

Member Update

UPDATE 05 of 19 • 08 March 2019

TOPIC: GTA Trade Rule 13 – Notice of Conveyance and Delivery Instructions

DISTRIBUTION: GTA Members – primary contact list. Please circulate to all appropriate internal parties.

1. Purpose

The purpose of this Member Update is to improve clarity relating to Conveyance and Delivery Instructions (i.e. Trade Rule 13) and the term “**Buyers Call**” with specific reference to:

- a) The order of precedence between GTA contracts and Trade Rules; and
- b) Conveyance and Delivery process within the GTA Trade Rules.

2. Background

GTA Member feedback, and a review of recent GTA Arbitrations indicate that:

1. GTA Trade Rules relevant to Conveyance and Delivery Instructions (i.e. Trade Rule 13) and the term “**Buyers Call**” may not be clear or well understood in the Trade, and
2. There appears to be confusion in the Trade between:
 - The Right of Conveyance (notice to execute) and,
 - Delivery Instructions and Delivery Notice (how to execute) (i.e. they are separate steps), and
 - Who is responsible to issue the Conveyance Notice and Delivery Instructions and Delivery Notice.

These issues are dealt with in the Trade Rules by:

1. the **Buyers Call** definition; as well as
2. Trade Rules 13.0, 13.1.1 and 13.1.2.

Whilst these two areas are discussed in detail in this Member Update it is important to understand that GTA Trade Rule 13 is concerned with “Conveyance and Delivery instructions.” **and is relied on when a contract does not include specific delivery instructions.**

Clarification – Contractual Order of Prevalence

In any grain contract, the Parties are free to negotiate and agree any terms they wish. The purpose and intention of the GTA standard form contracts and the GTA Trade Rules is to provide a base or default set of terms and conditions to address other requirements, not expressly agreed by the Parties.

The Trade Rules are a support to the contracts agreed between counterparties. There is an order of precedence between the specific terms expressly agreed by the parties, the GTA Standard Form Contract and the GTA Trade Rules.

The order of precedence is:

1. Express terms agreed by parties as recorded in a **Contract or Brokers Note** prevail over;
2. The **GTA Standard Form Contract**; which prevail over
3. The defaults contained in the **GTA Trade Rules**

Their role and purpose is described in Table 1.

Table 1. Contract Precedence / Purpose

Order	Document	Purpose
1	Counterparties Contracts / Broker's Note	This is the Prime document. Parties to a contract may have their own contract terms or a Broker's Note that describes the specific terms of their contract.
2	GTA Standard Form Contract	Available to Parties as a base or default agreement. Parties may agree to use the standard form contracts or may refer to the specific GTA standard form contract in the Broker's Note.
3	GTA Trade Rules	The Trade Rules facilitate the contract process through providing Rules and Definitions when not specifically covered in the agreed contract form (inclusive of the Broker's Note and base contract). The Trade Rules are intended to provide for items that are not expressly agreed in the Broker's Note and Contract, not to dictate terms.

3. Clarification – Trade Rule 13 -The Right of Conveyance and Buyers Call

GTA Trade Rule 13 states that *“Unless otherwise agreed, the Seller shall have the right of conveyance”*

The GTA Trade Rules defines the following terms as:

- **‘right of conveyance’** means the right to give a notice requiring transfer or delivery of the goods in accordance with the terms of the contract and the notice.”
- **“Buyers Call”** as outlined in the Trade Rules Definition section means that the Seller shall have fifteen [15] Calendar Days or such other time specified in the contract after receipt of instructions from the Buyer in which to make Delivery or Shipment.

Where the term **“Buyers Call”** is included in the express contract (i.e. the Broker's Note or Contract – which prevail over the Trade Rules (and assuming there are no other specific instructions)), means that it has been agreed that the Seller has relinquished the **right of conveyance to the Buyer..**

As stipulated in the definition of **“Buyers Call”** the Buyer is required to *“give the Seller 15 Calendar Days”* notice requiring transfer or delivery of the goods.

For a ‘Buyers Call’ contract that requires delivery (and where there are no other specific instructions in the contract) the Delivery process should be:

1. The Buyer must provide the Seller 15 Calendar days’ notice of the commencement of the Delivery process (Trade Rule 13 and the Definition ‘Buyers Call’).
2. For the actual Delivery Instructions and Delivery Notice either Trade Rule 13.1.1 or 13.1.2 is then applied, depending on the contract type (eg Delivered, ex-farm etc)

It is important to distinguish between Trade Rule 13.0 – the “right of conveyance” (or notice of commencing the delivery process) and Trade Rule 13.1 – the Delivery Notice and Instructions.

Issues have arisen when the provision of the 15 days’ notice under a Buyers Call were not given.

4. Clarification – Application of Trade Rule 13.1.1 & 13.1.2

Under GTA Trade Rules the responsibility to issue Delivery Instructions varies by contract type or by who has responsibility to execute delivery or present transport for the contracted goods to the point of Title Transfer. These are addressed specifically by GTA Trade Rules 13.1.1 and 13.1.2.

GTA Trade Rules 13.1 states Delivery Instructions are as follows:

13.1.1 *In cases of a contract for other than Loaded, Immediate, or Prompt instructions for Delivery, the Seller shall give the Buyer five [5] Business Days written notice of commencement of Delivery, and the Buyer shall within two [2] Business Days of receipt of such notice give Delivery or consigning instructions to the Seller.*

13.1.2 *In cases of a contract with terms Ex-Store, Ex-Farm or Free On Board instructions for Delivery, other than contracts with Loaded, Immediate, or Prompt instructions, the Buyer shall give the Seller not less than five [5] Business Days written notice of intent to present appropriate transportation for the commencement of loading, and, the Seller shall, within two [2] Business Days of receipt of such notice, give delivery or consigning instructions to the Buyer.*

13.1.3 *Once tendered under Rule 13.1(1) or 13.1(2), delivery instructions may only be varied by the Buyer at the Buyer's expense.*

Where the GTA Trade Rule 13.1.1 or 13.1.2 is applicable the following clauses refer to the Delivery Process:

Clause 13.1.1 “Delivered” such that **the Seller is responsible for arranging freight** for delivery to the Buyer;

Clause 13.1.2 “Ex-Farm” or “Ex-Store” such that **the Buyer is responsible (if under GTA Contracts and Trade Rules) for procuring freight** for the collection of the grain

5. Scenarios for Clarification – Application of Trade Rule 13.1.1 & 13.1.2

The following scenarios are provided as examples:

1. Scenario 1 Trade Rule 13.1.1 (Buyers Call)–

A Buyer’s Call Contract on a Delivered Basis where the Seller is required to transport to the point of title transfer (e.g., GTA #3 Contract Confirmation and GTA #4 (DCT) Contracts).

By including the **Buyers Call** term in the contract, the Seller relinquishes the Right of Conveyance to the Buyer and in most cases the Seller will be responsible to arrange the freight of the goods to the point of Title Transfer.

Thus, under Trade Rule 13.1.1 the sequence of events to execute the contract should be:

- 1) Notice of conveyance - The Buyer is required to provide the Seller with 15 calendar days’-notice (per the Buyer’s Call definition). This Buyer’s Notice is required once per contract (which may consist of multiple consignments).
- 2) Delivery Notice -After receipt of the Buyer’s Call (or Notice of conveyance), the Seller is required to give the Buyer 5 business days’ Notice of commencement of delivery.
- 3) Delivery Instructions – After receipt of the Delivery Notice the Buyer then has 2 business days to provide delivery instructions to the Seller.

2. Scenario 2 Trade Rule 13.1.2 (Sellers Call)

Under a contract that does **not** include the Buyer's Call term and where the Buyer is required to present transport at the point of title transfer (such as ex-Farm or ex-Store), the sequence of events to execute the contract per Trade Rule 13 (and its sub clauses) should be:

1. Notice of Conveyance - The Seller has the right / obligation as per Trade Rule 13.0 to notify the Buyer of its intention to execute the contract.
2. -Delivery Notice - Then having received the notice, the Buyer then is required to give the Seller 5 business days' notice of commencement of delivery.
3. Delivery Instructions - The Seller then has 2 business days to provide delivery instructions to the Buyer.

Under the GTA No. 2 Track Contract the Conveyance applies as per Trade Rule 13.0 and the Title Transfer (akin to delivery) is addressed by Clauses 8.3 and 15 of the GTA No. 2 Contract.

It is recognised that segments of industry may have different notice and delivery instruction practices and requirements included in their standard contract terms. It is important to re-iterate the point that Parties are able to agree to any contract terms they wish. The GTA Contracts and Trade Rules provide a base or default set of terms and conditions and rules.

6. Commerce Sub-Committee Process and Proposal

The GTA Commerce Committee considered amendments to the GTA Trade Rules Definitions and Trade Rules 13.1.1 & 13.1.2 to remove ambiguity and to provide clarity in this area. A specific Sub-Committee was formed to address this issue. The Sub-Committee met on two occasions in 2018 to consider the most practical means to remove the ambiguity.

The Actions discussed and considered by the committee to resolve the lack of clarity were:

- 1) Carry out further communication on the process of contract execution and/or
- 2) Make amendments to the Trade Rules

Given any change to the Trade Rules has risks of unintended consequences, the Committees have opted initially for a communication process using this Member Update and an information tool (infographic medium).

The Committees are further interested in Member Feedback (via the Submission form [here](#)) as to whether to consider an amendment to the form (i.e. wording), but NOT function of GTA Trade Rules, with a suggestion of potential amendments (**noted in yellow background**) below:

- Rule 13.0 CONVEYANCE **AND DELIVERY INSTRUCTIONS**

*Unless otherwise agreed (such as nominating **Buyers Call**), the Seller shall have the **Right of Conveyance**.*

- Rule 13.1 DELIVERY INSTRUCTIONS (NB: change Font to Capitals)
 - 1) *In cases of a contract where the **Seller** is responsible for transport/delivery to the point of Title Transfer (per Trade Rule 14.0), with terms including, but not limited to, Delivered Port, Delivered Consumer/Mill, Delivered Container Terminal, and other than Loaded, Immediate, or Prompt instructions for Delivery, the Seller shall give the Buyer five [5] Business Days written notice of commencement of Delivery, and the Buyer shall within two [2] Business Days of receipt of such notice give Delivery or consigning instructions to the Seller.*
 - 2) *In cases of a contract where the **Buyer** is responsible to present suitable transport/delivery at the point of Title Transfer (per Trade Rule 14.0), with terms including but not limited to, Ex-Store, Ex-Farm, or Free on Board instructions for Delivery, other than contracts with Loaded,*

Immediate, or Prompt instructions, the Buyer shall give the Seller not less than five [5] Business Days written notice of intent to present appropriate transportation for the commencement of loading, and, the Seller shall, within two [2] Business Days of receipt of such notice, give delivery or consigning instructions to the Buyer.

- 3) *Once tendered under Rule 13.1(1) or 13.1(2), delivery instructions may only be varied by the Buyer at the Buyer's expense*

7. Calling for Submissions

GTA Members are asked to consider whether the provision of this Member Update and the educational tool will address the issue or whether amendments to the Trade Rules should be given further consideration.

Comments and submissions on the structure and format of this infographic are sought from GTA Members and other interested parties.

Submissions should be lodged by emailing submissions@graintrade.org.au and title your email – *Trade Rules 13.1 – Infographic*.

Submissions should be received by **COB Friday 29 March 2019**.

A proforma for lodging submissions can be accessed [here](#), noting that submissions do not need to be supported by other GTA Members, however, if they are supported, please indicate on the form.

Unless marked “confidential” and appropriate supporting reasons are provided, all submissions may be placed on the GTA website for industry review.

END.