



Nyrstar Sales & Marketing AG Voyage Charter Party

Tessinerplatz 7  
Zurich 8002  
Switzerland  
(ABN 46 401 415 344)

IT IS THIS DAY MUTUALLY AGREED BETWEEN

## 1. Owners/Charterers

("Owners")

.....

.....

("Charterers")

**Nyrstar Sales & Marketing AG**

**Tessinerplatz 7**

**Zurich 8002**

**Switzerland**

**(ABN 46 401 415 344)**

## 2. Vessel Description

Name of Vessel .....

Configuration of Vessel

Dead Weight Tonnage / Summer Saltwater Draft

Flag State

Length Over All / Breadth Moulded

Gross Registered Tonnage / Net Registered Tonnage

Holds / Ship's Gear

Fuel consumption

Other Information

"Vessel".

## 3. Loading Port(s)/Discharging Port

"Loading Port(s)"

One safe berth **[insert name of port]** **[if two loading ports insert and one safe berth insert name of second port]** Australia

"Discharging Port"

One safe berth **[insert name of port]**

China

## 4 Cargo

**[Insert number]** wet metric tonnes +/- **[Insert number]**% in the Charterers' option

**[Specify product]** concentrates in bulk



**[Insert number]** wet metric tonnes +/- **[Insert number]**% in the Charterers' option **[DELETE THIS BOX IF ONLY ONE KIND OF CARGO]**  
**[Specify product]** concentrates in bulk

"Cargo".

## 5. Rate of freight

Freight US\$..... per metric ton  
 Demurrage/despatch US\$.....

F.I.O. and free stowed/spout trimmed, per wet metric ton, bill of lading weight (shipper's weights to be accepted as bill of lading weight. See clause 19).

## 6. Freight payable by Charterers to

**Bank**  
**Swift Code**  
**Account Number**  
**IBAN**  
**Account Name**  
**Correspondent Bank**

## 7. Laydays/cancelling

1 Laydays not to commence before **[Insert time date]** hours on **[Insert]**

2 Vessel must be in the first or only Loading Port and ready to load on or before **[Insert time date]** hours on **[Insert]**

## 8. Brokerage

Brokerage .....

## 9. Address Commission

Address Commission .....

## 10. Approach voyage

The Owners warrant the Vessel to be now trading, seaworthy, tight, staunch and strong and in every way fitted for the voyage, compliant in all respects with the requirements of this Charter Party and proceeding with all convenient speed to load under this Charter Party.

## 11. Loading

- (a) Owners shall be responsible for Vessel's holds being clean, dried and free of all dunnage, loose rust scale and scrap or foreign matter of any kind whatsoever, and suitable in all respects to receive the cargo to be loaded under this Charter Party, to the satisfaction of Charterers or Charterers' agents.
- (b) The Vessel to load always afloat in the customary manner, free of turn, when, where and as soon as ordered (including by shippers' agent) a full and complete or, in Owners' option, part cargo(es) (see clause 37) not exceeding what she can reasonably stow and carry over and above her Tackle, Apparel, Provisions, and Furniture,
- (c) Notice of readiness is to be given:



- (i) in ordinary office hours 9 am to 5 pm, i.e. excluding holidays and the time between noon Saturday and 8 am Monday;
- (ii) only when the Vessel is in every respect ready to load;
- (iii) whether in free pratique or not, whether in berth or not, whether customs cleared or not.

Time for loading to start to count from 8 am the next working day.

- (d) The Cargo shall be loaded under the Master's responsibility and to the Master's satisfaction in respect of seaworthiness. The Master shall be responsible for nominating the holds to be loaded, the order and the quantity of Cargo to be loaded in each hold.
- (e) Any Notice of Readiness tendered when the Vessel's holds are unsuitable is invalid. Owners must, in such case, re-tender Notice of Readiness when the Vessel complies in all respects with the terms of this Charter Party. If the Vessel's hold(s) are found to be unsuitable, any time lost from time of such rejection of hold(s) until the Vessel is accepted and ready in all respects to load, shall not count as laytime or as time on demurrage, and any expenses directly attributable thereto, labour and mechanical equipment, shall be for Owners' account.

## 12. Laytime at Loading Port

- (a) The Cargo to be loaded in a total of **[Insert number of days]** weather working days of 24 consecutive hours, Saturday afternoons, Sundays, holidays always excluded unless used.
- (b) If Charterers can arrange to load between noon Saturday and 8 am Monday, Sundays or Holidays or before time commences to count, Owners to allow work to be done, half time actually so used to count.
- (c) Time not to count as laytime or time on demurrage for opening and closing hatches at each Loading Port even if already on demurrage.

## 13. Time at Discharging Port

- (a) The Cargo to be discharged at the average rate of 2,500 metric tons per weather working day of 24 consecutive hours, Sundays and holidays excepted unless used (SHEXUU).
- (b) Time for discharging to count from 0800 hours the next working day after notice of readiness validly tendered. Time from 0001 hours Sunday to 0800 Monday and holidays excepted unless used, half actual time so used to count.

## 14. Working Winches Overtime & Ship's Gear

- (a) The Vessel's gear is to be fully in compliance with all Australian laws and kept always in good working order.
- (b) The Vessel is to load and discharge as rapidly as possible, and to give use of electric winches and sufficient light, power and crew to drive the winches all free of expense to Charterers.
- (c) If crew are not permitted by local labour regulations shore hands to be employed, and Charterers to pay cost of same.
- (d) The ship to work overtime if requested to do so, all extra expenses incurred thereby being paid by the party ordering it, but overtime for Ships' officers and crew always to be for the Owners' account, unless the Vessel is already on demurrage.
- (e) Time during breakdowns of the Vessel's gear not to count pro rata as laytime or time on demurrage even if already on demurrage but Owners shall have the option of hiring suitable shore gear to replace disabled ship's gear, in which case, laytime to continue counting for the time any such shore gear is actually in use.



## 15. Demurrage/Despatch

Demurrage (if any) per running day, fractions of a day pro-rata, to be settled after completion of discharge. Owners to pay despatch money at the rate of one half of the demurrage rate per day or pro-rata for all laytime saved in loading and discharging, to be settled after completion of discharge.

## 16. Laydays/Cancelling

Should the Vessel not be in the first or only Loading Port and ready to load on or before the time and on the date stated in line 2 of clause 7, Charterers have the option to cancel or at their sole discretion, and without affecting any of their rights, to load the Vessel and in any event to claim all costs, losses and damage arising. No statement, act, conduct or omission of the Charterers affects the right of cancellation under this clause.

## 17. Shifting Berths

At loading or discharging any cost of shifting to second berth, if used, to be for the Owners' account, and time so used to count as laytime.

## 18. Bills of Lading

- (a) Bills of lading to be signed without prejudice to this Charter Party, by or on behalf of the Master and to state on their face "Subject to all terms, conditions, limitations and exceptions, including arbitration clause, of the Charter Party dated" followed by the date of this Charter Party.
- (b) Bills of lading must state on their face "Freight payable as per Charter Party dated" followed by the date of this Charter Party.

## 19. Agents at Loading/Discharging Ports

Vessel to be addressed for the Custom House business to Charterers' agents at Loading Port(s) and Owners' agents at Discharging Port.

Charterers' agents at Loading Port are:

**Risdon**

**[insert name of agent].**

**Port Pirie**

**[insert name of agent]**

The Master to apply to Charterers' agents for cargo.

Agents at Discharging Port are:

**[Insert name of port]**

**[insert details of Owners' agents].**

## 20. Freight

- (a) Freight to be paid on bill of lading weight (shipper's weights to be accepted as bill of lading weight, the Owners having the right to check the weights during loading), which is inclusive in full of all port charges, pilotages, light dues, and all other dues usually paid by vessel.
- (b) Freight to be paid by telegraphic transfer by Charterers in cash, ninety five (95) percent less address commission within seven (7) days of signing/releasing bills of lading, discountless and non-returnable.



- (c) Freight is payable Vessel and/or cargo lost or not lost, and is deemed earned on completion of loading.
- (d) The balance of freight to be settled within 30 days of completion of discharge and is to include or offset as the case may be any sum or sums due in settlement of demurrage/despatch.

## **21. Address commission**

An address commission of 2.50% (two and a half percent) on freight, deadfreight and demurrage to be deducted by Charterers on freight and brokerage payable.

## **22. Cesser Clause**

All liability of Charterers shall cease on completion of loading, Owners having a lien on cargo for freight.

## **23. Exceptions**

Vessel has liberty to deviate for the purpose of saving life or property, with leave to sail without pilots, and tow or to be towed and assist vessels.

## **24. Notices**

- (a) All notices under this clause are to be given by email.
- (b) Master to advise Charterers:-
  - (i) on leaving port last before proceeding to the Loading Port or first Loading Port giving sailing date, time and the Vessel's ETA at the Loading port or first Loading port;
  - (ii) of the Vessel's ETA every 24 hours thereafter until the Vessel's arrival at or off the Loading Port or first Loading Port;
  - (iii) immediately should the ETA previously confirmed be altered by more than 12 hours or should the Vessel have to put in at any port en route;
  - (iv) on sailing from each Loading Port giving sailing date, quantity loaded, ETA next Loading Port (if any) and ETA Discharging Port; and
  - (v) of the Vessel's ETA at or off the discharging area every 48 hours thereafter and 48 hours before expected readiness to discharge.
- (c) In addition, Master to email Charterers' agents at each Loading Port giving 9 and 7 days' notice of expected readiness to load, stating the Vessel's ETA at or off the loading place and the quantity Vessel is expected to load.

## **25. Stevedores**

- (a) Stevedores are to be appointed and paid for by the shippers or their agents for loading and stowing/spout trimming.
- (b) At discharging port, stevedores are to be appointed and paid for by the receivers.
- (c) Separations of Cargo by hold.

## **26. Grab Discharge/Deep Tanks**

Vessel holds to be suitable for grab discharge. No cargo is to be loaded in places inaccessible to grabs or that cannot be cleaned with mechanical equipment (including but not limited to deep tanks, bridge spaces, any hold or space with uncovered tunnel, open brackets or uncovered bilges), excepting frame and void spaces within the hold.



## 27. Rain Covers

The hatch of each hold to be covered as soon as loading into it has finished and/or loading or discharging has finished for the day and/or the weather is threatening, wet or snowing.

## 28. Strike Clause

- (a) If there is a strike at a Loading Port prior to the Vessel's arrival there, Owners may ask Charterers to declare that they agree to maintain Laydays as if there were no strike. Unless Charterers have given such declaration in writing within 48 hours, Owners shall have the option of cancelling the voyage.
- (b) If there is a strike after the Vessel's arrival, the Vessel shall have the liberty to sail from the Loading Port affected by the strike without the Cargo or sail with only part Cargo on expiry of 48 hours notice of Owners' intention to do so but such notice may not be given by Owners until at least 72 hours have elapsed since the Vessel's arrival at the Loading Port so affected. The Owners' 48 hours notice shall be invalidated by the cessation of the strike within the 48 hour notice period.
- (c) If after giving valid notice under this clause the Vessel is entitled to sail with part of the Cargo and does so sail, Charterers shall pay freight only on the cargo quantity actually loaded and shall be under no liability for deadfreight or damages howsoever arising. Owners shall have the liberty to complete with other cargo en route for their own account.
- (d) If there is a strike affecting the discharge of the Cargo on or after the Vessel's arrival at or off the discharging port and same has not been settled within 48 hours, Charterers shall have the option of keeping the Vessel waiting until the strike is at an end against paying half demurrage after expiration of the time provided for discharging, or of ordering the Vessel to a safe port where she can safely discharge without risk of being detained by a strike. Such orders to be given within 48 hours after Master or Owners have given notice to Charterers of a strike affecting the discharge. On delivery of the Cargo at such port, all conditions of this Charter Party and of the bill(s) of lading 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 substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

## 29. Bunker Clause

The Vessel shall have the liberty as part of the contract voyage to proceed to any port or ports at which bunkers are available for the purpose of bunkering as reasonably necessary and whether such ports are on or off the direct and/or customary route or routes between any of the Loading Port(s) or Discharging Port named in this Charter but not so as to affect clause 44.

## 30. Both to Blame Collision Clause

If the Vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the Master, Mariner, Pilot or the servants of Owners in the navigation or in the management of the Vessel, the owners of the Cargo carried hereunder indemnify the Owners against all loss or liability to the other or non-carrying vessel or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said Cargo, paid or payable by the other or non-carrying vessel or her owners to the owners of the said Cargo and set off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying Vessel or Owners. The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.

## 31. War Risks Clause

- (a) For the purpose of this Clause, the words "War Risks" shall include any actual, threatened or reported:

War; act of war; civil war; hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; acts of piracy; acts of terrorists; acts of hostility or malicious damage; blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or



against certain cargoes or crews or otherwise howsoever); by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.

- (b) If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or the Owners, performance of the Charter Party, or any part of it, may expose, or is likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Charter Party, or may refuse to perform such part of it as may expose, or may be likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks; provided always that if this Charter Party provides that loading or discharging is to take place within a range of ports, and at the port or ports nominated by the Charterers the Vessel, her cargo, crew, or other persons onboard the Vessel may be exposed, or may be likely to be exposed, to War Risks, the Owners shall first require the Charterers to nominate any other safe port which lies within the range for loading or discharging, and may only cancel this Contract of Carriage if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.
- (c) The Owners shall not be required to continue to load cargo for any voyage, or to sign bills of lading for any port or place, or to proceed or continue on any voyage, or on any part thereof, or to proceed through any canal or waterway, or to proceed to or remain at any port or place whatsoever, where it appears, either after the loading of the cargo commences, or at any stage of the voyage thereafter before the discharge of the cargo is completed, that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo (or any part thereof), crew or other persons on board the Vessel (or any one or more of them) may be, or are likely to be, exposed to War Risks. If it should so appear, the Owners may by notice request the Charterers to nominate a safe port for the discharge of the cargo or any part thereof, and if within 48 hours of the receipt of such notice, the Charterers shall not have nominated such a port, the Owners may discharge the cargo at any safe port of their choice (including the port of loading) in complete fulfilment of the Charter Party. The Owners shall be entitled to recover from the Charterers the extra expenses of such discharge and, if the discharge takes place at any port other than the Loading Port, to receive the full freight as though the cargo had been carried to the Discharging Port and if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route, the Owners having a lien on the cargo for such expenses and freight.
- (d) If at any stage of the voyage after the loading of the cargo commences, it appears that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo, crew or other persons on board the Vessel may be, or are likely to be, exposed to War Risks on any part of the route (including any canal or waterway) which is normally and customarily used in a voyage of the nature contracted for, and there is another longer route to the discharging port, the Owners shall give notice to the Charterers that this route will be taken. In this event the Owners shall be entitled, if the total extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route.
- (e) (i) Owners may effect war risks insurance in respect of the Hull and Machinery of the Vessel and their other interests (including, but not limited to, loss of earnings and detention, the crew and their Protection and Indemnity Risks), and the premiums and/or calls therefore shall be for their account.
- (ii) If the Underwriters of such insurance should require payment of premiums and/or calls because, pursuant to the Charterers' orders, or in order to fulfil the Owners' obligation under this Contract of Carriage, the Vessel is within, or is due to enter and remain within, or pass through any area or areas which are specified by such Underwriters as being subject to additional premiums because of War Risks, then the actual premiums and/or calls paid shall be reimbursed by the Charterers to the Owners within 14 days after receipt of the Owners' invoice. If the Vessel discharges all of her cargo within an area subject to additional premiums as herein set forth, the Charterers shall reimburse the Owners for the actual additional premiums paid which may accrue from completion of discharge until the Vessel leaves such area or areas referred to above. The Owners shall leave the area as soon as possible after completion of discharge.





(f) The Vessel shall have liberty:-

- (i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery or in any way whatsoever which are given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government which so requires, or any body or group acting with the power to compel compliance with their orders or directions;
- (ii) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;
- (iii) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;
- (iv) to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;
- (v) to call at any other port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment or other sanctions;
- (vi) where cargo has not been loaded or has been discharged by the Owners under any provisions of this Clause, to load other cargo for the Owners' own benefit and carry it to any other port or ports whatsoever, whether backwards or forwards or in a contrary direction to the ordinary or customary route.

(g) If in compliance with any of the provisions of sub-clauses (b) to (f) of this Clause anything is done or not done, such shall not be deemed to be a deviation, but shall be considered as due fulfilment of the Contract of Carriage.

### **32. Average**

Any general average occurring under this Charter to be settled in London according to York-Antwerp Rules, 1994 and subsequent amendments.

### **33. Arbitration and Governing Law**

- (a) Any dispute, controversy or claim arising out of, relating to or in connection with this Charter Party, including any question regarding its existence, validity or termination, shall be resolved by arbitration at Melbourne, Australia in accordance with the ACICA arbitration rules and with the Commercial Arbitration Act 1984 (Vic). The language of the arbitration shall be English. The number of arbitrators shall be three.
- (b) The arbitrators shall be persons engaged in the shipping trade and may be qualified legal practitioners. No award shall be questioned or invalidated on the grounds of objection to an arbitrator unless objection is taken before the award is made.
- (c) This Charter Party is governed by and to be construed in accordance with the laws in force in the State of Victoria, Australia.
- (d) Any claim must be made in writing and the claimant's arbitrator appointed within three months of final discharge and where this provision is not complied with the claim shall be deemed to be waived and shall be absolutely barred.
- (e) For any disputes of less than US\$75,000 both parties agree use the procedure of the London Maritime Arbitrators' Association Small Claims Procedure.





### 34. Taxes

Any dues and/or taxes charged on the Vessel to be for Owners' account. Australian income tax, if any, on freight for Owners' account. Dues / taxes / wharfage on cargo for Charterers account.

### 35. I.T.F.

Should the Vessel be boycotted, picketed, blacklisted or delayed at any port or place by reason of the Vessel's actual or alleged non-compliance with the requirements of the International Transport Workers' Federation (or successor organisation) or of the Vessel's flag/registry/manning or ownership, or the terms and conditions on which members of the officers/crew are employed, or by reason of trading of the Vessel or any other vessel under the same ownership, management, operation or control, the Owners must indemnify the Charterers for all costs and consequences thereof (including but not limited to providing a substitute or transfer vessel). Time shall not count nor shall demurrage accrue even if on demurrage for all time lost by reason of such boycott, picket, blacklisting or delay.

### 36. Insurance

Owners warrant that the Vessel is entered with a Protection & Indemnity Association for liability coverage in respect of all customary risks and that the Vessel's hull and machinery is insured for its full value against all customary risks and remains so at all times throughout the currency of this Charter Party.

### 37. Pollution & Financial Responsibility

- (a) Owners agree to indemnify Charterers and their servants and agents or any other party against any liability for or arising out of oil, including bunker oil, pollution (whatever the basis of liability may be) by reason of any act or omission of the Vessel, the Master or any servant or agent of Owners
- (b) Owners warrant that the Vessel is entered in a P & I Association with cover for liabilities arising out of any contravention of any international convention, laws or regulations governing or applicable to this Charter Party.
- (c) During the period of this Charter Party, Owners warrant that they shall comply with all financial capability, responsibility, security or laws, regulations and/or other requirements of whatsoever kind with respect to oil, including bunker oil, or other pollution damage applicable to the Vessel entering, leaving, remaining at or passing through any ports or places or waters in the performance of this Charter Party. Owners, at their sole risk and expense shall make all arrangements by bond, insurance or otherwise and obtain all such certificates or other documentary evidence and take all such action as may be necessary to satisfy such laws, regulations and/or other requirements applicable to the Vessel entering, leaving, remaining at or passing through any ports or places or waters in the performance of this Charter Party. Any expense or time lost to the Charterers due to any failure or omission to do the foregoing shall be for Owners' account.
- (d) Notwithstanding anything else contained herein, for U.S. financial responsibility requirements, Owners warrant that they will continue to have throughout the period of this Charter Party the standard oil pollution insurance coverage available through Owners' P. & I. Club (minimum US \$500,000,000.00), the expense of such coverage to be for Owners' account.

### 38. Part Cargo(es)

This clause applies if part cargo is loaded or to be loaded.

"These part cargo(es) is/are to be loaded, stowed, carried and discharged always in accordance with IMO regulations and all applicable laws. Appropriate certificates showing the moisture limit of intended cargo to be furnished to the Master prior to loading each cargo. In the event of a part cargo option being granted by Charterers, the following conditions are deemed to have been accepted by Owners:

- (a) Owners have the option to complete with other lawful merchandise at their risk and expense from a port enroute to a port enroute. Any such completion cargo is to be non-injurious to cargo carried under this Charter Party, and this is not to be loaded in same compartments as cargo loaded under this Charter Party.



At all times Owners are to be fully responsible for any contamination of cargo loaded under this Charter Party due to completion cargo being carried.

- (b) At Loading Port(s) Notice of Readiness is not to be presented (or accepted) until all compartments into which cargo will be loaded under this Charter Party are actually free and unimpededly available. At discharging port Notice of Readiness is not to be presented (or accepted) until all cargo impeding discharge of cargo under this Charter Party has been discharged or otherwise removed.
- (c) If other part cargo(es) is/are loaded on board the same vessel for discharge at the same discharge port by means of the same discharging equipment the following shall apply:
  - (i) In the event that each parcel is discharged separately:
    - If cargo under this Charter Party is to be discharged first, laytime shall commence and be calculated as per Clause 12
    - In the case of cargo under this Charter Party being discharged after the completion of discharge of other part cargo(es), laytime shall commence 2 hours after completion of discharge of other part cargo(es) of the previous parcel.
  - (ii) In case of cargo under this Charter Party being discharged simultaneously with other part cargo(es) carried in the Vessel and by means of the same discharging equipment, laytime shall be calculated by pro-rating all laytime used by the respective outturn cargo weights.
  - (iii) Generally, if physically possible, Nyrstar cargo to be given priority in loading and discharge in the case of other cargo being loaded and/or discharged at the same port.

### **39. I.S.M.**

Owners warrant that at all times during the currency of this Charter Party, the Vessel and "the Company" (as defined by the ISM Code) comply with the requirements of the ISM Code. Upon request Owners shall provide a copy of the relevant certificates of compliance to the Charterers. Owners must indemnify Charterers for all, loss, damage, expense or delay caused by failure on the part of the Owners or "the Company" to comply with the ISM Code and except as otherwise provided in this Charter Party any time lost as a result of any such failure shall not count, nor shall demurrage accrue (even if already on demurrage).

### **40. Ports and Loading**

- (a) It shall be the responsibility of Owners at all times to make their own enquiries and rely on their own information and to satisfy themselves that the Vessel can safely approach, arrive at, enter, remain, load/discharge and leave each place, port, Loading Port and Discharging Port.
- (b) Owners are responsible to make their own investigation and satisfy themselves as to any relevant restrictions or requirements current at all places and ports and to ensure that the Vessel complies with any such restrictions or requirements including by ensuring that the Vessel is loaded to comply with any such restrictions or requirements.

### **41. Stevedore Damage**

- (a) Stevedores, are to be appointed and paid for by the Charterers/receivers, but they shall be deemed to be the Owners' servants and shall work under the supervision of the Master. Charterers are not to be deemed responsible for any default, error of judgment or negligence by stevedores. (In particular but without affecting the generality of clause 40(a) Owners to be responsible to ensure there is no damage to cargo battens and cleats or to unprotected tanktops, manhole covers and pipes, or any sheathing not held securely in place.)
- (b) Time used in investigating or settling any dispute involving stevedores or in repairing damage caused or alleged to have been caused by stevedores shall not count as laytime or time on demurrage even if already on demurrage. Stevedore damage, if any, is to be settled directly between Owners and



stevedores, but should it be necessary, Charterers will endeavour to assist Owners in obtaining just compensation for such damage in accordance with Owners' calculations and vouchers.

- (c) The Master or Owners to notify the stevedores and Charterers, in writing, immediately of any actual or alleged stevedore damage with supporting evidence and in any event no later than 48 hours after completion of loading/discharging (as the case may be).
- (d) Charterers not to be responsible for damage to cargo battens and cleats or to unprotected tanktops, manhole covers and pipes, or for any sheathing not held securely in place.

#### **42. Confidentiality**

This fixture is to remain strictly private and confidential.

#### **43. Cancelling/Substitution**

- (a) Charterers have the right to cancel this Charter Party and claim their losses arising should Owners wilfully make any materially false, inaccurate or misleading statement in respect of Vessel's stated description and/or capabilities and/or itinerary.
- (b) Should it become apparent to Owners that any nominated vessel will arrive after the cancelling date, they must use their best endeavours to provide an earlier substitute vessel to load within the Laycan. Any such substitute vessel must comply with this Charter Party and is subject to Charterers' approval within one working day of nomination provided such nomination must be received by Charterers within their office hours 9 am to 5 p.m. Monday to Friday excluding holidays.
- (c) No statement, act, conduct or omission of the Charterers affects the right of cancellation under this clause.

#### **44. Force Majeure**

- (a) Owners shall not be liable to Charterers nor will Charterers be liable to Owners for any delay or failure (whether partial or total) in the performance of obligations hereunder if such delay or failure is due to or results from Force Majeure as defined in this Clause.
- (b) Force Majeure means any cause or causes beyond the control of the party whose performance is prevented, delayed or affected by it, including but not limited to war (declared or undeclared), terrorism, piracy, rebellion, revolution, tumults, political disturbances, accident breakdown or stoppage at the Charterers' mine, receivers works' or any wharf, breakdown or stoppage of the mine, or any part of the works from which the cargo is supplied or to which the cargo is destined, including loading and/or discharging facilities, installations and/or equipment at or en route, partial or total stoppage, hazard or blockage of roads, rivers or channels, riot, insurrection, civil commotion, epidemics, quarantine, strike, lockout, blockade, industrial disturbances, interference of trade union, labour/industrial dispute or stoppage ban or slowdown of miners, workmen, lightermen, tugboatmen or any kind of labour required for the working, carriage, delivery, shipment or discharge of cargo whether partial or general, act of God, fire, flood, storm, tempest, volcanic eruption, earthquake, landslip, frost or snow, bad weather, epidemic, quarantine, intervention of sanitary, customs, or other authorities, action or inaction of any government (whether de-facto or de-jure) or authority and supervening illegality, or any other cause beyond the control of Charterers and Owners. Act of government shall include, but not be limited to, the refusal to grant any licence necessary for import or export provided that seller and/or buyer in respect of any such licence shall have used best endeavours to obtain the same.
- (c) A party whose performance of any obligation is directly affected, or who has reason to believe such performance may be affected by Force Majeure shall, as promptly as possible, but within seven days, give to the other party concerned written particulars of the relevant event or circumstances and supply, if possible, supporting evidence. The party so affected shall also take reasonable steps to make good and resume with the least possible delay compliance with all of its obligations under this Charter Party provided that nothing obliges a party to settle or compromise a labour dispute except on terms satisfactory to itself.



#### 45. Transit Time

Charterers require the Owners to minimise the transit time of the shipment by proceeding with all convenient speed.

#### 46. Vessel Requirements

- (a) Modern craned single-deck self-trimming bulk carrier classed Lloyds +100A1 or equivalent, to be less than 15 years of age during the carriage of cargo and to comply with all laws and regulations in force from time to time at all Loading and Discharging ports.
- (b) Owners warrant that the Vessel, including its holds, hatches, cargo gear and all other equipment is suitable and fitted/equipped in all respects for the loading, carriage and discharging of the intended Cargo by grabs.
- (c) Vessel's cargo gear, its holds, hatches and all other equipment shall comply with all applicable laws including without limitation the laws of countries in and to which the Vessel shall be employed, and Owners must procure that the Vessel is at all times in possession of valid and up to date certificates to comply with such laws.
- (d) If stevedores, or other workmen are not permitted or refuse to work due to any breach of clause 45, time not to count nor demurrage accrue, even if already on demurrage for all time thereby lost and Owners indemnify Charterers for all costs and consequences of such breach.
- (e) Owners warrant that the Vessel complies at all times with the following requirements:-

- Minimum 15 metric ton SWL cranes;
- Engines, bridge and accommodation aft;
- Beam minimum must be not less than 26 metres maximum 32.3 metres;
- Distance waterline to top of hatch coaming or hatch cover for side rolling type, min/max 10.00/12.00 metres;
- McGregor type or side rolling hatch covers;
- Hold(s) in which cargo is to be stowed are served by Vessel's own gear;

Vessel to have no:-

- Longitudinal centreline bulkheads;
- Twin hatches; • Fixed hatch beams;
- Obstructions on Vessel's tank tops;
- Timber stanchions or any other equipment that would obstruct or interfere with the loading or discharging operations.

Other requirements: -

- The Master/First Mate to be competent in the English language;
- Vessel is in all respects suitable for the intended trade;
- When loading at the Loading Place, Owners warrant the Vessel's compliance with the following restrictions:
- Trim not to exceed 2 metres
- Heel not to exceed 1 degree

- (f) Any wilful misrepresentation be made in respect of the size, position, or any particular of the Vessel Charterers have the right to cancel this Charter Party and Owners must indemnify Charterers for all costs and consequences.

#### 47. ISPS

- (a) From the date of coming into force of the International Code for the Security of the Ship and Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) in relation to the Vessel And thereafter during the currency of this Charter Party, the Owners shall procure that both the Vessel and the "Company" (as defined by the ISPS Code) shall comply with requirements of the ISPS Code relating to the Vessel and the Company. Upon request the Owners shall provide a copy of



the Relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) To the Charterers.

The Owners shall provide the Charterers with the full style contact details of the Of the Company Security Officer (CSO).

- (b) Except as otherwise provided in this Charter Party, loss, damage, expense or delay, caused by failure on the part of the Owners or the Company to comply with the Requirements of the ISPS Code or this Clause shall be for the Owners' account.
- (c) The Charterers shall provide the Owners with their full style contact details.

#### **48. I.M.O. Regulations**

Cargo under this Charter Party always to be loaded, stowed, trimmed and discharged in accordance with all applicable laws and I.M.O. codes and regulations. The moisture content of all concentrates shipped under this Charter Party shall be within the moisture limits specified for safe shipment in bulk carriers by I.M.O. and certification of moisture content shall be supplied to the Master.

#### **49. Moving Cost and Time**

At the Loading Port(s) and/or the Discharging Port, the Vessel shall move along any berth or installation as reasonably required by Charterers, shippers or receivers for the purposes of making hatch or hatches available for loading or discharging.

All costs incurred by the Vessel, including bunkers consumed, shall be for Owners' account and time used for any such moving or warping shall count as laytime or time on demurrage.

#### **50. Trimming**

Owners and the Master remain responsible at all times prior to, during and after the voyage for the seaworthy trim and condition of the Vessel. Owners, through the Master, have the obligation to ensure that the Vessel is safely and properly loaded having regard to its International Loadline Certification. If the Master requires additional cargo trimming over and above spout trimming, any additional time and expense to be for Owners' account.

#### **51. Ballasting I De-Ballasting**

The Vessel is to comply with all applicable laws regarding ballasting and de-ballasting, including but not limited to the Australian Quarantine and Inspection Service's Australian Ballast Water Management Requirements and the International Maritime Organisation's International Guidelines for Preventing the Introduction of Unwanted Aquatic Organisms and Pathogens from Ships' Ballast Water and Sediment Discharge Options for Ballast Water Management.

#### **52. Lighterage**

Charterers/Receivers have the option to discharge into barges sent alongside. Lighterage, if any, shall be at Charterers' risk and expense, including any necessary fendering.

#### **53. Vessel Deficiencies**

In the event of a deficiency in the Vessel, including the Vessel's gear or ability to ballast and de-ballast as required for the loading and discharging operations, laytime shall not count nor demurrage accrue even if on demurrage, time pro-rata in relation to the number of workable hatches so affected when applicable. All standby (including standby labour already arranged) and other costs caused by any such deficiency shall be for Owners' account.

#### **54. Trading Certificates**

The Owners warrant that throughout the term of this Charter Party, the Vessel shall be in all respects eligible under applicable conventions, laws and regulations and any amendments thereto for trading to the



ports and places as specified herein and that at all times they shall have on board for inspection by the appropriate authorities all certificates, records, compliances, letters and other documents required for such services, including but not limited to certificates of financial responsibility for pollution.

## **55. vInternational I Legal Regulations**

- (a) The Vessel nominated under this Charter Party must comply with all applicable international and local laws and regulations and any amendments thereto, including but not limited to all Australian Marine Orders made pursuant to the Navigation Act 1912 and the Protection of the Sea (Prevention of Pollution from Ships) Act 1983.
- (b) Owners, at their sole risk and expense shall make all arrangements necessary to obtain all certificates or other documentary evidence and take all such action as may be necessary to satisfy such laws, regulations and/or other requirements applicable to the Vessel approaching, entering, leaving, remaining at or passing through any ports or places or waters in the performance of this Charter Party.
- (c) All time lost by reason of a relevant authority declaring the Vessel to be in non-compliance with any of the foregoing shall not count as laytime or as time on demurrage even if demurrage and any expenses directly attributable thereto, including but not limited to standby of transfer vessel, labour and/or other equipment ordered and not used shall be for Owners' account.

## **56. Insurance Premiums**

Extra insurance on the Vessel and/or cargo on account of the Vessel's ownership, flag, classification, type or build to be for Owners' account. Charterers are entitled to deduct such extra insurance on the cargo from payment of freight, in which case Charterers shall furnish documentary evidence of payment supporting such deduction.

## **57. Insolvency or Bankruptcy**

If Owners become insolvent or bankrupt or have a receiving order made against them or compound with their creditors, or being a corporation commence to be wound up, or are placed under official management or carries on its business under a receiver, trustee, liquidator or provisional liquidator for the benefit of its creditors or any of them, or any analogous event in any jurisdiction, Owners shall forthwith notify Charterers accordingly and Charterers may either:

- (i) terminate this Charter Party forthwith by notice to Owners, receiver, trustee liquidator or provisional liquidator, official manager or to any other person or persons in whom this Charter Party may have become vested; or
- (ii) give to the receiver, trustee liquidator, provisional liquidator, official manager or other person or persons the option to perform this Charter Party subject to him providing a guarantee (satisfactory to Charterers) for the time being remaining to be performed for the due and faithful performance of this Charter Party.

Any option given under Paragraph (ii) above shall be exercisable within thirty (30) days of its receipt.

## **58. Health and Safety**

Owners shall have on board the Vessel an effective occupational health and safety policy and procure that due care and attention is given by officers and crewmembers to safe working practices in all operations pertaining to the Vessel. Owners shall have a policy regarding drug and alcohol abuse on board the Vessel with the object that no crewmember will navigate the Vessel or operate its onboard equipment whilst impaired by drugs or alcohol. The policy will also have the objective of strictly prohibiting the possession, use, transport and distribution of illicit or non-prescribed drugs by crewmembers. Owners shall exercise due diligence throughout the currency of this Charter Party to ensure that such policies are complied with.





## 59. Inspection

Representatives of the Charterers at Loading Port(s) Discharging Port shall be allowed on board the Vessel at any reasonable time for the purpose of inspecting the Vessel, checking the quality of maintenance and other operational standards, inspecting the cargo or supervising their interests, provided that loading or discharging operations are not affected thereby. The Master and crew shall extend all reasonable assistance and co-operation to any such personnel.

## 60. Events beyond Charterers' control

Time not to count as laytime or time on demurrage even if the Vessel is already on demurrage if loading or discharging is prevented or delayed due or partly due to any cause beyond the Charterers' control including but not limited to war, terrorism, rebellion, tumults, civil commotions, insurrections, political disturbances, riots, strikes, lock-outs, interference of trade unions, labour disputes, stoppages, bans or slowdowns by any kind of labour required for the working, carriage, delivery, shipment or discharge of cargo (whether partial or general), accident or breakdown at the Charterers' mine, receivers' works or at any wharf, earthquake, landslip, fire, flood, frost or snow, bad weather, epidemics, quarantine, action or inaction of any government or authority, partial or total disruption, hazard or blockage affecting roads, rivers, channels or transfer vessel.

## 61. Claims

Any claim that Master or Owners consider they may have against Charterers arising at the Loading port(s) or Discharging port shall be notified in writing by the Master to Charterers before sailing from the place or port at which the claim arose. Failure to do so shall absolutely bar any claim thereon. This clause does not affect clause 32(d) or clause 40(c).

## 62. Hardship

If Charterers experience difficulties with any part of the production process, or if Charterers reduce or suspend sales to customers they reserve the right to delay or decrease the quantity to be shipped under this Charter Party without any financial consideration to either party. If at any time Charterers believe there has been a material change which makes it unlikely that they will be able to meet the tonnage or timing agreed in this Charter Party, they shall provide written notice to Owners as soon as possible the parties must negotiate in good faith to delay or decrease the quantity to be shipped under this Charter Party without penalty or additional liability to the Charterer.

## OWNERS

## CHARTERERS

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