

## FIXTURE NOTE

Date: .....

Parties

Charterers:	..... .....
Owner:	..... .....

The Charterer and the Owner have concluded the following fixture (ID: )

Vessel:	Vessel Description: ..... ..... ..... <b>Maximum 18 years, always subject to RightShip vetting system, and be always acceptable to Charterer, all ports covered under this Fixture Note and Charter Party.</b>
Cargo:	.....
Cargo Quantity:	.....
No. of Shipments:	.....
Loading Port(s):	.....
Discharging Port(s):	.....
Laycan Period:	.....
Nomination Clause: (where applicable)	.....
Freight Rate:	<b>All basis USD FIOBT/FIOST per WMT</b> <b>USD\$ per metric tonne</b> <b>If Charterers change the Discharging Port(s) under clause 8 of RTM VOY 1Q15, freight shall be adjusted in accordance with that clause.</b>
Loading Terms:	.....
Discharging Terms:	.....

<b>NOR at Loading Port(s):</b>	.....
<b>NOR at Discharging Port(s):</b>	.....
<b>Demurrage/Despatch:</b>	.....
<b>Agents:</b>	.....
<b>Address Commission:</b>	.....
<b>Brokerage:</b>	.....
<b>Owner's Bank Details:</b>	.....
<b>Charter Party Details:</b>	<b><i>Otherwise as per RTM VOY 1Q15 with PETCOKE Huanghua Loading - Additional Clauses</i></b>

Otherwise all terms and conditions as per Rio Tinto Marine 'Standard Form Voyage Charter Party', code name RTM VOY 1Q15, including without limitation the arbitration agreement in clause 33 thereof.

This Fixture Note shall upon its conclusion, pursuant to clause 44 of said RTM VOY 1Q15, form part of and be incorporated into that Charter Party.

In the event of a conflict between terms and conditions contained in this Fixture Note and the RTM VOY 1Q15, then the terms and conditions of the Fixture Note shall prevail over those contained in the RTM VOY 1Q15.

**Charterer:**

**Owner:**

.....	.....
.....	.....

**RIO TINTO MARINE**

**STANDARD FORM**

**VOYAGE CHARTER PARTY**

**CODE NAME: RTM VOY 1Q15**

**Specific Contract between**

**"**

**and**

**"**

**Charter Party dated**

**ID: 0**

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**THIS VOYAGE CHARTER PARTY (hereinafter called 'Contract') IS THIS DAY MUTUALLY AGREED AND ENTERED INTO BETWEEN THE PARTIES MENTIONED IN THE INCORPORATED FIXTURE NOTE AS FOLLOWS:**

**1. DEFINITIONS**

In this Contract, unless a contrary intention appears:

**'Bill of Lading'** means the Charterer's Standard Form Bill of Lading in Appendix I.

**'Contract'** means this Voyage Charter Party.

**'Discharging Port(s)'** means any of the ports so named in the Fixture Note or otherwise pursuant to clause 8, and includes, unless the context expresses a contrary intention, any berth to which the Vessel is ordered at such port.

**'Dollars', '\$' and 'cents'** refer to the lawful currency of the United States of America.

**'ETA'** means estimated time of arrival.

**'Economic Sanctions'** means any sanction, asset freeze, prohibition, or trading or dealing restriction or proscription imposed by any rule, regulation or statute of the United States and/or the European Union and/or the United Kingdom and/or Australia including, without limitation, those administered by the Office of Foreign Asset Control of the United States Treasury Department ("OFAC"), and any other applicable laws of similar effect.

**'FIOBT'** means Free In and Out Belt Trimmed

**'FIOST'** means Free In and Out Spout Trimmed

**'Fixture Note'** means the fixture note between Owner and Charterer incorporated in this Contract pursuant to clause 44.

**'ITF'** means the organisation presently styled the International Transport Federation or any successor organisation.

**'Layby Berth'** means the facility adjacent to Charterer's/shipper's customary load berth at load port into which, on completion of draft survey, a vessel can be moved always afloat.

**'Laycan'** means the period from the opening loading date to the cancelling or last agreed loading date.

**'Loading Port(s)'** means any port(s) so named in the Fixture Note or otherwise pursuant to clause 7, and includes, unless the context expresses a contrary intention, any berth to which the Vessel is ordered at such port.

**'MOLOO'** means more or less in owner's option.

**'MT'** means metric ton.

**'MTDW'** means total deadweight metric tons (Summer load line).

**'NOR'** means Notice of Readiness.

**'SSHINC'** means Saturdays, Sundays and Holidays included.

**'SSEX'** means Saturdays, Sundays and Holidays excluded.

**'Overage'** means a vessel, which by reason of its age and/or class, attracts any additional insurance premiums.

**'Overtime'** means time spent over and above standard and or agreed hours of work.

**'RightShip'** means RightShip Pty Limited, a company engaged by the Charterer to screen, inspect, survey and/or vet, assess and approve, as a ship acceptable for the carriage on the nominated cargo(es).

**'Vessel(s)'** means a vessel or vessels nominated by the Owner.

**'Voyage(s)'** means the carriage of the cargo in the Vessel from the Loading Port(s) to the Discharging Port(s).

**'WMT'** means wet metric ton.

Clause Headings in this Contract are inserted for the parties' convenience only and shall be disregarded for the purposes 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, supervision and responsibility of the Vessel's Master, and Owner shall carry and deliver the cargo as set out in this Contract.

## 3. CARGO - SHIPMENTS, SIZES AND OPTIONS

- 3.1 The Vessel shall load a cargo as specified in the ***Fixture Note***. Cargo shall be loaded, transported and discharged in accordance with IMO recommendations.
- 3.2 The shipment will be deemed to be a full and complete cargo, even if the Vessel is not loaded down to her marks by reason of draft restrictions at Loading or Discharging Port(s).

## 4. VESSEL'S DESCRIPTION

- 4.1 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 4.2 and is being maintained and operated in accordance with the terms and conditions of this Contract.

- 4.2 Owner shall provide a seaworthy and cargo-worthy Vessel for the voyage, which:

- (a) is a modern, non-Overage, single deck, self-trimming, gearless (or if applicable geared) bulk carrier or ore carrier, which has been vetted by RightShip, with engine/accommodation 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
- (b) shall be acceptable to the relevant authorities and conform with all laws, regulations and requirements in force at or applicable to Loading and Discharging Port(s) and be maintained to standards of accommodation, equipment, fixtures & fittings acceptable to the Charterer, and



- (c) 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
- (d) if applicable shall have holds strengthened and classed for carriage of iron ore in bulk; and
- (e) shall be capable of loading cargo in all holds as required by Charterer and be cargo-worthy in every respect; and
- (f) shall be suitable for grab discharge with no fittings protruding from internal hold surfaces and fitted with Australian hold ladders; and
- (g) shall have all cargo holds, compartments, open and closed trunk-ways, where applicable, free of flammable and toxic gasses on presentation of the Vessel at the Loading Port(s) and Discharging Port(s); and
- (h) subject to clause 4.2(g), if the Vessel's slop tanks contain any slops, shall be warranted by the Owner at its expense, to have been made safe with inert gas before commencing operations to load and discharge the Vessel.
- (i) shall at each Loading Port and each Discharging Port have its tanks free of substances harmful to the marine environment within the meaning of MARPOL Annexe V, and Owner agrees to indemnify Charterer for all consequences (if any) associated with any breach or alleged breach of Owner's obligations under MARPOL Annexe V, time not to count even if on demurrage for any delay occasioned thereby.

4.3 Owner warrants that:

- (a) if by reason of Vessel's construction, cost of discharge exceeds the customary normal cost, the extra costs are to be for Owner's account and any additional time used in discharging shall be added to laytime;
- (b) the Vessel is entered with an International Group Protection & Indemnity Club for full P&I coverage, and that Vessel's hull and machinery is fully insured, and in each case shall remain so for the duration of this Contract and any voyage(s) hereunder;
- (c) the Owners comply, and will for the duration of this Contract and any Voyage(s) hereunder remain compliant, with all requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) relating to the Vessel and 'the Company' (as defined by the ISPS Code). If trading to or from the United States or passing through United States waters, the Owners shall also comply with the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the 'Owner' (as defined by the MTSA). Except as otherwise provided in this Contract, any loss, damage, expense or delay caused by any failure on the part of the Owner to comply with the ISPS Code and/or the MTSA, shall be for the Owner's sole account; and
- (d) the Vessel and 'the Company' (as defined by the ISM Code) comply, and will for the duration of this Contract and any Voyage(s) hereunder remain compliant, with all requirements of the International Safety Management Code (ISM Code) relating to the Vessel and 'the Company'. Except as otherwise provided in this Contract, any loss, damage, expense or delay caused by any failure on the part of the Owner to comply with the ISM Code, shall be for the Owner's sole account.

- 4.4 Should the Vessel after arrival at Loading Port(s) or Discharging Port(s) be found to be in breach of any part of clause 4, and/or not able to perform cargo operations when requested to do so, 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) at the Loading Port, treat the Vessel's nomination as cancelled and the voyage unperformed, or;
- (b) treat the voyage as suspended until Owner rectifies the Vessel's default of clause 4.

Any NOR previously accepted, even if valid at the time of issue, shall be deemed to be invalid and all time counting (including any time spent on demurrage) to be for Owner's account. Owner shall keep Charterer fully indemnified against any consequences of the Vessel's failure to comply with any part of clause 4, including any delays, and, where applicable, Charterer's costs to provide a suitable replacement Vessel to meet its shipping requirements.

- 4.5 In the event of the Owner providing an Overage Vessel and/or a Vessel not classed as required in clause 4.2(a), the Charterer may at its sole discretion accept in writing such nomination, which acceptance shall in no way relieve the Owner of all its other obligations under this Contract, particularly clauses 4.1, 4.2, 4.3 and clause 30 with which the Owner shall comply.

## 5. OWNER'S/MASTER'S OBLIGATIONS

- 5.1 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 Port(s) and to ensure that the Vessel is loaded so as to comply at all times with such requirements;
- (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) 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); and
- (d) shall by no later than the time specified in the **Fixture Note** 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.

## 6. I.T.F. CLAUSE

Owner shall provide evidence to Charterer that the Vessel(s), excluding any manned by Master and crew of the same nationality as the flag state of the Vessel's registration, comply with all the requirements of the International Transport Federation ('I.T.F.') and of the

Maritime Labour Convention 2006 or have equivalent standards applicable to all crew on-board throughout the voyage or term of this Contract, as the case may be.

If the Vessel does not possess a current I.T.F. certificate or does not evidence equivalent standards or if the Vessel's 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, by-laws or regulations as aforesaid.

## 7. **LOADING PORT(S)**

The Vessel shall proceed with all reasonable despatch to the Loading Port(s) as specified in the **Fixture Note**, or such other safe ports, as ordered by Charterer, and there load a full and complete cargo pursuant to the provisions of clause 5.1.

Charterer whilst having contractual commitments to other owners and operators of other vessels in the Loading Port(s) may be directed by the Port Authority to allocate berths and cargo at that port, and accordingly, Charterer shall not be bound to give the Vessel priority over any other vessel.

## 8. **DISCHARGING PORT(S)**

8.1 Upon completion of loading and final draft survey and if tide and weather permit the Vessel shall proceed at the nominated speed, via the direct and/or customary route to the nominated Discharging Port(s) as ordered by Charterer where the Vessel shall discharge always afloat as specified in the **Fixture Note**.

- (a) Charterer shall have the option to change the Discharging Port(s), against paying freight which gives the Owner a daily time charter rate equivalent to the freight rate agreed in the **Fixture Note**.
- (b) The alternative Discharging Port(s) freight calculation shall be conducted on an open book basis commencing from the Vessel's previous Discharging Port and without consideration for repositioning (i.e. last to next basis).
- (c) Charterer whilst having contractual commitments to other owners and operators of other vessels in the Discharging Port(s) may be directed by the Port Authority to allocate berths and cargo at the port, and accordingly, Charterer shall not be bound to give the Vessel priority over any other vessel.

## 9. **LAYDAYS AND CANCELLING DATE**

Charterer is not bound to commence loading the Vessel and laytime shall not commence before 00:01 on the first day of the Laycan Period specified in the **Fixture Note**, unless otherwise agreed. Should the Vessel not be presented ready to load on or before 23:59 on the last day of the Laycan Period specified in the **Fixture Note** ('Cancelling Date'), Charterer has the right, without any liability or penalty attaching, to cancel the voyage. If Charterer does not cancel the voyage, and does not agree a revised Laycan Period with conditions, NOR shall be accepted on arrival and laytime shall run in accordance with clause 14.1(a).

Should Owner have reason to believe the nominated Vessel may arrive at the Loading Port after the Cancelling Date, Owner will immediately notify Charterer of the Vessel's revised ETA. Within two (2) working days of such advice Charterer shall notify Owner if Charterer will either agree a revised Laycan Period with conditions, or cancel the Vessel and/or treat the Voyage as unperformed. In the event the Vessel is cancelled, at Charterer's option the Owner

may be called upon to provide a replacement Vessel that satisfies the Owner's obligations under the terms of this Contract. If Owner fails to do so, then the Charterer may charter a substitute vessel and the Owner will reimburse the Charterer for any freight payment in excess of the freight rate under this Contract.

#### 10. RELETTING, SUBLETTING, SUBCONTRACTING AND ASSIGNING

- 10.1 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.
- 10.2 If Owner is unable to perform its obligations under this Contract, Charterer may at its sole option perform Owner's obligations, which shall reduce Owner's rights and Charterer's obligations regarding the quantity of cargo and/or number of shipments as specified in the **Fixture Note**. Any additional cost of obtaining replacement vessel(s) in excess of the freight rate under this Contract shall be for Owner's account.

#### 11. NOTICES BY MASTER

- 11.1 The Master of a Vessel proceeding to Loading Port(s) shall notify parties as advised by Charterer:
- (a) On fixing, on sailing the last port or ten (10) days prior to Vessel's arrival, whichever is earlier:
    - (i) giving daily ETA notices;
    - (ii) advising quantity of cargo to be loaded on deepest departure draft;
    - (iii) advising hatch loading order and quantities of cargo by holds in BLU format; and
    - (iv) advising expected fore and aft drafts on arrival;
  - (b) seventy two (72) hours prior to Vessel's ETA, confirming or revising information in (a) above;
  - (c) forty eight (48) hours prior to Vessel's ETA, giving revised ETA; and
  - (d) twenty four (24) hours prior to Vessel's ETA, giving revised ETA.
- 11.2 The Master of a Vessel proceeding to Discharging Port(s) shall notify parties as advised by Charterer
- (a) on departure Loading Port(s), giving ETA Discharging Port(s) and estimated arrival draft;
  - (b) ten (10) days prior arrival, giving ETA and expected arrival drafts;
  - (c) seventy two (72), forty eight (48) and twenty four (24) hours prior arrival, giving ETA.
- 11.3 In addition to the foregoing advice 'only' to 'The Charterer', each day noon position report giving the following information:
- (a) position;
  - (b) average speed;

- (c) ETA at Discharging Port; and
  - (d) distance to Discharging Port.
- 11.4 Charterer may, by radioed notice to Master, which notice is deemed to be notice to the Owner for the purposes of this clause, advise of any change in the order of the Discharging Port(s) provided that such notice is given:
  - (a) at least five (5) days prior to Vessel's ETA at first Discharging Port; or
  - (b) within twenty four (24) hours of receipt of Master's advice pursuant to clause 11.1 or 11.2;and provided that either:
  - (c) the Vessel as loaded will be able to enter the Discharging Port(s); or
  - (d) if such change in order necessitates lightening and/or the use of lighterage at Discharging Port(s), the provisions of clause 20 shall apply.
- 12. **LOADING AND DISCHARGING RATES**
  - 12.1 The cargo shall be loaded, belt or spout trimmed and discharged free of expense to Owner, under Owner's/Master's responsibility, 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.
  - 12.2 Subject to the provisions of this Contract the Owner and Master shall be responsible for:
    - (a) the declaration of cargo quantity to be loaded within the range specified; and
    - (b) nominating the hatch loading sequence with quantities and monitoring the quantities as loaded in each hold;
    - (c) the calculation and determination of each Vessel's drafts at Loading Port(s) 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.
  - 12.3 The Owner agrees that:
    - (a) cargo shall be loaded at the rates specified in the ***Fixture Note***;
    - (b) cargo shall be discharged at the rates specified in the ***Fixture Note***; and
    - (c) the above loading and discharging rates have been calculated on the basis of all the Vessel's hatches being available for loading and discharging when and as required by Charterer.
  - 12.4 Owner shall provide and maintain in good working order:
    - (a) Vessel's lights for loading and discharging; and
    - (b) Vessel's cranes and/or grabs if fitted.

### 13. PRESENTATION OF NOTICE OF READINESS

At Loading Port(s) and Discharging Port(s) NOR shall be tendered as specified in the *Fixture Note*, and may be tendered whether the Vessel is in berth or not, whether in free pratique or not, whether in customs clearance or not, but in case the Vessel is an ore/oil or ore/bulk/oil carrier the Master must possess a valid gas free certificate (as Owner provides for in clause 4.2(g)) and present same as required by the Port/Harbour Authority or berth operator.

In the event that free pratique and/or customs clearance is not granted and/or the Vessel is not ready in all respects to load or discharge when the NOR was tendered and/or when requested to load or discharge, the previously tendered NOR shall be deemed null and void and no laytime or time on demurrage shall have accrued, and a new NOR shall be tendered when the Vessel has complied with the aforementioned conditions.

If Master or Vessel's agent fails to tender NOR by the Cancelling Date pursuant to clause 9, Charterer may at its option and without prejudice to Owner's obligations under this Contract, treat the Vessel's nomination as cancelled and/or the Voyage unperformed.

Turntime shall commence running after a valid NOR has been tendered.

### 14. 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 specified in the *Fixture Note*.

#### 14.1 At a Loading Port

- (a) Laytime shall commence running after a valid NOR has been tendered in accordance with clause 13 once turntime expires, or when loading commences, whichever occurs first. Should turntime expire before the start of the Laycan Period as per clause 9, laytime will commence at 00:01 on the first day of the Laycan Period.
- (b) Time used for draft checks during the course of loading shall not count as laytime or time on demurrage if the Vessel is already on demurrage.
- (c) Laytime shall cease on completion of loading.

#### 14.2 At a Discharging Port

- (a) Laytime shall commence running after a valid NOR has been tendered in accordance with clause 13 once turntime expires, or when discharging commences, whichever occurs first.
- (b) Time used for draft checks during the course of discharge shall not count as laytime or time on demurrage if the Vessel is already on demurrage. Time used for draft surveys prior to the commencement of discharge shall always count as laytime or time on demurrage if the Vessel is already on demurrage.
- (c) Laytime shall cease on completion of discharge. In the event a draft survey is required by Charterer/receiver then time shall only cease to count on completion of draft survey.

#### 14.3 At Loading and Discharging Ports

- (a) Time used in the first shift of the Vessel from any waiting place to the berth shall not count as laytime or time on demurrage if the Vessel is already on demurrage. 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 load or discharge at two ports, time shall cease to count from the time of completion of loading or discharging at the first port until arrival of the Vessel at the second port, whether in berth or not. Shifting time from waiting place to berth in the second port is not to count 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 in berth again and ready to resume loading or discharging, whether the Vessel is on demurrage or not.
- 14.4 Any time lost during loading or discharging due to the Vessel's inability to load or discharge at the rates referred to in clause 12.3, or due to any other defect and/or default in the Vessel, failure to comply with local regulations, 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, shall not count as laytime or time on demurrage if the Vessel is already on demurrage. Any time lost obtaining gas free clearance, either directly or as a consequence thereof, shall be for Owner's account, whether the Vessel is already on demurrage or not.
- 14.5 Laytime shall not be reversible.
- 14.6 Laytime permitted at Loading and Discharging Port(s), shall be calculated on the Bill of Lading quantity and deadfreight quantity, if any.
15. **FORCE MAJEURE**
- 15.1 Charterer 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 (including but not limited to Economic 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 Port(s) or Discharging Port(s), the navigation channels or approaches; accidents or stoppages, mechanical or electrical breakdowns, whether total or partial, at mines, ports including Loading Port(s) or Discharging Port(s), 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 Loading Port(s) 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.
- 15.2 In the event of an occurrence of Force Majeure under clause 15.1, 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.

- 15.3 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(s) and Discharging Port(s), may be directed by the Port Authority to allocate berths and cargo at those ports, and accordingly, Charterer shall not be bound to give the Vessel priority over any other vessels.

## 16. DEMURRAGE/DESPATCH

### 16.1 At Loading and Discharging Port(s):

- (a) Charterer shall pay to Owner demurrage at the rates specified in the *Fixture Note*; per day 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 rates specified in the *Fixture Note*; per day 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.

## 17. COVERING AND UNCOVERING OF HATCHES

- 17.1 All time and expenditure relating to the covering and uncovering of hatches shall be for Owner's account.
- 17.2 The Master shall cover the hatch(es) of each hold as soon as loading into that hold has finished.
- 17.3 If weather is inclement or wet the Master shall have all hatches closed when loading or discharging has finished for the day.
- 17.4 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.

## 18. 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 shall be shared equally between Charterer and Owner.

## 19. STEVEDORE DAMAGE

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

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

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 twenty four (24) hours after occurrence.

In the event that Owner and stevedores are not able to settle directly, then Charterer is to assist with resolving any claim(s) where possible.

**20. LIGHTERAGE AND LIGHTENING**

Charterer has the option of discharging into lighters and/or otherwise lightening the Vessel if it so requires. Subject always to clause 5, the expenses of lighterage and lightening shall 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.

**21. PORT CHARGES, DUES AND TAXES**

Any taxes (including any goods and services taxes, and/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.

**22. AGENCY AND DISBURSEMENTS**

At Loading and Discharging Port(s), the Vessel(s) shall be consigned to agents as specified in the *Fixture Note*.

Agency fees as customary shall be for Owner's account. Owner undertakes to provide the nominated agents with funds sufficient to cover Vessel(s) disbursements prior to arrival at the respective ports and acknowledge that pursuant to Charterer's worldwide agency arrangements, Charterer may receive appointment fees from the nominated agents, which shall be for Charterer's benefit.

**23. 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:

- 23.1 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;
- 23.2 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;
- 23.3 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;
- 23.4 All Bills of Lading issued under this Contract covering cargo shipped in Australia shall be subject to the Australian *Carriage of Goods by Sea Act 1991* and shall incorporate the Hague-Visby Rules as amended in Schedule 1A thereof.

**24. FREIGHT RATE**

24.1 The freight rate payable by the Charterer shall be as specified in the *Fixture Note*.

24.2 Full freight to be deemed earned on completion of loading whether or not the Vessel and/or cargo is subsequently lost, and 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.

**25. PAYMENT OF FREIGHT**

25.1 Freight shall be remitted telegraphically by Charterer through its bank to Owner's nominated bank account, ninety five percent [95%] for value within seven [7] banking days after signing Bill(s) of Lading, but in any case before breaking bulk, on Bill(s) of Lading quantity, non-returnable, ship and/or cargo lost or not lost. Freight shall be deemed paid when Charterer gives to its bank written instructions to make the appropriate remittance, and Owner acknowledges any delay in transfer of freight that may thereafter occur to be outside Charterer's control. The balance of freight together with settlement of despatch and/or demurrage if applicable shall be paid (or received by Charterer from Owner, as the case may be) within 30 days of completion of discharge.

25.2 Charterer's nominated bank account is as follows:

25.3 Owner's nominated bank account is as specified in the *Fixture Note*.

**26. DEADFREIGHT**

Under no circumstances shall deadfreight be payable in respect of any Voyage performed under this Contract provided Charterer makes available cargo under clause 3.

**27. ADDRESS COMMISSION AND BROKERAGE**

An address commission shall be payable to Charterer as specified in the *Fixture Note*. This is payable on all freight, deadfreight and demurrage.

A brokerage commission shall be payable by Owner as specified in the *Fixture Note*. This is payable on all freight, deadfreight and demurrage.

**28. WAR RISKS**

28.1 For the purpose of this clause, the words:

- (a) 'Owners' shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and
- (b) 'War Risks' shall include any actual, threatened or reported: war, act of war, civil war or hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; acts of piracy and/or violent robbery and/or capture/seizure (hereinafter '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 or territory whether recognised or not, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or may become dangerous to the Vessel, cargo, crew or other persons on board the Vessel.

- 28.2 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 this Contract, or any part of it, may expose the Vessel, cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Contract, or may refuse to perform such part of it as may expose the Vessel, cargo, crew or other persons on board the Vessel to War Risks; provided always that if this Contract 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, cargo, crew, or other persons on board the Vessel may 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 if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.
- 28.3 The Owners shall not be required to continue to load cargo for any voyage, or to sign bills of lading, waybills or other documents evidencing contracts of carriage 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, cargo, crew or other persons on board the Vessel may 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 this Contract. 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.
- 28.4 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, cargo, crew or other persons on board the Vessel may 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.
- 28.5 **War Risks Insurance**
- (a) The Owners may effect War Risks insurance in respect of the Vessel and any additional insurances that Owners reasonably require in connection with War Risks and the premiums therefore shall be for their account.
  - (b) If, pursuant to the Charterers' orders, or in order to fulfil the Owner's obligation under this Contract, the Vessel proceeds to or through any area or areas exposed to War Risks, the Charterers shall reimburse to the Owners any additional premiums required by the Owners' insurers. If the Vessel discharges all of her cargo within an area subject to additional premiums as herein set forth, the Charterers shall further reimburse the Owners for the actual additional premiums paid from completion of discharge until the Vessel leaves such area or areas. The Owners shall leave the area or areas as soon as possible after completion of discharge.

- (c) All payments arising under this clause 28.5 shall be settled within fifteen (15) days of receipt of Owners' supported invoices.

28.6 The Vessel shall have liberty:

- (a) 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 other 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 of any state or territory whether recognised or not, body or group whatsoever acting with the power to compel compliance with their orders or directions;
- (b) to comply with the requirements of the Owners' insurers under the terms of the Vessel's insurance(s);
- (c) 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;
- (d) to discharge at any alternative port any cargo or part thereof which may expose the Vessel to being held liable as a contraband carrier;
- (e) to call at any alternative 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, detention or similar measures;
- (f) 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.

28.7 The Charterers shall indemnify the Owners for claims arising out of the Vessel proceeding in accordance with any of the provisions of clauses 28.2 to 28.6 which are made under any bills of lading, waybills or other documents evidencing contracts of carriage.

28.8 When acting in accordance with any of the provisions of clauses 28.2 to 28.6 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 this Contract.

29. **WAR BONUS**

Charterer shall pay for the additional cost, if any, of the Vessel's 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 the trade in which the Vessel is employed under this Contract shall, to the extent of the excess (if any) of the rates from time to time prevailing in such trade over those in effect on the date of the commencement of the voyage, be for Charterer's account provided such bonuses are actually incurred and properly vouched.

30. **EXTRA INSURANCE**

Any extra cost of insurance payable on cargo due to Vessel's age and/or class not being one of the ages or classes included in the classification clause which at the particular time is adopted

by the cargo underwriters and/or route and/or flag and/or ownership, shall be for Owner's account.

31. **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 this Contract.

32. **UNFORESEEN CIRCUMSTANCES**

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

33. **ARBITRATION**

33.1 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; however 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:

- (a) 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; and
- (b) in the event one party fails, in response to the other's notice of appointment, to appoint an arbitrator of its choice, the arbitrator first appointed shall be the sole arbiter of the dispute and the award of the sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

33.2 The arbitrators appointed shall be senior commercial or legal practitioners engaged in the shipping industry.

33.3 The arbitrator(s) shall have an absolute discretion in relation to the apportionment of the costs and expenses of the arbitration between the parties.

33.4 The award of the arbitrator(s) shall be a condition precedent to the reference of any dispute to a Court, however this provision shall not affect any process or application for urgent relief.

33.5 The arbitration shall be conducted in London in accordance with the provisions of the LMAA Rules for the time being in force.

33.6 Any dispute arising out of or in relation to this Contract shall be referred to arbitration within 1 year of the dispute arising, failing which the dispute and any claim arising therefrom shall lapse and be forever time barred.

34. **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 should a dispute be referred pursuant to clause 33 above.

35. **OIL POLLUTION**

35.1 Subject to the terms of this Contract, as between Owners and Charterers, in the event of an oil pollution incident involving any discharge or threat of discharge of oil, oily mixture, or oily residue from the Vessel (the "Pollution Incident"), Owners shall have sole responsibility for

responding to the Pollution Incident as may be required of the Vessel's interests by applicable law or regulation.

35.2 Without prejudice to the above, as between the parties and to the extent permitted by law it is hereby agreed that:

- (a) Owners shall indemnify, defend and hold Charterers harmless in respect of any liability which may be imposed upon them or which they may incur under any statute regulation (or requirement or directive made thereunder) of any nation, state or international organisation regarding liability for pollution of navigable waters by oil, including for criminal fine or civil penalty arising out of or in connection with a Pollution Incident, to the extent that such Pollution Incident results from a negligent act or omission, or breach of this Contract by the Vessel, Master, or servant or agent of the Owner.
- (b) Charterers shall indemnify, defend and hold Owners harmless in respect of any liability which may be imposed upon them or which they may incur under any statute regulation (or requirement or directive made thereunder) of any nation, state or international organisation regarding liability for pollution of navigable waters by oil, including for criminal fine or civil penalty arising out of or in connection with a Pollution Incident, to the extent that such Pollution Incident results from a negligent act or omission, or breach of this Contract by Charterers, their servants or agents;

provided always that in respect of any fine or penalty, it has not been imposed by reason wholly or partly of any fault of the party seeking the indemnity and that the law governing the Contract does not prohibit recovery of such fines or penalty.

35.3 Nothing in this clause shall prejudice any right of recourse of either party, or any defences or right to limit liability under any applicable law.

35.4 Charterers shall procure that this clause be incorporated into all sub-charters and contracts of carriage issued pursuant to this Contract

35.5 The rights of Owners and Charterers under this clause shall extend to and include an indemnity in respect of any reasonable legal costs and/or other expenses incurred by or awarded against them in respect of any proceedings instituted against them for the imposition of any fine or other penalty in circumstances set out in paragraph (b), irrespective of whether any fine or other penalty is actually imposed.

## 36. 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 and/or sub-freights 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.

## 37. DRUG AND ALCOHOL CLAUSE

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 Vessel 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 the Owner to exercise due diligence throughout the period of the Contract to ensure that such guidelines are complied with.



**38. GENERAL AVERAGE AND THE NEW JASON CLAUSE**

General Average shall be payable according to the York/Antwerp Rules, 1994, as amended, but where the adjustment is made in accordance with the law and practice 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 consequence of which, the carrier is not responsible by statute, Contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship 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'.

**39. 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 contact.'

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

**40. ICE CLAUSE**

40.1 The Vessel shall not be obliged to force ice but, subject to the Owner's approval having due regard to its size, construction and class, may follow ice-breakers.

**40.2 Loading Port**

- (a) If at any time after setting out on the approach voyage the Vessel's passage is impeded by ice, or if on arrival the Loading Port is inaccessible by reason of ice, the Master or Owners shall notify the Charterers thereof and request them to nominate a safe and accessible alternative port. If the Charterers fail within 48 running hours, Sundays and holidays included, to make such nomination or agree to reckon laytime as if the port named in the contract were accessible or declare that they cancel this Contract, the Owners shall have the option of cancelling this Contract. In the event of cancellation by either party, the Charterers shall compensate the Owners for all proven loss of earnings under this Contract.
- (b) If at any Loading Port the Master considers that there is a danger of the Vessel being frozen in, and provided that the Master or Owners immediately notify the Charterers thereof, the Vessel may leave with cargo loaded on board and proceed to the nearest safe and ice free place and there await the Charterers' nomination of a safe and accessible alternative port within 24 running hours, Sundays and holidays excluded, of the Master's or Owners' notification. If the Charterers fail to nominate such alternative port, the Vessel may proceed to any port(s), whether or not on the customary route for the chartered voyage, to complete with cargo for the Owners' account.

#### 40.3 Discharging Port

- (a) If the voyage to the Discharging Port is impeded by ice, or if on arrival the Discharging Port is inaccessible by reason of ice, the Master or Owners shall notify the Charterers thereof. In such case, the Charterers shall have the option of keeping the Vessel waiting until the port is accessible against paying compensation in an amount equivalent to the rate of demurrage or of ordering the Vessel to a safe and accessible alternative port. If the Charterers fail to make such declaration within 48 running hours, Sundays and holidays included, of the Master or Owners having given notice to the Charterers, the Master may proceed without further notice to the nearest safe and accessible port and there discharge the cargo.
- (b) If at any Discharging Port the Master considers that there is a danger of the Vessel being frozen in, and provided that the Master or Owners immediately notify the Charterers thereof, the Vessel may leave with cargo remaining on board and proceed to the nearest safe and ice free place and there await the Charterers' nomination of a safe and accessible alternative port within 24 running hours, Sundays and holidays excluded, of the Master's or Owners' notification. If the Charterers fail to nominate such alternative port, the Vessel may proceed to the nearest safe and accessible port and there discharge the remaining cargo.
- (c) On delivery of the cargo other than at the port(s) named in the contract, all conditions of the Bill of Lading shall apply and the Vessel shall receive the same freight as if discharge had been at the original port(s) of destination, except that if the distance of the substituted port(s) exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port(s) shall be increased proportionately.

#### 41. 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.



**42. COMMUNICATIONS**

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

42.1 Charterer's details for purpose of service is:

42.2 Owner's address for purpose of service is as specified in the *Fixture Note*.

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

**43. 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 Charterer and Owner.

**44. INCORPORATED DOCUMENTATION**

Only the following documents form part of and are incorporated into this Contract:

44.1 Fixture Note(s)

44.2 Standard Form (Congen) Bill of Lading (Appendix I)

44.3 Standard Form Letters of Indemnity (Appendices II, III & IV)

44.4 Other Appendices and Additional Clauses

In case of any conflict between the provisions of any of these documents and the provisions of this Contract, the provisions of the said document will prevail over this Contract to the extent of such inconsistency only.

**45. LIQUIDATION/BANKRUPTCY OF OWNER**

45.1 If the Owner becomes insolvent or bankrupt or has a receiving order made against it or compounds with its creditors, or being a corporation proceedings are commenced to have it wound up, or placed under official management or administration or to have its business carried on under a receiver, trustee, liquidator or provisional liquidator, and including the equivalent events in any jurisdiction, then in that event Owner shall immediately notify Charterer accordingly and Charterer may either:

- (a) Terminate the Contract forthwith by notice to Owner, receiver, trustee, liquidator, provisional liquidator, official manager or to any other person in whom the Contract may have become vested; or
- (b) Give to the receiver, trustee, liquidator, official manager or other person (appointed provisionally or otherwise) the option to perform this Contract, subject to such person providing the Charterer with a guarantee (satisfactory to the Charterer) in respect of the full performance of the Owner's remaining obligations under this Contract.

45.2 Any option given under clause 45.1(b) shall be exercisable within fourteen (14) days of its receipt.

**46. SET OFF**

Following a default by either party hereunder (the Defaulting Party) the other party (the Non-Defaulting Party) shall be entitled, at its option, to set off any amounts believed in good faith and on reasonable grounds by the Non-Defaulting Party to be payable (whether at such time or in the future or upon the occurrence of a contingency) by the Defaulting Party to the Non-Defaulting Party (whether under this Contract or otherwise), against any amounts believed in good faith and on reasonable grounds by the Non-Defaulting party to be payable (whether at such time or in the future or upon the occurrence of a contingency) by the Non-Defaulting Party to the Defaulting Party (whether under this Contract or otherwise), irrespective of the currency, place of payment or booking office of either party's obligations and the parties' respective obligations shall be discharged promptly and in all respects to the extent they are so set-off.

The Non-Defaulting Party will give 3 (three) days prior notice to the Defaulting Party of any intended set-off to be effected under this provision. For this purpose, any such amount payable by one party to the other (or the relevant portion of such amount) may be converted by the Non-Defaulting Party, acting in good faith and in a commercially reasonable manner, into such currency as may reasonably be required in order to effect such set-off at an exchange rate determined by the Non-Defaulting Party acting in good faith and in a commercially reasonable manner.

If an obligation is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained. The right of the Non-Defaulting Party under this provision shall apply without prejudice to any other right of set-off which it may have whether by agreement, operation of law or otherwise. Nothing in this provision shall be effective to create a charge or other security interest.

**47. LETTER OF INDEMNITY**

If requested by Charterer, the Master shall deliver all or part of the cargo at the Discharging Port(s) without presentation of original Bills of Lading.

Prior to such delivery, and if required by Owner, Charterer shall provide Owner with a signed Letter of Indemnity in the standard P&I Club format requesting delivery of cargo without production of original bills of lading, without the requirement of counter signature from Charterer's bank. Such Letter of Indemnity shall automatically become null and void upon presentation to Owner/Master of an original Bill of Lading by the party to whom the goods were discharged, or by their duly authorised agent.

**48. CHANGE OF CONTROL OR OWNERSHIP**

48.1 The Owner warrants that throughout the term of this Contract, there shall be no change in its effective control or ownership. For the purposes of this clause "effective control or ownership" shall mean:

- (a) control of the composition of the Owner's Board of Directors;
- (b) control of more than 20% of the ultimate beneficial ownership or voting power of the Owner; and/or
- (c) control of more than 20% of the ultimate beneficial ownership of the share capital of the Owner.

48.2 In the event of a change of effective control or ownership of the Owner during the term of this Contract (which the Owner undertakes to notify to the Charterer promptly upon the occurrence of such a change and to provide reasonable details thereof to the Charterer), the

Charterer may at its sole option, without prejudice to Owner's obligations under this Contract, either:

- (a) propose to the Owner revised terms under which Charterer is prepared to continue the performance of the Contract; or
- (b) terminate the Contract by giving 30 days' notice in writing to the Owner.

#### 49. **CHARTERER'S CODE**

The Charterer, as a member company of the Rio Tinto Group, operates under the Rio Tinto Group global code of business conduct entitled "The Way we Work". It contains principles and standards of conduct which affirm Charterer's aspirations in respect of corporate responsibility. Charterer requests Owner(s), in acknowledging this code of business conduct, a prevailing copy of which can be viewed at [www.riotinto.com](http://www.riotinto.com), to use its best endeavours to match those aspirations in its performance under this Contract.

In particular, Charterers and Owners each agree:

- 49.1 that in connection with the negotiation and performance of this Charter, they and each of their respective officers, directors, employees and any agents or other third parties acting on their behalf, shall strictly comply with all applicable anti-bribery and anti-corruption laws; and
- 49.2 represent and warrant that they and each of their respective officers, directors, employees and any agents or other third parties acting on their behalf, shall not, directly or indirectly:
  - (a) take any action in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of anything of value to any person while knowing that all or some portion of the money or value will be offered, given or promised to any person to influence official action, to obtain or retain business or otherwise to secure any improper advantage; or
  - (b) engage in any other act in violation of or inconsistent with any applicable anti-corruption law; and
- 49.3 that Owners will instruct the Master that neither the Master nor any member of crew or any third party operating on behalf of Owners, Charterer or Master, or otherwise operating in connection with the Vessel, shall provide anything of value (including, but not limited to, money, cigarettes, beverages or other gifts or gratuities) to a Government Official (including, but not limited to, port authorities, inspectors and surveyors) or to any other person, in either case without prior written consent from the Charterer; and
- 49.4 that each may terminate this Contract upon written notice at any time if either party believes in good faith that the other party is in breach of any of the above anti-corruption representations, warranties and undertakings.

#### 50. **ECONOMIC SANCTIONS**

50.1 Owners warrant that the Vessel is not:

- (a) flagged or registered by an entity that is the target of Economic Sanctions;
- (b) owned or controlled or chartered by any person that is the target of Economic Sanctions; or
- (c) owned or controlled or chartered by any person that is named on OFAC's List of Specially Designated Nationals and Blocked Persons ("SDN") (which can be found at

<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>) or any other similar applicable blacklist, as may be amended from time to time.

## Appendix I

B/L No. DSL-001

CODE NAME: "CONGENBILL" EDITION 1994

**BILL OF LADING**

TO BE USED WITH CHARTER-PARTIES

Reference No.

Shipper  
DAMPIER SALT LIMITED  
37 BELMONT AVENUE  
BELMONT WA 6104  
AUSTRALIA

Consignee

Notify Address

Vessel

Port of Loading

Port of discharge

Shipper's description of goods

Gross weight

(of which NIL on deck at Shipper's risk; the Carrier not  
being responsible for loss or damage howsoever arising)

Freight payable as per  
CHARTER-PARTY dated \_\_\_\_\_  
FREIGHT ADVANCE

Received on account of freight

Time used for loading \_\_\_\_\_ days \_\_\_\_\_ hours

**S H I P P E D** at the Port of Loading in apparent good order and  
condition on board the Vessel for carriage to the Port of Discharge or so near  
thereto as she may safely get the goods specified above.

Weight, measure, quality, quantity, condition, contents and value unknown.

IN WITNESS whereof the Master or agent of the said Vessel has signed the  
number of Bills of Lading indicated below all of this tenor and date, any one of  
which being accomplished the others shall be void.

FOR CONDITIONS OF CARRIAGE SEE OVERLEAF

Freight payable at

Place and date of issue

Number of original B/L

Signature

THREE (3)

AS AGENTS FOR AND ON BEHALF OF  
MASTER M/V

**BILL OF LADING**

TO BE USED WITH CHARTER-PARTIES

CODE NAME: CONGENBILL™

EDITION 1994

ADOPTED BY

THE BALTIC AND INTERNATIONAL

MARITIME COUNCIL (BIMCO)

**Conditions of Carriage.**

(1) All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause, are herewith incorporated.

**(2) General Paramount Clause.**

(a) The Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading, dated Brussels the 25<sup>th</sup> August 1924 as enacted in the country of shipment, shall apply to this contract. When no such enactment is in force in the country of shipment, the corresponding legislation of the country of destination shall apply, but in respect to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply.

**(b) Trades where Hague-Visby Rules apply.**

In trades where the International Brussels Convention 1924 as amended by the Protocol signed at Brussels on February 23<sup>rd</sup> 1968—the Hague-Visby Rules—apply compulsorily, the provisions of the respective legislation shall apply to this Bill of Lading.

(c) The Carrier shall in no case be responsible for the loss or damage to the cargo, howsoever arising prior to loading into and after discharge from the Vessel or while the cargo is in charge of another Carrier, nor in respect of deck cargo or live animals.

**(3) General Average.**

General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1994, or any subsequent modification thereof in London unless another place is agreed in the Charter Party.

Cargo's contribution to General Average shall be paid to the Carrier even when such average is the result of a fault, neglect or error of the Master, Pilot or Crew. The Charterers, Shippers and Consignees expressly renounce the Belgian Commercial Code, Part II, Art. 148.

**(4) 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 consequence of which, the Carrier is not responsible, by statute, contract or otherwise, the cargo, Shippers, Consignees or the owners of the cargo 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 cargo.

If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the cargo, Shippers, Consignees or owners of the goods to the Carrier before delivery.

**(5) 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 the Carrier in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her Owners in so far 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 non-carrying vessel or her Owners to the owners of 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 Carrier. 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.

For particulars of cargo, freight destination, etc., see overleaf.

## INT GROUP A

To: insert name of Owners [insert date]  
The Owners of the [insert name of ship]  
[insert address]

Bill of lading: *[insert identification numbers, date and place of issue]*

In consideration of your complying with our above request, we hereby agree as follows :-

- Page 31 of 37 .

4. If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, facility, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.
5. As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or otherwise to cause all original bills of lading to be delivered to you, whereupon our liability hereunder shall cease.
6. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
7. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully  
For and on behalf of  
[insert name of Requestor]  
The Requestor

.....  
Signature



## INT GROUP B

To: insert name of Owners [insert date]  
The Owners of the [insert name of ship]  
[insert address]

Ship: *[insert name of ship]*

Voyage: *[insert load and discharge ports as stated in the bill of lading]*

Cargo: *[insert description of cargo]*

Bill of lading: *[insert identification numbers, date and place of issue]*

The above cargo was shipped on the above ship by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bill of lading is made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bill of lading] but we, [insert name of party requesting substituted delivery], hereby request you to order the ship to proceed to and deliver the said cargo at [insert name of substitute port or place of delivery] ["X [name of the specific party] or to such party as you believe to be or to represent X or to be acting on behalf of X"] against production of at least one original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows :-

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of the ship proceeding and giving delivery of the cargo against production of at least one original bill of lading in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the ship proceeding and giving delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.

4. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
5. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully  
For and on behalf of  
[insert name of Requestor]  
The Requestor

.....  
Signature

**INT GROUP C**

## Page 35 of 37 .

4. If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, facility, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.
5. As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or otherwise to cause all original bills of lading to be delivered to you.
6. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
7. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully  
For and on behalf of  
[insert name of Requestor]  
The Requestor

.....  
Signature

## **ADDITIONAL CLAUSES**

### **PETCOKE Huanghua loading CLAUSES**

- NOR can be tendered when:

(a) berth is not occupied - when the vessel is alongside all fast and in all respects ready to load

(b) berth is occupied - when the vessel is at anchor at the position where waiting vessels usually lie

- Owner shall notify Charterer fourteen (14) days prior to the opening layday at the Port of Loading of:

(a) the name and type of the performing Vessel, estimated cargo intake and full vessel itinerary ;

(b) estimated date of arrival at the port of Loading or the first port of Loading if more than one.

- Within 24 hours after receipt of such notification Charterer by notice to Owner shall accept or reject the Vessel. The Vessel may be rejected if it does not comply with all of the requirements as set out in clause 4.2 of charterers standard Charter Party. If the Vessel is rejected Charterer shall state the reason for its rejection in its notice to Owner. 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 nominated.

- Vessel will present at loading with holds swept and clean and washed down with fresh water, hatches open, beams removed, in free pratique and in all respects ready to load. It will be suitably equipped, with lights for night loading and will have on board all necessary records, documents, certificates and letters of compliance as are required for loading at the loading facility.

- Charterers will appoint surveyor, and pay surveyor costs, to inspect the holds prior to loading. Charterers will be given full access to vessel holds and work with the surveyors to jointly assess the condition of the holds. If vessel holds are found to be unsuitable to receive cargo, then any time lost not to count from time vessel fails survey until time the vessel passes survey.

- Charterers will load Owner's vessel using container loading method at the average rate as set out in mainterms, calculated from the commencement of laytime until the vessel is completely loaded trimmed in vessel to the Master's reasonable satisfaction and completion of draft survey.

- The master of the vessel or his agent and the Owner or its agent will sign, on completion of loading, a Statement of Facts which will detail all times and operations as necessary for the recordation and documentation of laytime.

- If Charterer declares two Petcoke grades, these two Petcoke grades to be stowed in separate holds, unless Charterer's agree to co-mingling.

- Charterer warrants that Calcined Petcoke will have an approximate stowage factor of 48 cubic feet/tonne (1.359 cubic metres/tonnes)