



# **EXPLANATORY MEMORANDUM**

## **CONTRACT FOR GRAIN AND OILSEEDS IN BULK FOB TERMS**

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## **1 Background**

GTA received a submission from the Australian Grain Exporters Association (AGEA) that the FOB Contract required review to ensure that it was a reflection of trade requirements, particularly given the changed nature in recent years of the number of grain exporters and their respective needs.

The GTA Board, following a recommendation from the GTA Commerce Committee, to fully endorse the recommendations of AGEA.

## **2 AGEA FOB Contract Review Committee**

The AGEA FOB Contract Review Committee consisted off:

- Cargill – Dominic Dillon and Herman Schoo
- Louis Dreyfus – Alick Osborne/Amanda Reilly
- Glencore – James Maw
- Viterra – Peter Jones/Bronwyn Kennedy
- Geoff Farnsworth (McPherson + Kelley, and a GTA Director) provided legal advice to the Committee as required.

## **3 Review process**

The Committee considered a number of international contracts as references. The approach taken was to develop a simple, vanilla contract (attached) and to refer people via the Explanatory Memorandum (attached) to issues that should be considered such as the various BHC protocols that operate in different parts of Australia.

Importantly, the dispute resolution process references the GTA Dispute Resolution Service to be used in the first instance.

## **4 Access to the contract**

The contract and Explanatory memorandum can be found on the GTA website.

## **5 Attribution**

AGEA provided the lead on this review process and the vast bulk of the work effort. The GTA Board notes AGEA's contribution with appreciation.

This review process is a marvelous demonstration of the various trade organisations working in a cooperative manner to ensure maximum efficiency on the development of contemporary trade facilitation processes.

## **6 Notes**

Note 1: Sellers/buyers should note that each bulk handling company (BHC) in Australia have their own port protocols and nomination periods can vary. In some cases, a shipping slot refers to x tonnage, while in other cases this can refer to one shipping slot. It is recommended that you familiarise yourself with the individual protocols of the relevant BHC. These protocols can be found at:

- Graincorp <http://www.graincorp.com.au/prodserv/Ports/Pages/PortTerminalServices.aspx>
- Viterra <http://viterra.com.au/port-access-scheduling>
- CBH <https://www.cbh.com.au/our-business/operations/port-services.aspx>

Sellers may want to nominate whether the tonnage can be shipped in one or two bottoms

Note 2: Sellers/buyers should note that each bulk handling company (BHC) in Australia have their own port protocols and nomination periods can vary. It is recommended that you familiarise yourself with the individual protocols of the relevant BHC.

Extension clauses may also differ between the various BHC terms. It is recommended that you familiarise yourself with the individual protocols of the relevant BHC.

Buyers have liberty to re-nominate laycan, ETA or substitute a vessel, so long as it falls within the Delivery Period (refer to Clause 12 of the FOB contract).

Optional clause for consideration “Buyers to indemnify Sellers in respect of any losses, costs or expenses incurred solely as a result of changes to vessel laycan, ETA or substitution”

Note 3: The sampling requirements of AQIS can be found at the web site [www.comlaw.gov.au/comlaw/Legislation](http://www.comlaw.gov.au/comlaw/Legislation) in the document titled Export Control (Plants and Products) Orders 2005

Note 4: Extension clauses and vessel substitution also differ between the various BHC protocols. It is recommended that you familiarise yourself with the individual protocols of the relevant BHC.

Optional clause for consideration “Buyers to indemnify Sellers in respect of any losses, costs or expenses incurred solely as a result of changes to vessel laycan, ETA or substitution”

Note 5: Carrying Charges to be predetermined at the time of each negotiation.

Note 6: Max rate to be determined at the time of each negotiation.

Note 7: The list of documents in Clause 16(b) is not exhaustive and the buyer and seller should agree and document what documents are required for payment

Note 8: Sellers/buyers should note that each bulk handling company (BHC) in Australia have their own port protocols and force majeure clauses can vary. It is recommended that you familiarise yourself with the individual clauses of the relevant BHC. These protocols can be found at:

- Graincorp <http://www.graincorp.com.au/prodserv/Ports/Pages/PortTerminalServices.aspx>
- Viterra <http://viterra.com.au/port-access-scheduling>
- CBH <https://www.cbh.com.au/our-business/operations/port-services.aspx>

In developing a Force Majeure clause, this should consider:

- Definition i.e. should Sellers be prevented from loading goods on board Buyer’s vessel or should Buyers be prevented from taking delivery by an event of "Force Majeure", event or circumstance not within the reasonable control of the party affected by it (the "Affected Party"), including, but not limited to xyz
- Exemptions from Force Majeure
- Relief from performance and liability