

CODE NAME: RTS ALUMINA COA

**STANDARD FORM**

**VOYAGE CHARTER PARTY**

**BETWEEN**

**AND**

**DATED:**

**FN No:**

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**APPENDICES**

Gladstone Port Questionnaire  
Gove Port Questionnaire

THIS CHARTER PARTY (hereinafter called "Charter Party") is entered into on the  
....., .....

BETWEEN

....., ..... (hereinafter called "Charterer")

AND

....., ..... as Owner (hereinafter called "Owner").

WHEREBY IT IS MUTUALLY AGREED AS FOLLOWS:

## **1 DEFINITIONS**

- In this Contract, unless a contrary intention appears.
- A. "Bill of Lading" means the Standard "Congenbill" bill of lading form, Edition 1994.
  - B. "Bunkers" means IFO.
  - C. "Contract" means this Charter Party.
  - D. "Port of Loading" means Gove or Gladstone, Australia.
  - E. "Discharging Port(s)" or "Port(s) of Discharge" means Kitimat, B.C. Canada
  - F. "Dollars", "\$" and "cents" refer to the lawful currency of the United States of America.
  - G. "ETA" means estimated time of arrival.
  - H. "IFO" means Intermediate Fuel Oil (maximum 180 centistokes).
  - I. "ITF" means the organisation presently styled the International Transport Federation or any successor organisation.
  - J. "NOR" means Notice of Readiness.
  - K. "TDW" means total deadweight tonnes (summer load line).
  - L. "Tonne" means 1,000 kilograms.
  - M. "Overage" means a vessel which by reason of its age and/or class, attracts any additional insurance premiums.
  - N. Clause Headings in this Contract are inserted for the parties' convenience only and shall be disregarded for the purpose of interpretation.

## **2 BASIC OBLIGATIONS**

Owner to nominate and provide vessel(s), which shall be RightShip approved, loaded with cargo provided by the Charterer under the direction and responsibility of the vessel's Master, and Owner shall carry and deliver the cargo as set out in this Contract.

## **3 CARGO QUANTITY AND SHIPMENT SIZES**

This Contract will be for the carriage of .....

Cargo shall be loaded, transported and discharged in accordance with IMO recommendations.

## **4 CONTRACT TERM**

Laycan: .....

## **5 VESSEL'S DESCRIPTION**

A. Owner undertakes that the vessel shall at all times be acceptable to Charterer.

The Vessel shall be suitable at all times for the loading, carriage and discharge of the cargoes nominated under this contract.

Charterer and/or Receiver shall have the right at any time on reasonable notice to inspect or survey the vessel or substitute vessel with the Master or his nominee for the purpose of ascertaining whether the vessel meets the requirements set out in Clause 5B and is being maintained and operated in accordance with the terms and conditions of this contract.

B. Owner shall provide a seaworthy and cargo-worthy vessel for the voyage, which:

- (b) is a modern (max 20 years), non overage, single deck, self trimming, bulk carrier with minimum 25 mt cranes at all hatches, which has been approved by RightShip, with engines, bridge/accommodation and gangway aft, each without longitudinal centre line bulkheads; be tight, staunch and strong and in every way fitted for the nominated voyage, and classed 100A1 at Lloyds or equivalent and. Vessel is to give free the use of all vessel's cargo handling gear, and sufficient power to operate all the gear simultaneously as required, and
- (c) shall be acceptable to the relevant authorities and conform with all laws, regulations and requirements in force at or applicable to Loading and Discharging Ports, and be maintained to standards of accommodation, equipment, fixtures & fittings acceptable to the Charterer and;
- (d) shall be of such size, draft, air draft and other dimensions as to permit the vessel to safely enter, berth, lay alongside, load and discharge and depart always safely afloat from Loading and Discharging Port(s) and;
- (e) shall be capable of loading cargo in all holds as required by Charterer and be cargo-worthy in every respect and;
- (f) be in possession of a current ITF Certificate or equivalent acceptable to ITF and;

- (g) shall have steel tanktops strengthened for heavy cargoes, suitable for grab discharge with no fittings protruding from internal hold surfaces, and no obstructions in the holds and on deck which would hinder grab and/or other loading and discharging operations and;
- (h) be fitted with hold ladders and pilot ladders in accordance with Maritime Union of Australia requirements and/or other local applicable rules and regulations.

C. Owner further warrants that:

- (a) vessel shall have no cargo battens; no twin hatch vessels or woodchip carriers to be nominated; and
  - (b) if by reason of vessel's construction cost of discharge exceeds the customary normal cost and time, the extra costs are to be for Owner's account and any additional time used in discharging shall be added to laytime.
- D. Should vessel after arrival at a Loading Port be found to be in breach of sub-clause 5B or 5C, then notwithstanding any right(s) of the Charterer elsewhere contained in this Contract, the Charterer may at its option and without prejudice to Owner's obligations under this Contract:
- (a) treat the voyage as suspended until Owner rectifies the vessel's default, or
  - (b) treat the vessel's nomination as cancelled and the voyage unperformed.

Any NOR previously accepted shall be deemed to be invalid and the time lost whether on demurrage or not, to be for Owner's account. Owner shall keep Charterer fully indemnified against any consequences of any vessel's failure to comply with the undertaking and covenants of Clause 5, including any delay occasioned thereby, and also including Charterer's cost, to provide a suitable replacement vessel to meet its scheduling requirements.

## 6 OWNER'S/MASTER'S OBLIGATIONS

Owner undertakes that Owner and/or Master:

- A. shall at all times be solely responsible to establish the applicable vessel size, draft and air-draft requirements for Loading and Discharging Ports and to ensure that the vessel is loaded so as to comply at all times with such requirements; and
- B. should Owner or the Master cause or permit the vessel to be loaded with a quantity of cargo such that on arrival the vessel has at any Discharging Port, a draft in excess of the permissible entry draft at that port, Charterer or consignee(s) or their agent(s) shall have the right to require the vessel to proceed to that port, or to any other port or place as they may require, for the purpose of lightening and/or complete or partial discharge. The costs of any lightening and any other additional costs incurred and time lost by reason of the necessity to lighten and/or divert the vessel as aforesaid as a consequence of the above shall be for Owner's account.
- C. further, Owner shall indemnify Charterer and/or consignee(s) against any loss or damage resulting from such diversion or delay including but not limited to the costs of

on-carriage of the cargo to the nominated port, stockpiling charges, deterioration to the cargo (including any loss of market).

- D. shall by no later than [10] days before the opening date of the Laycan period, nominate a Vessel to perform the Voyage. Failure to do so by the date specified in this clause will give the Charterer the right to cancel the Voyage on notice to the Owner, fix a vessel against the Owner and to claim as damages from the Owner any increased cost differential incurred by the Charterer as a result.

## **7 LOADING PORT**

The vessel shall proceed with all reasonable despatch to port of loading, Port of ..... and there load a full and complete cargo subject always to any Discharging Port arrival draft restriction(s) as it is the Owner's responsibility to determine pursuant to sub-clause 6B.

## **8 DISCHARGING PORT**

The vessel shall discharge at the Port of .....

## **9 VESSEL NOMINATION AND NOTICES BY MASTER**

- A. Owner shall notify Charterer ten (10) days prior to the opening layday at the Port of Loading of the following:
  - (a) The vessel's name and full description, along with completed relevant port questionnaire as attached in appendices;
  - (b) Estimated date of arrival at the Port of Loading;
  - (c) Estimated date of arrival at the Port of Discharge;
  - (d) Estimated draft on arrival at the Port of Loading and at the Port of Discharge, hatch division and, where known, the tonnage the Owner proposes to load into each hold;
  - (e) Estimate of the shipped weight of the cargo the vessel will carry;
  - (f) The full name and address of vessel's Australian agent; and
  - (g) What type of mooring lines the vessel intends using at load port.
- B. Within one (1) working day after receipt of the said nomination Charterer by notice to Owner shall accept or reject the vessel. The vessel shall only be rejected if it does not comply with the requirements of this contract. If the vessel is rejected Charterer shall state the reason for rejection. If the vessel is rejected Owner shall arrange another vessel in its place and the procedure hereinbefore set out shall apply in respect of that vessel and any other vessel nomination.
- C. Owner shall ensure that the Master of the vessel notifies Charterer of the vessel's expected date of arrival at the Port of Loading when leaving the previous port or ten (10) days before the expected time of arrival at the Port of Loading (whichever is the earlier). The Master shall also notify Charterer of the vessel's estimated time of arrival at the Port of Loading 7 days, seventy-two (72) hours, forty-eight (48) hours and twenty-four (24)

hours before the expected time of arrival at the Port of Loading. Owner shall ensure that the Master of the vessel confirms to Charterer on his arrival at the Port of Loading the route he intends to take and his estimated time of arrival at the Port of Discharge. Should vessel's ETA vary by more than 48 hours from previous advice, then Owner/Master to immediately notify Charterer of same.

- D. Owner shall ensure that the Master of the vessel notifies receiver or the person nominated by Charterer at the port of discharge of the estimated date of arrival at the Port of Discharge immediately after leaving the Port of Loading and also fourteen (14) days, seven (7) days, seventy-two (72) hours, forty-eight (48) hours and twenty-four (24) hours before it is expected that the vessel will arrive at the Port of Discharge, and keep persons nominated and Charterer fully informed of any alterations to such estimated date of arrival.

## **10 LOADING AND DISCHARGING TERMS**

- A. The cargo shall be loaded, spout trimmed and discharged free of expense to Owner, while under Owner's/Master's direction and supervision which includes, but is not limited to loading and discharging speeds, which at all times remain the sole responsibility of the Owner and Master.
- B. Subject to the provision of this Contract the Owner and Master shall be responsible for:-
  - (a) the declaration of cargo quantity to be loaded within the range specified
  - (b) nominating the hatch loading sequence with quantities in each hold; and
  - (c) the calculation and determination of each vessel's drafts at Port of Loading and Discharging Port(s) but always subject to any limitations and restrictions at those ports; and
  - (d) maintaining a seaworthy trim and condition of each vessel at all times.
- C.
  - (i) Cargo shall be loaded at an average rate of ..... at the Port of Loading;
  - (ii) Cargo shall be discharged at an average rate of .....
  - (iii) The above loading terms have been calculated on the basis of all vessel's holds wherein cargo is loaded or is to be loaded being available for loading when required by Charterer. If for any reason attributable to the vessel (including defects and/or default in the vessel, deficiency and/or default of vessel's personnel, inability of the vessel to ballast or deballast at a rate commensurate with the respective loaded or discharging rate) loading in or out of any of the vessel's holds in any way impaired, the laytime allowed is to be adjusted in accordance with Clause 12 and time so lost is not to count as laytime or time on demurrage.
- D. Owner shall provide on board the vessel all necessary lights for loading and discharging as required by the relevant Port Authorities or the receivers, or by any laws, regulations or requirements applicable in the Loading and Discharging Port(s).

## 11 PRESENTATION OF NOTICE OF READINESS

At Port of Loading or Discharging Port(s):

NOR for loading and discharging is to be tendered any time day or night Saturdays, Sundays or holidays included, by the Master or the vessel's agent, to and be accepted, by the shipper or consignee or their nominated agent after the vessel is an arrived ship and provided the vessel is in all respects ready to load or discharge, as the case may be.

Vessel to present at load port with all cargo holds, hatch coaming and underside of hatch covers clean, fresh-water washed and dry, and must be free of residue from previous cargoes, rust/rust scale and loose paint suitable for the carriage of alumina in bulk to Charterer's satisfaction. If vessel is determined not to be ready to commence loading, then laytime or time on demurrage will cease counting from such time as it was determined to be unclean and will not recommence counting until the vessel is clean and ready in all respects to commence loading.

At Loading Port, if NOR is tendered before the first/opening layday, the earliest laytime shall commence to count, unless loading commences earlier, is 12.00 pm on the first/opening layday.

NOR may be tendered whether the vessel is in berth or not, whether in free pratique or not, whether in customs clearance or not. In the event that free pratique and /or customs clearance is not granted, or the vessel is not ready in all respects to load or discharge the previously tendered NOR shall be deemed null and void and a new NOR shall be tendered when the vessel has complied with the aforementioned conditions.

If Master or vessel's agent at Loading Port fails to tender NOR by the cancelling date Charterer may at its option and without prejudice to Owner's obligations under this Contract, treat the vessel nominated as cancelled and the voyage unperformed. Should Owner have reason to believe the nominated vessel may arrive at the loading port after the agreed cancelling date, Owner will immediately notify Charterer of the vessel's revised ETA. Within 2 working days of such advice Charterer shall notify Owner whether they will maintain the vessel and extend the cancelling date accordingly or cancel the vessel and treat it as unperformed. In the event the vessel is cancelled, the Owner is to provide a replacement vessel that satisfies the Owner's contractual obligations under the terms of this contract. If owner's fail to do so, then the Charterers may charter a substitute vessel at that time and the Owners will reimburse the Charterers for any freight payment in excess of the freight rate under this Contract of Affreightment.

## 12 COUNTING OF LAYTIME

The measure of Laytime shall be a weather working day of twenty four [24] consecutive hours or pro rata for part thereof, Saturdays, Sundays and Holidays included/excluded as the case may be.

### A. At Loading Port

(a) Laytime shall commence running twelve (12) hours after a valid NOR has been accepted in accordance with Clause 11, or when loading commences whichever occurs first.

(b) Time used for draft checks during the course of loading shall not count as laytime whether the vessel is already on demurrage or not.

(c) Laytime shall cease on completion of loading.

**B. At Discharging Ports**

(a) Laytime shall commence running twelve (12) hours after a valid NOR has been accepted in accordance with Clause 11, or when discharging commences whichever occurs first.

(b) Time used for draft checks during the course of discharge shall not count as laytime whether the vessel is already on demurrage or not.

(c) Laytime shall cease on completion of discharge, but any extra time used solely for Charterer's draft survey shall count as laytime.

(d) Discharging will cease during periods when the wind velocity and direction are detrimental to the local environment as determined by receivers on site environmental instructions. During such period, time shall not count as laytime, unless is already on demurrage

**C. At Port of Loading and Discharging Port(s)**

(a) Time used in the first shift of the vessel from any waiting place to the berth shall not count as laytime whether the vessel is already on demurrage or not. Cost of the first shift shall be for Owner's account.

(b) Time used in shifting directly between berths at Charterer's request shall count as laytime and all costs thereof shall be for Charterer's account.

(c) If the Charterer orders the vessel to discharge at two ports, time shall not count from the time of completion of discharge at the first port until arrival of the vessel at the second port, whether in berth or not, or when discharge resumes, whichever occurs first. Shifting time from waiting place to berth in the second port is not to count at as laytime.

(d) If either the Master or the Port Authority shall for any reason whatsoever order the vessel out of a berth, time shall not count from the cessation of loading or discharging, whichever is applicable, until the vessel is again in the berth ready to resume loading or discharging, whether the vessel is on demurrage or not.

**D. Any time lost during loading or discharging due to the vessel's inability to load or discharge at the rates set out in clause 10C or due to any other defect and/or default in the vessel, deficiency and/or default of vessel's personnel, including inability of the vessel to ballast or deballast at a rate commensurate with the respective loading or discharging rate, then such time lost shall not count as laytime.**

**E. Laytime shall not be reversible.**

**F. Laytime permitted at Port of Loading and Discharging Port(s), shall be calculated on the Bill of Lading quantity.**

## **13 DEMURRAGE/DESPATCH**

At Loading and Discharging Port(s)

- A. Charterer shall pay to Owner demurrage at the rate of ..... of twenty four [24] consecutive hours and pro rata for part thereof for all time used in excess of laytime allowed.
- B. Owner shall pay to Charterer despatch money at the rate of ..... of twenty four [24] consecutive hours and pro rata for part thereof for all laytime saved.
- C. Demurrage and/or Despatch, if any, shall be settled within 30 days of completion of discharge.

## **14 COVERING AND UNCOVERING OF HATCHES**

- A. All expenditures and time relating to the covering and uncovering of hatches shall be for Owner's account.
- B. The Master shall cover the hatch(es) of each hold as soon as loading into that hold has finished.
- C. If weather is inclement or wet the Master will have all hatches closed when loading or discharging has finished for the day.
- D. During rain and/or snow and/or high wind the Master shall cover up all hatches into or from which loading or discharging is not in progress.
- E. Master shall co-operate with receivers and stevedores request for covering and uncovering of Hatches to ensure minimisation of dust.

## **15 OVERTIME**

Overtime expenses are to be paid by the party ordering same, except for overtime expenses for the vessel's officers and crew which shall be borne by Owner. Should overtime work be ordered by Port Authorities or outside bodies, extra expenses to be shared equally between Charterer and Owner. Owner agrees to permit its vessel to work at all times including Saturdays, Sundays and holidays if requested by Charterer, consignee(s), or their agent(s), in accordance with the customs of the Loading or Discharging Port(s) respectively and if permitted by the Port Authorities.

## **16 STEVEDORE DAMAGE**

Stevedores, although appointed by Charterer, shipper or receiver(s) or their agents, shall be under the direction and control of the Master. Charterer, shipper or receiver(s) shall not be responsible for the act and default of the stevedores at Loading and Discharging Ports.

All claims for damage allegedly caused by stevedores shall be settled directly between Owner and stevedores at the Loading and/or Discharging Port.

Neither the Charterer nor stevedores shall be responsible for fair wear and tear commensurate with the nature of the trade.

Owner or Master shall give written notice to stevedores of damage claimed not later than twentyfour [24] hours after occurrence.

## **17 LIGHTERAGE AND LIGHTENING**

Charterer has the option of discharging into lighters and/or otherwise lightening a vessel if it so requires and expenses thereof shall, subject to sub-clause 6C, be for Charterer's account and time so used to count as laytime.

Otherwise all other terms, conditions and exceptions of this Contract shall apply to lighterage and lightening.

## **18 DUES AND TAXES**

Any taxes (including any goods and services taxes, or freight tax), dues, port charges or other charges levied against the vessel and/or freight payments or added to any fees, levies or charges levied against the vessel shall be for Owner's account.

Any taxes, dues or other charges levied against the cargo shall be for the Charterer's account.

## **19 AGENCY AND DISBURSEMENTS**

At Loading and Discharging Port Vessel(s) shall be consigned to Charterer's nominated agent(s) as set out below who shall be appointed by Owner, Owner paying customary fees.

For each vessel, Owner undertakes to provide funds sufficient to cover the vessel's disbursements, said funds to be received by Charterer's nominated agent prior to the vessel's arrival at each port.

The Master/Owner to liaise with Shipper(s)/Charterer's agents at load port. The Master/Owner to give 96/48/24 hours notice of vessel's ETA to:

***Rio Tinto Shipping, Melbourne  
Facsimile No: (03) 9283 3318***

Charterers Load port Agents:

**TBA**

Charterers Discharge port Agents:

**TBA**

## **20 BILLS OF LADING**

All Bills of Lading issued in respect of the shipment of cargo under this Contract shall be in the Standard "CONGENBILL" bill of lading form, Edition 1994 and any subsequent modification thereof. On completion of loading:

- A. the Master or Owner's agent shall sign and issue on demand Bill(s) of Lading as presented, in strict conformity with Mate's Receipts by Charterer or Shipper without prejudice to this Contract;
- B. the Master shall ensure that (i) Mate's Receipts and ii) Bill(s) of Lading signed and issued by the Master or Owner's agent accurately describe the cargo's apparent order and condition. The Owner shall indemnify the Charterer against all consequences or liabilities which may arise as a result of the Mate's Receipts or Bill(s) of Lading inaccurately describing the cargo's apparent order and condition;
- C. except where the Charterer is the Shipper of the cargo shipped under this Contract, the Shipper will not be regarded as the Charterer's agent in presenting the Mate's receipt and or Bill(s) of Lading for signature by the Master or Owner's agents;
- D. all Bills of Lading issued under this Charter Party are to incorporate the Australian Carriage of Goods by Sea Act 1991 incorporating the Hague-Visby Rules as amended.

## **21 RATES OF FREIGHT**

- A. Freight rate that is to apply .....
- B. If vessel nominated has the capacity to load cargo in excess of the maximum quantity of cargo which Charterer has undertaken to proceed pursuant to Clause 3, Charterer shall have the right to load, subject to the provisions of sub-clause 6B, additional cargo and the applicable freight rate on such additional cargo shall be reduced by fifty percent (50%).
- C. Freight shall be paid on the loaded weight as determined by a joint draft survey made by the Master of the vessel and Charterer's nominated surveyor, which quantity will be incorporated in the Bill(s) of Lading. The cost of Charterer's nominated surveyor is to be for Charterer's account.

## **22 PAYMENT OF FREIGHT**

- A. Provisional freight shall be remitted telegraphically by Charterer through its bank to Owner's nominated bank account ninety five percent (95%) for value within five (5) bank working days after completion of loading, on Bill(s) of Lading quantity, non-returnable, ship and/or cargo lost or not lost.

Freight shall be deemed to be paid when Charterer gives to its bank instructions in the customary manner to make the appropriate remittance on the specified value date and Owner acknowledges any delay in transfer of freight that may occur from that time to be outside Charterer's control.

Balance of freight is to be settled along with demurrage or despatch, if any, within 30 days after completion of discharge and receipt by Charterer's of Owner's final freight

accounts supported by all closing documentation, including, timesheets, notice of readiness and statement of facts.

- B. Freight is to be paid to Owner's nominated bank account as follows:

.....

- C. Charterer's nominated bank account is as follows:

**Bank of America NT & SA**  
**1850 Gateway Blvd, Concord Ca 94520**  
**Account: Rio Tinto Shipping PTY LTD**  
**Account No: 62906-28313**  
**Swift: BOFAUS6S**

## **23 DEADFREIGHT**

Under no circumstances shall deadfreight be payable in respect of any voyage performed under this Contract provided Charterer makes available cargo as confirmed under Clause 3.

## **24 COMMISSION**

An address commission of ..... on all freight, deadfreight and demurrage is due to Rio Tinto Shipping Pty. Limited, Melbourne, and will be deducted from any freight, deadfreight and demurrage payments as and when payments are due and payable under this Contract.

A brokerage commission of ..... is due to ..... payable by owners on all freight, deadfreight and demurrage.

## **25 SECRECY**

It is hereby agreed that the terms of this Contract are confidential and that neither party shall disclose any of the terms to any third party unless such disclosure shall be required by law or to give commercial effect to the rights to related corporations if required.

## **26 UNFORSEEN CIRCUMSTANCES**

Both Owner and Charterer realise that circumstances may arise which could not have been foreseen at the time this Contract was executed. They agree they will use their best efforts to solve any problems due to such unforeseeable circumstances in a spirit of mutual understanding and cooperation.

## **27 PROPER LAW**

This Contract shall in all respects be governed by and construed in accordance with English Law and each party expressly submits to the jurisdiction of the English Courts.

## 28 ARBITRATION

- A. Any dispute arising out of or in relation to this Contract shall be referred to arbitration in London. A single arbitrator to be appointed by agreement between the parties shall settle the dispute; or, in the event one party fails, in response to the other's notice of appointment, to appoint an arbitrator of its choice; the arbitrator so appointed shall be the sole arbiter of the dispute. If the parties cannot agree upon the appointment of the single arbitrator within fourteen [14] days after service by either of a notice to arbitrate, the dispute shall be settled by two arbitrators, each party appointing one arbitrator and in the event of the arbitrators disagreeing on any matter they shall appoint a third arbitrator.

The arbitrators appointed shall be senior commercial or legal men engaged in the shipping industry. The President for the time being of the London Maritime Arbitrators Association shall upon request of either party appoint an umpire.

- B. The arbitrator(s) shall have an absolute discretion in relation to the apportionment of the costs and expenses of the arbitration between the parties.
- C. The award of the arbitrator, arbitrators shall be a condition precedent to the reference of any dispute to a Court.
- D. The arbitration shall be conducted in London in accordance with the provisions of the LMAA's Rules and shall be commenced within 1 year of the dispute arising or lapse.

## 29 OIL POLLUTION

Owner agrees to indemnify Charterer, its agent or any other party against any liability which may be imposed upon them or which they may incur under any statute regulation (or requirement or directive made there under) of any nation, state or international organisation regarding liability for pollution of navigable waters by oil by reason of any contravention of such statute, regulation (requirement or directive made there under) as aforesaid by the Vessel the Master or by any servant or agent of Owner, provided that such contravention shall not have been caused or contributed to by the party seeking to be indemnified under this Contract and provided further that the facts and matters giving rise to the contravention do not constitute a defence under Article 3 Section 2 of the International Convention of Civil Liability for Oil Pollution Damage 1969 or any amendments thereafter. Owner warrants that the ship is adequately insured at all time for any liabilities arising out of any contravention as aforesaid, and will comply fully with the United States Oil Pollution Act of 1990, the Federal Water Pollution Control Act and the Comprehensive Environmental Response and Liability Act as amended and any subsequent amendments to these Acts and rules and/or regulations issued thereunder .

No liability for demurrage shall arise from any delay or loss of time to the vessel at the Loading Port and/or Discharging Port(s) caused by any such contravention nor shall any time lost by such contravention count when calculating despatch.

## 30 I.T.F.

Owner shall provide evidence to Charterer that vessels, excluding those manned by Master and crew of the same nationality as the flag state of the vessel's registration, shall comply with all the requirements of the International Transport Federation ('I.T.F.') or any successor organisation at the Loading and Discharging Port(s) from time to time applicable. If the vessel does not possess a current I.T.F. certificate or equivalent

acceptable to the I.T.F. or if the vessel certificate lapses at any time during the currency of a voyage under this Contract, Charterer may terminate the voyage.

Further, Owner shall keep Charterer fully indemnified against any consequences (including any delay as well as Charterer's costs to provide a suitable replacement vessel to meet its scheduling requirements) occasioned by such lapse of the vessel's I.T.F certification and/or failure to comply with any rules, bylaws or regulations as aforesaid.

### **31 P & I COVERAGE**

Owner warrants that the vessel is entered with a Protection and Indemnity Club for full coverage and that the vessel's hull and machinery is fully insured and shall remain so for the duration of the Charter Party.

### **32 WAR RISKS**

- A. No Bill(s) of Lading to be signed for any blockaded port and if the Discharging Port(s) be declared blockaded after Bill(s) of Lading have been signed, or if the port(s) to which the ship has been ordered to discharge either on signing Bill(s) 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 ships sails. Owner shall discharge the cargo at any other port covered by this Contract as ordered by Charterer (provided that such other port is not blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the Discharging Port(s) to which she was originally ordered.
- B. The vessel 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 any person acting or purporting to act with the authority of such government of any department thereof, or by any committee or person having, under the terms of the War Risk Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be fulfilment of the contract voyage and the freight shall be payable accordingly.

### **33 EXTRA WAR RISK INSURANCE/WAR BONUS**

Charterer shall pay for the additional cost, if any, of any War Risks Insurance premiums on the vessel for her crew over the rates in effect on the date of this Contract which are necessitated by the trade in which the vessel is employed under this Contract. All War Risk Bonuses paid by Owner to members of the crew, in accordance with the provisions of Owner's Maritime Board agreements, and/or similar agreements in excess of those in effect on the date of this Contract as to trade in which the vessel was employed under this Contract shall to the extent of the excess (if any) of the rates from time to time prevailing such trade over those in effect on the date of the commencement of the voyage, be for Charterer's account.

## 34 TERMINATION CLAUSE

In the event that Shippers in its opinion is relieved of its obligation to deliver or is otherwise prevented from delivering, a part or all of any of all shiploads of alumina as a consequence of issues arising from the unions preventing the fulfilment of Shippers obligations to deliver the cargo, including any environmental problems that arise at the discharge port, shippers shall be entitled to postpone or cancel in part or in whole, without recourse, any corresponding obligations hereunder.

Shippers at the time of notifying the Owner's of such an event will supply them with documentary evidence to substantiate the reasons for the termination of the shipment or shipments.

## 35 EXTRA INSURANCE

Notwithstanding the provisions of Clause 5 any extra cost of insurance payable on cargo due to vessel's age being in excess of 20 years and/or class not being one of the class(es) including in the classification clause which at that particular time is adopted by the cargo underwriters and/or route and/or flag and/or ownership shall be for Owner's account.

## 36 FORCE MAJEURE

- A. Charterers shall be under no liability to Owner for any delay or failure in the performance of any of its obligations under this Contract nor shall laytime count, nor shall any other time thereby lost count against Charterer whether the vessel is already on demurrage or otherwise, if such delay or failure is due to or results directly or indirectly from war, or the anticipated imminence thereof, between any nations; restraint of rulers, governments or peoples; legislation, decrees, orders, regulations or the like by government of the country of shipment or discharge or any port or waterway where the vessel may from time to time be, or of the vessel's flag; inability to obtain export or import licenses; blockade, sanctions, civil commotion, political disturbances, revolution, revolt or riot, strikes, boycott, lock-outs, industrial disturbances or any effects whatsoever thereof; combinations of seamen or workmen; blockages or obstructions in the loading or discharging port(s), the navigation channels or approaches; accidents or stoppages, mechanical or electrical breakdowns, whether total or partial, at mines, ports, railways, roadways, waterways, ropeways or other means of transport; epidemics, quarantine, acts of God, inclement weather (including but not limited to drought, frosts, tropical revolving storms, high winds, floods, snow, storms, heavy rain, tempests or washaways); congestion at the Port of Loading or Discharging Port(s) resulting from any of the above causes; or any other event or occurrence of any nature or of any kind whatsoever beyond the reasonable control of Charterer, including any delay or failure resulting directly or indirectly from the consequences of such event or events after they have ceased to operate.
- B. In the event of an occurrence of Force Majeure under sub-clause 36A, affecting or likely to affect the performance of any of Charterer's obligations herein, Charterer shall give prompt notice thereof to Owner and shall, if required, and upon reasonable notice, give to Owner in writing particulars of the relevant event, together with such supporting evidence as is reasonably available.
- C. In the event of an occurrence of Force Majeure as aforesaid affecting the performance of any of Charterer's obligations herein, Charterer shall take reasonable steps to

minimise any delay or effect of Force Majeure and make good and resume with the least possible delay compliance with any obligation affected. Charterer, whilst having contractual commitments to other owners and operators of other vessels in the Loading Port may be directed by the Port Authority to allocate berths and cargo at that port, and accordingly, Charterer shall not be bound to give to Owner any precedence over any other vessel.

### **37 ISM CLAUSE**

From the date of coming into force of the International Safety Management (ISM) Code in relation to the Vessel and thereafter during the currency of this Contract, the Owners shall procure that both the Vessel and 'the Company' (as defined by the ISM Code) shall comply with the requirements of the ISM Code. Upon request, the Owners shall provide a copy of the relevant Document of Compliance (DOC) and Safety Management Certificate (SMC) to the Charterers.

Except as otherwise provided in this Contract, loss, damage, expense or delay caused by failure on the part of the Owners or 'the Company' to comply with the ISM Code shall be for the Owner's account.

### **38 AUSTRALIAN CLAUSE PARAMOUNT**

This Charter Party is to be read and construed as if every clause therein contained which is rendered illegal or null and void by the Australian Carriage of Goods by Sea Act 1991 had never been inserted therein or had been cancelled and eliminated therefrom prior to the execution hereof. This Charter Party is subject to the terms and provisions of the Australian Carriage of Goods by Sea Act 1991 and the conditions thereby implied in the Bill of Lading shall be deemed to form part of and be incorporate in this Contract.

### **39 GENERAL AVERAGE AND THE NEW JASON CLAUSE**

General Average shall be payable according to the York/Antwerp Rules, 1994, but where the adjustment is made in accordance with the law and practise of the United States of America, the following clause shall apply:

#### **NEW JASON CLAUSE**

"In the event of accident, danger damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences 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 salving ships is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agent(s) 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."

Charterer shall ensure that the Bills of Lading issued under this Contract shall contain or by general reference be deemed to incorporate the abovementioned "General Average and New Jason Clause."

## 40 BOTH TO BLAME COLLISION CLAUSE

If the liability for any collision in which the vessel is involved while performing this Contract falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:

### BOTH TO BLAME COLLISION CLAUSE

"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 vessel, the owner(s) of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owner(s) in so far as such loss or liability represents loss of, or damage to, any claim whatsoever of the owners of the said goods. Paid or payable by the other non-carrying ship or her owner(s) to the owner(s) of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owner(s) as part of their claim against the carrying ship or carrier.

The foregoing provisions shall also apply where the owner(s), operator(s) 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 contract.

Charterer shall ensure that the Bill(s) of Lading issued under this Contract shall contain or by general reference be deemed to incorporate the above mentioned "Both to Blame Collision Clause".

## 41 ICE CLAUSE

- A. Should ice prevent the vessel(s) from reaching Discharging Port(s), Charterer shall have the option of keeping the vessel waiting until the reopening of navigation on paying demurrage for time thereby lost, or of ordering the vessel to a safe and immediately accessible port where it can safely discharge without risk of detention by ice. Such orders are to be given within forty-eight (48) hours after Master or Owner has given notice to Charterer and consignee(s) of the impossibility of reaching the Discharging Port.
- B. If, during discharging the Master, for fear of the vessel being frozen in, deems it advisable to leave, he has the liberty to do so with whatever quality of cargo he has on board. Owner shall forthwith give notice to Charterer of the situation. Within forty-eight (48) hours after receipt of such notice Charterer shall give notice to Owner in reply nominating an alternate discharge port conforming to the same conditions in sub-clause 37A.
- C. On delivery of the cargo at the alternate discharge port, all conditions of the Contract shall apply and vessel shall receive the same freight as if she had discharged at the original Discharging Port, except that if the distance of the alternative discharge port from the Discharging Port exceeds one hundred (100) nautical miles, Charterer shall pay Owner any extra expenses incurred by Owner due to such alteration of destination.

## **42 DEVIATION AND LIBERTIES**

The vessel shall have liberty to sail with or without pilots, except where compulsory pilotage is required, to tow or to be towed to deviate from the voyage for the purpose of saving human life, to communicate with a vessel in distress in case lives may be in danger or to avoid danger to the ship or cargo, but for no other purpose whatsoever.

## **43 DRUG AND ALCOHOL CLAUSE**

Owner/Disponent Owner undertakes to Charterer that it has guidelines on drug and alcohol abuse applicable to each vessel with the objective that no seafarer will navigate a ship or operate its on-board equipment while impaired by drugs or alcohol and that no seafarer will have the use or possession of or the opportunity to sell or distribute or transport illicit or non-prescribed drugs aboard the vessel. Further, the Charterer expects that the Owner/Disponent Owner exercise due diligence throughout the period of the charterparty to ensure that such guidelines are complied with.

## **44 LIEN**

If the vessel is under charter to the Owner then the Owner shall defend, indemnify and hold the Charterer herein harmless from any lien on cargo, freight or subfreights exercised by the actual/Disponent Owner of the vessel arising from the failure of Owner to discharge its obligations to the vessel's actual/Disponent Owner under charter. All liability of Charterer shall cease upon completion of loading.

## **45 COMMUNICATIONS**

It is mutually agreed that the English language will be used in notices, letters, telexes, facsimile and all other means of communication between parties.

In this Contract:

- A. Charterer's address for purpose of service of notice is:

**RIO TINTO SHIPPING PTY LIMITED**  
**Level 31, 120 Collins Street**  
**Melbourne VIC 3000**  
**Tel: (03) 9283 3243**  
**Fax: (03) 9283 3318**

- B. Owner's address for purpose of service of notice is:

**TBA**

Unless otherwise provided, notice hereunder may be given to either party by telex, cable, facsimile or airmail and shall be deemed to have been given at the time they would in normal circumstances be received by the other party.

## **46 RELETTING, SUBLetting, SUBCONTRACTING AND ASSIGNING**

Charterer may relet or, sublet the vessel and/or assign or subcontract any of its rights, duties or obligations but shall remain at all times fully responsible for all or any part thereof.

## **47 LIQUIDATION/BANKRUPTCY OF OWNER**

If Owner becomes insolvent or bankrupt or has a receiving order made against it or compounds with its creditors, or being a corporation commences to be wound up, or is placed under official management or carries on its business under a receiver, trustee, liquidator or provisional liquidator for the benefit of any or all of its creditors Owner shall forthwith notify Charterer accordingly and Charterer may either:

A terminate the Charter Party forthwith by notice to owner, receiver, trustee, liquidator, provisional liquidator, official manager or to any other person in whom the Charter Party may have become vested; or

B give to the receiver, trustee, liquidator, provisional liquidator, official manager or other person the option to perform the Charter Party subject to him providing a guarantee (satisfactory to Charterer) for the time being remaining to be performed for the due and faithful performance of the Charter Party.

C any option given under paragraph (B) of this Clause shall be exercisable within fourteen (14) days of its receipt.

## **48 AMENDED BIMCO ISPS CLS FOR VOYAGE CHARTER**

(a) In this clause:

- (i) 'CSO' means Company Security Officer;
- (ii) 'ISPS Code' means the International Ship and Port Facility Security (ISPS) Code (as amended from time to time) and the relevant amendments to Chapter XI of the International Convention for the Safety of Life at Sea 1974;
- (iii) 'SSO' means Ship Security Officer;
- (iv) all words and expressions that are defined in the ISPS Code have the same meanings in this clause, in particular 'the Company', 'Company Security Officer', 'Interim International Ship Security Certificate', 'International Ship Security Certificate', 'Ship Security Officer' and 'Ship Security Plan'.

(b) From the date of coming into force of the ISPS Code in relation to the Vessel and thereafter during the currency of this Contract, Owner shall ensure that both the Vessel and the Company comply at all times with the requirements in the ISPS Code relating to the Vessel and the Company. Owner shall provide to Charterer:

- (i) a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) for the Vessel; and
- (ii) the full style contact details of the CSO.

- (c) Except as otherwise provided in this Contract, Owner shall be liable for any loss, damage, expense or delay, which arises from any failure at any time of the Company or the Vessel to comply with the requirements in the ISPS Code (or the taking of any action to meet such requirements) or breach by Owner of any of its obligations in this clause.
- (d) Charterer shall provide the CSO and either the SSO or the Master with Charterer's full style contact details and any other information Owner requires to comply with the ISPS Code. Any delay caused by Charterer's failure to provide information required under this paragraph (d) shall count as Laytime and Charterer must reimburse Owner for any additional costs incurred by Owner which result directly from Charterer's failure to provide such information.
- (e) The Master shall be entitled to tender NOR even if the Vessel is not cleared due to applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code provided that the SSO and the Master believe (having made all reasonable enquiries) that clearance will be granted swiftly in accordance with normal practice and procedure at the port. However, the NOR shall be invalidated if any delay in clearance of the Vessel arises from any failure at any time of the Company or the Vessel to comply with the requirements in the ISPS Code (or the taking of any action to meet such requirements) or breach by Owner of any of its obligations in this clause.
- (f) Notwithstanding sub-clause (e), any time lost as a result of security measures imposed by a port facility or relevant authority under the ISPS Code shall not count as Laytime or time on demurrage (unless such lost time was directly caused by Charterer's failure to comply with its obligations in the ISPS Code or this clause).
- (g) Notwithstanding anything else contained in this Contract:
  - (i) Owner and Charterer shall share in equal proportions any additional costs or expenses arising out of, or related to, security regulations or measures required by the port facility or relevant authority under the ISPS Code including security guards, launch services, tug escorts, port security fees or taxes and inspections (provided that if any such additional costs arise solely from either
  - (ii) party's failure to comply with the requirements of the ISPS Code or this clause, then that party will be solely responsible for such costs);
  - (iii) Owner shall be responsible for the cost and expense of all measures required by Owner or the Company to comply with the Ship Security Plan.
- (h) If either party makes any payment which is for the other party's account according to this clause, the other party shall indemnify the paying party.

## 49 AMENDMENTS

Amendments, if any, to the Contract shall be in the form of a properly numbered and executed addendum to the Contract, unless otherwise agreed in writing by telex facsimile, cable or letter by Charterer.

**IN WITNESS WHEREOF** the parties hereto have signed this Contract as at the date herein above mentioned by their respective duly authorised officers or representatives.

**For CHARTERER:**

**For OWNER:**