOA.
- 9.3 Upon returning to GrainCorp an AOA in accordance with clause 9.1, the customer will be liable for the Booking Fee and will agree to the payment terms of Booking Fee invoicing and payment contained within Annexure A of either the *Bulk Wheat Port Terminal Services Agreement* or the *Bulk Grain Port Terminal Services Agreement (Non wheat)*.
- 9.4 On the business day following the receipt of an AOA from the customer, GrainCorp will change the status of any relevant CNA(s) on the Shipping Stem, from 'Pending Assessment' to 'Accepted'.

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- 9.5 The Booking Fee payable upon the return of an AOA to GrainCorp is in addition to any other fees that may be applicable to the receipt, storage, and elevation of grain for the nominated cargo elevation.
- 9.6 Failure to make payment in cleared funds within seven (7) days of receiving a tax invoice for a Booking Fee will cause the customer to lose any allocated Booked Elevation Capacity and Confirmed Elevation Period relevant to the unpaid invoice(s).
- 9.7 In a circumstance where the customer
- (a) provides an AOA but subsequently fails to comply with the requirements of Clauses 9.6, 15, 17, 21, 19, 20, 21, 22, 23, 24 or 37, or
 - (b) cancels the Booked Elevation Capacity;
- the Booked Elevation Capacity and Confirmed Elevation Period may be cancelled by GrainCorp and the customer will forfeit any Booking Fee previously paid, and / or remain liable for any Booking Fee agreed to under Clauses 9.3, 9.5 and 9.9 (even if not yet invoiced).
- 9.8 Where a customer executes Booked Elevation Capacity and the total tonnage elevated is **less** than the booked tonnage for which a Booking Fee has been paid, GrainCorp will rebate to the customer an amount at the relevant Booking Fee rate equivalent to the difference between the booked tonnage and the actual tonnage elevated, up to an amount not exceeding 10% of the original Booking Fee amount.
- 9.9 Where a customer executes Booked Elevation Capacity and the total tonnage elevated is **more** than the booked tonnage for which a Booking Fee has been paid, GrainCorp will invoice the customer an amount at the relevant Booking Fee rate equivalent to the difference between the actual tonnage elevated and the original Booking Fee.
-

10 Execution of Booked Elevation Capacity

- 10.1 Booked Elevation Capacity will not be executed prior to the first day of a Confirmed Elevation Period, and must be executed before the last day of a Confirmed Elevation Period.
- 10.2 If due to factors within the control of the customer, that customer is unable to execute Booked Elevation Capacity within the Confirmed Elevation Period (plus 5 business days from the last day of that Period), or within another elevation period to which Booked Elevation Capacity has been moved, the Booking Fee related to any unused Booked Elevation Capacity will be forfeited.
- 10.3 Elevation Capacity booked between 1st October and 30th September (the shipping year) **must be used** within that shipping year.
- 10.4 Elevation Capacity not executed during a shipping year **cannot be carried** forward into the next shipping year.
- 10.5 Any Booking Fees related to unused Booked Elevation Capacity **will be forfeited** after the end of a shipping year (30th September) and Booking Fees relating to forfeited Booked Elevation Capacity will also be forfeited.
-

11 Request for a change to Load Port and/or Confirmed Elevation Period

- 11.1 A customer may seek to make a Load Port and/or Confirmed Elevation Period change to a CNA shown as 'Approved' on the GrainCorp shipping stem by,
- a. Consulting with GrainCorp Logistics and discussing the details of the change to the Load Port and/or Confirmed Elevation Period required by the customer.
 - b. Amending the relevant CNA in workflow and submitting the request to GrainCorp.
- 11.2 A change to a Confirmed Elevation Period can include a change to the length of the Confirmed Elevation Period from a period of one month to a shorter period of any consecutive 15 days within the Confirmed Elevation Period.
- 11.3 A request to change a Confirmed Elevation Period and/or Load Port must be lodged no later than 21 days prior to the nominated estimated time of arrival (ETA) of a vessel. Refer to Clause 9 and 14 of the Protocols.

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- 11.4 Assessment of a request to make a Load Port or Confirmed Elevation Period change will be made subject to all relevant clauses in these Protocols, including Clause 6.
-

12 Managing Booked Elevation Capacity

- 12.1 Once Elevation Capacity has been booked, the period of time in which the capacity is to be delivered becomes the Confirmed Elevation Period.
- 12.2 A customer that has accepted Elevation Capacity by accepting any or all AOA's sent to them by GrainCorp, has 'Booked Elevation Capacity'.
- 12.3 Booked Elevation Capacity can be divided by the customer into more than one parcel during the Confirmed Elevation Period. For example, if a customer has Booked Elevation Capacity of 50,000 T, in a Confirmed Elevation Period, they can elect to have that capacity delivered as multiple lifts into multiple vessels. Booked Elevation Capacity **cannot be increased by dividing the booked capacity into multiple lifts and adding the +10% cargo elevation allowance to each multiple**. Multiple lifts shall collectively equal no more than the sum of the Booked Elevation Capacity. If a customer wishes to divide Booked Elevation Capacity into multiple lifts, they must,
- Contact GrainCorp shipping operations in Toowoomba and provide advice on their intentions.
 - Amend existing CNA's to reflect the change in vessel tonnes
 - Submit new 'supplementary' CNA's via workflow for the relevant tonnages, making note of the reference number of the existing original CNA that refers to the Booked Elevation Capacity that appears on the shipping stem.
 - Ensure that GrainCorp shipping operations in Toowoomba is aware of the request of the customer.

GrainCorp will then assess the 'supplementary' CNA(s) against Clause 7.5 of the Protocols. Acknowledgement of Acceptance(s) will be forwarded to the customer after the assessment of the CNA's is complete.

- 12.4 The ability of GrainCorp to divide Booked Elevation Capacity into multiple lifts during the Confirmed Elevation Period will depend upon other elevation bookings during that period.
-

13 Reducing Booked Elevation Tonnage

- 13.1 To **decrease** the elevation tonnage requested for a particular elevation period, a customer must firstly accept an AOA and then submit an amended CNA via the GrainCorp Workflow system to reflect the reduced elevation tonnage required. GrainCorp will then assess the amended CNA against criteria noted in Clause 7 of the Protocols, with particular reference to Clause 7.5.

Note.

Reducing the requested elevation tonnage does not reduce the liability for the Booking Fee applied to the original CNA. The amount that represents the difference between the CNA tonnage accepted by the customer through the submission of an AOA and any subsequent reduction to the requested elevation tonnage made by a customer **will be forfeited**.

Where a customer requests a reduction in the Booked Elevation Tonnage and the actual tonnage elevated to vessel is more than 10% above the Booked Elevation Capacity, the customer will be liable to pay a Booking Fee on the difference between the Booked Elevation Capacity plus 10%, and the actual tonnage elevated to vessel.

14 Increasing Booked Elevation Tonnage

- 14.1 To **increase** the Elevation Capacity requested for a particular elevation period, a customer must firstly submit a CNA, then accept the related AOA and then submit an amended CNA via the GrainCorp Workflow system requesting that additional Elevation Capacity be added to the Booked Elevation Capacity. Customers should consult the GrainCorp shipping stem prior to submitting additional requests for elevation tonnage, to ensure

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that the relevant Port Terminal has sufficient elevation capacity to meet additional demand in the Requested Elevation Period.

- 14.2 GrainCorp will assess an amended CNA against the criteria noted in Clause 7 of the Protocols, with particular reference to Clause 7.5. Should sufficient grain Elevation Capacity be available, GrainCorp will send to the customer an AOA relating to the CNA requesting additional Elevation Capacity.
 - 14.3 If a customer accepts the offered Elevation Capacity, they will be **liable to pay a Booking Fee** equal to the total of the additional elevation tonnage requested (Refer to Clause 9).
-

15 Estimated Time of Arrival (ETA) Nomination – Minimum 21 Day Notice

- 15.1 At any time from the return of an AOA to GrainCorp by a customer (Clause 9), up to, but no later than, 21 days prior to the estimated time of arrival of a vessel, the customer must lodge a formal **ETA Nomination** by updating the original CNA.
 - 15.2 The ETA nominated by the customer must be within the Confirmed Elevation Period.
 - 15.3 Should a customer fail to comply with this minimum notice period, the customer will forfeit their Booked Elevation Capacity and Booking Fee (Clause 9.7).
 - 15.4 An ETA Nomination received by GrainCorp outside business hours (8:00 am to 4:00 pm AEST) Monday to Friday or on public holidays is taken to have been received at the commencement of the next business day.
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16 Assigned Load Date

- 16.1 Following the nomination of a vessel ETA (Clause 15.1) and within 1 business day of receipt of an ETA Nomination, GrainCorp will notify the customer of an **Assigned Load Date**, which is the date on which GrainCorp has scheduled the commencement of vessel loading. On provision of such advice to a customer, GrainCorp will update the shipping stem with the relevant information.
 - 16.2 Where required and in the order in which CNAs were initially received and with reference to Clauses 15, 21, 22, 23, 24, 35, 36, and 37, GrainCorp will update the Assigned Load Date taking into account:
 - 16.2.1 Other Booked Elevation Capacity previously accepted by GrainCorp that appear as 'accepted' on the GrainCorp shipping stem, and
 - 16.2.2 The sufficiency of capacity to receive and handle the customer's grain at the time of the anticipated commencement of cargo accumulation at the port.
 - 16.3 GrainCorp reserves the right to change the Assigned Load Date and will immediately notify the customer of any such decision, taking into account factors mentioned in sub clauses 16.2.1, 16.2.2 and other relevant factors.
-

17 Vessel Nomination – Minimum 10 Day Notice

- 17.1 At any time from the ETA Nomination (Clause 15.1) up to but no later than 10 days prior to the date of the Nominated ETA, the customer must lodge a **Vessel Nomination** by adding the information required in Clauses 17.1.1 to 17.1.5 to the original CNA.
 - 17.1.1 The name of the Nominated Vessel;
 - 17.1.2 Details of the vessel length, depth, and maximum air draft, or any other vessel characteristic that may inhibit or affect loading performance;
 - 17.1.3 Any variations that may have been applied and accepted to the original CNA,
 - 17.1.4 Details of the last three (3) cargoes carried and the last three (3) ports of call,
 - 17.1.5 Information relating to any preparations made to the vessel to ensure it passes the regulatory Marine and AQIS pre-loading surveys.

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- 17.2 Should a customer fail to comply with this minimum notice period, the customer will forfeit their Booked Elevation Capacity and Booking Fee.
 - 17.3 A Vessel Nomination received by GrainCorp outside business hours (8:00 am to 4:00 pm AEST) Monday to Friday or on public holidays is taken to have been received at the commencement of the next business day.
-

18 Variations to ETA Nomination or Vessel Nomination Notice Periods

- 18.1 At the request of a customer GrainCorp may vary or waive the minimum notice periods noted in Clauses 15 and / or 17 following consultation with a customer.
 - 18.2 GrainCorp will not consider any variation to, or waiving of, the notice periods noted in Clauses 15 and / or 17 unless a customer provides a written request seeking GrainCorp to do so, before the notice period expires.
 - 18.3 The action of submitting a request under sub clause 18.1 does not guarantee that GrainCorp will grant a variation or waiver. In making any decision to vary or waive the minimum notice periods noted in Clauses 15 and / or 17, GrainCorp will consider the extent to which customer's inability to comply with the notice periods is within the customer's control and the impact of the variation on the efficient operation of the Port Terminal and will notify the customer in writing of the relevant decision within one (1) business day of receipt of a request.
-

19 Substituting Nominated Vessels

- 19.1 Subject to Clause 17, the customer may, by submitting amendments to Section 1 of the relevant CNA, substitute a Nominated Vessel with another vessel at the nominated Port Terminal for the Booked Elevation Capacity (+/- 10% tolerance on elevated tonnes), provided the substituted vessel is a 'similar performing' vessel¹.
 - 19.2 The customer will not be required to pay a new Booking Fee, or to submit a new CNA if a vessel substituted under Clause 19.1 will arrive within five (5) days of the most recent Nominated ETA (Clause 15).
 - 19.3 If the customer's substitution involves an increase in Booked Elevation Capacity of more than 10%, commodity or grade substitution, or any alteration to the Site Accumulation Plan that will impact upon the accumulation or elevation of other customers' cargo, the customer, if demand for elevation at the Port Terminal is committed to other customers or if the substitution request requires activities that will decrease the efficiency of grain elevation at the Terminal, may be required to pay a new Booking Fee and / or may be required to submit a new CNA (Clause 4).
 - 19.4 Notification of a request for substitution of a Nominated Vessel received by GrainCorp outside business hours (8:00 am to 4:00 pm AEST) Monday to Friday or on public holidays is taken to have been received at the commencement of the next business day.
-

20 Changing a Load Port

- 20.1 The customer must inform GrainCorp no later than 21 days from the Assigned Load Date of the customer's desire to change the Load Port. If a customer wishes to submit a request to change a Load Port, and to secure a new Assigned Load Date (refer to Clauses 3 through 9) the request can only be processed by updating the relevant CNA by updating the original CNA using the GrainCorp Workflow Online Platform.
- 20.2 Any notification of a change in Load Port must be submitted to GrainCorp during business hours (8:00 am to 4:00 pm AEST). Any notification received outside business hours (as specified elsewhere in this Protocol) will be deemed to have been received at the commencement of the next business day.
- 20.3 Any grain accumulated by a customer that is stored in a Port Terminal for a cargo for which the Load Port has been changed, will accrue storage charges in addition to the standard storage charges detailed in Annexure A

¹ 'Similar performing' is a vessel of similar size and capacity, with similar rates of ballasting and loading capability, as the originally nominated vessel.

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of either the *Bulk Wheat Port Terminal Services Agreement* or the *Bulk Grain Port Terminal Services Agreement (Non wheat)*.

- 20.3.1 Charges mentioned under Clause 20.3 will apply from the sixth day after the original Assigned Load Date, until the grain is either loaded to a vessel, or removed from the Port Terminal. Any additional fees accrued are payable prior to the elevation of the grain to a vessel or to other transport.
- 20.4 If a change in Load Port creates operational efficiencies for GrainCorp, GrainCorp in its sole right and discretion may elect to waive some (or all) of Clauses 20.1 and 20.2, and assign a new Load Date for the new Load Port with the agreement of the customer.
-

21 Vessel Loading Order

- 21.1 Under the circumstances where a customer's vessel is delayed due to late arrival or is cancelled (Clause 37), or where a customer notifies GrainCorp of a requirement to change a Load Port (Clause 20), or where a customer's vessel fails regulatory or related surveys (Clause 36), or where a customer has failed to accumulate sufficient grain at a Port Elevator to complete loading (Clause 26), GrainCorp shall have the right to change the Assigned Load Date (Clause 16) of a vessel or to change the order in which vessels are loaded from the order shown on the shipping stem. GrainCorp will only make changes to the vessel loading order to –
- 21.1.1 Ensure efficient provision of Port Terminal services to all customers.
- 21.1.2 Avoid situations arising where a customer or customers with a vessel or vessels scheduled to load after a vessel that is affected by occurrences noted under Clauses 25, 26, 28, 36, 34,35, 36, or 37 would suffer delays and / or additional costs that could be avoided by changing the order in which vessels are loaded.
- 21.2 In making a change to vessel loading order, GrainCorp shall notify all affected parties in writing, where such notice will contain details of –
- 21.2.1 The specific changes to vessel loading order and the affected parties.
- 21.2.2 The reason(s) for the changes made to vessel loading order.
- 21.3 Where GrainCorp changes an Assigned Load Date, or changes the order in which vessels are loaded, GrainCorp shall make appropriate changes to the shipping stem on the next business day after the notification referred to in Clause 21.2 has been issued.
-

22 Vessels Arriving Outside the Confirmed Elevation Period – No Amendment to Assigned Load Date Requested

- 22.1 If a vessel presents for loading no more than 5 days after the end of either a 15 or 30 day Confirmed Elevation Period, and ***no amendment to the Confirmed Elevation Period or the Assigned Load Date has been requested***, the following will apply.
- a) The customer will forfeit their Assigned Load Date and in the event of there not being available capacity in the subsequent 15 or 30 day elevation period, the Booking Fee may be forfeited if a new Load Date cannot be assigned.
 - b) GrainCorp may assign a new Load Date using Clauses 7.5 and 10.3.
 - c) Loading priority will be given to vessels that have Booked Elevation Capacity in the relevant elevation period.
 - d) GrainCorp will apply the Additional Terminal Storage Fee of \$0.51 / T per day to the total tonnage of an assembled cargo for each day from the first day of the elevation period following the Confirmed Elevation Period until the commencement of vessel loading.
- 22.2 GrainCorp **will not** apply the abovementioned fee where delays caused by rain, elevator mechanical failure or other factors that can reasonably be described as relating to the failure of GrainCorp to meet the Assigned Load Date may be the cause of a vessel rolling-back into a following elevation period.
-

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23 Two Port Loading

- 23.1 Where Booked Elevation Capacity requires loading from two Port Terminals, an Assigned Load Date will be allocated at both Port Terminals after the customer's ETA Nomination (Clause 15) is received.

Two Port Loading Delay – No customer fault

- 23.2 Providing that all cargo tonnage has been accumulated at the second Load Port, Assigned Load Date priority at the second Port Terminal will be retained if a delay during loading at the first Port Terminal is no fault of the customer, where delays may include but are not limited to those caused by weather, mechanical breakdown of Port Terminal equipment, or AQIS rejection of infested grain.

Two Port Load Delay – customer's fault

- 23.3 The Assigned Load Date of a vessel at a second load port will lose priority if, during loading at the first Port Terminal, the vessel is delayed due to the customer's fault, including but not limited to, the customer's vessel being late, the customer's failure to accumulate sufficient cargo tonnage at the first Port Terminal, failure of the customer's vessel to pass relevant Marine, AQIS and any other survey required by regulation.
- 23.4 Should priority at a second port be lost due to circumstances noted in Clause 23.3, GrainCorp will review the original Booked Elevation Capacity and will allocate a new Assigned Load Date in the chronological order in which the CNA was originally received, taking into account other Elevation Capacity booking(s) previously accepted by GrainCorp that appear as 'accepted' on the GrainCorp Shipping Stem and the sufficiency of capacity to receive and handle the customer's grain.

24 Cargo Assembly Planning – Site Assembly Plan

- 24.1 The customer will work with GrainCorp Logistics and will be required to compile the detailed content of a **Site Assembly Plan (SAP)** prior to commencement of accumulation of a cargo tonnage at the nominated Port Terminal at any time from the date of return of an AOA to GrainCorp (Clause 9), up to, but no later than, the minimum notice period for an ETA Nomination (Clause 15).
- 24.2 The Site Assembly Plan will contain details of,
- 24.2.1 The location of the commodity(s),
 - 24.2.2 The grade(s) and,
 - 24.2.3 The method of accumulation of the cargo tonnage.
- 24.3 GrainCorp is under no obligation to receive grain at any of its Port Terminals for Booked Elevation Capacity more than 21 days in advance of the Assigned Load Date.
- 24.4 Where both GrainCorp and the customer agree, an SAP may allow for the accumulation of cargo tonnage at a Port Terminal more than 21 days in advance of an Assigned Load Date.

25 Cargo Assembly by Road from non GrainCorp Storage

- 25.1 Where a customer intends to accumulate cargo tonnage by road from bulk grain storages not managed by GrainCorp, the customer may request to accept sampling and testing services offered by GrainCorp at a site other than the nominated Port Terminal.

26 Insufficient Grain Accumulated to Load Vessel

- 26.1 A customer shall accept full responsibility for the accumulation of all cargo tonnage at a GrainCorp Port Terminal and for procuring all transport for the accumulation of such cargo tonnage.
- 26.2 Recognising the responsibilities of the customer for the accumulation of cargo(s) (Clause 27) GrainCorp is not liable for, and does not guarantee, that individual cargo tonnage will be available at a Port Terminal by the Assigned Load Date, regardless of the date(s) upon which CNA(s) were lodged by the customer.
- 26.3 If a customer has not accumulated sufficient grain to complete loading of the vessel at a Port Terminal by the Assigned Load Date, and the vessel has berthed and passed all required Marine, AQIS or other relevant

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surveys, GrainCorp may commence to load the vessel with any and all applicable grain owned by the customer at the Port Terminal, in such a manner as to comply with the directions of the captain of the vessel and / or stevedore that will ensure the stability of the vessel. GrainCorp may then request the movement of a part loaded vessel off the berth at the customer's expense, if the next vessel on the Shipping Stem is ready to berth and has sufficient cargo tonnage assembled to commence and complete loading.

- 26.4 A relocated vessel may be allowed back on the berth for the recommencement of loading when the balance of the cargo tonnage has been accumulated at the Port Terminal, taking into account:

26.4.1 Other Booked Elevation Capacity

26.4.2 The sufficiency of capacity to receive and handle the customer's grain at the time of the anticipated commencement of cargo tonnage accumulation at the port.

27 Port Terminal Stock Swaps

- 27.1 Should a customer fail to accumulate sufficient cargo tonnage in a timely manner (Clause 29), the customer will be encouraged to 'swap' stock with another customer holding title to suitable grain at the Port Terminal.
- 27.2 When a 'stock swap' occurs, all transactions related to such a swap(s) must be completed prior to completion of elevation of grain to a vessel.
- 27.3 Charges described in Annexure A of either the *Bulk Wheat Port Terminal Services Agreement* or the *Bulk Grain Port Terminal Services Agreement (Non wheat)* will apply to all stock swaps involving the transfer of title of grain held in storage at all GrainCorp Port Terminals.

28 Grain Origination - Ex GrainCorp Storage

- 28.1 If grain arriving at the Port Terminal from a GrainCorp country site cannot be elevated to a nominated vessel due to quality reasons that are no fault of the customer (excluding infestation or where the customers cargo quality / grade specifications vary from the relevant Grain Trade Australia receival standards) GrainCorp will -
- 28.1.1 Replace that grain with grain of the nominated grade and at GrainCorp's cost, or
- 28.1.2 Deem the customers 'Grain Accounting Stock Tonnes' in the GrainCorp storage network for that component of stock outside of the quality requirements referred to in Clause 28.1. to have remained at the originating GrainCorp country site, or
- 28.1.3 'Stock swap' at the Port Terminal the rejected grain with grain of an equivalent quality profile to that specified in the CNA, in doing so, GrainCorp will assume ownership of the rejected grain at the Port Terminal.
- 28.2 If insect infestation is detected in grain arriving at the Port Terminal from a GrainCorp Storage, GrainCorp will comply with its obligations under the *Bulk Wheat Port Terminal Services Agreement* or the *Bulk Grain Port Terminal Services Agreement (Non wheat)*.

29 Grain Origination - Ex Non GrainCorp Storage

- 29.1 GrainCorp will not assume any liability for any losses associated with grain sent to the Port Terminal from non-GrainCorp storage facilities that does not meet the quality specifications specified in an accepted CNA and related SAP.
- 29.2 If grain received from non-GrainCorp storage facilities fails to meet the quality specifications defined by the customer in the relevant CNA and related SAP, or such grain is rejected by AQIS as being unfit for elevation onto a vessel, the customer remains the owner of the grain until it is removed from the Port Terminal in its entirety. Until such grain is removed, the grain will be subject to any applicable storage and related fees detailed in Annexure A of either the *Bulk Wheat Port Terminal Services Agreement* or the *Bulk Grain Port Terminal Services Agreement (Non wheat)*.
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30 Treated or Fumigated Grain

- 30.1 The customer must advise, prior to the dispatch of any grain to a Port Terminal, if that grain is to be, or has been, treated or fumigated with any grain protectants or insecticides approved for application to grain.
- 30.2 The customer must also provide advice on the chemical treatment used, or planned to be used on grain, and must not deliver grain to the Port Terminal
- (a) until advised that such treatments are acceptable to GrainCorp, or
 - (b) that poses any significant market risks that may cause AQIS to reject the grain on inspection, or would cause the grain to fail Australian or importing country residue surveillance.

Note - Port Terminals have a nil tolerance for fumigant residues above accepted Maximum Residue Levels.

31 Fumigation Clearance Certificate

- 31.1 Where grain has been fumigated, the customer must provide a '**Clearance Certificate**' stating that the commodity is free from all fumigant residues, issued by a licensed fumigator.
- 31.2 The requirement under this Clause does not apply to grain received from GrainCorp Storages, as all grain treatment and fumigation activities are carried out in a manner that ensures they meet Port Terminal grain receipt requirements.
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32 Additional Terminal Storage Charge for Residual Grain at the Port Terminal

- 32.1 Any residual grain remaining in the Port Terminal after the completion of vessel loading, or as the result of a vessel cancellation, will accrue an **Additional Terminal Storage Charge** detailed in Annexure A of either the *Bulk Wheat Port Terminal Services Agreement* or the *Bulk Grain Port Terminal Services Agreement (Non wheat)*.
- 32.2 If the customer continues to retain title to residual grain, or is unable to relocate residual grain, the customer acknowledges that GrainCorp may reposition or relocate grain to another (non Port Terminal) site at the customer's cost, including storage, freight and weighing.
- 32.3 Where grain has been delivered to a Port Terminal from non-GrainCorp storage facilities and is rejected as being unfit for loading onto a vessel, GrainCorp will not be liable for any loss relating to the degradation of the quality of that grain. The customer remains the owner of this grain at all times and until the grain is sold or removed from the Port Terminal.
- 32.4 Clause 32.1 will not apply if:
- 32.4.1 Residual stock remaining in the Port Terminal as a result of a rejection to load to vessel by AQIS was moved to the Port Terminal from a GrainCorp country storage, or
 - 32.4.2 The customer has Booked Elevation Capacity with an Assigned Load Date within 14 days of the previous vessel's completion of loading, where previously rejected grain may be included as part of that cargo tonnage, or;
 - 32.4.3 The customer sells residual grain to another customer, or agrees that the grain can be included as a component of the cargo of a vessel of another customer, where cargo tonnage accumulation for that customer commences within 14 days of the completion of loading of the vessel upon which the rejected grain was originally to be loaded.
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33 Provision of Transport for the Accumulation of Cargo Tonnage

- 33.1 For the avoidance of doubt, the customer is responsible for organising all matters related to the booking and / or provision of transport.
- 33.2 By accepting a CNA, GrainCorp does not undertake to provide to the customer any grain transportation services associated with the accumulation of grain for an accepted CNA.

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- 33.3 Where a customer specifically contracts GrainCorp to provide cargo tonnage accumulation services, or where GrainCorp is specifically contracted to supply grain transportation services to a customer, a contract for the provision of such services will be entered into, and such a contract will be separate to the provision of port Terminal services described under this Protocol.
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34 Vessel Readiness to Load – In Transit Marine Survey

- 34.1 If GrainCorp assesses that a vessel presents a higher than acceptable risk of failing a Marine, AQIS or related survey required under Regulation, GrainCorp may request that the customer provide assurance of the fitness or readiness of a vessel to load by procuring an 'in transit' marine surveyor report, either at the previous discharge port or at anchor at the Load Port. GrainCorp may refuse to accept a vessel 'alongside' to present for the Marine, AQIS or related survey required under Regulation if such a request is not complied with, within three (3) Business Days.
- 34.2 Any costs incurred in relation to Clause 34.1, shall be the responsibility of the customer.
- 34.3 GrainCorp may record all information relating to the vessel readiness to load performance of the customer, its shipping agents and shipping lines, and may incorporate this information into relevant CNA assessment procedures in the future.
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35 Vessel Authority to Load

- 35.1 Prior to calling a vessel to the berth and commencing loading, GrainCorp will forward to the customer an **Authority to Load** for the customer's approval. The Authority to Load will include all quality information relating to the customer's cargo.
- 35.2 The customer must approve the Authority to Load and return it to GrainCorp prior to the commencement of elevation of grain to a vessel.
- 35.3 The customer acknowledges that GrainCorp has the right to mitigate dust emissions at the Port Terminal. Such mitigation may include moisture conditioning of grain paths.
- 35.4 Notwithstanding any other provision in this Protocol, the customer understands and accepts that matters and events beyond GrainCorp's control may occur, including but not limited to, changes in vessel scheduling and arrival or departure times, failure of vessels to pass any quarantine requirements or other inspections, grain quality related matters, harbour / port congestion, berth occupation by vessels under the direction of a Port Authority, lack of performance and delays due to freight or other service providers and rain or high winds that prevent vessel loading which means GrainCorp cannot guarantee that cargo tonnage will be ready for loading, or that they can or will be loaded as scheduled. GrainCorp will try to avoid any changes or delays where possible, and will keep the customer informed.
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36 Vessels Failing Regulatory Survey

- 36.1 The customer is responsible for the condition and state of readiness of vessels presented to GrainCorp for loading and for a vessel passing relevant Marine, AQIS and any other survey required by regulation relating to the export of grain from Australia.
- 36.2 In the event of the customer's vessel failing a Marine, AQIS or other survey that may be required by regulation, GrainCorp reserves the right to give berthing and elevating priority to other vessels on its Shipping Stem, and to assign any vessel that has failed a survey, which is re-presented for loading, a new Assigned Load Date.
- 36.3 Where a vessel fails Marine, AQIS or other survey and loading is delayed until the elevation period following the Confirmed Elevation Period, the following will apply.
- a) On the eleventh day after the most recent Assigned Load Date, GrainCorp will apply the Additional Terminal Storage Fee of \$0.51 / T per day to the total tonnage of the assembled cargo until the commencement of vessel loading.
 - b) GrainCorp may assign a new Assigned Load Date using Clauses 7 and 16.

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- 36.4 Where a vessel is not able to load until an Elevation Period following the end of a Confirmed Elevation Period, loading priority will be given to vessels that have Booked Elevation Capacity in the relevant elevation period.
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37 Late or Cancelled Vessels

- 37.1 If a vessel fails to be available for loading within ten (10) days of the Assigned Load Date, or if a vessel has been cancelled by the customer then -
- 37.1.1 The customer forfeits any Booking Fee previously paid and remains liable for any Booking Fee not paid (even if not yet invoiced).
 - 37.1.2 If the customer wishes to make a new Elevation Capacity booking, the customer must submit a new CNA per Clauses 3 through 9 and must pay a new Booking Fee.
- 37.2 All grain in a Port Terminal accumulated for a vessel that is late or cancelled, will accrue additional storage charges (in addition to the standard storage charges detailed in *Annexure A of either the Bulk Wheat Port Terminal Services Agreement or the Bulk Grain Port Terminal Services Agreement (Non wheat)*).
- 37.2.1 Such charges will apply from the eleventh (11th) day after the Assigned Load Date relating to late or cancelled Booked Elevation Capacity (Clause 37.1 and 37.2) until the grain is either elevated to a vessel or removed from the Port Terminal.
- 37.3 Any additional fees accrued are payable prior to the elevation of the relevant grain to a vessel or other transport.
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38 Dispute Resolution

If a customer wishes to dispute a decision to reject a CNA (refer to Clause 7 for CNA assessment criteria) or to change the vessel loading order (refer to Clause 21), the following procedures will apply:

- 38.1 The customer must notify GrainCorp in writing of their intent to dispute, the reason(s) for the dispute and any requested resolution (**Dispute Notice**) by 4.00 pm AEST of the next business day following issue of a notice of rejection of a CNA or the publication of a change to the vessel loading order.
- 38.2 GrainCorp must respond to the customer raising a dispute within two business days after 4.00 pm AEST of the day of receipt of a Dispute Notice (**Response**).
- 38.3 A Response must set out whether GrainCorp intends to reverse its decision to reject a CNA, or to change the vessel loading order, and if not, must provide a written explanation or basis for GrainCorp's decision.
- 38.4 If the customer is not satisfied with the Response, or GrainCorp fails to respond in the manner set out in Clause 38.3, the customer may serve a notice to escalate (**Escalation Notice**) on GrainCorp no later than two Business Days after 4.00 pm AEST of the day of receipt of a Response or from the last day the Response should have been received.
- 38.5 Upon receipt of an Escalation Notice, GrainCorp must at the request of the customer, arrange a meeting within five (5) business days of receipt of the Escalation Notice between GrainCorp's General Manager, Ports and the customer to discuss and resolve the dispute.
- 38.6 To avoid doubt, Clauses 38.1 to 38.5 do not apply to any other dispute under these Protocols including, to avoid doubt, a dispute relating to the grade, quality, sampling, testing, or classification of grain that accumulated for or has been accumulated for elevation onto a vessel.