



Bulk Storage and Handling Agreement

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Parties

Queensland Bulk Terminals Pty Ltd (ACN 138 437 260) of 156 Colmslie Road,
Murarrie, Queensland

(QBT)

(ABN /ACN)

of

(Client)

Background

- A QBT is the owner of the Facility, from which QBT carries on import and export services through receiving, handling, storing, and outturning bulk commodities.
 - B The Client has requested that QBT, from time to time, provide certain services to it at the Facility.
 - C QBT agrees to perform services at the Facility for the Client on the terms of this Agreement.
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Agreed terms

1 Definitions

In this document these terms have the following meanings:

Accreditation Requirements	Any consent, authorisation, accreditation, registration, lodgement, permit, licence, agreement, direction, declaration, authority or exemption issued by any entity that has a right to impose a requirement at Law.
Accumulation Period	As defined in clause 4.1(a)(iii)(A) .
Agreement	This document, including its schedules.
Authority to Load Form	The form to be provided by QBT and completed by the Client in accordance with section 4.4 of schedule 4 .

Bill of Lading	The document issued by a Vessel containing details about the Product, including its type, quantity and weight.
Booking Acceptance Notification	The notification provided by QBT under which it accepts the Client's Cargo Booking Application. A copy of the Cargo Booking Application signed by a representative of QBT is a Booking Acceptance Notification.
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Brisbane.
Cancellation Fee	The fee stated in schedule 2 that may be charged in accordance with clause 4.5 .
Cargo Booking	A cargo booking reflected in a Booking Acceptance Notification.
Cargo Booking Application	The application form to be completed by a Client setting out the relevant Services the Client is requesting of QBT and the other details specified in clause 4.1 , which may be provided in any other form acceptable to QBT in its discretion.
Cargo Booking Fee	The amount to be paid by the Client to confirm a Cargo Booking as set out in schedule 2 .
Claim	Any claim, action, proceeding or investigation of any nature or kind and includes the allegation or threat of any such claim.
Client's Entitlement	Has the meaning in clause 6.2 .
Commencement Date	The date specified in item 1 of schedule 1 .
Confidential Information	Information that is disclosed by one party to another party that: <ul style="list-style-type: none"> (a) is by its nature confidential; (b) is designated or marked by the discloser as confidential; or (c) the recipient of the information knows or ought reasonably to know is confidential, but does not include information that is in the public domain other than as a direct or indirect result of a breach of an obligation of confidence by a party to this Agreement.

Consequential Loss	<p>Subject to paragraphs (e) and (f) below:</p> <ul style="list-style-type: none"> (a) any special, indirect or consequential loss; (b) any economic loss in respect of any claim in tort; (c) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of goodwill, loss of opportunity, loss of reputation or wasted overheads whatsoever; and (d) any loss arising out of any claim by a third party, <p>but Consequential Loss does not include:</p> <ul style="list-style-type: none"> (e) a loss (including a loss arising out of a claim by a third party) in respect of: <ul style="list-style-type: none"> (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a party) that has been lost, damaged or destroyed; or (ii) personal injury to or death of any person; or (f) in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims.
Consignment	A specific consignment of Product stored and handled at the Facility in accordance with this Agreement. (For clarity, each quantity of Product received following a request under clause 4.1 constitutes a separate consignment).
DAFF	The Australian Government Department of Agriculture, Fisheries and Forestry, as the department's name is updated from time to time.
Discharge	In relation to Import, means the receipt of Product from a Vessel when the Product enters the Facility (and 'Discharged' has a corresponding meaning).
Discharge Fee	The fee for Discharge and Services described in schedule 2 .
Discharge Services	The Services described in section 2 of schedule 3 .
Discharge Period	As defined in clause 4.1(a)(ii)(A) .
Dispute	Any dispute, controversy or Claim arising out of or in any way connected with or relating to this Agreement.

Expiry Date	The date specified in item 2 of schedule 1 .
Export	The receipt into the Facility by road for and including Outturn of Product onto Vessels from the Facility.
Export Storage Fee	The fee for Storage Services for Export described in schedule 2 .
Facility	The port terminal facility located at 156 Colmslie Road, Murarrie, Queensland at which Product is received, stored, handled and Outloaded or Outturned in accordance with this Agreement.
Feed Grade	A Grade of Product that is specifically for the purpose of non-human animal stock feed consumption.
Force Majeure Event	As defined in clause 11(e) .
Fumigation Fee	The fee for fumigation related to Discharge Services described in schedule 2 .
Good Operating Practice	A standard of operating practice generally accepted and followed by competent suppliers of services of the same kind and scope as the Services.
Grade	The classification of a Product determined by its Season, variety and/or physical qualities to be assessed in accordance with the Receipt Standards for that Season, or any other method agreed by the parties.
Import	The receipt of Product into the Facility from Vessels for collection by or on behalf of the Client from the Facility.
Import Storage Fee	The fee for Storage Services described in schedule 2 .
Insolvency Event	Any of the following: <ul style="list-style-type: none"> (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable; (b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation; (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;

- (d) an administrator, provisional liquidator, liquidator or person having a similar function under the Laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- (e) a controller is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself;
- (j) a person presents a declaration of intention under section 54A of the Bankruptcy Act 1966 (Cth); or
- (k) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

Law

Any:

- (a) legislation, including regulations, determinations, by-laws, declarations, ministerial directions and other subordinate legislation;
- (b) common law;
- (c) government agency requirement or authorisation (including conditions in respect of any authorisation);
- (d) mandatory codes, standards and guidelines;
- (e) writ, order, injunction, or judgment; or

- (f) local government legislation, including regional plans, district plans, regulations, by-laws, declarations, ministerial directions and other subordinate legislation.

Laycan Period	Has the meaning in clause 4.1(a)(i) .
Load Out Date	The date nominated by QBT for the commencement of Outturn of Product from the Facility, which is within the Outturn Period.
Load Plan	The plan containing details for Outload to be submitted by the Client in accordance with section 4.2 of schedule 4 .
Loss	Any loss (including Consequential Loss), damage, liability, costs or expenses including legal costs.
Normal Business Hours	7.00 am to 3.00 pm on a Business Day.
Outload	The loading of Product onto road transport at the Facility (and 'Outloaded' or 'Outloading' have a corresponding meaning).
Outload Fee	The fee for Outload Services described in schedule 2 .
Outload Period	The period during which the Product is Outloaded from the Facility onto Trucks.
Outload Services	The Services described in section 4 of schedule 3 .
Outload Tonnage	The tonnage of Product that is Outloaded from the Facility.
Outturn	When Product crosses the loading Vessel's rail for a Vessel leaving the Facility (and 'Outturned' or 'Outturning' have a corresponding meaning).
Outturn Fee	The fee for Outturn Services described in schedule 2 .
Outturn Period	A period of 15 days within which the Product is proposed to be Outturned.
Outturn Services	The Services described in section 4 of schedule 4 .
Outturn Tonnage	The tonnage of Product that is Outturned from the Facility.
Overtime Fee	The fee that may be charged by QBT in accordance with clause 5.10(b)(i) as described in schedule 2 .
Port Loading Statement	A list of grain vessel loading information shown on the Facility's webpage.

Product	Bulk commodities, including (without limitation) grain, meals, pulses (excluding fertiliser), owned by the Client and stored and handled at the Facility from time to time.
Receival Fee	The fee for Receival Services described in schedule 2 .
Receival Services	The Services described in section 2 of schedule 4 .
Receival Standards	Unless otherwise agreed between QBT and the Client, the classification and receival standards issued by Grain Trade Australia from time to time with respect to the grading and storage of Product.
Receival Tonnage	The weight of Product determined in accordance with clause 5.4 .
Related Bodies Corporate	Has the meaning given in the <i>Corporations Act 2001</i> (Cth).
Season	The period in which Product is harvested and delivered to the Facility, typically commencing in October of each year and ending in September of the following year.
Services	The activities relating to Import or Export (as applicable) provided as: <ul style="list-style-type: none"> (a) Discharge Services; (b) Receival Services; (c) Storage Services; (d) Outload Services; and (e) Outturn Services.
Shrinkage Allowance	The adjustment to the Receival Tonnage of Product to be calculated in accordance with clause 5.5 .
Site Assembly Plan	The plan to be provided by the Client for the assembling Product at the Facility for the Discharge or Outturn of Product as contemplated by clause 4.3 .
Stock Information	Details of the type, quantity and Grade of Product received, held in storage and Outloaded or Outturned (as applicable) at a particular point in time.
Storage Fee	The Import Storage Fee or Export Storage Fee specified in schedule 2 , as applicable.
Storage Services	The Services described in section 3 of schedule 3 for Import, and section 3 of schedule 4 for Export.
Term	As defined in clause 2(a) .

Third Party Service Provider	The providers and operators of Vessels or Trucks used to provide services to the Client at the Facility (other than QBT).
Truck	A motor vehicle used to transport Product.
Unload Date	The date nominated by QBT for the commencement of Discharge of Product from a Vessel, which is within the Discharge Period.
Unload Plan	The plan containing details for Discharge to be submitted by the Client in accordance with section 2.2 of schedule 3 .
Variation	Has the meaning in clause 12(a) .
Variation Request	Has the meaning in clause 12(b) .
Vessel	For Export, any ship or other vessel nominated by the Client to Outturn Product from the Facility by sea. For Import, any ship or other vessel nominated by the Client to deliver Product to the Facility for Discharge.

2 Term

- (a) This Agreement commences on the Commencement Date and will continue until the Expiry Date, unless terminated earlier in accordance with this Agreement (**Term**).
- (b) Where the Client does not have a current agreement in place with QBT and QBT provides Services to the Client after providing the Client with a copy of this Agreement but prior to this Agreement being executed, the supply of those Services will be deemed to have been provided by QBT to the Client pursuant to the terms and conditions of this Agreement.

3 Services

3.1 Applicable terms

- (a) This Agreement governs the overarching relationship between QBT and the Client for the supply of Services by or on behalf of QBT to the Client, including in relation to Cargo Bookings, from time to time.
- (b) Where QBT provides Services related to Import, the terms set out in **schedule 3** of this Agreement apply.
- (c) Where QBT provides Services related to Export, the terms set out in **schedule 4** of this Agreement apply.

3.2 Hierarchy

If there is a conflict between any of the documents or terms forming part of the agreement, the conflict will be resolved by giving the documents or terms the following order of priority in descending order:

- (a) this Agreement, including its schedules and annexures;
- (b) a Booking Acceptance Notification;
- (c) a Cargo Booking Application; and
- (d) any other terms agreed between the parties, in writing.

4 Cargo Bookings

4.1 Requests

- (a) If, during the Term, the Client wishes to make a Cargo Booking, it must submit a Cargo Booking Application containing:
 - (i) a proposed laycan period of dates within which the Vessel is expected to arrive at the Facility (**Laycan Period**);
 - (ii) for Import:
 - (A) a proposed period within which Product is to be Discharged from a Vessel into the Facility for Import (**Discharge Period**);
 - (B) a proposed Outload Period;
 - (iii) for Export:
 - (A) a proposed period during which Product will be accumulated at the Facility in preparation for Outturn (**Accumulation Period**);
 - (B) a proposed Outturn Period;
 - (iv) cargo details of:
 - (A) the Product, including the Grade and Season (and for Export, its origin); and
 - (B) the maximum tonnage of Product on the Vessel to be processed by QBT at the Facility (**Nominated Tonnage**); and
 - (v) the details of the Vessel that are available at the time of the Cargo Booking Application, including for Export, its destination.
- (b) Within 5 Business Days of receipt of the Cargo Booking Application, QBT may:
 - (i) accept the Cargo Booking Application and give notice to the Client by issuing a Booking Acceptance Notification;

- (ii) reject the Cargo Booking Application and propose an alternative Laycan Period, Discharge Period or Outturn Period; or
 - (iii) reject the Cargo Booking Application.
- (c) If the time period in **clause 4.1(b)** expires and no notice has been provided to the Client, the Cargo Booking Application is deemed to be rejected by QBT.
- (d) Where QBT has rejected the Cargo Booking Application and proposed an alternative Laycan Period, Discharge Period or Outturn Period, that alternative Laycan Period, Discharge Period or Outturn Period will not be accepted until the Client confirms in writing that it accepts the alternative proposal and QBT issues a Booking Acceptance Notification for that alternative Laycan Period, Discharge Period or Outturn Period.
- (e) For clarity, the Client may submit multiple Cargo Booking Applications, but the last application before the issue of the Booking Acceptance Notification is deemed to be the Cargo Booking Application for the purposes of this a Cargo Booking.
- (f) The Client acknowledges and agrees that Cargo Bookings are non-transferable and it cannot sell, assign or transfer a Cargo Booking (including to the Client's Related Bodies Corporate) without QBT's written agreement.

4.2 Cargo Booking Fee

- (a) In order to reserve a Cargo Booking, the Client must pay a non-refundable Cargo Booking Fee. (The Cargo Booking Fee may be adjusted as provided in **schedule 3** and **schedule 4**).
- (b) QBT will use its best endeavours to issue an invoice for the Cargo Booking Fee within two Business Days of the date a Cargo Booking Application is accepted by QBT under **clause 4.1(b)(i)**.
- (c) The Client must pay the Cargo Booking Fee within seven Business Days of the date of the invoice issued under **clause 4.2(a)**.
- (d) If the Client does not pay the Cargo Booking Fee in accordance with **clause 4.2(c)**, QBT is entitled to terminate the Cargo Booking at any time by notice to the Client.

4.3 Site Assembly Plan

- (a) The Client acknowledges and agrees that it must, in consultation with QBT, prepare a Site Assembly Plan for approval by QBT to confirm the Cargo Booking under **clause 4.4**.
- (b) Each party agrees to use reasonable endeavours to comply with the Site Assembly Plan, and QBT is not required to undertake any Services that do not comply with the Site Assembly Plan.

4.4 Confirmation of Cargo Booking

- (a) The Client must confirm the Cargo Booking in writing by 5pm on the date 60 days prior to the first day of the Laycan Period.
- (b) If by 5pm on the date 60 days prior to the first day of the Laycan Period QBT:
 - (i) has not received written confirmation that the Client wishes to proceed with the Cargo Booking; and/or
 - (ii) has not, acting reasonably, provided its written approval for the Site Assembly Plan,QBT may:
 - (iii) cancel the Client's Cargo Booking;
 - (iv) retain the Cargo Booking Fee; and
 - (v) reallocate the slot to an alternative client.
- (c) The Client must confirm the date of commencement of the Discharge Period (for Import) or Outturn Period (for Export) at least 60 days prior to the commencement of that period.
- (d) QBT will advise the Client of the Unload Date or Load Out Date (as applicable) for Product when available.

4.5 Termination of a Cargo Booking

Where the Client notifies QBT, verbally or in writing, that it wishes to cancel a Cargo Booking within the 60 day period prior to the first day of the Laycan Period, QBT may:

- (a) cancel the Client's Cargo Booking;
- (b) retain the Cargo Booking Fee;
- (c) charge the Client the Cancellation Fee;
- (d) charge any relevant Storage Fees for Product at the Facility, or other Services provided up to the date of cancellation (where applicable); and
- (e) reallocate the slot to an alternative client.

5 Performance of Services

5.1 Required Services

Subject to QBT providing a Booking Acceptance Notification, QBT agrees to provide the Services nominated by the Client in its Cargo Booking Application. The relevant Services for Import are dealt with in **schedule 3** and for Export in **schedule 4**.

5.2 Standard

QBT will perform the Services under this Agreement in accordance with:

- (a) all Laws;
- (b) Good Operating Practice; and
- (c) Receival Standards.

5.3 Receipt at Facility

- (a) Upon receipt of a Consignment at the Facility, QBT will determine:
 - (i) the Product's type and Grade by testing; and
 - (ii) the Receival Tonnage in that Consignment by the method stated in **clause 5.4**.
- (b) QBT may undertake any testing, including the following, to determine the type and Grade of a Consignment:
 - (i) protein, moisture and contaminant testing;
 - (ii) falling number testing;
 - (iii) test weight; and
 - (iv) other characteristics specified by Client and agreed by QBT.
- (c) QBT defines 'nil' as less than 0.01% by weight where a 'nil' tolerance is specified in the approved Receival Standards.
- (d) QBT will undertake all testing in accordance with Good Operating Practice, using instruments which comply with the provisions of the *National Measurement Act 1960* (Cth) and *National Measurement Regulations 1999* (Cth).
- (e) In the absence of manifest error, QBT's testing results will (for the purposes of this Agreement) be taken to be conclusive evidence of the matters to which they relate.
- (f) Within 1 Business Day of receipt of the Consignment, QBT will deliver a statement to the Client specifying the type, Grade and weight determinations made by QBT for each Consignment received at the Facility.
- (g) QBT has the right to:
 - (i) mitigate dust emissions at the Facility including moisture conditioning of Product; and
 - (ii) move Product around the Facility, at its discretion, and charge the Client the Transfer Fee for transfers between locations at the Facility. For the purpose of the calculation of the Transfer Fee, the transferred tonnage will be determined by QBT.

5.4 Weighing Product

- (a) For Export, QBT will use its weighbridges at the Facility to determine the Receival Tonnage.

- (b) For Import, QBT will use the Bill of Lading as the Receival Tonnage for receival by Vessel Discharge.
- (c) In the absence of manifest error, the Receival Tonnage determined in accordance with this **clause 5.4** will be taken to be conclusive evidence of the matters to which it relates.
- (d) QBT will use the Receival Tonnage determined in accordance with this **clause 5.4** for all site to site movements between the Facility to any other location, and on all stock records of the Client.

5.5 Shrinkage Allowance

- (a) A Shrinkage Allowance of 0.6% of the quantity of the original Consignment delivered will be deducted from the total Receival Tonnage. For clarity, if 100 tonnes of Product is received, after allowing for the Shrinkage Allowance only 99.40 tonnes will be Outloaded or Outturned.
- (b) After the Shrinkage Allowance has been deducted, title in the shrinkage residue (being a volume of Product representing the shrunk tonnage) will be taken to have transferred to QBT.
- (c) Any dust extracted from the Facility during the Outloading or Outturning of a Consignment is included in the Outload Tonnage or Outturn Tonnage (as applicable) and remains the property of the Client. Unless the Client requests otherwise, QBT will dispose of dust following the Outloading or Outturning of a Consignment.
- (d) The Client acknowledges and agrees that:
 - (i) Receival Fees and Storage Fees payable by the Client in accordance with this Agreement will be levied against the Receival Tonnage; and
 - (ii) Outload Fees or Outturn Fees (as applicable) will be calculated on the tonnage after applying the Shrinkage Allowance.
- (e) If the Outload Tonnage or Outturn Tonnage (as applicable) for a Consignment (after accounting for the Shrinkage Allowance) is more than the Receival Tonnage, then the Client must (as QBT requires):
 - (i) pay to QBT the fair market price at the time of Outloading or Outturning for the excess amount of Product that was Outloaded or Outturned; or
 - (ii) replace the excess Product Outloaded or Outturned with Product of the same type and Grade.
- (f) If the Outload Tonnage or Outturn Tonnage for a Consignment is less than the Receival Tonnage (after accounting for the Shrinkage Allowance), then QBT will (at its discretion):

- (i) make available to the Client for Outloading or Outturning an additional amount of Product equivalent to the shortfall of the same type and Grade; or
 - (ii) pay to the Client the fair market price at the time of Outloading or Outturning for the Product not received, having regard to its type and Grade.
- (g) If at any time the Client's Entitlement of a particular type and Grade is less than one tonne, the Client's Entitlement will be deemed to have no value and neither party will have any liability to the other in respect of it.
- (h) QBT will keep separate records of the Receival Tonnage and Outload Tonnage or Outturn Tonnage (as applicable) determined in accordance with this Agreement for each type and Grade of Product received and Outloaded or Outturned (as applicable).

5.6 Stock Information

- (a) QBT will keep daily Stock Information records for the Client's Product in QBT's possession.
- (b) QBT will provide to the Client (via email) daily reporting of Stock Information, or any other information requested by the Client that QBT agrees to provide.
- (c) QBT will use reasonable endeavours to provide Product information to the Client in a timely and accurate manner.

5.7 Contaminants

- (a) The Client must ensure that Product delivered to the Facility complies with the Receival Standards.
- (b) Without limiting **clause 5.7(a)**, the Client must ensure that Product known or suspected, or which ought reasonably be known or suspected, to contain contaminants or residues (or both) is not delivered to the Facility.
- (c) The Client is to ensure that all grain deliveries meet the requirements of the Australian Maximum Residue Limits as per APVMA export regulations.
- (d) QBT may treat all Consignments received into the Facility with approved chemicals and/or treatments, in accordance with applicable codes and regulations (including, but not limited to, the Australian Pesticides and Veterinary Medicines Authority Code and the Food Safety Australia and New Zealand Code).
- (e) For the purposes of this **clause 5.7**, QBT will provide to the Client a list of approved chemicals and treatments at or around the date of this Agreement and, thereafter, on an annual basis.
- (f) If the Client requests, QBT may (but is not obliged to) agree to use different chemicals and/or treatment strategies at the Facility for certain

Consignments, but the Client must reimburse QBT on demand in respect of any additional cost incurred by QBT.

- (g) If fumigation certificates (or other similar certificates) are requested by the Client in respect of a Consignment, QBT may apply a further charge with respect to the provision of such certificates.
- (h) QBT is not obliged to comply with any certification requests that have not been agreed between the Client and QBT prior to a relevant Consignment having been received.
- (i) The Client acknowledges that QBT, while using best endeavours to Outload and Outturn Product in accordance with the Receival Standards, is not liable for any non-conformance to Receival Standards where the attribute does not form part of the original testing procedure or cannot be comprehensively determined by QBT at the time of receipt at the Facility. This includes, but is not limited to, the presence of objectionable, toxic and chemical residues.

5.8 Facility shut-down

- (a) From time to time QBT may shut-down all or part of the Facility for maintenance. Despite anything else in this Agreement, during such shut-down periods QBT will not be obliged to provide the Services, to the extent QBT determines it is impractical to do so and will not be liable to the Client for any non-provision of Services during that period.
- (b) QBT will notify the Client of such maintenance shutdown 14 days in advance of any shut down that will, or is likely to, interfere with the provision of Services.

5.9 Safety plan compliance

- (a) QBT will give the Client a copy of QBT's then current safety plan for the Facility.
- (b) The Client will comply, and will ensure that all of its employees, agents and contractors familiarise themselves with, and comply with the safety plan at all times.

5.10 Hours of operation

- (a) QBT is not obliged to receive, Outload or Outturn Product other than during the Normal Business Hours.
- (b) The Client acknowledges that Services provided by QBT outside of Normal Business Hours may be subject to additional charges, including (without limitation):
 - (i) overtime fees;
 - (ii) stevedoring charges and charges to be paid to the Department of Agriculture and other charges paid, incurred or required to be paid by QBT in connection with providing Services outside the Normal Business Hours; and

- (iii) cancellation and other fees in relation to the late arrival or cancellation of a delivery of Product by the Client as set out in **schedule 2**.
- (c) Notification of any request to receive, Outload or Outturn Product outside the Normal Business Hours must be given to QBT at least 15 days prior to the date on which the requested Services are to be provided. Any request received after such time may be refused by QBT in its discretion.

6 Title and risk

6.1 Allocation of title and risk

- (a) Title in the Product remains with the Client at all times, subject to:
 - (i) **clause 5.5** (Shrinkage Allowance); and
 - (ii) QBT's rights to sell Product under a provision of this Agreement in which case title to that Product will be deemed by this **clause 6.1** to have transferred from the Client to QBT immediately before QBT's exercise of the right to sell that Product.
- (b) Risk of Loss, including destruction or damage, to the Product will remain with the Client at all times.
- (c) If any Product remains in storage with QBT following the date by which a Consignment of Product was due to be Outloaded or Outturned (as applicable), and any amounts due and owing under this Agreement remain unpaid by the Client in respect of that Consignment:
 - (i) QBT may retain possession of the Product comprised in that Consignment;
 - (ii) without prejudice to any other of QBT's rights, following the expiry of 30 days' notice to the Client, QBT may sell the Product (in a manner determined at the sole discretion of QBT) and apply the sale proceeds in payment of any outstanding amount owed to QBT under this Agreement or otherwise. Any amount received over and above the amount owed to QBT will be paid to the Client as soon as practicable. Any unpaid balance of moneys owing to QBT after that sale will remain due and owing to QBT; and
 - (iii) without prejudice to any other right of QBT, QBT may suspend the provision of Services in relation to any Product until unpaid amounts have been received by QBT in full.

6.2 Commingling and Client's Entitlement

- (a) Unless otherwise agreed between the parties, QBT reserves the right to store each Consignment in common with and commingle the whole

or any part of a Consignment with, Product of the same type, Grade and Season stored on behalf of any other client or user of the Facility.

- (b) Product received and stored by QBT of Feed Grade may be commingled with Product of the same type and Grade but from a different Season. Where the Client is delivering Product from a previous Season to the Facility, the Client must notify QBT in writing in advance of the delivery of that Product to the Facility.
- (c) The Client acknowledges that if the Client's Consignment is commingled in a stockpile with other product belonging to any other client or user of the Facility:
 - (i) it will result in that Consignment ceasing to have a separate physical identity and becoming a quantity comingled within a stockpile; and
 - (ii) the Client will have title to a quantity of the stockpile equivalent to that proportion of the comingled stockpile represented by the quantity of the Receival Tonnage for the relevant Consignment (less the Shrinkage Allowance) in the stockpile (**Client's Entitlement**).
- (d) The Client's Entitlement will be:
 - (i) with the prior written consent of QBT, capable of transfer by the Client to another client of QBT at the Facility, or to a prospective user of the Facility in either case by the Client completing a stock transfer form in the format required by QBT; or
 - (ii) Outloaded or Outturned in accordance with this Agreement.

7 Payment

7.1 Fees

- (a) The Client must pay the fees for the Services provided by QBT in the amounts stated in **schedule 2** (as varied in accordance with **clause 7.3** from time to time).
- (b) QBT will issue an invoice to the Client in accordance with **clause 7.3** in respect of the Services provided by QBT.
- (c) The Client must pay any invoice issued by QBT under **clause 7.1(b)** within 30 days of the date of the invoice.
- (d) Without prejudice to any of QBT's other rights, QBT may suspend the provision of any Services under this Agreement until unpaid amounts have been received by QBT in full.

7.2 Other charges

- (a) The Client is responsible for payment of all shipping related costs of receival, storage, Outloading and Outturning of Product at, and from,

the Facility including Vessel, demurrage, DAFF fees, harbour dues, port charges, wharf tie up and discharge fees and maritime port security charges as levied from time to time by the relevant entity.

- (b) The Client must reimburse QBT for any reasonable charges that QBT incurs under the *Maritime Transport and Offshore Facilities Security Act 2003*, or any other applicable act or regulation, in connection with this Agreement.
- (c) The Client will be responsible for paying all costs associated with conducting the import/export inspection of Product by DAFF and/or its agent(s) as well as the cost of employing all labour connected with discharging, loading, storing, treating and transporting of Product for any such inspection.

7.3 Invoicing

QBT may issue invoices to the Client for the Services provided in the following manner:

- (a) QBT will use its best endeavours to issue an invoice for the Cargo Booking Fee within two Business Days of the date a Cargo Booking Application is accepted by QBT under **clause 4.1**;
- (b) the Receival Fee will be invoiced weekly in arrears following the receipt of a Consignment at the Facility;
- (c) the Import Storage Fee will be invoiced as specified in **schedule 3**;
- (d) the Export Storage Fee will be invoiced as specified in **schedule 4**;
- (e) the Outload Fee for Import (and any other charges payable by the Client in connection with this Agreement not otherwise specified in this clause in relation to Import) will be invoiced weekly in arrears; and
- (f) the Outturn Fee for Export (and any other charges payable by the Client in connection with this Agreement not otherwise specified in this clause in relation to Export) will be invoiced on the completion of Outturning of a Consignment.

7.4 Changes to Fees

- (a) The Client acknowledges that QBT may vary the fees specified in **schedule 2**:
 - (i) from one Season to the next on 60 days' notice to the Client; and
 - (ii) where QBT's direct or indirect costs are increased because:
 - (A) there is a change to any Law; or
 - (B) any new Laws come into effect (including, without limitation, carbon tax or similar emissions trading scheme),on 30 days' notice to the Client.
- (b) The fees for Services will be determined as of the date the Services are performed by QBT.

7.5 Interest

If the Client fails to pay any amount under this Agreement on the due date, interest will be payable by the Client and will accrue on the overdue amount from the due date up to the date of actual payment of the amount due, at the rate of 15% per annum, calculated daily.

7.6 Retention of Product

- (a) For so long as amounts are due and owing under this Agreement but unpaid by the Client, QBT may retain possession of Product.
- (b) Following the expiry of 30 days' notice to the Client, QBT may sell the Product (in a manner determined at the sole discretion of QBT) and apply the sale proceeds in payment of any outstanding amount owed to QBT under this Agreement or otherwise. Any amount received over and above the amount owed to QBT will be paid to the Client as soon as practicable.

7.7 No right of set off

The Client is not entitled to withhold payment of any disputed amount for which QBT has issued an invoice to the Client, or to set-off the amount of any invoice from QBT or the amount of any other Claim that the QBT may have against the Client against any amount that may be payable by QBT to the Client.

8 GST

8.1 Construction

In this **clause 8**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

8.2 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**).

8.3 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

8.4 Timing of GST payment

The amount referred to in **clause 8.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

8.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 8.3**.

8.6 Adjustment event

- (a) If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 8.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.
- (b) However, the Supplier is not required to make any payment to the recipient if, at the time the payment would otherwise be required, a time limit has expired or there is another limitation preventing the Supplier from being entitled to claim, or from claiming a corresponding credit or refund in respect of that payment.

8.7 Reimbursements

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any Loss suffered or incurred by another party or indemnify another party in relation to such Loss(**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.

- (b) This **clause 8.7** does not limit the application of **clause 8.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 8.7(a)**.

8.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under or in connection with this document is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

8.9 No merger

This **clause 8** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

9 Client responsibilities

9.1 Obligations

- (a) The Client is responsible for:
 - (i) holding and maintaining at all times during the Term an appropriate and unconditional Product import/export licence and any other Accreditation Requirements to carry on its business (including the Outloading or Outturning of Product from the Facility);
 - (ii) transportation of each Consignment to and from the Facility, including:
 - (A) the cleanliness and fitness for carriage of any mode of transportation nominated by the Client as determined in accordance with the Receiving Standards. If DAFF or QBT determine that the Client's selected mode of transportation is not clean or fit for carriage, then QBT may suspend or refuse to provide any of the Services (and the Client agrees that QBT will not be liable for any resulting delay, Loss or Claim); and
 - (B) any Loss caused to any Product during transportation;
 - (iii) supplying the Facility supervisor with forecast ship loading and discharging requirements as soon as shipping information becomes available to assist in efficient scheduling of Facility

operations, and informing the Facility supervisor immediately on becoming aware of any significant changes to the forecast previously provided;

- (iv) any damage to the berth, ship loader or any other part of the Facility caused by any Vessel or Truck owned, operated or utilised by the Client or by a Third Party Service Provider, and any Loss caused by any such Vessel or Truck, or any Loss arising as a result of any mechanical failure by any such Vessel or Truck;
- (v) compliance with all directions and requirements of:
 - (A) the Port Authority and Harbour Master in relation to the shipping of the Product;
 - (B) the Facility supervisor in respect of all Vessels and Trucks utilised by the Client and Third Party Service Providers to deliver or collect Product from the Facility when entering, remaining on, using and leaving the Facility;
- (vi) ensuring that no external surfaces of any Vessel docked at the Facility is washed without QBT's prior written consent;
- (vii) removing a Vessel if requested by QBT where it cannot be loaded for any reason, including for failing to pass any inspection or survey; and
- (viii) ensuring all Vessels loading at the Facility are able to be loaded taking into account loading limitations such as but not limited to berth length, draft, air draft and ship loader maximum clearance and reach.

9.2 Non-compliance

If QBT reasonably becomes aware of or suspects the Client's non-compliance with an Accreditation Requirement, then QBT may at the Client's sole risk and cost, refuse to provide any Services in connection with this Agreement, until the Client provides sufficient evidence of compliance with such requirements.

9.3 Road transport providers

The Client must:

- (a) only engage road transport providers that deliver to, or remove Product from, the Facility that use vehicles and equipment which is registered, insured, operated by licensed and physically capable operators, clean, safe and fit for purpose;
- (b) procure that its road transport providers and their employees deliver Consignments to the Facility in a manner that:
 - (i) complies with all Laws and regulations, including those in respect of safety, the environment and carriage of goods;

- (ii) complies with Facility safety procedures including for employees entering the Facility that those employees undergo a site induction programme with QBT prior to entering the Facility for the first time if directed by QBT;
- (iii) complies with the reasonable directions of the Facility supervisor; and
- (iv) does not require or request QBT employees, to climb on Trucks for any purpose or assist with the securing of loads.

9.4 Warranties

The Client warrants and represents that:

- (a) any information or documentation it provides or arranges to be provided to QBT (including all shipping or other documents) which contain details of type, Grade, origin, location and treatment of Product, will contain accurate, complete and truthful statements and descriptions; and
- (b) in respect of Accreditation Requirements:
 - (i) it will hold and maintain at all times during the Term the Accreditation Requirements required by **clause 9.1(a)**; and
 - (ii) it will not request any Services unless and until all relevant Accreditation Requirements have been obtained.

9.5 Client indemnity

The Client indemnifies QBT and its Related Bodies Corporate from and against all Loss suffered or incurred by QBT and its Related Bodies Corporate in connection with:

- (a) a breach of this Agreement by the Client;
- (b) Loss relating to equipment, facilities, systems or other tangible property, including the Facility, to the extent that such Loss is caused by the Client or any Third Party Service Provider, including for clarity any Loss suffered by QBT in respect of any of the matters for which the Client is responsible in accordance with **clause 9.1**;
- (c) personal injury, sickness or death of any person to the extent that such injury, sickness or death is caused by the Client or by any Third Party Service Provider;
- (d) the Client's reliance on information provided by QBT relating to the type, Grade, weight or other characteristics of a Consignment or Product, including Stock Information, other than for the purposes of calculating the Fees payable under this Agreement;
- (e) a failure of the Client to comply with, in whole or in part, any Accreditation Requirements; and

- (f) any Claim made against QBT and its Related Bodies Corporate by any third party arising out of or in relation to the performance of this Agreement, including any claim by a third party for damage to their Product resulting from any act or omission of the Client or a Third Party Service Provider.

10 Liability

10.1 Exclusion of guarantees

All express and implied terms, conditions, warranties and guarantees which otherwise might apply to, or arise out of, this Agreement are excluded other than:

- (a) as provided in this Agreement; and
- (b) guarantees which by Law, including the Australian Consumer Law, cannot lawfully be excluded by agreement.

10.2 QBT's limit of liability

- (a) If QBT is liable for a breach described in **clause 10.1**, and that liability cannot, by Law, be excluded but can be limited, QBT's liability is, to the fullest extent permitted by Law, limited to any one or more of the following as QBT determines in QBT's absolute discretion:
 - (i) in relation to goods:
 - (A) replacing or repairing the goods;
 - (B) supplying an equivalent item of goods;
 - (C) paying the cost of replacing or repairing the goods; or
 - (D) paying the cost of acquiring or hiring an equivalent item of goods,
 - (ii) in relation to services:
 - (A) the re-supply of the services; or
 - (B) the payment of the cost of having the services re-supplied,
 - (iii) in relation to all other liability, QBT's liability for:
 - (A) any breach of this document;
 - (B) any act or omission (including any negligent act or omission) of QBT arising out of or in any way in connection with the performance or non-performance of this document; or
 - (C) the termination of this document (whether as a result of breach, repudiation or otherwise),
- to the extent that it is not expressly excluded, is limited to \$150,000.

- (b) Where liability described in **clause 10.2(a)** relates to a diminution in the Grade of Product (**Downgraded Product**):
- (i) QBT's liability will be offset by the fair market value of the Downgraded Product;
 - (ii) the Client must provide QBT with a sample of the Downgraded Product, and allow QBT an opportunity to test the sample and compare it with any sample Product retained by QBT from the Client's Consignment; and
 - (iii) QBT's liability, if any, in respect Downgraded Product will be excluded in the following circumstances:
 - (A) the diminution in quality or standard of Product has not resulted in the downgrading of the Product from the Grade to which the Product was classified on receipt of the Product by QBT at the Facility;
 - (B) where the Claim relates to defects and contaminants, where defects or contaminants can only be detected at levels of 0.01% by weight or less;
 - (C) where the Claim relates to moisture content, the moisture content of the representative sample for all Grades unloaded is within 0.3% of the maximum allowable range under the Receival Standards; or
 - (D) where the Client requested QBT to blend two or more Grades of Product into one Grade of Product, if the blended Product is at least the same quality of the lower Grade.
- (c) QBT is not liable to the Client or any third party, or any person claiming through or on behalf of the Client, for any Claim or Loss, that may arise if a Consignment cannot be Outloaded or Outturned from the Facility at the designated time for any reason.

10.3 Consequential Loss

Without prejudice to the express indemnity rights in this Agreement and any fees payable under this Agreement, to the fullest extent permitted by law, neither party will be liable to the other for, nor will any indemnity by either party under this document extend to, any Consequential Loss suffered by or claimed against the other party, including for:

- (a) any breach of this Agreement by a party;
- (b) any act or omission (including any negligent act or omission) of a party arising out of or in any way in connection with the performance or non-performance of this Agreement; or
- (c) the termination of this Agreement (whether as a result of breach, repudiation or otherwise) by a party.

10.4 No representations

The Client acknowledges that:

- (a) it has not relied on any statement, representation, warranty, conduct or undertaking made or given by QBT or any person on its behalf, other than those set out in this Agreement; and
- (b) it has relied on its own skill and judgment in deciding to acquire the Services and enter into this Agreement.

11 Force Majeure Event

- (a) If a party (**Affected Party**) is prevented or hindered by Force Majeure Event from fully or partly complying with any obligation (except for the payment of money) under this document, that obligation is suspended for the duration of such Force Majeure Event.
- (b) If the Affected Party wishes to claim the benefit of this clause, it must give prompt notice of the Force Majeure Event's occurrence to the other parties including reasonable details of:
 - (i) the Force Majeure Event's occurrence;
 - (ii) the effect of the Force Majeure Event's occurrence on the performance of the Affected Party's obligations; and
 - (iii) the likely duration of the delay in performance of those obligations.
- (c) The Affected Party must use reasonable endeavours to remove the cause and/or effect of the Force Majeure Event, but is not obliged to settle any strike or other labour dispute contrary to its best judgment if it has used reasonable endeavours to settle that strike or dispute.
- (d) If a delay caused by Force Majeure Event continues for more than 30 days, either party may terminate this Agreement by giving 14 days' notice to the other parties.
- (e) Force Majeure Event means any of the following:
 - (i) act of God;
 - (ii) Law, rule, regulation or order of any government or governmental authority;
 - (iii) act of war declared or undeclared;
 - (iv) accident, fire, explosion, epidemic
 - (v) public disorder;
 - (vi) riot, civil disturbance, insurrection, rebellion, sabotage or act of terrorists;

- (vii) flood, earthquake, hail, lightning, severe weather conditions or other natural calamity; or
 - (viii) strike, boycott, lockout or other labour disturbance,
- which:
- (ix) is beyond the control of the Affected Party;
 - (x) could not have been reasonably foreseen by the Affected Party; and
 - (xi) was not directly or indirectly caused or contributed to by the Affected Party.

12 Variation

- (a) Unless otherwise agreed in writing, all variations, alterations, amendments, omissions, additions or other changes to this Agreement or the Services (**Variations**) (other than in relation to variation to fees required by QBT, which are governed by **clause 7.4**) must be dealt with by the parties in accordance with this **clause 12**.
- (b) If the QBT wishes to request a Variation, it must submit a request to the Client (**Variation Request**).
- (c) If the Client requests a Variation, the Client must provide to QBT details of the requested Variation, and QBT must prepare and submit to the Client a Variation Request within five Business Days of such request or any further period as agreed between the parties.
- (d) A Variation Request may outline:
 - (i) the options QBT considers suitable for implementing the Variation;
 - (ii) changes or modifications to, or additional, Services that are required as a result of the Variation;
 - (iii) the cost of the Variation;
 - (iv) if applicable, the date of expiry of the Variation Request;
 - (v) if applicable, the changes to the documents comprising the Agreement required as a result of the Variation; and
 - (vi) any other effects which compliance with the Variation will have in respect of QBT's obligations under the Agreement.
- (e) the Client may:
 - (i) evaluate, analyse, discuss and negotiate the Variation Request with QBT; and
 - (ii) before the expiry of the Variation Request (if applicable):
 - (A) reject a Variation Request; or

- (B) accept the Variation Request (with negotiated modifications, if any).
- (f) If the Variation Request is accepted by the Client (including any negotiated modifications), both parties must sign the Variation Request and the Agreement will be varied as set out in the accepted Variation Request.

13 Termination

13.1 Termination Rights

Either party may terminate this Agreement immediately on notice where:

- (a) a party breaches its obligations under this Agreement and:
 - (i) the breach is material and cannot be remedied; or
 - (ii) the breach can be remedied, but it is not remedied within 30 calendar days of receiving a notice from specifying the breach and requiring the breach to be remedied; and
- (b) to the extent permitted by law, a party suffers an Insolvency Event.

13.2 QBT Rights

QBT may terminate this Agreement immediately on notice where:

- (a) the Client fails to pay any amount owing to QBT within 30 calendar days from the date on which the payment is due, or, if there is a Dispute about an amount that is owing, within 30 calendar days from the date on which the Dispute is resolved in QBT's favour;
- (b) in QBT's reasonable opinion, the Client has brought QBT or any Related Body Corporate of QBT or any employee of QBT or of any Related Body Corporate of QBT into disrepute, including with respect to safety of any person;
- (c) QBT has reasonable grounds to suspect fraud or other illegal conduct on the part of the Client;
- (d) QBT, or any of QBT's suppliers, are required or instructed to do so by a governmental body or statutory authority or by Law; or
- (e) QBT are otherwise entitled to do so at common law.

13.3 Consequences of termination or expiry

- (a) On termination or expiry of this Agreement:
 - (i) the Client must pay all fees and other amounts due and payable in connection with this Agreement, including any interest that has accrued under **clause 7.5**, no later than 5 Business Days following the date of termination;

- (ii) subject to QBT's right to retain Product under **clause 7.6(a)**, the Client must collect the Product from the Facility within one month of the date of termination; and
- (iii) where the Client does not procure the removal of Product from the Facility if required by **clause 13.3(a)(ii)**, the Product will be deemed to have been abandoned by the Client and will become the property of QBT. QBT may, at its option:
 - (A) cause the abandoned Product to be removed or stored in the manner QBT considers appropriate (at the risk and at the cost of the Client); and/or
 - (B) sell the Product (in a manner determined at the sole discretion of QBT) and retain any proceeds of sale.
- (b) the Client must pay to QBT on demand (as a liquidated debt) the reasonable costs and expenses incurred by QBT to store and remove the Product from the Facility under **clause 13.3(a)(ii)** and **13.3(a)(iii)**.

13.4 Survival

- (a) Termination of this Agreement will not prejudice any rights of either party that have accrued prior to the date of termination.
- (b) The following provisions will survive termination of this Agreement:
 - (i) **clause 1** (Definitions);
 - (ii) **clause 3.2** (Hierarchy);
 - (iii) **clause 6** (Title and risk);
 - (iv) **clause 7** (Payment);
 - (v) **clause 8** (GST);
 - (vi) **clause 9** (Client responsibilities);
 - (vii) **clause 10** (Liability);
 - (viii) **clause 13** (Termination);
 - (ix) **clause 14** (Confidential Information);
 - (x) **clause 15** (Disputes);
 - (xi) **clause 16** (Notices); and
 - (xii) **clause 17** (General).

14 Confidential Information

- (a) Each party agrees to keep confidential, and not to use or disclose, any Confidential Information of the other party, except:
 - (i) as permitted under this Agreement;
 - (ii) where required by Law;

- (iii) to its officers, employees, agents, advisers, contractors, insurers and auditors;
 - (iv) where the permission of the other party has been obtained in advance; and
 - (v) QBT may disclose the Client's Confidential Information to Related Body Corporate of QBT.
- (b) Unless it has received the other party's prior written approval, each party must not:
- (i) make any statements or authorise or publish any material in relation to any of the other party's personnel, site, facility or any matter connected to the Services or this Agreement; and
 - (ii) make any statements or authorise or publish any material which may be construed as having been approved by or endorsed by the other party.

15 Disputes

15.1 General

- (a) Neither party will commence court proceedings or action against the other party under or in connection with this Agreement (other than where urgent interlocutory relief is required) unless it has first attempted to resolve the Dispute under this **clause 15**.
- (b) The parties must continue to perform their obligations under this Agreement in the event of a Dispute.
- (c) Any Dispute concerning the Grade, quality, sampling, testing or classification of Product which QBT and the Client cannot resolve may be referred by either party to an accredited independent testing facility nominated by both QBT and the Client for resolution. The costs of independent testing will be shared equally.

15.2 Executive negotiation

- (a) If a Dispute arises then any party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between senior representatives of the parties (**Representatives**).
- (b) The Representatives must have authority to settle a Dispute.
- (c) The Representatives must meet and enter into discussions in good faith to resolve the Dispute (in whole or in part) within 21 days of the date on which the notice under **clause 15.2(a)** was received (or such later date as the parties may agree).
- (d) Any agreement reached by the Representatives must be reduced to writing and executed so as to be contractually binding on the parties.

15.3 Mediation

- (a) If the Dispute is not resolved within 30 days of the notice under **clause 15.2(a)**, the Dispute must be referred to arbitration administered by Grain Trade Australia, unless otherwise agreed by the parties.
- (b) The mediation will take place in Brisbane, Australia and will be conducted in accordance with the GTA Dispute Resolution Rules (which are incorporated into this Agreement) in force at the Commencement Date.

16 Notices

16.1 General

A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an agent of the sender.

16.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address for notices;
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) emailed to the current email address for notices.

16.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially the details set out in **schedule 1**.
- (b) Each party may change its particulars for delivery of notices by notice to each other party.

16.4 Communications by post

Subject to **clause 16.5**, a communication is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

16.5 Communications by email

Subject to **clause 16.6**, a notice sent by email is taken to be received at the time the email was sent, as recorded on the device from which the sender sent the email (provided the sender does not receive a delivery failure or out of office message).

16.6 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

16.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this **clause 16** or in accordance with any applicable law.

17 General

17.1 Duty

- (a) The Client as between the parties is liable for, must pay, and indemnify QBT for, all stamp duty, duty, or like duties or imposts (**Duty**) (including any fine, interest or penalty) payable or assessed on or in connection with:
 - (i) this Agreement;
 - (ii) any document executed under or required by or contemplated by this Agreement; and
 - (iii) any transaction evidenced, effected or contemplated by a document referred to in **clause 17.1(a)(i)** or **clause 17.1(a)(ii)**.
- (b) If a party other than Client pays any Duty referred to in **clause 17.1(a)** (including any fine, interest or penalty), in whole or in part, the Client must reimburse the paying party without set-off or deduction immediately on demand.

17.2 Legal costs

Except as expressly stated otherwise in this document, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

17.3 Amendment

This Agreement may only be varied or replaced by a document executed by the parties.

17.4 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

- (b) A party is not liable for any Loss of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

17.5 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

17.6 Consents

Except as expressly stated otherwise in this Agreement, a party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

17.7 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

17.8 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

17.9 Assignment

- (a) QBT may assign, transfer or novate any of its rights or obligations under this Agreement to a successor in title to the land on which the Facility is located.
- (b) The Client:
 - (i) must not assign, transfer, novate or deal with any right under this document without the prior written consent of QBT; and
 - (ii) any purported dealing in breach of this **clause 17.9(b)** is of no effect.

17.10 Liability

An obligation of two or more persons binds them separately and together.

17.11 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

17.12 Entire understanding

- (a) This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.

- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

17.13 Relationship of parties

- (a) This document is not intended to create a partnership, joint venture or agency relationship between the parties.
- (b) For clarity, this Agreement is not to be construed as a lease or licence to the Client of any storage facilities or land upon which any storage facility is located.

17.14 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Brisbane;

- (vii) '\$' or 'dollars' is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions and emails;
 - (x) this document includes all schedules and annexures to it; and
 - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

17.15 Headings

Headings do not affect the interpretation of this document.

Execution

Executed as an agreement.

**Executed by Queensland Bulk
Terminals Pty Ltd**)
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

.....
Date

.....
Date

Executed by)
)

.....
(Client)

.....
Company Secretary/Director

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Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

.....
Date

.....
Date

Where the Client has a sole director / sole company secretary

Executed by)
)

.....
(Client)

.....
Sole Director and Sole Company
Secretary

.....
Name of Sole Director and Sole Company
Secretary (print)

.....
Date

Schedule 1

Details

Item	Description	Detail																				
1	Commencement Date																					
2	Expiry Date																					
3	Particulars for delivery of notices	<table border="1"><thead><tr><th colspan="2">QBT</th></tr></thead><tbody><tr><td>Delivery address:</td><td>156 Colmslie Road, MURARRIE QLD 4172</td></tr><tr><td>Postal address:</td><td>PO Box 86, MORNINGSIDE QLD 4172</td></tr><tr><td>Email:</td><td></td></tr><tr><td>Attention:</td><td></td></tr><tr><th colspan="2">Client</th></tr><tr><td>Delivery address:</td><td></td></tr><tr><td>Postal address:</td><td></td></tr><tr><td>Email:</td><td></td></tr><tr><td>Attention:</td><td></td></tr></tbody></table>	QBT		Delivery address:	156 Colmslie Road, MURARRIE QLD 4172	Postal address:	PO Box 86, MORNINGSIDE QLD 4172	Email:		Attention:		Client		Delivery address:		Postal address:		Email:		Attention:	
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Client																						
Delivery address:																						
Postal address:																						
Email:																						
Attention:																						

Schedule 2

Fees

Description	Amount (excl GST)
Cargo Booking Fee (for both Import and Export Services)	<p>\$10.00 per metric tonne of Nominated Tonnage specified by the Client the Cargo Booking Application</p> <p>An additional Cargo Booking Fee of \$10.00 per metric tonne of Receival Tonnage may be charged in accordance with schedule 3 and schedule 4 in respect of each tonne, or part thereof, in excess of the Nominated Tonnage</p>
Import Services	
Discharge Fee	\$15.00 per metric tonne of Receival Tonnage
Import Storage Fee	<p>\$2.00 per metric tonne of Receival Tonnage per month (or part thereof) until Outload of the relevant Consignment</p> <p>Where Outload of the relevant Consignment is completed beyond the Outload Period nominated on the Cargo Booking Application, the Import Storage Fee will increase to \$4.00 per metric tonne per month of Receival Tonnage, or part thereof</p>
Outload Fee	\$7.00 per metric tonne of Outload Tonnage
Fumigation Fee	\$3.00 per metric tonne of Product on hand
Overtime Fee	A quotation for any overtime fees will be provided by QBT on request from the Client
Cancelled Overtime (Discharge) Fee	\$8,000 per shift
Cancelled Overtime (Outload) Fee	\$3,000 per shift
Export Services	

Receival Fee	\$15.00 per metric tonne of Receival Tonnage
Export Storage Fee	\$2.00 per metric tonne of Receival Tonnage per week or part thereof
Outturn Fee	\$7.00 per metric tonne of Outturn Tonnage
Overtime Fee	A quotation for any overtime will be provided by QBT on request from the Client
Cancelled Overtime (Receival) Fee	\$3,000.00 per shift
Cancelled Overtime (Outturn) Fee	\$8,000.00 per shift
Other Fees	
Cancellation Fee	\$15.00 per metric tonne specified by the Client as the Nominated Tonnage on the Cargo Booking Application
Extra Fumigation Fee	Where the Receival Tonnage is less than 10,000 metric tonnes, additional fumigation charges may apply and QBT may pass these costs and any additional costs on to the Client
Transfer Fee	\$4.00 per metric tonne of transferred tonnage

Schedule 3

Import Terms

1 Cargo Bookings for Import

1.1 Adjustment to Nominated Tonnage

- (a) Where the Client wishes to decrease or increase the agreed Receival Tonnage as compared to the Nominated Tonnage, the Client must submit to QBT a request for changed Receival Tonnage and revised Cargo Booking Application.
- (b) QBT at its sole discretion will either confirm acceptance or rejection of the requested change to Receival Tonnage.
- (c) Where QBT has agreed to the proposed change and the Nominated Tonnage is exceeded, QBT reserves the right to charge an additional Cargo Booking Fee as specified in **schedule 2**.

1.2 Adjustment to Discharge Period

- (a) A Client may apply to amend the Discharge Period confirmed in accordance with **clause 4.4(c)** of the Agreement. QBT may agree or reject the proposed amendment.
- (b) An application to change to the Discharge Period cannot be requested later than 21 days prior to the commencement of the originally confirmed Discharge Period under **clause 4.4(c)**.
- (c) QBT will endeavour to ensure that the Client's Discharge Period and Unload Date will be held for the Client. However, QBT may make changes to the Discharge Period (or order in which the Vessel is unloaded as per the Port Loading Statement) or Unload Date where:
 - (i) the Vessel is late to arrive to port, or is cancelled;
 - (ii) the Product is not importable or ready to be Discharged by the relevant Unload Date;
 - (iii) a Force Majeure Event occurs;
 - (iv) the Client's Vessel fails to pass required regulatory, marine or DAFF port surveys;
 - (v) poor or dangerous weather requires the Discharge Period or Unload Date to be delayed in the interests of safety;
 - (vi) there is a change to the estimated time of arrival of the Client's Vessel or others in the queue;

- (vii) the Client has not complied with the relevant notice periods within this Agreement; or
 - (viii) if the Client has failed to pay any storage or handling charges due and payable.
- (d) QBT shall notify all affected parties in writing of any such changes to the Discharge Period (or order in which the Vessel is loaded as per the Port Loading Statement) or Unload Date as soon as possible.
- (e) For clarity, QBT is not liable for any Claim or Loss caused by a change to the Discharge Period (or order in which the Vessel is loaded as per the Port Loading Statement) or Unload Date for the reasons stated in **section 1.2(c)** of this **schedule 3**.

2 Discharge Services

2.1 Vessel Nomination Form

- (a) QBT will provide a Vessel Nomination Form for completion by the Client.
- (b) The Client must provide the Vessel Nomination Form to QBT by 5pm on the date 21 days prior to the first day of the Laycan Period.
- (c) If after submission of a Vessel Nomination Form the Client wishes to substitute a different Vessel, it must provide a written notice of that proposed change to QBT as soon as practicable. Where such a notice is provided, and QBT is unable accommodate the substitute Vessel at the Facility for the originally nominated Discharge Period, **section 2.4** of this **schedule 3** will apply.

2.2 Unload Plan

The Client must prepare and submit an Unload Plan to QBT at least 14 days before the Vessel arrival date setting out the plan for Discharge.

2.3 Scope of Discharge Services

- (a) QBT will provide Discharge Services to the Client in accordance with a request sent by the Client at least 60 days in advance of the Vessel's estimated arrival date where the Client's request for Discharge Services has been accepted by QBT.
- (b) The relevant Discharge Services may include any of the following as applicable:
 - (i) In consultation with the Client, QBT will engage with DAFF to secure inspection and clearance of the Product by DAFF.
 - (ii) QBT will use best endeavours to:
 - (A) Discharge Product from the Vessel and mitigate against the risk of any contamination affecting Product integrity;
 - (B) manage all environmental and local authority requirements;

- (C) provide the number of gangs as reasonably necessary to carry out the Discharge of Product from Vessel;
 - (D) confirm Discharge of Product and cargo as per the Client's shipping documentation;
 - (E) liaise with relevant parties (agents, transport operations, port companies) to support efficient Vessel operations;
 - (F) report to the Client any damage during Discharge of Product from the Vessel;
 - (G) provide any other stevedoring-related services agreed between the Client and QBT.
- (c) In return for provision of the Discharge Services, QBT will be entitled to charge the Discharge Fee in **schedule 2**.
 - (d) Where less than 90% of the Nominated Tonnage is presented for Discharge as the Receival Tonnage, QBT reserves the right to charge all receival, storage, outload and other applicable fees that would have been charged as if the Discharge had occurred to the full value of the Nominated Tonnage.

2.4 Late Vessels

- (a) If a Vessel is late or not available for Discharge to commence on the Unload Date, QBT:
 - (i) reserves the right to give berthing and Discharge or Outturn priority to other Vessels on its shipping schedule;
 - (ii) may assign a new Unload Date;
 - (iii) require that any additional fees accrued are payable prior to the Discharge of the relevant Product from a Vessel or other transport; and/or
 - (iv) treat the delay as a termination of the Cargo Booking and apply the consequences under **clause 4.5**.
- (b) Where QBT is unable to complete the Discharge of Product within four (4) days from the last day of the confirmed Discharge Period due to factors within the reasonable control of the Client, QBT will charge an additional Cargo Booking Fee for the actual tonnage Discharged past the relevant period.

2.5 In Transit Marine Survey

- (a) If QBT assesses that a Vessel presents an unacceptable risk of failing a Marine, DAFF or related survey required by Law, QBT may request that the Client provide assurance of the fitness or readiness of a Vessel to load by submitting an 'in transit' marine surveyor report, either at the previous discharge port or at anchor at the load port. The costs of obtaining this report are to be covered by the Client.

- (b) QBT may refuse to accept a Vessel 'alongside' to present for the Marine, DAFF or related survey required by Law if such a request is not complied with within three Business Days of the request.

2.6 Vessels Failing Regulatory Survey

- (a) The Client is responsible for the condition and state of readiness of Vessels for loading and for a Vessel passing relevant Marine, DAFF and any other survey required by Law relating to the export or import of Product from or to Australia.
- (b) In the event that a Client's Vessel fails a Marine, DAFF or other survey that may be required by Law, QBT:
 - (i) reserves the right to give berthing and Discharge or Outturn priority to other Vessels on its shipping schedule; and
 - (ii) may assign any Vessel that has failed a survey, which is re-presented for Discharge, a new Unload Date.
- (c) Where a Vessel fails Marine, DAFF or other survey and a new Unload Date has been assigned, QBT may charge any applicable fees required to Discharge the Product on that later date.

2.7 Overtime

In the event where overtime labour has been booked for Discharge Services, and the Client fails to have the Vessel ready for Discharge, the Cancelled Overtime (Discharge) Fee will apply.

3 Storage

- (a) QBT will be entitled to charge the Import Storage Fee where Storage Services are provided for Import of Product.
- (b) The Import Storage Fee will not apply for the month in which the Vessel was nominated to arrive on the Cargo Booking Application or for the calendar month immediately following that month. For clarity, QBT will be entitled to charge the Import Storage Fee for each month in which Storage Services were provided after completion of the second month following the originally nominated date of arrival on the Cargo Booking Application.
- (c) The Import Storage Fee will be invoiced on the first of each month for which the Import Storage Fee is payable, and will be charged at the rate nominated in **schedule 2**.
- (d) An increased Import Storage Fee will apply for each month, or part thereof, during which Storage Services are being provided beyond the nominated Outload Period on the Cargo Booking Application. The increased Import Storage Fee is specified in **schedule 2**.

- (e) The Import Storage Fee (including any increased Import Storage Fee) will be invoiced on the first day of each month during the period of storage.
- (f) QBT will also be entitled to charge the Fumigation Fee where QBT, acting reasonably, identifies a need for fumigation of the Product whilst in storage. The Fumigation Fee will be the fee specified in **schedule 2**. The Fumigation Fee will be invoiced on completion of the fumigation service.

4 Outload Services

- (a) Where the Client intends to have Product Outloaded by Truck, it will arrange for its counterparty to contact QBT to arrange for the time and process for collection and transportation of the relevant Product in accordance with QBT's booking requirements.
- (b) QBT will be entitled to charge the Client the Outload Fee for the provision of Outload Services as specified in **schedule 2**.
- (c) The Outload Fee will be invoiced weekly in arrears.
- (d) In the event where overtime labour has been booked for Outload Services, and the Client fails to have the Trucks ready for Outloading, the Cancelled Overtime (Outloading) Fee will apply.

Schedule 4

Export Terms

1 Cargo Bookings for Export

1.1 Adjustment to Nominated Tonnage

- (a) Where the Client wishes to decrease or increase the agreed Outturn Tonnage as compared to the Nominated Tonnage, the Client must submit to QBT a request for changed Outturn Tonnage and revised Cargo Booking Application.
- (b) QBT at its sole discretion will either confirm acceptance or rejection of the requested change to Outturn Tonnage.
- (c) Where QBT has agreed to the proposed change and the Nominated Tonnage is exceeded, QBT reserves the right to charge an additional Cargo Booking Fee as specified in **schedule 2**.

1.2 Adjustment to Outturn Period

- (a) A Client may apply to amend the Outturn Period confirmed in accordance with **clause 4.4(c)** of the Agreement. QBT may agree or reject the proposed amendment.
- (b) An application to change to the Outturn Period cannot be requested later than 21 days prior to the commencement of the originally confirmed Outturn Period under **clause 4.4(c)**.
- (c) QBT will endeavour to ensure that the Client's Outturn Period and Load Out Date will be held for the Client. However, QBT may make changes to the Outturn Period (or order in which the Vessel is loaded as per the Port Loading Statement) or Load Out Date where:
 - (i) the Vessel is late to arrive to port, or is cancelled;
 - (ii) the Product is not exportable or ready to be Outturned by the relevant Load Out Date, for example, where insufficient Product has been accumulated by the Client;
 - (iii) a Force Majeure Event occurs;
 - (iv) the Client's Vessel fails to pass required regulatory, marine or DAFF port surveys;
 - (v) poor or dangerous weather requires the Outturn Period or Load Out Date to be delayed in the interests of safety;
 - (vi) there is a change to the estimated time of arrival of the Client's Vessel or others in the queue;

- (vii) the Client has not complied with the relevant notice periods within this Agreement;
 - (viii) QBT has not received the Client's Authority to Load Form; or
 - (ix) if the Client has failed to pay any storage or handling charges due and payable.
- (d) QBT shall notify all affected parties in writing of any such changes to the Outturn Period (or order in which the Vessel is loaded as per the Port Loading Statement) or Load Out Date as soon as possible.
- (e) For clarity, QBT is not liable for any Claim or Loss caused by a change to the Outturn Period (or order in which the Vessel is loaded as per the Port Loading Statement) or Load Out Date for the reasons stated in **section 1.2(c)** of this **schedule 4**.

2 Receival Services

2.1 Scope of Receival Services for Export

- (a) QBT can provide the following Receival Services as required by the Client:
- (i) sampling, testing and classification of Product;
 - (ii) weighing;
 - (iii) tipping and inward elevation to the Facility;
 - (iv) segregation of Product;
 - (v) placing into storage; and
 - (vi) the recording of relevant information.
- (b) The Client will arrange for its counterparty to contact QBT to arrange for the time and process for delivery of the relevant Product in accordance with QBT's booking requirements.
- (c) Where the Client intends to have Receival Services performed by QBT, QBT will provide those services for the Receival Fee. The Receival Fee will be the amount specified in **schedule 2**.
- (d) The Receival Fee will be invoiced weekly in arrears.
- (e) Where QBT identifies that the Receival Services required by the Client will need to be provided during periods beyond normal operating times at the Facility, QBT will be entitled to charge overtime rates for the staff involved in providing those out of hour services. QBT will advise the Client of the overtime rates applicable prior to commencement of those services.
- (f) In the event where overtime labour has been booked for Receival Services, and the Client fails to have the Trucks ready for Receival Services, the Cancelled Overtime (Receival) Fee will apply.

3 Storage Services

3.1 Scope of Storage Services for Export

QBT may provide the following Storage Services for Export as required by the Client:

- (a) the physical storage of Product;
- (b) standard Product protection and maintenance;
- (c) dis-infestation; and
- (d) recording of relevant information.

3.2 Residual Product

If after the completion of Outturn the Client has residual Product at the Facility, and the Client does not have a Cargo Booking for the same Grade or type of Product within a reasonable timeframe (determined by QBT at its discretion), QBT may:

- (a) direct the Client to collect the Product from the Facility;
- (b) apply the Export Storage Fee for each week or part thereof the Product remains in the Facility; and/or
- (c) on 30 days' notice to the Client, sell the Product (in a manner determined at the sole discretion of QBT) and apply the sale proceeds in payment of any outstanding amount owed to QBT under this Agreement or otherwise. Any amount received over and above the amount owed to QBT will be returned to the Client as soon as practicable.

4 Outturn Services

4.1 Vessel Nomination Form

- (a) QBT will provide a Vessel Nomination Form for completion by the Client.
- (b) The Client must provide the Vessel Nomination Form to QBT by 5pm on the date 21 days prior to the first day of the Laycan Period.
- (c) If after submission of a Vessel Nomination Form the Client wishes to substitute a different Vessel, it must provide a written notice of that proposed change to QBT as soon as practicable. Where such a notice is provided, and QBT is unable accommodate the substitute Vessel at the Facility for the originally nominated Outturn Period, **section 4.6** of this **schedule 4** will apply.

4.2 Load Plan

The Client must prepare and submit a Load Plan to QBT at least 14 days before the Vessel arrival date setting out a plan for Outturn.

4.3 Scope of Outturn Services

QBT may provide the following Outturn Services as required by the Client:

- (a) monitoring quality of Outturned Product (testing and will provide test results);
- (b) weighing;
- (c) outward elevation to Vessels;
- (d) loading onto road transport of residual stock if any; and
- (e) the recording of relevant information (stock on hand reports, Outturn Tonnage).

4.4 Preconditions for Outturn

- (a) Prior to calling a Vessel to berth, QBT will forward to the Client an Authority to Load Form for the Client's approval.
- (b) The Client must approve the Authority to Load and return it to QBT no later than 48 hours from the confirmed Load Out Date.
- (c) Without limiting any other provision of this Agreement:
 - (i) the Client must complete, execute and deliver to QBT all forms prescribed by QBT necessary for the Outturn of any Product;
 - (ii) QBT is not required to Outturn any Product until QBT is satisfied that all relevant requirements for the Outturn of that Product have been satisfied;
 - (iii) QBT will Outturn each Consignment in accordance with the Authority to Load Form provided to QBT by the Client and accepted by QBT; and
 - (iv) the Client acknowledges that the Outturning of Product at any time is subject to local operating arrangements, legislative and regulatory requirements and compliance, fumigation requirements and periods of unavailability due to prevailing weather or other relevant adverse conditions.

4.5 Accumulation requirements

- (a) The Client must accumulate the Nominated Tonnage in order to Export in accordance with the Cargo Booking and the Authority to Load, subject to QBT having provided sufficient intake capacity to the Client for that purpose.
- (b) Where less than 90% of the Nominated Tonnage is presented for loading as the Outturn Tonnage, QBT reserves the right to charge all receipt, storage, outturn and other applicable fees that would have been charged as if the accumulation and Outturn had occurred in full.
- (c) Where the Client accumulates less than 90% of the Nominated Tonnage, and the Vessel has berthed and passed all required Marine,

DAFF or other relevant surveys, after discussing with the Client, QBT may either:

- (i) commence to load the Vessel with the Client's Product in compliance with the directions of the Vessel's captain and or stevedore to ensure the stability of the Vessel; or
 - (ii) order the Vessel to move off berth (at the Client's expense), if the next vessel on the shipping schedule is ready to berth and has sufficient cargo tonnage accumulated to commence and complete loading.
- (d) Following the occurrence of an event described in **section 4.5(c)** of this a Vessel will only be allowed back onto the berth, when the Client has accumulated sufficient Product for QBT, acting reasonably, to decide it will load out the tonnage accumulated.

4.6 Late Vessels

- (a) If a Vessel is late or not available for Outturn to commence on the Load Out Date, QBT:
- (i) reserves the right to give berthing and Outturn or Discharge priority to other Vessels on its shipping schedule;
 - (ii) may assign a new Load Out Date;
 - (iii) may charge the Export Storage Fee for all Product at the Facility accumulated for a Vessel that is late;
 - (iv) require that any additional fees accrued are payable prior to the Outturn of the relevant Product to a Vessel or other transport; and/or
 - (v) treat the delay as a termination of the Cargo Booking and apply the consequences under **clause 4.5**.
- (b) Where QBT is unable to complete the Outturn of Product within four (4) days from the last day of the confirmed Outturn Period due to factors within the reasonable control of the Client, QBT will charge an additional Cargo Booking Fee for the actual tonnage Outturned past the relevant period.

4.7 Consignment Availability

- (a) QBT will use reasonable endeavours to ensure that each Consignment is available to Outturn when the relevant Vessel has berthed at the Facility and is ready to commence loading.
- (b) However, if due to any cause beyond the reasonable control of QBT (including if the Vessel does not arrive on time or has particular cargo requirements), a Consignment is not available for Outturning at the time a Vessel is ready to commence loading, then QBT accepts no responsibility for any Claim or Loss suffered by the Client.

4.8 In Transit Marine Survey

- (a) If QBT assesses that a Vessel presents an unacceptable risk of failing a Marine, DAFF or related survey required by Law, QBT may request that the Client provide assurance of the fitness or readiness of a Vessel to load by submitting an 'in transit' marine surveyor report, either at the previous discharge port or at anchor at the load port. The costs of obtaining this report are to be covered by the Client.
- (b) QBT may refuse to accept a Vessel 'alongside' to present for the Marine, DAFF or related survey required by Law if such a request is not complied with within three Business Days of the request.

4.9 Vessels Failing Regulatory Survey

- (a) The Client is responsible for the condition and state of readiness of Vessels for loading and for a Vessel passing relevant Marine, DAFF and any other survey required by Law relating to the export or import of Product from or to Australia.
- (b) In the event that a Client's Vessel fails a Marine, DAFF or other survey that may be required by Law, QBT:
 - (i) reserves the right to give berthing and Outturn priority to other Vessels on its shipping schedule; and
 - (ii) may assign any Vessel that has failed a survey, which is re-presented for loading, a new Load Out Date.
- (c) Where a Vessel fails Marine, DAFF or other survey and a new Load Out Date has been assigned, QBT may charge the Export Storage Fees and any other applicable fees required to Outturn the Product on that later date.

4.10 Overtime

In the event where overtime labour has been booked for Outturn Services, and the Client fails to have the Vessel ready for Outturn Services, the Cancelled Overtime (Outturn) Fee will apply.