

# Port Terminal Services Access Undertaking

by

**ABB Grain Ltd** (ABN 59 084 962 130) of 124 South Tce Adelaide SA  
5064 ("**Port Operator**")

in favour of

**Australian Competition and Consumer Commission**  
being a body corporate established under **section 6A** of the TPA  
("**ACCC**")

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# Port Terminal Services Access Undertaking

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# Port Terminal Services Access Undertaking

## General terms

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### 1 Background

#### 1.1 Introduction

- (a) The Port Operator operates the Port Terminal Facilities at the Port Terminals.
- (b) The Port Terminal Facilities provide services relating to the export of Bulk Wheat and other commodities.
- (c) The Port Operator has historically provided access to services provided by the Port Terminals to third parties under open access policies.
- (d) The Port Operator or a Related Body Corporate has applied to become an Accredited Wheat Exporter under the *Wheat Export Marketing Act 2008* (Cth).
- (e) Under section 24 of the WEMA, a person who is also the provider of one or more port terminal services (as defined under that Act) must satisfy the 'access test' to be eligible for accreditation to export bulk wheat.
- (f) The 'access test' under the WEMA requires:
  - (i) the person to comply with the continuous disclosure rules in relation to a port terminal service; and
  - (ii) either there is:
    - (A) an access undertaking in operation (under Division 6 Part IIIA of the *Trade Practices Act 1974*) relating to the provision to Accredited Wheat Exporters of access to the port terminal service for purposes relating to export of Bulk Wheat; or
    - (B) a decision in force that a regime established by a State or Territory for access to the port terminal service is an effective access regime (under Division 2A Part IIIA of the TPA) and under that regime Accredited Wheat Exporters have access to the port terminal service for purposes relating to the export of Bulk Wheat.
- (g) The Port Operator has submitted this Undertaking to the ACCC for approval under Part IIIA of the TPA for the purpose of satisfying the 'access test'.

## 1.2 Objectives

The Undertaking has the following objectives:

- (a) providing a framework to manage negotiations with Applicants for access to services provided by certain facilities at the Port Terminals in relation to export of Bulk Wheat;
- (b) establishing a workable, open, non-discriminatory and efficient process for lodging and processing Access Applications;
- (c) providing a non-discriminatory approach to pricing under which the Port Operator publishes reference prices and terms and conditions for the provision of certain standard services annually;
- (d) operating consistently with the objectives and principles in Part IIIA of the TPA and the Competition Principles Agreement;
- (e) reaching an appropriate balance between:
  - (i) the legitimate business interests of the Port Operator, including:
    - (A) the recovery of all reasonable costs associated with the granting of access to the Port Terminal Services;
    - (B) a fair and reasonable return on the Port Operator's investment in the Port Terminal Facility commensurate with its commercial risk;
    - (C) the Port Operator's business interests relating to the export of grain other than Bulk Wheat and to the export of non-grain commodities using the Port Terminal Facilities;
    - (D) the Port Operator's ability to meet its own or its Trading Divisions' reasonably anticipated requirements for Port Terminal Services; and
  - (ii) the interest of the public, including:
    - (A) ensuring efficient use of resources; and
    - (B) the promotion of economically efficient investment, use and operation of the Port Terminals; and
  - (iii) the interests of Applicants wanting access to the Port Terminal Services, including providing access to the Port Terminal Services:
    - (A) on non-discriminatory price and non-price terms; and
    - (B) in a transparent, open, efficient and non-discriminatory manner;

- (f) providing an efficient, effective and binding dispute resolution process in the event that the Port Operator and the Applicant are unable to negotiate a mutually acceptable Access Agreement; and
- (g) in accordance with the objective in s44AA(b) of the TPA, providing for a uniform approach to access to the Port Terminal Services at the different Port Terminals to the extent practicable having regard to the different characteristics of the Port Terminals.

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## **2 Structure**

### **2.1 Components**

- (a) This Undertaking applies in relation to access to Port Terminal Services provided by means of Port Terminal Facilities at a number of Ports Terminals. The Port Terminal Facilities are geographically separate and have different physical and operating characteristics and modes of operation.
- (b) Accordingly, this Undertaking comprises:
  - (i) these **General Terms (and Schedules)** which apply to Port Terminal Services provided by means of each Port Terminal Facility; and
  - (ii) the specific **Port Schedules** which describe:
    - (A) any variations to the general Port Terminal Services provided by means of a Port Terminal Facility; and
    - (B) any specific terms and conditions on which access will be offered to the Port Terminal Services provided by means of that Port Terminal Facility,and apply only to Port Terminal Services provided by means of that particular Port Terminal Facility.

### **2.2 Priority**

The terms of a Port Schedule will prevail over the General Terms to the extent of any inconsistency between them.

### **2.3 Obligation to procure**

If the performance of an obligation under this Undertaking requires a Related Body Corporate of the Port Operator to take some action or refrain from taking some action, the Port Operator must use reasonable endeavours to procure that Related Body Corporate to take that action or refrain from taking that action.

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### **3 Term and variation**

#### **3.1 Commencement Date**

This Undertaking commences on 1 October 2009.

#### **3.2 Expiry**

This Undertaking expires on the earlier of:

- (a) 30 September 2011; or
- (b) the day the ACCC consents to the Port Operator withdrawing the Undertaking in accordance with Part IIIA of the TPA (including under clause 3.3).

#### **3.3 Early withdrawal of the Undertaking**

The Port Operator may seek the approval of the ACCC to the withdrawal of this Undertaking on the occurrence of any of the following events:

- (a) the Port Operator or a Related Body Corporate ceases to be an Accredited Wheat Exporter under the WEMA; or
- (b) the WEMA is amended such that an Accredited Wheat Exporter is no longer required to have in place an access undertaking under Part IIIA of the TPA in relation to access to any of the Port Terminal Services for the purposes of obtaining or maintaining accreditation under that Act.

#### **3.4 Variation for a particular Port Terminal**

The Port Operator may seek the approval of the ACCC to the variation of this Undertaking by removing the Port Terminal Services provided at a particular Port on the occurrence of any of the following events:

- (a) the Port Terminal is disposed of to a person who is not a Related Body Corporate of the Port Operator and the Port Operator ceases to operate or control the Port Terminal Facilities at that Port Terminal; or
- (b) there is in force under Division 2A Part IIIA of the TPA a regime established by a State or Territory for access to services provided at the Port Terminal and under that regime Accredited Wheat Exporters have access to Port Terminal Services (or services substantially similar to the Port Terminal Services) for purposes relating to the export of Bulk Wheat.

#### **3.5 Other variations**

- (a) If, during the term of the Undertaking, the Port Operator is of the opinion that circumstances have changed such that this Undertaking:

- (i) is no longer commercially viable for the Port Operator or becomes inconsistent with the objectives set out in clause 1.2; or
- (ii) is no longer consistent with the Continuous Disclosure Rules as a result of changes to the WEMA,

the Port Operator may seek the approval of the ACCC to vary this Undertaking.

- (b) Prior to seeking the approval of the ACCC under clause 3.5(a), the Port Operator will first consult with counterparties to Access Agreements and Applicants regarding the proposed variation.

### **3.6 Extension**

- (a) At least three months before the expiry of this Undertaking, the Port Operator will submit to the ACCC a written statement outlining whether or not it intends to submit a new undertaking to the ACCC for its consideration.
- (b) If the Port Operator intends to submit a new undertaking to the ACCC for its consideration, the Port Operator will also apply to the ACCC for an extension of the expiring Undertaking.
- (c) The application for extension would include a proposed extension period which, in the Port Operator's view, reasonably estimates the time it would take for the Port Operator to formulate a new undertaking and have that undertaking take effect following approval by the ACCC.
- (d) If the Port Operator does not propose to submit to the ACCC a new undertaking then paragraphs (b) and (c) are not applicable.
- (e) Nothing in this clause prevents the Port Operator from submitting a new undertaking to the ACCC at any time during the term of this Undertaking.

### **3.7 Existing agreements**

- (a) This Undertaking applies only to the negotiation of new Access Agreements (i.e. Access Agreements to be entered into in respect of the 2009/2010 season or subsequent seasons during the term of this Undertaking) and the negotiation of access in addition to that already the subject of an Access Agreement.
- (b) Nothing in this Undertaking can require a party to an existing Access Agreement to vary a term or provision of that agreement.

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## **4 Scope**

### **4.1 Meaning of Port Terminal Services**

- (a) This Undertaking applies only to access to Port Terminal Services.



- (b) **“Port Terminal Services”** means the services described in the Port Schedule in relation to Bulk Wheat provided by means of a Port Terminal Facility, and includes the use of a Port Terminal Facility.

#### **4.2 Meaning of Port Terminal Facility**

**“Port Terminal Facility”** means a ship loader that is:

- (a) at a Port Terminal; and
- (b) capable of handling Bulk Wheat;

and includes any of the following facilities:

- (c) an intake/receival facility;
- (d) a grain storage facility;
- (e) a weighing facility;
- (f) a shipping belt;

that is:

- (g) at the Port Terminal; and
- (h) associated with the ship loader; and
- (i) capable of dealing with Bulk Wheat.

The Port Terminal Facilities at each Port are described in the relevant Port Schedules.

#### **4.3 Nature of Port Terminal Services**

Subject to the Port Schedules, the Port Terminal Services may include:

- (a) intake and receival services;
- (b) storage and handling services;
- (c) ship nomination, acceptance, booking, cancellation and cargo accumulation; and
- (d) ship loading.

#### **4.4 What this Undertaking does not cover**

- (a) The grain supply chain comprises the following activities:
  - (i) intake and receival services;
  - (ii) grain storage and handling (inland);
  - (iii) transportation (from inland facilities to port facilities);

- (iv) services at port terminals (at port); and
  - (v) shipping services (at port).
- (b) To avoid doubt, this Undertaking does not apply:
- (i) to access to services not being Port Terminal Services provided by the Port Operator in relation to Bulk Wheat; or
  - (ii) in relation to other facilities owned by the Port Operator which are part of the grain supply chain such as up country receival and accumulation facilities; or
  - (iii) to the transportation of Bulk Wheat to port; or
  - (iv) to grains which are not wheat; or
  - (v) to wheat which is not Bulk Wheat.
- (c) Nothing in this Undertaking prevents the Port Operator from agreeing with an Applicant or User to provide access to port terminal services for grains other than Bulk Wheat and other services related to Port Terminal Services.
- (d) Nothing in this Undertaking requires a Port Operator or Related Body Corporate to share efficiency savings or benefits from the operation of a separate integrated supply chain service whether or not the integrated supply chain service utilises the Port Terminal Facilities.

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## 5 Price and non-price terms

### 5.1 Obligation to publish price and non-price terms

- (a) By no later than 30 September of each year, the Port Operator must, for access to each Standard Port Terminal Service, publish on the Port Operator's website:
  - (i) reference prices ("**Reference Prices**"); and
  - (ii) standard offer terms and conditions ("**Standard Terms**").
- (b) Unless varied in accordance with clause 5.6, the Reference Prices and Standard Terms must apply for a period not ending before 30 September of the next year.
- (c) If the Port Operator has not already complied with clause 5.1(a) at the commencement of this Undertaking, then it must do so within 15 Business Days of its commencement.
- (d) The Port Operator must give the ACCC copies of Reference Prices and Standard Terms promptly following publication.
- (e) If an Applicant seeks access to non-standard Port Terminal Services, the Port Operator and the Applicant may negotiate prices and non-

price terms that are different from the Reference Prices and Standard Terms.

## **5.2 Access to Standard Port Terminal Services**

- (a) The Standard Port Terminal Services for each Port are set out in the relevant Port Schedules.
- (b) Unless otherwise specified in a Port Schedule, access to a Standard Port Terminal Service (and the Port Operator's obligation to enter into an Access Agreement for them) will only be offered for a term expiring no later than 30 September of the year following the year in which the Standard Terms were first published (subject to appropriate 'holding over' provisions).

## **5.3 Standard Terms**

- (a) The Standard Terms offered to an Applicant must include the Port Loading Protocols.
- (b) Nothing in this Undertaking prevents the parties agreeing to include terms relating to access to the Port Terminal Services in an agreement also applying to access to other services provided by the Port Operator but, to avoid doubt, this Undertaking (including clauses 6, 7 and 9) will only apply to the terms relating to the provision of access to Port Terminal Services.

## **5.4 Non-discriminatory access**

- (a) Subject to clause 5.5:
  - (i) if an Applicant requests a Standard Port Terminal Service at a Port Terminal, the Port Operator must offer the Standard Port Terminal Service at the Reference Prices applicable from time to time for that Standard Port Terminal Service for that Port Terminal in accordance with clause 6; and
  - (ii) the Port Operator must not provide access to Applicants or Users (including its own Trading Division) which are different from:
    - (A) in the case of Standard Port Terminal Services, the Reference Prices or Standard Terms; or
    - (B) in all cases, the price and non-price terms offered to another Applicant or User,unless such different terms are:
    - (C) consistent with the objectives of this Undertaking set out in clause 1.2;
    - (D) commercially justifiable taking into account the matters set out in clause 5.5; and

(E) offered on an arms length commercial basis.

- (b) The Port Operator must not discriminate against an Applicant in breach of this Undertaking where the terms and conditions are different to those offered to another User or the Trading Division for providing like Port Terminal Services and the differentiation is for the purpose of substantially damaging a competitor or conferring upon the Port Operator or its Trading Division any unfair competitive advantage over a competitor in the marketing of Bulk Wheat.

## 5.5 Price and non-price terms

For the purposes of this Undertaking, the price and non-price terms for the provision of access to Port Terminal Services to different Applicants or Users will be determined having regard to:

- (a) the Port Operator's legitimate business interests and investment in the Port Terminal Services, Port Terminal Facilities and the Port Terminal;
- (b) all costs that the Port Operator incurs or may incur in providing access, including any costs of extending the Port Terminal Services, but not costs associated with losses arising from increased competition in upstream or downstream markets;
- (c) the economic value to the Port Operator of any additional investment that the Applicant or Port Operator has agreed to undertake;
- (d) the interests of all persons who have rights to use the Port Terminal;
- (e) the operational and technical requirements necessary for the safe and reliable operation of the Port Terminal Services, the Port Terminal Facilities and the Port Terminal;
- (f) the economically efficient operation of the Port Terminal Services, the Port Terminal Facilities and the Port Terminal;
- (g) any differences in the costs of providing access to Port Terminal Services to different Applicants or Users;
- (h) the opportunity cost of accommodating the requirements of one Applicant or User compared to the requirements of one or more other Applicants or Users;
- (i) the provision of quality related services reasonably required by the Port Operator in respect of some Applicants or Users, but not others including security of Bulk Wheat integrity, testing of Bulk Wheat or Bulk Wheat classification, fumigation and protection requirements for Bulk Wheat;
- (j) the relative risk related to storing and handling different Bulk Wheat segregations for Applicants and Users;
- (k) available Port Terminal capacity, including receipt, handling, storage and cargo accumulation capacity;

- (l) differences in types and grades of Applicants' or Users' Bulk Wheat;
- (m) differences in Applicants' or Users' Bulk Wheat volumes;
- (n) differences in periods of time during which access to Port Terminal Services is required by Applicants or Users;
- (o) differences in levels of Applicants' or Users' usage of Port Terminal Services;
- (p) differences in modes of receipt, storage or outturn including different transport modes to receive Bulk Wheat and different ship configurations;
- (q) geographic and seasonal variations;
- (r) minimisation of demurrage at the port over a given period;
- (s) maximisation of throughput of Bulk Wheat and other commodities at the port over a given period;
- (t) unless the Port Operator is offering segregated services at a Port Terminal, the ability to mix the same grade of Bulk Wheat owned by different owners and / or mix different grades of Bulk Wheat owned by the same or different owners;
- (u) the credit risk of an Applicant or User; and
- (v) existing industry practices.

#### **5.6 Variation to Reference Prices and Standard Terms**

- (a) The Port Operator may vary the Reference Prices or the Standard Terms;
- (b) Any variation under clause 5.6(a) must be published at least 30 days prior to the date on which it is to become effective in the same locations as it publishes its Reference Prices and Standard Terms;
- (c) The Port Operator must provide the ACCC with copies of variations to the Reference Prices and Standard Terms promptly following publication.
- (d) To avoid doubt, any variations to the Reference Prices or Standard Terms does not automatically override the terms of existing access agreements.

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## **6 Negotiating for access**

### **6.1 Good faith negotiation**

The Port Operator will negotiate with an Applicant for the provision of access to Port Terminal Services in good faith in accordance with the terms of this Undertaking.

## 6.2 Confidentiality

- (a) Subject to clause 6.2(b), if a party provides Confidential Information to the other party as part of the negotiation process for access under this Undertaking, the receiver of the Confidential Information will treat that Confidential Information as secret and confidential and the property solely of the provider and not use that Confidential Information for any purpose other than the provisions of this Undertaking allow.
- (b) A party is permitted to disclose Confidential Information to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants (provided they are under a legal obligation not to disclose the Confidential Information to any third party).

## 6.3 Framework

- (a) This part of the Undertaking outlines the process to be followed for an Applicant to gain access to the Port Terminal Services. It provides for:
  - (i) **Preliminary inquiry** - preliminary exchanges of information and meeting to enable an Access Application to be lodged;
  - (ii) **Access Application** - submission of a formal Access Application by the Applicant;
  - (iii) **Negotiation** - negotiating an Access Agreement;
  - (iv) **Access Agreement** – acceptance and execution of an Access Agreement.
- (b) The Port Operator and the Applicant must comply with the confidentiality obligations under clause 6.2 in relation to Confidential Information provided during this process.
- (c) If, at any time during the process, a dispute arises between the parties which, after reasonable negotiation, the parties are unable to resolve to their mutual satisfaction, then either party may seek to resolve the dispute in accordance with the Dispute resolution process outlined in clause 7.

## **6.4 Preliminary inquiry**

### **(a) Provision of information**

- (i) Subject to clause 6.4(a)(ii), the Port Operator will, if requested by an Applicant, provide information related to access to the Port Terminal Services to Applicants to assist with negotiations that may be reasonably required by the Applicant in relation to the Access Application.
- (ii) The Port Operator's obligation under clause 6.4(a)(i) is subject to:
  - (A) the Port Operator not disclosing any information which would breach a confidentiality obligation binding on it or which it considers is commercially sensitive in relation to its own operations; and
  - (B) the Port Operator being able to refuse the request if:
    - (aa) it is unduly onerous; or
    - (ab) the expense and resources required to provide the information is disproportionate to the benefit to be obtained from the information; and
  - (C) the Applicant agreeing to pay the reasonable costs incurred by the Port Operator in obtaining information that is not ordinarily and freely available to the Port Operator.

### **(b) Parties to Negotiation**

- (i) The Port Operator reserves the right to negotiate only with an Applicant who complies with the requirements and processes set out in this Undertaking. If an Applicant does not comply with the relevant obligations and processes, and the Port Operator considers that such non-compliance is material, the Port Operator will not be obliged to continue negotiations regarding the provision of access for that Applicant.
- (ii) The Applicant must be an Accredited Wheat Exporter. It is the responsibility of the Applicant to ensure that they are in compliance with the relevant legal requirements for wheat export as set out in WEMA and the WEAS.
- (iii) At any time, before or during the negotiation process, the Port Operator may require the Applicant to demonstrate to the Port Operator that it is able to meet the Prudential Requirements. In the event the Applicant cannot meet the Prudential Requirements, Port Operator may refuse to commence negotiations or may cease negotiations with that Applicant.

- (iv) For the purposes of clause 6.4(b)(iii), the Applicant will be required to meet the following Prudential Requirements:
  - (A) the Applicant must be Solvent; and
  - (B) the Applicant, or a Related Body Corporate of the Applicant, must not be currently, or have been in the previous two years, in Material Default of any agreement with the Port Operator; and
  - (C) the Applicant must be able to demonstrate to the Port Operator that it has a legal ownership structure with a sufficient capital base and assets of value to meet the actual or potential liabilities under an Access Agreement, including timely payment of access charges and payment of insurance premiums and deductibles under the required policies of insurance or otherwise provides Credit Support acceptable to the Port Operator (acting reasonably).
- (v) If the Port Operator refuses to negotiate for any reasons as described in clauses 6.4(b)(i) or 6.4(b)(iii), it will, within 10 Business Days of the decision to refuse to negotiate, explain in writing to the Applicant the reasons for such refusal.
- (vi) If the Applicant considers that the Port Operator has unreasonably refused to commence, unreasonably delayed, or subsequently unreasonably ceased negotiations in accordance with clause 6.4(b) or clause 6.6(c), then the Applicant may refer the matter to the arbitrator in accordance with clause 7. If the arbitrator determines that the Port Operator has unreasonably refused to commence or subsequently unreasonably delayed or ceased negotiations, the Port Operator will recommence negotiations immediately.
- (vii) If at any time, the Port Operator is of the view that an Applicant's request for access is frivolous in nature or the Applicant is not negotiating in good faith, the Port Operator may refer the request to the arbitrator in accordance with clause 7 for determination. If the arbitrator determines that the request is in fact frivolous, then the Port Operator will be entitled to cease negotiations and will not be obliged to comply with this Undertaking in respect of the request.



## 6.5 Access Application

### (a) Application process

- (i) Requests for access to the Port Terminal Services are to be submitted to the Port Operator in the form of an Access Application and in accordance with the form requirements of Schedule 1.
- (ii) Prior to submitting an Access Application, an Applicant may seek initial meetings with the Port Operator to discuss the Access Application and to seek clarification of the process as outlined in this Undertaking and in particular, the information requirements set out in Schedule 1.

### (b) Acknowledgment

- (i) Upon receiving an Access Application from an Applicant, the Port Operator will acknowledge receipt of the Access Application in writing (or electronically) to the Applicant within five Business Days of its receipt, or such longer period as specified in accordance with clause 6.5(b)(iii).
- (ii) Prior to acknowledging the Access Application, the Port Operator may seek:
  - (A) additional information; or
  - (B) clarification of the information that has been provided in the Access Application.
- (iii) If the Port Operator seeks additional information or clarification in accordance with clause 6.5(b)(ii), it will advise the Applicant of the additional information or the clarification required within five Business Days of receipt of the Access Application.
- (iv) Upon receiving the required information or clarification from the Applicant, the Port Operator will provide written acknowledgment of the receipt of the completed Access Application within five Business Days.

## 6.6 Negotiation of Access Agreement

- (a) Following the Port Operator's acknowledgment under clause 6.5(b), both parties will commence negotiations as soon as reasonably possible to progress towards an Access Agreement.
- (b) The Negotiation Period ("**Negotiation Period**") will commence upon the Port Operator acknowledging the Access Application under clause 6.5(b) and will cease upon any of the following events:
  - (i) execution of an Access Agreement in respect of access sought by the Applicant;

- (ii) written notification by the Applicant that it no longer wishes to proceed with its Access Application;
  - (iii) the expiration of three months from the commencement of the Negotiation Period, or if both parties agree to extend the Negotiation Period, the expiration of the agreed extended period;
  - (iv) if the Port Operator believes that the negotiations are not progressing in good faith towards the development of an Access Agreement within a reasonable time period; or
  - (v) if the Port Operator receives evidence confirming that the Applicant no longer satisfies the Prudential Requirements on receiving such evidence Port Operator will advise the Applicant of such evidence and issue a notice of intent to end the negotiation period, to become effective 10 Business Days after the issue of the notice. If the Port Operator issues a notice of intent the Port Operator will provide to the Applicant written reasons for its decision to end the Negotiation Period.
- (c) Upon cessation of the Negotiation Period, the Port Operator will be entitled to cease negotiations with the Applicant.

## **6.7 Access Agreement**

- (a) The granting of access will be finalised by the execution of an Access Agreement. The parties to the Access Agreement will be the Port Operator and an Accredited Wheat Exporter.
- (b) Subject to clause 5.4 and 5.5 the Port Operator:
  - (i) must offer the Standard Terms to the Applicant where it requests access to a Standard Port Terminal Service subject to the Applicant satisfying the Prudential Requirements; or
  - (ii) may offer amended Standard Terms updated to reflect terms which the Port Operator considers reasonably necessary or desirable to accommodate a request for access to a non-standard Port Terminal Service; and
  - (iii) may agree changes to the Standard Terms requested by the Applicant.

A negotiated Access Agreement will, unless otherwise agreed between Port Operator and the Applicant at least include the Port Loading Protocols.

- (c) Once the Applicant has notified the Port Operator that it is satisfied with the terms and conditions of the Access Agreement as drafted, the Port Operator will, as soon as reasonably practicable, provide a final Access Agreement (or, if applicable, an amendment to an existing Access Agreement) to the Applicant for execution.

- (d) If the Port Operator offers an Access Agreement and the Applicant accepts the terms and conditions offered in that Access Agreement, both the Port Operator and the Applicant will execute the Access Agreement. The parties will use reasonable endeavours to comply with this clause as soon as practicable.

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## **7 Dispute resolution**

### **7.1 Disputes**

- (a) Any Dispute will, unless otherwise expressly agreed to the contrary by both parties, be resolved in accordance with this clause 7 and either party may give to the other party to the Dispute Notice in writing ("**Dispute Notice**") specifying the Dispute and requiring it to be dealt with in the manner set out in this clause 7. The parties will use reasonable endeavours acting in good faith to settle the Dispute as soon as is practicable.
- (b) Any disputes in relation to an Access Agreement once executed will be dealt with in accordance with the provisions of that Access Agreement.
- (c) The Port Operator will by 31 July of each year provide a report to the ACCC on any material disputes in relation to an Access Agreement and any Disputes raised by Applicants or Users or the Port Operator in the last 12 months (except for the first year in which case the report will apply to the period from the commencement of this Undertaking) including the details of any resolution and the status of unresolved matters.

### **7.2 Negotiation**

Within five Business Days of a party giving the other party a Dispute Notice, senior representatives from each party will meet and use reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

### **7.3 Mediation**

- (a) If the Dispute is not resolved under clause 7.2 within 10 Business Days after the date of the Dispute Notice then:
  - (i) if the parties agree, they will attempt to resolve the Dispute by mediation pursuant to this clause 7.3; or
  - (ii) if the parties do not wish to resolve the Dispute by mediation, either party may by notice in writing to the other and the arbitrator, refer the Dispute to be determined by arbitration under clause 7.4.
- (b) If the parties agree to attempt to resolve the Dispute by mediation, the Dispute will be referred to the chief executive officers of both parties who will attempt to resolve the Dispute, including by informal mediation.

- (c) If the Dispute is not resolved within 10 Business Days after being referred to the chief executive officers under clause 7.3(b) (or such longer period as is agreed by each chief executive officer), the Dispute will be referred to formal mediation in South Australia to be mediated by a single mediator appointed by agreement of the parties or if they fail to agree within 10 Business Days, a mediator appointed by the President of the South Australian Chapter of the Institute of Arbitrators and Mediators of Australia (“IAMA”) acting on the request of either party.
- (d) Unless the parties agree otherwise:
  - (i) the mediation will be conducted by a mediator under the IAMA Mediation Rules (whether or not the mediator is a legal practitioner);
  - (ii) the parties may appoint a person, including a legally qualified person to represent it or assist it in the mediation;
  - (iii) each party will bear their own costs relating to the preparation for and attendance at the mediation; and
  - (iv) the costs of the mediator will be borne equally by the parties.

#### **7.4 Referral to arbitration**

- (a) If the Dispute is not resolved under clause 7.2, or at any time after the appointment of the mediator (if any) under clause 7.3(c), either party may by notice in writing to the other and to the mediator terminate the mediation proceedings and give notice of a Dispute that is to be referred to arbitration under this clause 7.4.
- (b) The Port Operator must notify the ACCC of the details of any Dispute which has been referred to arbitration and the progress of the arbitration. The Port Operator must provide the arbitrator’s final determination to the ACCC.
- (c) If the Applicant serves notice on the arbitrator under clause 7.4(a), that notice will also include an agreement by that Applicant to:
  - (i) pay any amounts determined in accordance with clause 7.10; and
  - (ii) indemnify the arbitrator from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under clause 7, such indemnity excluding circumstances where the conduct of the arbitrator constitutes wilful negligence, dishonest or unlawful conduct.
- (d) The Port Operator must pay any amounts determined in accordance with clause 7.10 and will indemnify, the arbitrator from any claims made against it arising in connection with the performance by the arbitrator of its duties under clause 7, such indemnity excluding circumstances where the conduct of the arbitrator constitutes wilful negligence, dishonest or unlawful conduct.

## **7.5 Selection of arbitrator**

- (a) The arbitration is to be conducted by an arbitrator appointed by agreement of the parties.
- (b) Within two Business Days of the parties agreeing an arbitrator, the Port Operator must notify the ACCC. The ACCC may within five Business Days of receiving that notice give notice to the parties of its objection to the arbitrator appointed by the parties and substitute a new arbitrator. The substitute arbitrator must not be the ACCC. If the ACCC does not provide a notice within that time, the parties' appointment of the arbitrator stands.
- (c) If the parties fail to agree an arbitrator within 10 Business Days, of the referral under clause 7.4(a), either party may request the ACCC to appoint an arbitrator.
- (d) The arbitrator will not proceed with the arbitration unless and until the Applicant has agreed to pay the arbitrator's costs as determined under clause 7.10.

## **7.6 Arbitration procedure**

- (a) Subject to the involvement of and disclosures to the ACCC, unless the Port Operator and the Applicant agree otherwise, the arbitration must be conducted in private.
- (b) A party may appoint a person, including a legally qualified person, to represent it or assist it in the arbitration.
- (c) The arbitrator will when conducting the arbitration:
  - (i) observe the rules of natural justice but is not required to observe the rules of evidence;
  - (ii) proceed as quickly as is possible and consistent with a fair and proper assessment of the matter;
  - (iii) while having the right to decide on the form of presentations, encourage a written presentation by each party with exchange and with rebuttal opportunities and questioning by the arbitrator;
  - (iv) call on any party the arbitrator believes necessary to give evidence;
  - (v) permit the ACCC, on request, to make submissions to the arbitrator on matters relevant to the Dispute;
  - (vi) decide how to receive evidence and submissions and consider the need to keep evidence and submissions confidential and the need to protect the confidentiality of the arbitration process;

- (vii) present their determination in a draft form to the parties and hear argument from the parties before making a final determination; and
  - (viii) hand down a final determination in writing which includes all their reasons for making the determination and findings on material questions of law and fact, including references to evidence on which the findings of fact were based.
- (d) The arbitrator may at any time terminate arbitration (without making an award) if it thinks that:
- (i) the notification of the Dispute is vexatious;
  - (ii) the subject matter of the Dispute is trivial, misconceived or lacking in substance; or
  - (iii) the party who notified the Dispute has not engaged in negotiations in good faith.

### **7.7 Matters which arbitrator must take into account**

- (a) In deciding a Dispute the arbitrator will take into account:
- (i) the principles, methodologies and provisions set out in this Undertaking, in particular clauses 5.4 and 5.5;
  - (ii) the objectives and principles in Part IIIA of the TPA and the Competition Principles Agreement;
  - (iii) the benefit to the public from having competitive markets;
  - (iv) any guidance published by the ACCC;
  - (v) any submissions provided by the ACCC;
  - (vi) any other matters that the arbitrator thinks are appropriate to have regard to.
- (b) In making its determination, the arbitrator:
- (i) may deal with any matters referred to in section 44V of the TPA;
  - (ii) will not make a determination that would have any of the effects described in section 44W of the TPA;
  - (iii) will take into account the matters referred to in section 44X of the TPA.

### **7.8 Confidentiality**

- (a) The arbitrator must take all reasonable steps to protect the confidentiality of information that a party has identified is confidential or commercially sensitive.

- (b) The arbitrator may require the parties to comply with rules and orders aimed at protecting the confidentiality of information provided by the parties, including:
  - (i) requiring each party to give confidentiality undertakings to the other party and their external advisers; and
  - (ii) limiting access to confidential information to specified individuals subject to confidentiality undertakings provided by those individuals.
- (c) The arbitrator may make confidential and non-confidential versions of its determination and limit access to the confidential versions to specific individuals.
- (d) For the purpose of clarity, the entire dispute resolution process outlined in this clause 7 remains subject to clause 6.2.

### **7.9 Effect of arbitrator's decision**

- (a) The determination of the arbitrator will be final and binding subject to any rights of review by a court of law.
- (b) Except where the determination or direction is subject to a review by a court of law, if an Applicant does not comply with a determination or direction of the arbitrator, then the Port Operator will no longer be obliged to continue negotiations regarding the provision of access for that Applicant.
- (c) Except where the determination or direction is subject to a review by a court of law, the Port Operator will comply with the lawful directions or determinations of the arbitrator.

### **7.10 Arbitrator's costs**

The arbitrator's costs and the costs of the parties to the arbitration will be borne by the parties in such proportions as the arbitrator determines. Each party may make submissions to the arbitrator on the issue of costs at any time prior to that determination.

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## **8 Capacity management**

### **8.1 Continuous Disclosure Rules**

- (a) The Port Operator must, as a condition of this Undertaking, comply with the Continuous Disclosure Rules under the WEMA from time to time, which at the commencement of this Undertaking involve publishing on its website in relation to Port Terminal Services:
  - (i) a statement setting out the Port Operator's policies and procedures for managing demand for the Port Terminal Services (including the Port Operator's policies and procedures relating to the nomination and acceptance of ships

to be loaded using the Port Terminal Services) (“**Port Loading Protocols**”); and

- (ii) a Shipping Stem (to be updated each Business Day) setting out:
  - (A) the name of each ship scheduled to load grain using a port terminal service;
  - (B) for each ship referred to in sub clause (i), the date when the ship was nominated to load grain using a Port Terminal Service;
  - (C) for each ship referred to in sub clause (i), the date when the ship was accepted as a ship scheduled to load grain using a Port Terminal Service;
  - (D) for each ship referred to in sub clause (i), the quantity of grain to be loaded by the ship using a Port Terminal Service;
  - (E) for each ship referred to in sub clause (i), the estimated date on which grain is to be loaded by the ship using a Port Terminal Service.
- (b) The Port Loading Protocols and the Shipping Stem are available at [www.abb.com.au](http://www.abb.com.au).

## **8.2 Port Loading Protocols**

- (a) As at the commencement date of this Undertaking, the Port Loading Protocols which the Port Operator will include in its Access Agreements are set out in Schedule 3.
- (b) The Port Operator may vary the Port Loading Protocols (whether or not included in an Access Agreement) from time to time subject to the following conditions:
  - (i) any variations to the Port Loading Protocols must be consistent with:
    - (A) the objectives of this Undertaking set out in clause 1.2;
    - (B) the Port Operator’s obligations to provide non-discriminatory access in accordance with clause 5.4 (subject to clause 5.5);
  - (ii) the Port Loading Protocols must include an expeditious dispute resolution mechanism for dealing with disputes over compliance with the Port Loading Protocols;
  - (iii) the Port Operator must consult with Major Users in relation to any proposed variation to the Port Loading Protocols at least 14 days prior to implementing that variation and any variation



must be published at least 30 days prior to the date on which it is to become effective in the same locations as the Port Operator publishes its Port Loading Protocols.

- (c) The Port Operator must provide the ACCC with copies of variations to the Port Loading Protocols promptly following publication.
- (d) To avoid doubt, any variations to the Port Loading Protocols do not automatically override the terms of existing access agreements.

### 8.3 Non-discrimination

Subject to clause 5.4 and 8.4, the Port Operator undertakes not to discriminate between Users or in favour of its Trading Division in providing Port Terminal Services.

### 8.4 Operational Decisions

- (a) “**Operational Decisions**” means decisions made in the course of providing the Port Terminal Services including day to day decisions concerning scheduling, cargo accumulation decisions and ship loading.
- (b) In making Operational Decisions relating to the provision of access to the Port Terminal Services, the Port Operator must balance conflicts of interests of users of the Port Terminals.
- (c) The Port Operator’s obligations under clause 8.4(b) will be read subject to the qualification that many Operational Decisions made relating to the provision of Port Terminal Services will necessarily involve conflicts of interests of users of the Port. Particularly when viewed in isolation, some decisions necessarily confer a relative disadvantage on one user of the Port Terminal and an advantage on others. The Port Operator will make such decisions based on objective commercial criteria and will adopt practices and policies to promote fair, reasonable and non-discriminatory Operational Decision making.
- (d) Without limiting paragraph (c) or clause 5.5, the Port Operator may in making Operational Decisions:
  - (i) give priority to vessels based on the lead time given between nomination and vessel ETA and likely availability of sufficient Bulk Wheat at the Port Terminal prior to vessel ETA necessary to make a nominated vessel’s nominated cargo tonnage;
  - (ii) take into account in particular, the objectives of:
    - (A) minimising demurrage at the Port Terminal over a given period;
    - (B) maximising throughput of Bulk Wheat and other commodities at the Port Terminal over a given period;

- (iii) vary a cargo assembly plan or queuing order for vessels as a result of:
  - (A) insufficient Bulk Wheat at the Port Terminal accumulated by the User necessary to make a User's nominated vessel's nominated cargo tonnage;
  - (B) variations in vessel arrival times;
  - (C) failure of vessels to pass surveys;
  - (D) stability and ship worthiness inspections;
  - (E) vessel congestion;
  - (F) variation in cargo requirements;
  - (G) lack of performance of freight providers;
  - (H) equipment failure;
  - (I) maintenance outages;
  - (J) contamination of accumulated cargoes or contamination of loads;
  - (K) a User not working a vessel or accumulating a cargo on a 24 hour/7 day basis where another User is able to do so.

#### **8.5 No hindering access**

The Port Operator must not engage in conduct having a purpose of hindering access to the Port Terminal Services by any other User in the exercise of a reasonable right of access.

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### **9 Ring fencing**

The Port Operator must comply with the ring fencing rules set out in Schedule 2.

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### **10 Contact details**

- (a) Persons wishing to contact the Port Operator for further information or to apply for access to the Port Terminal Services should contact the Port Operator at the following address:

*The General Manager  
National Supply Chain  
ABB Grain Ltd  
124 South Tce  
Adelaide SA 5064  
Tel: (08) 8211 7199  
Fax: (08) 8211 7478*

- (b) Applicants are also encouraged to review the Port Operator's web site at [www.abb.com.au](http://www.abb.com.au) which includes information relevant to the Port Terminal Services.

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## 11 Definitions

### 11.1 Definitions

**"Access Agreement"** means an agreement between a User and the Port Operator for the provision of Port Terminal Services;

**"Access Application"** means an application for Port Terminal Services as described in clause 6.5;

**"Accredited Wheat Exporter"** means a person having accreditation as an accredited wheat exporter under the WEAS;

**"Applicant"** means the person seeking access to Port Terminal Services under clause 6;

**"Bulk Wheat"** means wheat for export from Australia other than wheat that is exported in a bag or a container that is capable of holding not more than 50 tonnes of wheat;

**"Business Day"** means a day which is not a Saturday, Sunday or public or bank holiday in South Australia, except that if used in relation to a specific Port Terminal means the State or Territory in which the relevant Port Terminal is located;

**"Cargo Assembly Plan"** means a document or documents recording, among other things, the agreed approximate tonnage of Bulk Wheat to be delivered and accumulated by the User at each loading port submitted by the User and accepted, subject to the Port Operator's final determination, by the Port Operator;

**"Competition Principles Agreement"** means the agreement entered into by the Commonwealth of Australia and each State and Territory of Australia in 1995 to implement the national competition policy of Australia;

**"Confidential Information"** means information exchanged between the Port Operator and an Applicant or User in relation to the business of those persons that:

- (a) is by its nature confidential;
- (b) is specified to be confidential by the person who supplied it; or
- (c) is known, or ought to be known, by a person using or supplying it to be confidential or commercially valuable;

but excludes information that:

- (d) is comprised solely of the name, address and contact details of a person; or

- (e) was in the public domain at the time when it was supplied; or
- (f) subsequently becomes available other than through a breach of confidence or breach of this provision; or
- (g) was in lawful possession of the a party prior to being provided by the party; or
- (h) must be disclosed under the Continuous Disclosure Rules under the WEMA; or
- (i) ceases to be confidential in nature by any other lawful means.

**“Continuous Disclosure Rules”** means the continuous disclosure rules as defined in subsection 24(4) of WEMA;

**“Credit Support”** means either:

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

**“Dispute”** means a bona fide dispute between an Applicant or User and the Port Operator arising under this Undertaking but excludes any disputes in relation to an Access Agreement once executed;

**“Dispute Notice”** means a written notice provided by an Applicant or User to the Port Operator or by the Port Operator to an Applicant or User specifying the Dispute and requiring the Dispute to be dealt with in the manner set out in clause 7.1;

**“ETA”** means expected time of arrival;

**“Intention Notice”** means a document by which a User notifies the Port Operator of its intention to nominate a vessel, which is not an official Vessel Nomination Application but will be used by the Port Operator to develop a forward vessel plan;

**“Major Users”** means Users that, as at the date of the proposed variation to the Port Loading Protocols, have shipped more than 20,000 tonnes of Bulk Wheat through the Port Terminals in the past 2 years.

**“Material Default”** means any breach of a fundamental or essential term or repeated breaches of any of the terms of the agreements referred to in clause 6.4;

**“Negotiation Period”** means the period during which negotiation in relation to a final Access Agreement is undertaken as specified in clause 6.6(b);

**“Operational Decisions”** has the meaning given 8.4(a);

**“Parent Guarantee”** means a guarantee given by a Related Body Corporate of the Applicant or User who has an investment grade credit rating or is otherwise acceptable to the Port Operator (acting reasonably);

**“Port Loading Protocols”** has the meaning given in clause 8.1(a).

**“Port Terminals”** means each of the ports operated by the Port Operator at:

- (a) Port Adelaide, SA;
- (b) Outer Harbor, SA;
- (c) Port Giles, SA;
- (d) Wallaroo, SA;
- (e) Port Lincoln, SA; and
- (f) Thevenard, SA.

**“Port Schedules”** means Port Schedules A - F to this Undertaking;

**“Port Terminal Facility”** has the meaning given in clause 4.2;

**“Port Terminal Service”** has the meaning given in clause 4.1;

**“Prudential Requirements”** means the requirements specified in clause 6.4(b)(iv);

**“Reference Prices”** means the reference prices described in clause 5.1(a)(i), or as varied in accordance with clause 5.6;

**“Related Body Corporate”** has the meaning given to Related Body Corporate in the *Corporations Act 2001 (Cth)*;

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

**“Shipping Stem”** has the meaning given in clause 8.1(a)(ii);

**“Solvent”** means that, in the last five years:

- (a) the Applicant has been able to pay all its debts as and when they become due and has not failed to comply with a statutory demand under section 459F(1) of the *Corporations Act 2001 (Cth)*;
- (b) a meeting has not been convened to place it in voluntary liquidation or to appoint an administrator;
- (c) an application has not been made to a court for the Applicant to be wound up without that application being dismissed within one month;
- (d) a controller (as defined in the *Corporations Act 2001 (Cth)*) of any of the Applicant’s assets has not been appointed; or

- (e) the Applicant has not proposed to enter into or enters into any form of arrangement with its creditors or any of them, including a deed of company arrangement.

“**Standard Port Terminal Service**” means a Port Terminal Service specified as such in a Port Schedule;

“**Standard Terms**” means the standard terms and conditions described in clause 5.1(a)(ii), or as varied in accordance with clause 5.6;

“**TPA**” means the *Trade Practices Act 1974 (Cth)*;

“**Trading Division**” means a business unit or division of the Port Operator or its Related Bodies Corporate which have responsibility for the trading and marketing of Bulk Wheat;

“**User**” means a person who has entered into an Access Agreement with a Port Operator in relation to Bulk Wheat;

“**Vessel Nomination Application**” means a document by which a User notifies the Port Operator of its intention to nominate a vessel to be loaded at a Port Terminal;

“**WEAS**” means the Wheat Export Accreditation Scheme 2008;

“**WEMA**” means the *Wheat Export Marketing Act 2008 (Cth)*.

## 11.2 Interpretation

In this Undertaking, unless the context otherwise requires:

- (a) singular words will also have their plural meaning and vice versa;
- (b) a reference to a person includes companies and associations;
- (c) a reference to a consent of a party means the prior written consent of that party;
- (d) headings are for convenient reference only and do not affect the interpretation of this Undertaking;
- (e) a reference to a, clause, Part or a Schedule is a reference to a clause, Part or Schedule of this Undertaking;
- (f) a reference to a party includes its successors and permitted assigns;
- (g) notices that are required to be given in writing to Port Operator may, if so agreed by Port Operator, be provided in electronic form;
- (h) a reference to any Act includes all statutes, regulations, codes, by-laws or ordinances and any notice, demand, order, direction, requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act includes all consolidations, amendments, re-enactments or replacements from time to time of that Act and a reference to “law” includes a reference to any Act and the common law;

- (i) the words “including”, “for example” or “such as” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (j) a reference to \$ and dollars is to Australian currency.

# Port Terminal Services Access Undertaking

## Schedule 1 – Access Application information

Access Applications are to be submitted to the Port Operator in written form and clearly state that the Access Application is made in accordance with this Undertaking and must be accompanied by the following information:

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### **1 Request details**

- 1.1 Season**
- 1.2 Customer Application Type**
- 1.3 Business Category**

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### **2 Applicant details**

- 2.1 Company name**
- 2.2 ABN/ACN**
- 2.3 Website**
- 2.4 Address**
- 2.5 Contact details**
- 2.6 Details of authorised company representative (including authorisation)**
- 2.7 Duration of the Access Agreement sought**



# Port Terminal Services Access Undertaking

## Schedule 2 – Ring fencing rules

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### 1 Financial records

The Port Operator must make the financial records relating to its provision of access to and the provision of the Port Terminal Services available to the independent auditor appointed by the ACCC when requested to do so by notice in writing given by the ACCC.

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### 2 Restricted information

- (a) The Port Operator must not use or disclose Restricted Information other than for the purpose of providing access to Port Terminal Services in compliance with the terms of this Undertaking.
- (b) “**Restricted Information**” means Confidential Information received from a User in respect of:
  - (i) an Intention Notice or a Vessel Nomination Application until the date on which it is accepted by the Port Operator, including information on:
    - (A) the expected date of arrival of the ship at the nominated Port;
    - (B) a Cargo Assembly Plan; and
    - (C) the destination of nominated ships;
  - (ii) an order to load a ship including any amendments to the loading order.

---

### 3 Prohibited information flows

Subject to clause 5 of this Schedule, the Port Operator shall not:

- (a) disclose Restricted Information to:
  - (i) its Trading Divisions; or
  - (ii) other entities, including its own Related Bodies Corporate, their agents or employees who are involved in trading Bulk Wheat;
- (b) access or use Restricted Information for the purpose of substantially damaging a competitor or conferring upon it or its Related Bodies Corporate any unfair competitive advantage over a competitor in the marketing of Bulk Wheat; or
- (c) allow its Trading Divisions or other entities, including its own Related Bodies Corporate, their agents or employees who are

involved in trading Bulk Wheat to have access to Restricted Information in the Port Operator's possession or control.

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#### **4 Permitted information flows**

The Port Operator may disclose:

- (a) to an Applicant or User any Restricted Information that solely relates to the Bulk Wheat owned by that Applicant or User; and
- (b) to any person, information concerning the grade, quality, quantity, location or attributes of Bulk Wheat received by the Port Operator ("**Receival Specific Information**"), provided that the Receival Specific Information is aggregated to such an extent that a third party recipient of that aggregated information without access to the Receival Specific Information would not be capable of identifying information specific to any particular User.

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#### **5 Compliance**

- (a) The Port Operator's employees will be made aware that:
  - (i) a failure to comply with the obligations under this Schedule will constitute a disciplinary offence and may expose both the individual and the Port Operator to penalties for a breach of the TPA or WEMA;
  - (ii) they should contact the Port Operator's legal department if they have any concerns in relation to this policy, adherence to its objects by officers, employees or agents or its application to any particular conduct.
- (b) The Port Operator will provide and publish information and guidance to its officers, employees and agents to ensure so far as is practicable that they are made aware of their obligations under this Undertaking.
- (c) The Port Operator will provide training to its officers, employees and agents who:
  - (i) in dealing directly with Applicants or Users or potential Applicants or Users;
  - (ii) are involved directly in the provision of access to Port Terminal Services to Applicants and Users; and
  - (iii) have access to the Port Operator's Receival Specific Information;to ensure so far as is practicable that they are made aware of their obligations under the terms of this Undertaking.
- (d) If any Port Operator officer, employee or agent is responsible for, or knowingly involved in conduct in breach of this clause, or any

specific process created to implement this clause then, without prejudice to any other action that the Port Operator may be required by law to take or shall otherwise think appropriate:

- (i) the conduct of that employee will be taken into account in relation to that person's performance appraisal and remuneration review; and
  - (ii) the relevant person shall receive training as determined by the Port Operator's compliance manager.
- (e) The Port Operator will make employees aware that engaging in deliberate conduct in repeated or serious breach of this Schedule may be grounds for dismissal.

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## 6 Audit

- (a) The Port Operator's compliance with this clause (and its related processes and procedures) must be independently audited by an independent auditor at such times as the ACCC may direct but in event not more than once in any 12 month period.
- (b) The auditor ("**Compliance Auditor**") will be selected by the Port Operator but must be approved by the ACCC.
- (c) The Compliance Auditor shall review:
  - (i) records of any complaints;
  - (ii) the Port Operator's compliance with this clause;
  - (iii) records held by the compliance officer;
  - (iv) any relevant policies or procedures that implement or otherwise relate to this clause; and
  - (v) any other issues relevant to the Port Operator's compliance with the principles and obligations stated in this clause.
- (d) The Compliance Auditor's report, which shall include:
  - (i) recommendations for any improvements in the Port Operator's policies or processes; and
  - (ii) a report on the Port Operator's past compliance with any recommendations previously made by a Compliance Auditor,must be provided to the ACCC.

# Port Terminal Services Access Undertaking

## Schedule 3 – Initial Port Loading Protocols

## **ABB Grain Shipping Protocols**

In the context of these protocols, “the Company” means ABB Grain.

### **Export Options**

If a Client has not previously nominated the export option they wish to use, they must nominate this option on the Company’s standard nomination form (available from either [www.abb.com.au](http://www.abb.com.au) or [www.ezigrain.com.au](http://www.ezigrain.com.au)).

There are two export options available to the Client:

1. Export Select
2. Export Standard

All Clients must complete the nomination forms for every vessel, unless otherwise agreed with the Company.

### **Fees**

The port handling and shipping fee and the vessel nomination fee will vary depending on the Port being utilised by the Client, the Export Option Nominated, the date of commitment of tonnes to the Export Select option and the timing of nomination. The Company will require a deposit at the time of an accepted nomination.

The Client should refer to the Company’s current storage and handling charges (available on the ABB website or provided upon request) for further information.

### **Access to ABB port terminals**

The Company is willing to provide exporters of wheat and other commodities with access to its grain port terminal services at Thevenard, Port Lincoln, Wallaroo, Port Giles and Port Adelaide (inner harbour). The Company has proudly served the South Australian grains industry for over 50 years, providing grain assembly, freight, port storage, throughput and ship loading services to domestic and international marketers and looks forward to the commissioning of a new world-class deep-water terminal at Port Adelaide’s outer harbour.

The Company is a party to a voluntary undertaking provided to ACCC in 2004, to the effect that the Company will not unfairly or unreasonably discriminate between traders as to the terms and conditions of access to its port terminals. The undertaking expires on 20 September 2009.

Before being able to access port terminal services, an exporter must:

- Enter into and comply with the terms and conditions of a storage and handling agreement with the Company. To view the current Storage and Handling Agreement (including a schedule of applicable fees and charges) [click here](#).
- The Company will publish a revised storage and handling agreement annually in the September preceding each season to apply for that season. In the absence of special arrangements negotiated between the exporter and the Company, the standard Agreement terms and conditions will apply.

- Be creditworthy, as assessed by the Company.
- In the case of wheat exports, be accredited within the meaning of the Wheat Export Marketing Act, 2008.
- Hold all other licenses and permits required by regulation for the export of the commodity to be shipped.

### **Vessel Nomination**

Acceptance of a nomination of a vessel will be at the discretion of the Company.

Upon acceptance of a nomination, the Client will be allocated an estimated load date(s) based on the ability of the Company or the Client (if they are utilising the Export Standard option) to accumulate the cargo.

### **Allocation of Estimated Load Dates(s)**

Vessels will be allocated estimated load dates based on accumulation priority. To provide fair port access the following will be taken into account in allocating resources and thus determining accumulation priority.

- Vessels already nominated
- Available transport resources, port space and available upcountry stock.
- Client's ability to provide transport resources if using Export Standard
- Lead time provided on nomination
- Ownership/ Changes to ownership of cargo
- Specific quality requests
- Impact on terminal efficiencies
- Changes to Vessel ETAs
- Client willingness to accept overtime costs and/or purchase additional accumulation capacity
- Specific supply chain efficiencies including the ability to fully utilise available transport resources
- Stock already positioned in port
- If any vessel/cargo changes constitute a new nomination
- Clients' ability to provide proof of ownership or transfers (if applicable)

**Estimated load dates may change for one or more of the following reasons**

- Accumulation Issues
  - Lack of performance of freight providers
- Failure of vessel to pass customary port surveys
- Unable to provide accurate ETA
- Quality problems identified during accumulation for Client's vessel or other vessels already in the queue
- Variation in cargo requirements
- Weather
- Terminal Efficiencies
- Changing ETA's of your vessel or others in the queue
- Acceptance of late nomination
- Cancelled Vessels
- Clients' authority to load or otherwise
- Flinders Ports SA Port rules section 4.12 Grain Berth Loading Priorities
- Ability to utilise cargo already at port
- Payments received
- Vessel delayed at discharge port
- Delays at first port which impact on second port ETA

This is not an exhaustive list.

**Vessel Nomination Form**

Vessel Nomination form must be completed prior to acceptance and allocation of an estimated load date(s).

Vessel nomination forms must contain

- Name and details of vessel
- Current location of vessel
- Ship broker (or internal sea freight manager) contact details
- Expected ETA 1<sup>st</sup> load Port

- Load grades and information regarding specific quality parameters,
- Nominated Load Port(s),
- Information regarding the intake of stock from any 3<sup>rd</sup> party sites and
- In the case of Export Standard, a site accumulation and transport plan.

### **Load Grades and Specific Quality Parameters**

A vessel will not be accepted and allocated an estimated load date(s) until

1. Client holds ownership in their name to cover the requirements or are able to demonstrate remaining ownership in other Company approved third party bulk handlers and the grain is available; or transfers will occur prior to accumulation commencing.
2. If a Client is seeking tighter standards for outturn than that of normally agreed standards (pulses will not apply), the Company and the Client must agree on the costs and liability applicable for meeting the tighter specifications prior to outturn.

### **When a vessel substitution or variation may be treated as a new nomination**

- The nominated vessel is delayed from the original ETA by more than three (3) days;
- A vessel is substituted and the ETA varies by more than three (3) days from original ETA;
- The Client changes load ports;
- The Client changes grades to be loaded; or
- The Client changes specifications of the grade to be loaded.

The Company reserves the right to allocate new load dates.

### **Estimated load dates are calculated based on the following operating conditions unless otherwise negotiated with the Client.**

- The Company provides outturn and intake services for clients on a 5 day week (normal operating hours) basis for a standard shift provided sufficient notice was received for nomination (21 days).
- The Company will use reasonable endeavours to provide the following rail transport capacity for Export Select Accumulations in addition to road capacity:
  - 2 trains for Port Lincoln
  - 2 trains for Inner/Outer Harbor



Subject to receiving sufficient notice for nomination (21 days).

- A Clients' willingness to pay shift penalties for extra labour or purchase additional transport capacity.
- Specific supply chain efficiencies including the ability to fully utilise available transport resources, other site(s) conflicting movements and available up-country labour restrictions.

#### **Notification prior to Vessel Nomination & Company Acceptance**

- Any notification prior to the Vessel Nomination (and subsequent Company acceptance) is not considered a Nomination and the Company will not be required to commence grain movements for a vessel accumulation.
- However, the Company may commence accumulation into port subject to port space, where there are no nominated vessels or for supply chain efficiencies purposes.
- It is unlikely that pre-accumulations would commence into Outer Harbor due to limited port space.
- If the Company is required to prioritise accumulations due to conflicting accumulation plans or vessel ETAs then the Company will prioritise the accumulation for the earlier nominated vessel (unless, in the Company's discretion there are over-riding reasons to alter that priority, refer "Guiding Principles..." below).
- The Company will however make reasonable endeavours to commence mobilising upcountry resources to make stock available.

#### **Guiding Principals for determining Accumulation Priority and therefore allocation of Estimated Load Date(s)**

1. If a vessel is already nominated for the load port then it will receive accumulation priority even if the new vessel has an earlier ETA unless
  - a. The Company deems it can manage the impact of accepting the second nomination otherwise this vessel accumulation will occur after the initial vessel is completed; or
  - b. the ETA's are within 3 days (and can be confirmed with the ship) and accumulation cannot be stopped without
    - i. significant costs being incurred by the Company;
    - ii. Port efficiencies being negatively impacted.
2. Where Export Select Cargo is already positioned at port it will be allocated to Clients who have in the first instance provided the earlier nomination (and in the form required by the Company).

3. The Company reserves the right not to fully accumulate a vessel cargo into Outer Harbor to maximise all Client vessel turnarounds where multiple vessels are arriving in a short timeframe.
4. Specific supply chain efficiencies including an ability to fully utilise available resources may result in vessels loading out of arrival order based on an ability to fully position enough stock at port. This is more likely to occur with minor grade commodities.
5. If a Client is willing to work outside of the standard operating conditions or increase accumulation capacity the vessel may receive accumulation priority if the initial prioritised Client rejects a similar offer.
6. The Company also reserves the right to adjust accumulation priority based
  - a. On increased total terminal efficiencies and an ability to minimise the total accumulation time based on total wait time of all vessels (although an individual Client's vessel may be delayed).
  - b. The majority of the stock for a nominated vessel already being received at port and in a shippable position.
  - c. Vessel ETA changes, to ensure the supply chain continues to operate in an efficient manner.

### **Berthing Priority**

- Flinders Ports SA Port rules section 4.12 Grain Berth Loading Priorities
- Clients must work the vessel 24/7 basis (Labour Ordering conditions)
- If Stock in position and vessel not load ready, Client must vacate the berth if there is another vessel at anchor waiting to berth and can load stock.

### **Vessel Substitution/Cancellation**

In the event that a vessel is substituted and the accumulation plans have already commenced and the vessel is subsequently cancelled without substitution or the substituted vessel is delayed from the original ETA by more than three (3) days a vessel variation fee will apply (refer the Company's current Storage and Handling charges). Where export select option is taken, the Company may be able to mitigate the cost by utilising this cargo for another export select Client provided it does not negatively affect other Client accumulations. The Company reserves its right to amend the accumulation priority by treating this as a new nomination. Amended load dates will be calculated taking into account accumulation and terminal efficiencies.

In the event of a substituted vessel maintaining the original ETA, the vessel variation fee will not apply. If the vessel variation fee is to apply then it will apply to the original nominated vessel tonnage.

The Vessel Variation Fee does not limit the Company's right to seek further costs from the Client directly in relation to the cancellation of a vessel (within 21 days of the original

ETA) or the delay of a substituted vessel (by more than 3 days from the original ETA) in particular if repositioning costs are incurred to move the tonnage to alternative storage.

### **Vessel Repositioning**

Where cargo has been partly or fully positioned for shipment at a Company's port terminal as a result of a vessel nomination and subsequently the nominated vessel is cancelled or delayed from its original ETA by more than three (3) days, shipping re-positioning or variation fees may apply where the port terminal is blocked and causes other clients (who have a firm vessel nomination with the Company) to experience delays. Where the export select option is taken, the Company may be able to mitigate the cost by utilising this cargo for another export select Client provided it does not negatively affect other Client accumulations.

The Company will use its best endeavours to mitigate the Client's shipping Re-Positioning fees; however, the Client will remain ultimately responsible for Shipping Re-Positioning fees incurred as a result of the aforementioned circumstances.

Specifically, at Outer Harbor, the Client will be invoiced for the freight cost to Inner Harbor as well as the Shipping Re-positioning Fee (refer current storage and handling charges), if the Company has to clear cells at Outer Harbor for another vessel accumulation (where the original ETA is delayed by more than 3 days or the vessel was cancelled or the vessel fails survey significantly). Where Export Select is undertaken then the cargo will be transferred back to the Client's name at outer/inner harbour.

### **Limitation of Liability**

The Company reserves the right to cease loading if, in its opinion, continued loading may result in breaches of any safety or environmental requirements.

The Company will make every effort to ensure the cargo is available to load without delay and will advise the Client of any potential delays, however to the extent permitted by law the Company will not be liable for any losses (including loss of despatch earnings or demurrage incurred) suffered by the Client due to lack of cargo availability or inability to commence ship loading by the estimated load dates.

### **Disputes**

Notwithstanding any other provision of these Protocols or any other agreement between the Company and the Client, in the event that the Client disputes the Company's compliance with these Protocols the following procedures will apply:

- I. The Client must notify the Company in writing of the dispute and the nature of the non-compliance (**dispute notice**).
- II. The Company must respond in writing to the Client within 5 working days of receipt of the notice of dispute (**response**). The response must set out whether the Company accepts or rejects the claim of non-compliance and must provide an explanation or basis for the Company's conclusion.
- III. If the Client is not satisfied by the Company's response it may serve an escalation notice on the Company within 5 working days of receipt of the Company's response (**escalation notice**).

- IV. Upon receipt of an escalation notice the Company must make all reasonable endeavours to arrange a meeting within 5 working days receipt of the escalation notice between the Company's Executive General Manager National Supply Chain and the Client to provide an opportunity for the Client to air its grievances.

#### **Variation of Protocols**

In the event that the Company wishes to vary these Protocols, it will:

- consult beforehand with major clients (clients that have shipped over 20,000 tonnes of a commodity in the past 2 years) to assess the impact of the proposed changes
- provide all clients with 30 calendar days written notice of the variations and
- post the amended Protocols on the Company's web site.

END

# Port Schedule A – Port Adelaide

This Schedule contains information about, and terms and conditions which only apply to, the Port Adelaide port terminal.

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## **1 Description of Port**

### **1.1 Location**

Moonta Road, Port Adelaide, South Australia

Latitude 34°51'S

Longitude 138°30'E

### **1.2 Port Terminal Facilities**

- Flinders Ports Grain Berth 27, Port Adelaide
- Intake facilities for road and rail available
- Storage facilities located at the port
- intake weighbridges
- shipping batch weighers onto 1 shipping belt

### **1.3 Storage capacity**

60,800 mt steel shipping bins

260,000 mt concrete vertical silos

### **1.4 In load capacity**

Road 3000 tph, up to 10 receival hoppers

Rail 800 tph

### **1.5 Ship loading capacity**

Approximately 700 tph wheat

No. of shipping belts: 1

No. of spouts: 2

Restrictions:

Maximum LOA 200 m

Maximum beam 30.00 m

Depth alongside 10.7 m

Berth length 204 m

Maximum sailing draught 10.6 m (subject to tides)

Air draught 14.1 m

## **1.6 Interaction with upstream supply chain**

Accumulation for shipping follows the acceptance of vessel nomination and servicing of vessels with priority on stem. Users may choose to ship under Export Select or Export Standard terms.

### **Export Select**

Users commit stock to Export Select in an upcountry position and receive stock back in a notional port position. ABB Logistics manages the planning, up country accumulation and transport to port process. ABB operates two rail assets and has a number of agreements with road transport operators to meet the logistics requirements for shipping to Port Adelaide. Export Select transport charges are published on the ABB website.

### **Export Standard**

Users arrange their own accumulation plan and transport to port.

Additionally, ABB Freight Services can provide transport options and the Client Services department may facilitate grain swaps to assist Users if requested.

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## **2 Port Terminal Services**

### **2.1 Receival services**

(a) Road receival comprises:

- up to 10 receival hoppers
- Marshalling capacity 50 semitrailers
- intake weighbridges, 80 mt capacity each
- lines provide sample and quality testing services
- Standard intake hours 7.30 am – 3.30 pm. Daily intake hours may be extended and current hours are available on request.
- During the harvest period, the site receives direct deliveries from growers into long term storage.

- All road movements are required to meet on-site OH&S and Chain of Responsibility requirements as determined, and modified from time to time, by the Port Operator. Detail is available on the ABB website:
- [www.abb.com.au/StorageHandling/RoadFreightContractors.aspx](http://www.abb.com.au/StorageHandling/RoadFreightContractors.aspx)

(b) Rail receipt comprises:

- Standard gauge line
- Gross weighing
- Trains require shunting 10 wagons at a time
- Rail operators are required to have a full interface co-ordination plan prior to arranging any rail movements to company sites. This will require all wagons to be fitted with RFID. Further information can be obtained by contacting the Safety, Health and Environment (“SHE”) Department on (08) 8304 5000

## 2.2 Storage services

Storage for shipping comprises 8 welded steel silos of 7,600 mt capacity each. All shipping is performed through these bins.

Permanent non-shipping storage comprises a number of concrete vertical silos and steel bins with 260,000 mt capacity. This forms longer term storage.

## 2.3 Weigher Services

Weighing of grain on shipping is via two shore based batch weighers.

## 2.4 Ship loading services

The Port Operator provides the outturn to ship of grain from the Port Operator’s terminal, 24 hours/day 7 days/week excluding public holidays and subject to labour ordering conditions. This includes standard shipping related services in relation to positioning, shipping preparation, stevedoring, sampling, documentation and blending as described in the current:

- Storage and Handling Agreement; and
- Shipping protocols,

available on the company website: [www.abb.com.au](http://www.abb.com.au)

Information on the shipping stem is updated daily and is available at [www.abb.com.au/PortAccessScheduling/SAShippingSchedule.aspx](http://www.abb.com.au/PortAccessScheduling/SAShippingSchedule.aspx)

## 2.5 Additional services

- Methyl Bromide fumigation

- Stevedoring and agency services
- Ship cleaning services
- Freight services
- Dust extraction
- Grain cleaning

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### **3 Additional price and non-price terms**

Additional price and non-price terms are as set out in the ABB Storage and Handling Agreement as amended from time to time (a copy of which is available at [www.abb.com.au/StorageHandling/StorageHandlingServices.aspx](http://www.abb.com.au/StorageHandling/StorageHandlingServices.aspx)).

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### **4 Additional capacity management terms**

Shipping at Port Adelaide is operated on a “just in time” basis. Tonnage is executed through 8 shipping bins, of 60,800 metric tonnes total capacity. This means that shipping capacity can be adversely impacted by any constraint along the supply chain including, but not limited to, available transport, availability of grain, labour to load and unload grain, grain fumigation, vessel arrival delays and vessels failing surveys.

Port Adelaide can partially load panamax vessels subject to vessel configurations prior to topping up in Port Giles or Port Lincoln.

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### **5 Additional published protocols and information**

- ABB Storage and Handling Agreement  
[www.abb.com.au/StorageHandling/StorageHandlingServices.aspx](http://www.abb.com.au/StorageHandling/StorageHandlingServices.aspx)
- ABB Shipping Protocols (“Port Loading Protocols”)  
[www.abb.com.au/PortAccessScheduling.aspx](http://www.abb.com.au/PortAccessScheduling.aspx)
- ABB Chain of Responsibility Code of Conduct and ABB Carrier Agreement  
[www.abb.com.au/StorageHandling/RoadFreightContractors.aspx](http://www.abb.com.au/StorageHandling/RoadFreightContractors.aspx)
- Flinders Ports operating rules  
<http://www.flindersports.com.au/>



# Port Schedule B – Outer Harbor

This Schedule contains information about, and terms and conditions which only apply to, the Outer Harbor port terminal.

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## **1 Description of Port**

### **1.1 Location**

Outer Harbor, South Australia

Latitude 34°51'S

Longitude 138°30'E

### **1.2 Port Terminal Facilities**

- Flinders Ports Grain Berth 8, Outer Harbor
- Intake facilities for road and rail available
- Shipping storage facilities located at the port
- 1 intake weighbridge
- 2 shipping batch weighers onto 1 shipping belt

### **1.3 Storage capacity**

65,000 mt steel shipping bins

### **1.4 In load capacity**

Road 800 tph, 1 receival hopper

Rail 2400 tph

### **1.5 Ship loading capacity**

Approximately 2000 tph wheat

No. of shipping belts: 1

No. of spouts: 1

Restrictions:

Maximum LOA 300 m

Maximum beam 38 m

Depth alongside Temporary working depth 15 m

Berth box length 320 m

Maximum sailing draft Require a 10% UKC (greater than 32.2 m beam, 15%)

## **1.6 Interaction with upstream supply chain**

Accumulation for shipping follows the acceptance of vessel nomination and servicing of vessels with priority on stem. Users may choose to ship under Export Select or Export Standard terms.

### **Export Select**

Users commit stock to Export Select in an upcountry position and receive stock back in a notional port position. ABB Logistics manages the planning, up country accumulation and transport to port process. ABB operates two rail assets and has a number of agreements with road transport operators to meet the logistics requirements for shipping to Outer Harbor. Export Select transport charges are published on the ABB website.

### **Export Standard**

Users arrange their own accumulation plan and transport to port.

Additionally, ABB Freight Services can provide transport options and the Client Services department may facilitate grain swaps to assist Users if requested.

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## **2 Port Terminal Services**

### **2.1 Receival services**

(a) Road receival comprises:

- 1 receival hopper
- Marshalling capacity 12 semitrailers
- 1 intake weighbridges, 100 mt capacity
- lines provide sample and quality testing services
- Standard intake hours 7.30 am – 3.30 pm. Daily intake hours may be extended and current hours are available on request.
- All road movements are required to meet on-site OH&S and Chain of Responsibility requirements as determined, and modified from time to time, by the Port Operator. Detail is available on the ABB website:

[www.abb.com.au/StorageHandling/RoadFreightContractors.aspx](http://www.abb.com.au/StorageHandling/RoadFreightContractors.aspx)

(b) Rail receival comprises:

- Standard gauge loop line

- Gross and net weighing
- Rail operators are required to have a full interface co-ordination plan prior to arranging any rail movements to ABB sites. This will require all wagons to be fitted with RFID. Further information can be obtained by contacting the SHE Department on (08) 8304 5000

## **2.2 Storage services**

Storage for shipping comprises 8 welded steel silos of 7,500 mt capacity each and 2 welded steel silos of 2,500 mt capacity. All shipping is performed through these bins.

## **2.3 Weigher Services**

Weighing of grain on shipping is via shore-based batch weighers.

## **2.4 Ship loading services**

The Port Operator provides the outturn to ship of grain from the Port Operator's terminal, 24 hours/day 7 days/week excluding public holidays and subject to labour ordering conditions. This includes standard shipping related services in relation to positioning, shipping preparation, stevedoring, sampling, documentation and blending as described in the current:

- Storage and Handling Agreement; and
- Shipping protocols,

available on the Port Operator's website: [www.abb.com.au](http://www.abb.com.au)

Information on the shipping stem is updated daily and is available at [www.abb.com.au/PortAccessScheduling/SAShippingSchedule.aspx](http://www.abb.com.au/PortAccessScheduling/SAShippingSchedule.aspx)

## **2.5 Additional services**

- Methyl Bromide fumigation
- Stevedoring and agency services
- Ship cleaning services
- Freight services
- Dust extraction
- Grain cleaning

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## **3 Additional price and non-price terms**

Additional price and non-price terms are as set out in the ABB Storage and Handling Agreement as amended from time to time (a copy of which is

available at  
[www.abb.com.au/StorageHandling/StorageHandlingServices.aspx](http://www.abb.com.au/StorageHandling/StorageHandlingServices.aspx)).

---

#### **4 Additional capacity management terms**

Shipping at Outer Harbor is operated on a “just in time” basis. Tonnage is executed through 8 shipping bins, of 60,000 metric tonnes total capacity. This means that shipping capacity can be adversely impacted by any constraint along the supply chain including, but not limited to, available transport, availability of grain, labour to load and unload grain, grain fumigation, vessel arrival delays and vessels failing surveys.

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#### **5 Additional published protocols and information**

- ABB Shipping Protocols  
[www.abb.com.au/PortAccessScheduling.aspx](http://www.abb.com.au/PortAccessScheduling.aspx)
- ABB Chain of Responsibility Code of Conduct and ABB Carrier Agreement  
[www.abb.com.au/StorageHandling/RoadFreightContractors.aspx](http://www.abb.com.au/StorageHandling/RoadFreightContractors.aspx)
- Flinders Ports operating rules  
<http://www.flindersports.com.au/>

# Port Schedule C – Port Giles

This Schedule contains information about, and terms and conditions which only apply to, the Port Giles port terminal.

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## **1 Description of Port**

### **1.1 Location**

Port Giles, South Australia

Latitude 35°05'S

Longitude 138°68'E

### **1.2 Port Terminal Facilities**

- Flinders Ports Grain Berth 1, Port Giles
- Intake facilities for road and rail available
- Storage facilities located at the port
- 4 intake weighbridges
- shipping batch weigher

### **1.3 Storage capacity**

75,000 mt steel shipping bins

164,000 mt concrete vertical silos

### **1.4 In load capacity**

Road 3000 tph, up to 3 receival hoppers

### **1.5 Ship loading capacity**

Approximately 850 tph wheat

No. of shipping belts: 1

No. of spouts: 5

Restrictions:

Maximum LOA 225 m

Maximum beam 32.20 m

Depth alongside 11.6 m

Berth length 256 m

Maximum sailing draught 12.19 m at HWOST

Air draught 15.5 m

## **1.6 Interaction with upstream supply chain**

Accumulation for shipping follows the acceptance of vessel nomination and servicing of vessels with priority on stem. Users may choose to ship under Export Select or Export Standard terms.

### **Export Select**

Users commit stock to Export Select in an upcountry position and receive stock back in a notional port position. ABB Logistics manages the planning, up country accumulation and transport to port process. ABB operates a number of agreements with road transport operators to meet the logistics requirements for shipping to Port Giles. Export Select transport charges are published on the ABB website.

### **Export Standard**

Users arrange their own accumulation plan and transport to port.

Additionally, ABB Freight Services can provide transport options and the Client Services department may facilitate grain swaps to assist Users if requested.

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## **2 Port Terminal Services**

### **2.1 Receival services**

Road receival comprises:

- up to 3 receival hoppers
- Marshalling capacity 50 semitrailers
- intake weighbridges, 72-140 mt capacity each
- lines provide sample and quality testing services
- Standard intake hours 7.30 am – 3.45 pm. Daily intake hours may be extended and current hours are available on request.
- During the harvest period, the site receives direct deliveries from growers into long term storage.
- All road movements are required to meet on-site OH&S and Chain of Responsibility requirements as determined, and modified from time to time, by the Port Operator. Detail is available on the ABB website:

[www.abb.com.au/StorageHandling/RoadFreightContractors.aspx](http://www.abb.com.au/StorageHandling/RoadFreightContractors.aspx)

## **2.2 Storage services**

Storage for shipping comprises 10 welded steel silos of 7,500 mt capacity each. All shipping is performed through these bins.

Permanent non-shipping storage comprises a number of concrete vertical silos and steel bins with 164,000 mt capacity. This forms longer term storage.

## **2.3 Weigher Services**

Weighing of grain on shipping is via one shore based batch weighers.

## **2.4 Ship loading services**

The Port Operator provides the outturn to ship of grain from the Port Operator's terminal, 24 hours/day 7 days/week excluding public holidays and subject to labour ordering conditions. This includes standard shipping related services in relation to positioning, shipping preparation, stevedoring, sampling, documentation and blending as described in the current:

- Storage and Handling Agreement; and
- Shipping protocols,

available on the company website: [www.abb.com.au](http://www.abb.com.au)

Information on the shipping stem is updated daily and is available at [www.abb.com.au/PortAccessScheduling/SAShippingSchedule.aspx](http://www.abb.com.au/PortAccessScheduling/SAShippingSchedule.aspx)

## **2.5 Additional services**

- Methyl Bromide fumigation
- Stevedoring and agency services
- Freight services
- Dust extraction
- Grain cleaning

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## **3 Additional price and non-price terms**

Additional price and non-price terms are as set out in the ABB Storage and Handling Agreement as amended from time to time (a copy of which is available at [www.abb.com.au/StorageHandling/StorageHandlingServices.aspx](http://www.abb.com.au/StorageHandling/StorageHandlingServices.aspx)).

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## **4 Additional capacity management terms**

Shipping at Port Giles is operated on a "just in time" basis. Tonnage is executed through 10 shipping bins, of 75,000 metric tonnes total capacity. This means that shipping capacity can be adversely impacted by any

constraint along the supply chain including, but not limited to, available transport, availability of grain, labour to load and unload grain, grain fumigation, vessel arrival delays, vessels failing surveys and AQIS unavailability.

Port Giles operates as both a one port load or second port loading for vessels partially loaded at Port Adelaide or Wallaroo.

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## **5 Additional published protocols and information**

- ABB Storage and Handling Agreement  
[www.abb.com.au/StorageHandling/StorageHandlingServices.aspx](http://www.abb.com.au/StorageHandling/StorageHandlingServices.aspx)
- ABB Shipping Protocols  
[www.abb.com.au/PortAccessScheduling.aspx](http://www.abb.com.au/PortAccessScheduling.aspx)
- ABB Chain of Responsibility Code of Conduct and ABB Carrier Agreement  
[www.abb.com.au/StorageHandling/RoadFreightContractors.aspx](http://www.abb.com.au/StorageHandling/RoadFreightContractors.aspx)
- Flinders Ports operating rules  
<http://www.flindersports.com.au/>



# Port Schedule D – Wallaroo

This Schedule contains information about, and terms and conditions which only apply to, the Wallaroo port terminal.

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## **1 Description of Port**

### **1.1 Location**

Wallaroo, South Australia

Latitude 33°56'S

Longitude 137°37'E

### **1.2 Port Terminal Facilities**

- Flinders Ports Grain Berth 2, Wallaroo
- Intake facilities for road available
- Storage facilities located at the port
- 3 intake weighbridges
- 1 shipping batch weighers onto 1 shipping belt

### **1.3 Storage capacity**

150,000 mt steel and concrete shipping bins

### **1.4 In load capacity**

Road 4200 tph, up to 8 receival hoppers

### **1.5 Ship loading capacity**

Approximately 700 tph wheat

No. of shipping belts: 1

No. of spouts: 5

Restrictions:

Maximum LOA 200 m

Maximum beam 28.95 m

Depth alongside 9.5 m

Berth length 290 m

Maximum sailing draught 0.75m or 0.9m UKC subject vessel beam

Air draught 12.95 m

## 1.6 Interaction with upstream supply chain

Accumulation for shipping follows the acceptance of vessel nomination and servicing of vessels with priority on stem. Users may choose to ship under Export Select or Export Standard terms.

### Export Select

Users commit stock to Export Select in an upcountry position and receive stock back in a notional port position. ABB Logistics manages the planning, up country accumulation and transport to port process. ABB has a number of agreements with road transport operators to meet the logistics requirements for shipping to Wallaroo. Export Select transport charges are published on the ABB website.

### Export Standard

Users arrange their own accumulation plan and transport to port.

Additionally, ABB Freight Services can provide transport options and the Client Services department may facilitate grain swaps to assist Users if requested.

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## 2 Port Terminal Services

### 2.1 Receival services

Road receival comprises:

- up to 8 receival hoppers
- Marshalling capacity 200 semitrailers
- intake weighbridges, 60-80 mt capacity each
- lines provide sample and quality testing services
- Standard intake hours 7.30 am – 4.15 pm. Daily intake hours may be extended and current hours are available on request.
- During the harvest period, the site receives direct deliveries from growers into long term storage.
- All road movements are required to meet on-site OH&S and Chain of Responsibility requirements as determined, and modified from time to time, by the Port Operator. Detail is available on the ABB website:

[www.abb.com.au/StorageHandling/RoadFreightContractors.aspx](http://www.abb.com.au/StorageHandling/RoadFreightContractors.aspx)

## **2.2 Storage services**

Storage for shipping comprises concrete and steel silos comprising up to 150,000 mt capacity.

Off site bunker non-shipping storage comprises a further 440,000 mt capacity. This forms longer term storage for supply into Wallaroo.

## **2.3 Weigher Services**

Weighing of grain on shipping is via one shore based batch weigher.

## **2.4 Ship loading services**

The Port Operator provides the outturn to ship of grain from the Port Operator's terminal, 24 hours/day 7 days/week excluding public holidays and subject to labour ordering conditions. This includes standard shipping related services in relation to positioning, shipping preparation, stevedoring, sampling, documentation and blending as described in the current:

- Storage and Handling Agreement; and
- Shipping protocols,

available on the company website: [www.abb.com.au](http://www.abb.com.au)

Information on the shipping stem is updated daily and is available at [www.abb.com.au/PortAccessScheduling/SAShippingSchedule.aspx](http://www.abb.com.au/PortAccessScheduling/SAShippingSchedule.aspx)

## **2.5 Additional services**

- Stevedoring and agency services
- Ship cleaning services
- Freight services
- Dust extraction
- Grain cleaning

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## **3 Additional price and non-price terms**

Additional price and non-price terms are as set out in the ABB Storage and Handling Agreement as amended from time to time (a copy of which is available at [www.abb.com.au/StorageHandling/StorageHandlingServices.aspx](http://www.abb.com.au/StorageHandling/StorageHandlingServices.aspx)).

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## **4 Additional capacity management terms**

Shipping capacity at Wallaroo can be adversely impacted by any constraint along the supply chain including, but not limited to, available transport,

availability of grain, labour to load and unload grain, grain fumigation, vessel arrival delays, vessels failing surveys and AQIS labour unavailability.

Wallaroo can partially load panamax vessels subject to vessel configurations prior to topping up in Port Giles or Port Lincoln.

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## **5 Additional published protocols and information**

- ABB Storage and Handling Agreement  
[www.abb.com.au/StorageHandling/StorageHandlingServices.aspx](http://www.abb.com.au/StorageHandling/StorageHandlingServices.aspx)
- ABB Shipping Protocols  
[www.abb.com.au/PortAccessScheduling.aspx](http://www.abb.com.au/PortAccessScheduling.aspx)
- ABB Chain of Responsibility Code of Conduct and ABB Carrier Agreement  
[www.abb.com.au/StorageHandling/RoadFreightContractors.aspx](http://www.abb.com.au/StorageHandling/RoadFreightContractors.aspx)
- Flinders Ports operating rules  
<http://www.flindersports.com.au/>

# Port Schedule E – Port Lincoln

This Schedule contains information about, and terms and conditions which only apply to, the Port Lincoln port terminal.

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## **1 Description of Port**

### **1.1 Location**

Port Lincoln, South Australia

Latitude 34°43'S

Longitude 135°50'E

### **1.2 Port Terminal Facilities**

- Flinders Ports Grain Berths 4 and 5, Port Lincoln
- Intake facilities for road and rail available
- Storage facilities located at the port
- 6 intake weighbridges
- 4 shipping batch weighers onto 2 shipping belts

### **1.3 Storage capacity**

300,000 mt concrete vertical silos

### **1.4 In load capacity**

Road 4000 tph, up to 10 receival hoppers

Rail 800 tph

### **1.5 Ship loading capacity**

Approximately 1500 tph wheat

No. of shipping belts: 2

No. of spouts: 2

Restrictions:

Maximum LOA 270 m

Maximum beam 45.00 m

Depth alongside 15.0 m

Berth length 347 m

Maximum sailing draught approx. 14 m

Air draught 22.3 m

## **1.5 Interaction with upstream supply chain**

Accumulation for shipping follows the acceptance of vessel nomination and servicing of vessels with priority on stem. Users may choose to ship under Export Select or Export Standard terms.

### **Export Select**

Users commit stock to Export Select in an upcountry position and receive stock back in a notional port position. ABB Logistics manages the planning, up country accumulation and transport to port process. ABB operates two rail assets and has a number of agreements with road transport operators to meet the logistics requirements for shipping to Port Lincoln. Export Select transport charges are published on the ABB website.

### **Export Standard**

Users arrange their own accumulation plan and transport to port.

Additionally, ABB Freight Services can provide transport options and the Client Services department may facilitate grain swaps to assist Users if requested.

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## **2 Port Terminal Services**

### **2.1 Receival services**

(a) Road receival comprises:

- up to 10 receival hoppers
- Marshalling capacity 20 semitrailers
- 6 intake weighbridges, 30-100 mt capacity each
- lines provide sample and quality testing services
- Standard intake hours 8.00 am – 4.00 pm. Daily intake hours may be extended and current hours are available on request.
- During the harvest period, the site receives direct deliveries from growers into storage.
- All road movements are required to meet on-site OH&S and Chain of Responsibility requirements as determined, and modified from time to time, by the Port Operator. Detail is available on the ABB website:

[www.abb.com.au/StorageHandling/RoadFreightContractors.aspx](http://www.abb.com.au/StorageHandling/RoadFreightContractors.aspx)

(b) Rail receipt comprises:

- Narrow gauge line
- Gross weighing
- Trains require shunting
- Rail operators are required to have a full interface coordination plan prior to arranging any rail movements to Port Operator sites. This will require all wagons to be fitted with RFID. Further information can be obtained by contacting the SHE Department on (08) 8304 5000

## **2.2 Storage services**

Storage for shipping comprises concrete vertical silos of 300,000 mt total capacity.

## **2.3 Weigher Services**

Weighing of grain on shipping is via four shore based batch weighers.

## **2.4 Ship loading services**

The Port Operator provides the outturn to ship of grain from the Port Operator's terminal, 24 hours/day 7 days/week excluding public holidays and subject to labour ordering conditions. This includes standard shipping related services in relation to positioning, shipping preparation, stevedoring, sampling, documentation and blending as described in the current:

- Storage and Handling Agreement; and
- Shipping protocols,

available on the company website: [www.abb.com.au](http://www.abb.com.au)

Information on the shipping stem is updated daily and is available at [www.abb.com.au/PortAccessScheduling/SAShippingSchedule.aspx](http://www.abb.com.au/PortAccessScheduling/SAShippingSchedule.aspx)

## **2.5 Additional services**

- Stevedoring and agency services
- Ship cleaning services
- Freight services
- Dust extraction
- Grain cleaning

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### **3 Additional price and non-price terms**

Additional price and non-price terms are as set out in the ABB Storage and Handling Agreement as amended from time to time (a copy of which is available at

[www.abb.com.au/StorageHandling/StorageHandlingServices.aspx](http://www.abb.com.au/StorageHandling/StorageHandlingServices.aspx)).

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### **4 Additional capacity management terms**

Shipping capacity can be adversely impacted by any constraint along the supply chain including, but not limited to, available transport, availability of grain, labour to load and unload grain, grain fumigation, vessel arrival delays and vessels failing surveys. In particular, high temperatures during summer can result in rail assets being stood down due to rail line distortion.

Port Lincoln operates as both a one port load or second port loading for vessels partially loaded at Port Adelaide or Wallaroo.

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### **5 Additional published protocols and information**

- ABB Shipping Protocols  
[www.abb.com.au/PortAccessScheduling.aspx](http://www.abb.com.au/PortAccessScheduling.aspx)
- ABB Chain of Responsibility Code of Conduct and ABB Carrier Agreement  
[www.abb.com.au/StorageHandling/RoadFreightContractors.aspx](http://www.abb.com.au/StorageHandling/RoadFreightContractors.aspx)
- Flinders Ports operating rules  
<http://www.flindersports.com.au/>



# Port Schedule F – Thevenard

This Schedule contains information about, and terms and conditions which only apply to, the Port Adelaide port terminal.

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## **1 Description of Port**

### **1.1 Location**

Thevenard, South Australia

Latitude 32°09'S

Longitude 133°39'E

### **1.2 Port Terminal Facilities**

- Flinders Ports Grain Berth, Thevenard
- Intake facilities for road available
- Storage facilities located at the port
- intake weighbridges
- shipping batch weigher onto 1 shipping belt

### **1.3 Storage capacity**

200,000 mt concrete vertical and steel shipping bins

### **1.4 In load capacity**

Road 2200 tph, up to 7 receival hoppers

### **1.5 Ship loading capacity**

Approximately 700 tph wheat

No. of shipping belts: 1

No. of spouts: 1

Restrictions:

Maximum LOA 180 m

Maximum beam 30.50 m

Depth alongside 9.8 m

Berth length 198 m

Maximum sailing draught UKC: 0.9m

Air draught 14 m

## **1.6 Interaction with upstream supply chain**

Accumulation for shipping follows the acceptance of vessel nomination and servicing of vessels with priority on stem. Users may choose to ship under Export Select or Export Standard terms.

### **Export Select**

Users commit stock to Export Select in an upcountry position and receive stock back in a notional port position. ABB Logistics manages the planning, up country accumulation and transport to port process. ABB operates two rail assets and has a number of agreements with road transport operators to meet the logistics requirements for shipping to Thevenard. Export Select transport charges are published on the Port Operator's website.

### **Export Standard**

Users arrange their own accumulation plan and transport to port.

Additionally, ABB Freight Services can provide transport options and the Client Services department may facilitate grain swaps to assist Users if requested.

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## **2 Port Terminal Services**

### **2.1 Receival services**

Road receival comprises:

- up to 7 receival hoppers
- Marshalling capacity 60 semitrailers
- intake weighbridges, 100 mt capacity each
- 2 lines provide sample and quality testing services
- Standard intake hours 8.00 am – 5.00 pm. Daily intake hours may be extended and current hours are available on request.
- During the harvest period, the site receives direct deliveries from growers into storage.
- All road movements are required to meet on-site OH&S and Chain of Responsibility requirements as determined, and modified from time to time, by the Port Operator. Detail is available on the ABB website:

[www.abb.com.au/StorageHandling/RoadFreightContractors.aspx](http://www.abb.com.au/StorageHandling/RoadFreightContractors.aspx)

### **2.2 Storage services**

Storage for shipping comprises 200,000 mt total capacity.

### **2.3 Weigher Services**

Weighing of grain on shipping is via one shore based batch weigher.

### **2.4 Ship loading services**

The Port Operator provides the outturn to ship of grain from the Port Operator's terminal, 24 hours/day 7 days/week excluding public holidays and subject to labour ordering conditions. This includes standard shipping related services in relation to positioning, shipping preparation, stevedoring, sampling, documentation and blending as described in the current:

- Storage and Handling Agreement; and
- Shipping protocols,

available on the Port Operator's website: [www.abb.com.au](http://www.abb.com.au)

Information on the shipping stem is updated daily and is available at [www.abb.com.au/PortAccessScheduling/SAShippingSchedule.aspx](http://www.abb.com.au/PortAccessScheduling/SAShippingSchedule.aspx)

### **2.5 Additional services**

- Stevedoring and agency services
- Freight services
- Dust extraction
- Grain cleaning

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## **3 Additional price and non-price terms**

Additional price and non-price terms are as set out in the ABB Storage and Handling Agreement as amended from time to time (a copy of which is available at [www.abb.com.au/StorageHandling/StorageHandlingServices.aspx](http://www.abb.com.au/StorageHandling/StorageHandlingServices.aspx)).

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## **4 Additional capacity management terms**

Shipping capacity can be adversely impacted by any constraint along the supply chain including, but not limited to, available transport, availability of grain, labour to load and unload grain, grain fumigation, vessel arrival delays, vessels failing surveys and AQIS labour unavailability.

The grain shipping belt is also used to load regular gypsum and salt vessels.

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## **5 Additional published protocols and information**

- ABB Storage and Handling Agreement  
[www.abb.com.au/StorageHandling/StorageHandlingServices.aspx](http://www.abb.com.au/StorageHandling/StorageHandlingServices.aspx)

- ABB Shipping Protocols  
[www.abb.com.au/PortAccessScheduling.aspx](http://www.abb.com.au/PortAccessScheduling.aspx)
- ABB Chain of Responsibility Code of Conduct and ABB Carrier Agreement  
[www.abb.com.au/StorageHandling/RoadFreightContractors.aspx](http://www.abb.com.au/StorageHandling/RoadFreightContractors.aspx)
- Flinders Ports operating rules  
<http://www.flindersports.com.au/>