

# AUSTRALIAN BARLEY CHARTER 2004

Code Name "AUSBAR"

Adopted 3 April, 1986  
Amended 1 January, 2004

ABB Grain Ltd

Dated at ..... , Geneva

**IT IS THIS DAY MUTUALLY AGREED BETWEEN** the Owners .....  
 of the good Motor Vessel named the ..... of the measurement of tons gross and tons  
 net register, Vessel's total summer deadweight metric tons or thereabouts flag built  
 Classed and to be of that class when the Vessel sails with her cargo under this Charter now  
 AND ..... of ..... ("Charterers").

## OWNERS/SHIPPERS

Whenever the word "Owners" appears in this Charterparty, it is understood to mean "Owners and / or disponent Owners and / or Timechartered Owners". It is understood by both Owners and by Charterers of the Vessel, that throughout this Charterparty the Party referred to as "Shippers" shall be

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## LOADING PORT

1. That the said Vessel, being in every way fitted for the voyage shall, with all convenient speed, after completion of the present voyage and discharge of the outward cargo (if any) proceed as ordered by the Shippers to one or two ports out of Fremantle, Geraldton, Albany, Esperance in Western Australia, or one or two ports out of Port Giles, Wallaroo, Port Lincoln, Port Pirie, Port Adelaide, Thevenard in South Australia and/or one or two ports out of Geelong, Melbourne, Portland in Victoria, or to one or two ports out of Port Kembla, Newcastle in New South Wales, or to one or two ports out of Brisbane, Gladstone, Mackay in Queensland, rotation always at Shippers option and there load according to the custom of the port, always afloat, at such safe dock, pier, wharf or berth as ordered by the Shippers, a cargo of in bulk ex silo from the Shippers or their Agents, which the said Charterers bind themselves to provide, not exceeding what the Vessel can reasonably stow and carry in addition to her tackle, apparel, provisions, fuel and furniture. Shippers shall have the option of ordering the Vessel to shift from the loading berth / dock / wharf / pier at Owners' expense on one occasion at each loading port. If Laytime has commenced to count, all time used for shifting in the port shall count as Laytime, or, if the Vessel is on demurrage, as time on demurrage. Should the Vessel be ordered to move by the Port Authority all costs arising therefrom shall be for the Owners' account.

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## DESTINATION

2. Being so loaded, the Vessel shall proceed with all reasonable speed, to discharge at ..... and there deliver the cargo according to the custom of the Port and in accordance with Clauses 19/20 at any customary berth, dock, wharf or pier as ordered by the Charterers or their Agents, where the Vessel can safely lie, always afloat, having been paid freight at the rate hereinafter mentioned. The Master shall discharge the cargo in such a manner as to leave the Vessel in seaworthy trim to proceed to the second port of discharge if applicable.

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## CAPACITY

3. The Owners undertake that the Vessel shall not load more than metric tons or less than metric tons, The Master to declare in writing before loading commences the approximate quantity of cargo required.

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## LOADING AND CANCELLING DATES

4. Time for loading shall not commence before ..... unless the Shippers begin loading sooner, and if the Vessel is not ready to load at all hatches at (first) loading port by 1200 hours of the ..... , the Charterers shall have the option of cancelling this Charter, which shall be declared upon Notice of Readiness being given, unless more time has been lost waiting for orders than mentioned in Clause 8, in which case the cancelling date shall be correspondingly extended. For the purpose of this Clause the preliminary 24 hours' Notice of Readiness to load stipulated in Clause 10, shall not be obligatory and in no case shall the absence of a ready loading berth as per Clause 10 constitute a reason for cancelling this Charter.

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## CARGO ALONGSIDE

5. At the loading berth the cargo shall be delivered on board, in bulk ex spout, unstowed and untrimmed, at the risk and expense of the Shippers.

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## FREIGHT

6. Freight shall be payable at the rate of :- ..... all per metric ton of 1,000 kilos Bill of Lading weight based on Shippers' weights. Charterers have the option to load at a second loadport in which case the rate of freight shall be increased by per metric ton. The said freight shall be paid

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## INTERNATIONAL TRANSPORTWORKERS' FEDERATION

7. The Owners of the Vessel guarantee that the minimum terms and conditions of employment of the crew of the Vessel are now or will be prior to presentation of the Vessel for loading and will remain for the period of this Charterparty covered by an International Transportworkers' Federation agreement or a bona fide Trade Union agreement or equivalent acceptable to the International Transportworkers' Federation. If berthing, loading or discharging of the Vessel is prevented or delayed by or as a consequence of any industrial dispute arising directly or indirectly from the terms and conditions of employment of the crew, any time lost by reason thereof shall not count during the continuance of such prevention or delay and the Owners shall reimburse the Charterers and / or Shippers for any expense whatsoever caused thereby.

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## ORDERS FOR LOADING PORT.

8. Owners or their local Australian Agents shall keep the Charterers and Shippers closely advised of Vessel's movements, including date of sailing from last port prior to contract voyage. The Master shall apply by telegraphic communication to Shippers' ( ) for orders for first or sole loading port giving Vessel's position ETA and estimated cargo required when 96 hours off the loading range. Unless given earlier, Shippers shall give orders by telegraphic communication within 48 hours of receipt of Master's application. Orders for the second loading port, if any, shall be given before Vessel completes loading at the first port. Orders for a Vessel with cargo for, or discharging in Australia shall be given to the Master or Owners' Agents at the Vessel's final discharging port upon the Masters or Owners' Agents giving the Shippers' written or telegraphic notice of the Vessel's position and expected readiness, such notice to be given at least three days before the Vessel's expected departure from final discharging port. Failure to comply with this clause shall not be considered a breach of Charter, but if Shippers are not notified, three days shall be added to the time allowed for loading. If, when the Vessel is in Australian waters the Master does not intend to proceed direct to the loading port on receipt of orders, but via another port, for the purpose of bunkering, he shall inform Charterers and Shippers and advise them of Vessel's expected date of departure therefrom. If, after orders for loading

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port are given, the Vessel is delayed 48 hours or more after the date notified, the Master shall inform Charterers / Shippers by telegraphic communication of such delay and Shippers shall have the right of ordering Vessel by telegraphic communication to a different loading port, provided such orders are given within 24 hours (Saturdays, Sundays, and Holidays excepted) of receipt of Masters' notification, such orders shall be acknowledged to the Shippers by telegraphic communication as soon as possible after receipt thereof by the Master.

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#### **SURVEY AT LOADING PORT**

9. Before loading is commenced the Vessel shall pass the customary Solas Stability criteria as required by the Australian Maritime Safety Authority, a recognised Marine Surveyor approved by the Shippers and the Australian Quarantine Inspection Services pursuant to the Export (Grain) Regulations and or surveys required under state and / or federal legislation.

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In the event that Vessel has complied with Clause 9 inspection in another Australian State, the Vessel will not be required to undergo a further survey on arrival at the loading port unless the Vessel has been unnecessarily delayed transiting between ports and certification of clearance time period has expired. In that case Shippers have the right to call for re-pass inspections at the loading port(s) defined in this Charterparty. Any time lost in securing the required certificate shall not count as Laytime.

#### **LOADING**

##### **10. (A) (NOTICE OF READINESS)**

At the first loading port the time for loading shall count from 24 hours after Shippers or their Agents have received the Master's written or telegraphic Notice of Readiness between 0900 hours and 1700 hours on ordinary working days (Saturdays, Sundays and Holidays excepted) that the Vessel has passed survey in accordance with Clause 9 and is ready in all respects to load at the berth or place ordered by Shippers. Such orders shall be given to the Vessel by Shippers upon notice being given of the Vessel's arrival in port. Notice shall be given at the first port or place of loading only.

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At the second or subsequent loading port (if any) the time for loading shall count (Saturdays, Sundays, and Holidays excepted) from 1200 hours on the day of arrival at the port if the Vessel arrives and is secured at the berth or place ordered by shippers and ready to load before 1200 hours, and from 0900 hours on the following working day, if the Vessel arrives and is secured at the berth or place ordered by shippers after 1200 hours unless loading is commenced sooner, in which case the time shall count from commencement of loading.

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Should the Vessel on arrival at the port be prevented from proceeding directly to the loading berth due to unavailability of the berth, Laytime shall recommence in accordance with clause 10(B) in which case anchoring time to be taken as arrival time at the Port.

Time occupied in proceeding between loading ports shall not count as laytime.

The cargo shall be loaded at the rate of ..... Metric Tons for cargo in bulk ex silo per weather working day of 24 consecutive hours (Saturdays, Sundays, and Holidays excepted) provided the Vessel can receive at this rate. Any time lost on a working day owing to weather conditions shall not count provided work is actually stopped or prevented thereby.

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##### **10. (B) - WAITING FOR BERTH**

If the loading berth is not available to the Vessel on arrival at the first port, the Vessel shall be entitled to give Notice of Readiness during ordinary office hours on arrival at the standby anchorage. Laytime will begin to count as if the Vessel was already in berth and ready in all respects to receive cargo provided the Master warrants by telegraphic communication to the Shippers that the Vessel is physically ready in all respects to load.

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Time used undergoing hold surveys in accordance with Clause 9 shall not count as Laytime or Demurrage if on Demurrage. If after berthing the Vessel is found not to be ready in all respects as per Clause 9, the actual time lost between the time of failure to time the Vessel is in fact ready to load shall not count as Laytime or Demurrage if on demurrage. In the event that the Vessel is waiting for loading berth, no Laytime is to be deducted during such period for reasons of weather unless the Vessel occupying the loading berth in question is actually prevented from working due to weather conditions in which case time so lost is not to count unless the Vessel is on demurrage

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Time occupied in moving from place of waiting to loading berth at all port(s) shall not count as Laytime.

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Owners guarantee that the Vessel fully complies with and is in accordance with Australian Regulations that may be in force during the duration of this Charterparty including hold ladder requirements, and is suitable for the carriage of bulk grain.

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If separation, other than by Vessel's natural compartments, for bulk cargo are required, the Charterers shall pay the cost of such separations, unless otherwise agreed.

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The Shippers or their Agents shall have the right of sending the cargo alongside continuously (Saturdays, Sundays and Holidays excepted) and the Vessel shall be bound to proceed with the loading, the Shippers paying all stevedoring costs in connection with the actual taking aboard from alongside and spout trimming of the cargo.

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#### **DEMURAGE AND DESPATCH (LOADING)**

11. Should the Vessel not be loaded at the rate herein stipulated, demurrage shall be paid at the rate of ..... per running day, and pro rata for any part of a day.

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For all Laytime saved at port(s) of loading, despatch money shall be paid on completion of loading at the rate of one-half of the above rate of demurrage. Demurrage or Despatch money at loading port to be settled between Owners and Charterers

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#### **STEVEDORES**

12. The Stevedore at the loading port/s shall be appointed by the Shippers. The cost of trimming the cargo other than spout trimming is for the account of Owners.

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The Stevedore at the discharge port(s) to be appointed and employed by Receivers. The cargo shall be loaded, stowed and discharged under the supervision, direction and responsibility of the Master.

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#### **AGENTS**

13. At the port/s of loading the Vessel shall be consigned to Owners' Agents

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At the port/s of discharge the Vessel shall be consigned to Charterers / Receivers Agents

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#### **BILLS OF LADING**

14. Without prejudice to this Charterparty, the Master shall sign Ausbar Bills of Lading for the cargo, in the form endorsed in this Charter party, freight and all terms, conditions, clauses and exceptions as per this charter.

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Owners shall release signed Bills of Lading to Shippers immediately on completion of loading, and, if required by Shippers, at each loading port.

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#### **STRIKES**

15. If the cargo cannot be loaded or discharged by reason of Riots, Civil Commotions or of a Strike, Workban, or any Lock-out of any class of workmen essential to the berthing of the Vessel or to the loading or discharging of the cargo, or by reason of obstructions or stoppages beyond the control of the Shippers or Receivers caused by Riots, Civil Commotions or a Strike, Workban, or any Lock-out on the Railways or Road Transport or in the Docks or other places, or if the cargo cannot be discharged by reason of Riots, Civil Commotions, of a Strike, Workban or any Lock-out of any class of workmen essential to the discharge, the time for loading or discharging, as the case may be, shall not count during the continuance of such causes unless Vessel is already on demurrage, provided that a Strike, Workban, or any Lock-out of the Shippers / Receivers men shall not prevent demurrage accruing if by the use of reasonable diligence they could

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have obtained other suitable labour. In the case of any delay by reason of the before mentioned causes, or as a consequence thereof, no claim for damages or demurrage shall be made by the Shippers or the Receivers of the cargo or Owners of the Vessel. For the purpose of settling despatch money accounts, any time lost by the Vessel through any of the above causes shall be counted as time used in loading or discharging as the case may be. 115.  
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#### **ORDERS FOR DISCHARGE**

16. If the Vessel discharges at more than one port the discharging ports shall be in geographical (mileage) rotation from the port where the first discharging port orders are given unless otherwise agreed between Owners and Charterers. 118.  
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#### **SHIFTING BERTHS (DISCHARGE)**

17. Charterers have the option of ordering the Vessel to discharge at a second wharf or berth at discharging port, if required, cost of shifting including bunker fuel used, to be for the account of Owners and time occupied in shifting to count as Laytime. 120.  
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#### **ADDITIONAL DISCHARGING PORT OPTIONS**

18. The owners shall not give any additional discharging options under this Charter without the consent in writing of the Charterers or their Agents, and no cargo other than that provided by Charterers shall be carried without Charterers' written consent. 122.  
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#### **TIME FOR DISCHARGING**

19. Laytime shall commence from 0800 hours on the next business day, if Notice of Readiness is validly tendered in writing or by telegraphic communication by the Master or vessel's agent during ordinary office hours between 0800 and 1600 hours Monday to Friday and upto 1200 hours (noon) on Saturday (Sundays and Holidays excepted) whether in port or not, whether in berth or not at the sole port of discharge, or so near there unto as the vessel may be permitted to approach. 124.  
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If a suitable discharge berth is not available on vessel's arrival at or off the discharging port, the vessel or her agents shall be entitled to give Notice of Readiness on arrival at the anchorage place, whether within or outside of the commercial limits of the port, whether in free pratique or not and whether entered at the customs or not. Time occupied in moving from place of waiting to discharge berth shall not count as laytime. 128.  
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If after berthing the vessel is found not to be ready in all respects to discharge, the actual time lost from discovery thereof until the vessel is in fact ready to discharge shall not count as laytime. Excepted time as per clause 20 of the Charterparty not to count unless the vessel is on demurrage. 130.  
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At the second or subsequent discharge port (if any) the time for discharging shall count (Saturdays, Sundays and holidays excepted) from 1200 hours (noon) on day of arrival at the port if the vessel arrives before 1200 hours and from 0800 hours on the following working day if the vessel arrives at or after 1200 hours, unless discharging is commenced earlier, in which case the time shall count from commencement of discharging. However, any time lost after arrival of the vessel at the second discharging port waiting to pass quarantine and sanitation clearance by the port authority will not count as laytime. 132.  
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Time occupied in changing ports shall not count as laytime. At all discharge ports, time from 1200 hours on the day preceding a holiday until 0800 hours the next working day not to count even if used. 135.  
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#### **DISCHARGE RATE**

20. Cargo is to be discharged free of expense to the Vessel at the average rate of ..... metric tons per weather working day of twenty-four consecutive hours providing Vessel can deliver at this rate. 139.  
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#### **LIGHTERAGE AT PORT OF DISCHARGE**

21. Should the Vessel be ordered to discharge at a port where lighterage is required, all lighterage incurred to enable the Vessel to reach the place of discharge shall be at the risk and expense of Receivers of the cargo, any custom of the port or place to the contrary notwithstanding but time occupied in proceeding from the anchorage to the place of discharge shall not count. 141.  
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#### **DEMURRAGE AND DESPATCH (DISCHARGE)**

22. Should the Vessel not be discharged at the rate stipulated, demurrage shall be paid at the rate of ..... per running day and pro rata for any part of a day. For all Laytime saved at port(s) of discharge, despatch money shall be paid at the rate of one-half of the above rate of demurrage. Despatch money, if any, at discharging port(s) shall be calculated on the basis of a weather working day of 24 consecutive hours, but any time lost on a working day owing to weather conditions shall not count provided work is actually stopped or prevented. Demurrage or despatch, if any, at discharging port(s) shall be paid when and where incurred, and the cargo shall be treated as a whole and settlement to be made between Owners and Charterers on completion of discharge. Laytime at ports of loading and discharging to be non-reversible. 144.  
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#### **GEAR CLAUSE**

23. If required, the Master is to give free use of vessel's cargo gear and power to operate them 150.  
Vessel's personnel is to operate the gear if permitted to do so by shore regulations, failing which shore operators are to be used. 151.  
Such shore operators are for account of party ordering same at loading port(s) and/or discharging port(s) except where it contravenes clause 5 (loading) and clause 20 (discharging). 152.  
If required, Master shall give free use of the vessel's lighting as on board for night work. 153.  
All equipment must be in safe working condition in accordance with Port safety regulations. 154.  
Time lost on account of breakdown of vessel's gear or lighting essential to the loading or discharging of the cargo is not to count as laytime or time on demurrage. 155.  
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#### **OPENING HATCHES ETC (LOADING AND DISCHARGING)**

24. At the loading and discharging port(s), the Vessel is to open hatches and close hatches at Vessel's time, risk and expense, local regulations permitting. 158.

#### **OVERTIME (DISCHARGING)**

25. Overtime at the discharging port(s) to be for account of Party ordering it. If overtime is ordered by Port Controller or Elevator Authority, same to be for Receiver's account. Officers' and crew's overtime, however, always to be for Owners account. 159.  
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#### **SUPERVISING CARGO**

26. The Charterers/Shippers/Receivers or their respective Agents shall have the right of being on board the Vessel whilst at loading port and/or discharging port  
for the purpose of inspecting the cargo, checking the weights, and supervising their interests. 161.  
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#### **BUNKERING.**

27. Before loading the vessel shall have the right of proceeding to and bunkering at any usual bunkering port in Australia and/or of bunkering at the loading port. After loading, the Vessel shall have liberty as part of the contract voyage, to bunker at the loading port and/or proceed to any port or ports at which the bunker oil is available for the purpose of bunkering at any stage of the voyage whatsoever and whether such ports are on or off the direct and/or customary route or routes between any of the ports of loading or discharge name in this Charter and may there take oil bunkers in any quantity at the discretion of Owners even to the full capacity of fuel tanks and any other compartment in which oil can be carried, whether or not such amount is or is not required for the chartered voyage. 163.  
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**OIL POLLUTION**

28. Owners agree to indemnify Charterers, his Agents, or any other party against any liability which may be imposed on them or which they may incur under any Statute regarding liability for pollution or navigable waters by oil, by reason of any contravention of such statute by the Vessel, the Master or any servant or agent of the Owners provided that such contravention shall not have been caused or contributed to by the Party seeking to be indemnified under this Charter and provided that the facts and matters giving rise to the contravention do not constitute a defence under Article 3 Section 2 of the International Convention on Civil Liability for Oil Pollution Damage 1969. The Owners' total aggregate liability in respect of any oil pollution incident shall under no circumstances exceed U.S. Dollars 500,000,000 and the extent of the indemnity under this clause shall be limited to the difference between any cost and expenses incurred directly by the Owners and U.S. Dollars 500,000,000. The Owners warrants that the ship is entered in a Protection & Indemnity (P. and I.) Association with cover for liabilities arising out of any contravention as aforesaid.

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No liability for demurrage shall arise from any delay or loss of time to the Vessel at the port of loading and / or discharge caused by any such contravention nor shall any time lost by any such contravention count when calculating despatch.

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**EXCEPTIONS, ETC.**

29. The provisions of Sections 17 of the Australian Sea-Carriage of Goods Act 1991, and of Articles 3 (except Clause 8 thereof) 4,4 Bis, 8 and 9 of Schedule 1 thereto and any subsequent amendments thereto shall apply to this Charterparty and shall be deemed to be inserted in extenso herein. This Charterparty shall be deemed to be a contract for the carriage of goods by sea to which the said Sections and the said Articles apply, and no regard shall be had to Article 1 of the said Schedule. Nothing in this clause shall be deemed to prejudice or limit Clauses 6,18, 27, 33 (Nos. 1 and 2), 24,36, and 37 hereof.

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**LIBERTIES**

30. The Vessel shall also have liberty to sail without pilots, to call at any port(s) on the way for fuel, supplies, or any reasonable purpose, to tow and be towed, and to assist Vessels in distress, all as part of the contract voyage.

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**WAR (PROHIBITION OF EXPORT)**

31. If the nation under whose flag the Vessel sails shall be at war whereby the free navigation of the Vessel is endangered, or in case of blockade of, or prohibition of export from the loading port, this Charter shall be null and void at the last outward port of delivery or at any subsequent period when the difficulty may arise, previous to cargo being shipped.

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**WAR RISK CLAUSE**

32. (1) No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the Owners shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port(s) of discharge to which the Vessel was originally ordered.

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32. (2) The Ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the Vessel sails or any department thereof, or by any other Government or any Department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any Committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of an in compliance with any such orders or directions any thing is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfilment of the contract voyage and the freight shall be payable accordingly.

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**SUB LETTING**

33. The Charterers shall have the right of sub-letting the whole or part of the Vessel, but shall remain responsible for the due fulfilment of this Charterparty.

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**CESSER CLAUSE**

34. The Charterers liability under this Charter shall cease, except as regards Clause 2 (viz. safe trim between ports of discharge), Clause 6 (viz. payment of freight deadfreight) and clause 11 (demurrage in      ), when the cargo is shipped, provided it is worth the freight, deadfreight and demurrage, upon arrival at port of discharge, the Owners or their Agent having an absolute lien on the cargo for freight, deadfreight, demurrage, damages for detention at port(s) of discharge.

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**GENERAL AVERAGE AND NEW JASON CLAUSE**

35. GENERAL AVERAGE, if any, shall be adjusted and settled according to the York-Antwerp Rules, 1994 including any amendments or any modification hereof for the time being in force and shall be adjusted in London in accordance with English Law and Practice.  
Where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply:-

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NEW JASON CLAUSE - In the event of an accident, danger, damage or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, Shippers, consignees or Owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.  
If a salvaging ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salvaging ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required be made by the goods, Shippers, consignees or Owners of the goods to the carrier before delivery.

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**BOTH TO BLAME COLLISION CLAUSE**

36. If the liability for any collision in which the Vessel is involved while performing this Charterparty, falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:-  
If the Ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the Owners of the goods carried hereunder will indemnify the carrier against all loss of liability to the other or non-carrying ship or her Owners in so far as such loss or liability represents loss or damage to or any claim whatsoever of the Owners of the said goods, paid or payable by the other or non-carrying ship or her Owners to the Owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her Owners as part of their claim against the carrying ship or carrier.  
The foregoing provisions shall also apply whether the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

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**COMMISSION**

37. ..... percent commission upon the freight and deadweight (if any) and demurrage (if any) is due by the Owners to the Charterers, on the completion of loading (at the last loading port, if more than one) and shall be deducted from the freight payable under this Charter. If the Vessel is lost on passage between loading ports, then in lieu of the foregoing, the Owners shall pay      percent commission upon the freight on the net Bill of Lading weight of the cargo already shipped to the Charterers on the basis aforesaid.

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| <b>BROKERAGE</b>  |      |      |
| 38. .... percent brokerage on freight, deadfreight and demurrage, is due upon shipment of cargo to ..... and may be deducted from payment of freight.   | 227. | 228. |
| <b>ARBITRATION</b>  |      |      |
| 39. This Charterparty shall be construed and the relations between the parties determined in accordance with the laws of England  | 229. |      |
| Any and all differences and disputes of whatsoever nature arising out of this Charterparty shall be settled by arbitration in London in accordance with the Arbitration Act 1996 or any statutory re-enactment of it of which both parties shall be determined to be cognisant OR in Charterers option in Australia in the capital city of the Australian State in which the vessel loads and in accordance with the arbitral procedures there of which both parties shall be deemed to be cognisant. | 230. | 231. |
| Unless the parties mutually agree on the appointment of a sole arbitrator each party shall appoint one arbitrator and the arbitrators so appointed shall appoint a third. The decision of the sole arbitrator or the majority of the three arbitrators as the case may be, shall be final and binding.  | 234. | 235. |
| Any claim must be made in writing and claimants' arbitrator appointed within six months of the Vessel's arrival at the final port of discharge, otherwise claims shall be deemed to be waived and absolutely barred.  | 236. | 237. |
| <b>PENALTY</b>  |      |      |
| 40. The penalty for non-performance of this Agreement shall be proved damages not exceeding the estimated amount of freight.  | 238. |      |
| <b>DUTIES AND TAXES</b>   |      |      |
| 41. At both loading and discharging port(s) dues and / or taxes on Vessel and / or freight including Australian Freight Tax, if any, as well as normal port charges to be for Owners' account, Dues and / or taxes on cargo, if any, to be for Shippers' account at loading port(s) and for Receivers' account at discharge.  | 239. | 240. |
| <b>INSURANCE</b>  |      |      |
| 42. Extra insurance, if any, on the Vessel and / or cargo on account of the Vessel's age, flag, classification or ownership to be for Owners' account.  | 241. |      |