

# ANGLO AMERICAN

## VOYAGE CHARTERPARTY

### FIXTURE NOTE

To be used with the Anglo American General Chartering Terms and Conditions dated December 2012

<b>Date:</b>	Geneva,
<b>Parties:</b>	As Charterers: ,  and As Owner: ,
<b>Reference:</b>	CHINSAY ID 0
<b>Vessel:</b>	
<b>Cargo:</b>	
<b>Cargo Quantity/Shipment Size:</b>	MTS (10% more or less in Owner's option)
<b>Loading Port(s):</b>	
<b>Discharging Port(s):</b>	
<b>Laycan:</b>	
<b>Freight Rate:</b>	USD    FIOST per MT
<b>Loading Rate:</b>	MT PWWD SHINC OR, if left blank, as per Loadport Terms
<b>Turn Time at Loading Port:</b>	OR, if left blank, as per Loadport Terms
<b>Discharging Rate:</b>	MT PWWD SHINC OR, if left blank, as per Special Conditions
<b>Turn Time at Discharging Port:</b>	OR, if left blank, as per Special Conditions
<b>Demurrage/Despatch:</b>	USD    /USD    per day
<b>Address Commission:</b>	3.75% address commission to the Charterer
<b>Brokerage:</b>	1.25% brokerage paid by Owner
<b>Owner's Nominated Bank Account:</b>	

<b>Communications:</b>	<p>Owner's address for service is:</p> <p>.....</p> <p>Notices to the Owner should be sent to:</p> <p>email: .....or</p> <p>fax:....., or to such other addresses as the Owner may respectively from time to time designate by notice in writing.</p>
<b>Law and arbitration</b>	English law, LMAA Arbitration
<b>Terms and Conditions of Fixture:</b>	<p>The Owner and the Charterer agree that this Fixture Note incorporates and is subject to the Anglo American General Chartering Terms and Conditions dated December 2012 ("GTCs"), including without limitation the governing law and dispute resolution provision. This Charter shall comprise this Fixture Note, the GTCs, the Anglo American Loadport Terms applicable to the Loading Port(s) and the terms of any other Special Conditions, documents or agreements that are incorporated by reference in the Fixture Note, Loadport Terms or the GTCs. The Owner and the Charterer acknowledge that they have full notice of, and agree to, all of the terms.</p>
<b>Special Conditions</b>	

Signed on behalf of the Owner:

Signed on behalf of the Charterer:

Position/Appointment

Position/Appointment

**ANGLO AMERICAN GENERAL CHARTERING TERMS AND CONDITIONS**

**DATED DECEMBER 2012**

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## **PART 1 - INTRODUCTION**

### **1. APPLICABILITY**

- 1.1 Unless otherwise expressly agreed, these general chartering terms and conditions and the schedule and appendix hereto (together referred to as the "General Chartering Terms & Conditions", or "GTCs") shall apply to the Voyage(s) set out in the Fixture Note.
- 1.2 The GTCs are intended to be supplemented by a Fixture Note which together with the GTCs and the Loadport Terms will comprise the Charter.
- 1.3 In the case of any conflict, discrepancy, inconsistency or ambiguity between the provisions of the GTCs, the Loadport Terms and the Fixture Note, they shall take the following order of precedence: (1) the Fixture Note; (2) the Loadport Terms; and (3) the GTCs. In particular, but without limitation, where the Fixture Note contains Special Conditions amending or supplementing these GTCs or the Loadport Terms, the Charter shall be deemed to incorporate these GTCs or the Loadport Terms as amended by the Special Conditions.

### **2. DEFINITIONS AND INTERPRETATION**

The definitions and interpretative provisions set out in Schedule 1 and in the Fixture Note shall apply to this Charter.

## **PART 2 – VOYAGE TERMS**

### **3. THE VESSEL**

- 3.1 The Vessel must be acceptable to the Charterer at all times, and in particular the Owner warrants and undertakes that the Vessel or Vessels to be provided by the Owner for the Voyage(s) shall:
  - 3.1.1 be suitable at all times for the loading, carriage and discharge of the Cargo(es) nominated for carriage under this Charter;
  - 3.1.2 be in all respects seaworthy and cargo-worthy;
  - 3.1.3 be a single deck, self-trimming bulk carrier or ore carrier with engine/accommodation aft, each without longitudinal centre line bulkheads;
  - 3.1.4 have been approved by RightShip with a minimum rating of three stars;
  - 3.1.5 not be over 20 years old ex-shipyard;
  - 3.1.6 be tight, staunch and strong and in every way fitted for the relevant Voyage(s);
  - 3.1.7 be classed 100A1 at Lloyd's or equivalent free of recommendation or conditions of class;
  - 3.1.8 be acceptable to the relevant authorities at the Loading Ports and Discharging Ports and conform with all laws, regulations and requirements in force at or applicable to the Loading Ports and Discharging Ports, including the Loadport Regulations, Discharging Port Regulations and Loadport Terms;
  - 3.1.9 be of such size, draft, draught and other dimensions as to permit the Vessel safely to enter, berth, lay alongside, load and discharge and depart, always safely afloat from the Loading Ports and Discharging Port(s);
  - 3.1.10 not be in the reasonable judgment of the Charterer owned, chartered, operated or controlled by a Sanctioned Entity, or be a Sanctioned Entity itself; or be owned, chartered, operated or controlled by a person or entity that is registered, constituted or organised in, or that is a citizen or resident of or located in, a country that is the subject of a Country-based Sanction;
  - 3.1.11 be capable of loading cargo in all holds as required by the Charterer and be cargo-worthy in every respect;
  - 3.1.12 be suitable for mechanical and grab loading, and grab discharge with no fittings protruding from internal hold surfaces and fitted with Australian hold ladders;
  - 3.1.13 be crewed by persons whose minimum terms and conditions of employment are covered by an International Transport Workers Federation ("ITF") agreement or equivalent (the Owner to be responsible for any loss, damage or delay resulting from any boycott connected with the Vessel being crewed by persons whose minimum terms and conditions of employment are not covered by an ITF agreement, even if such Vessel is crewed by persons whose minimum terms and conditions of employment are covered by an equivalent agreement);

- 3.1.14 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 and Discharging Port(s); and hold a valid Gas Free Certificate;
- 3.1.15 where the Cargo is iron ore, have holds strengthened and classed for carriage of iron ore in bulk;
- 3.1.16 have been entered with a Protection & Indemnity ("P&I") Club which is a member of the International Groups of P&I Clubs for full P&I coverage and shall remain so covered for the duration of this Charter; and
- 3.1.17 have hull and machinery insurances placed through reputable brokers on International Hull Clauses terms or equivalent are in full force and effect, that the insured value of the Vessel is as specified in Appendix 1 and that such insurances shall be maintained for the duration of this Charter.
- 3.2 The Owner shall promptly furnish to the Charterer copies of the Vessel's classification and statutory certificates (including Document of Compliance (DOC), Safety Management Certificate (SMC) and International Ship Security Certificate (ISSC)) and proper evidence of the P&I insurance and hull & machinery insurance referred to in Clauses 3.1.16 and 3.1.17. Further, the Owner shall promptly provide the Charterer with any certification or documentation that the Charterer reasonably requests.
- 3.3 Each of the warranties set out at Clauses 3.1.4, 3.1.7, 3.1.10, 3.1.12, 3.1.16 and 3.1.17 are to be regarded as an essential part of this Charter, which is conditional on its truth or performance, such that breach of this condition shall entitle the Charterer, in the Charterer's option, to terminate this Charter and/or to recover damages.
- 3.4 The Charterer shall have the right at any time on reasonable notice to inspect or survey the Vessel with the Master or the Master's nominee for the purpose of ascertaining whether the Vessel satisfies and is in compliance with each of the requirements set out in this Clause 3 and otherwise is being maintained and operated in accordance with the terms and conditions of this Charter.
- 3.5 Should the Vessel after arrival at a Loading Port or Discharging Port be found not to be in compliance with Clauses 3.1 or 11.4, the Loadport Regulations or Loadport Terms, or the Discharging Port Terms, and/or is not able to perform cargo operations when requested to do so, then notwithstanding and without prejudice to any right(s) the Charterer may have under any other provision of this Charter or at law, the Charterer may, in its option, by written notice to the Owner at the Loading Port:
  - 3.5.1 reject the Vessel and treat a Charter for a single Voyage as cancelled; or, where the Charter is for multiple voyages, treat the Voyage as unperformed; or
  - 3.5.2 treat the Charter as suspended until the Owner rectifies the default to the satisfaction of the Charterer and re-tenders the NOR, and any NOR previously accepted, whether valid at the time of issue or not, shall be automatically deemed to be invalid and all time until the default is rectified and the Vessel is in an equivalent position or turn shall be for the Owner's account and shall not count as Laytime or time on demurrage.
- 3.6 The Owner shall keep the Charterer fully indemnified and held harmless against any and all consequences of the Owner's breach of the warranties and undertakings in this Clause 3, including, but not limited to, any and all delays, losses, costs and expenses incurred by the Charterer (upon cancellation) in relation to procuring a suitable replacement vessel.
- 3.7 In the event that the Vessel provided by the Owner is not in compliance with any of the requirements set out in this Clause 3, the Charterer may in its sole discretion and by written notice to the Owner accept such Vessel for the purposes of the fulfilment by the Owner of its obligations hereunder. Any such acceptance or waiver shall be without prejudice to the Charterers' other remedies and to each of the Owner's other obligations under this Charter (including, without limitation, each of the other Vessel-related requirements under this Clause 3).

#### **4. BILLS OF LADING**

- 4.1 All bills of lading issued in respect of the shipment of the Cargo under this Charter shall be on the form of the CONGENBILL Edition 1994 or alternatively, in the Charterers' option, in the form presented by the Charterer.
- 4.2 On completion of loading of the Cargo, the Master or the Owner's agent shall sign and issue on demand bill(s) of lading as presented, marked "clean on board" and "freight pre-paid" or "freight payable as per charterparty".
- 4.3 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.

- 4.4 Other than where the Charterer is the shipper of the Cargo, the shipper shall 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.
- 4.5 The Master shall reject any Cargo which would result in the Master clausing bill(s) of lading with remarks qualifying the apparent good order and condition of the Cargo.
- 4.6 All bills of lading issued under this Charter covering Cargo shipped from Australia shall incorporate the Australian Carriage of Goods by Sea Act 1991 incorporating the Hague-Visby Rules as amended.
- 4.7 All bills of lading issued under this Charter covering Cargo shipped from South Africa shall incorporate the Carriage of Goods by Sea Act 1986 incorporating the Hague-Visby Rules as amended.
- 4.8 All bills of lading issued under this Charter covering Cargo shipped from Canada shall incorporate the Marine Liability Act 2001 incorporating the Hague-Visby Rules as amended.
- 4.9 For the avoidance of doubt, all claims for loss or damage in relation to the Cargo shall be subject to the Hague-Visby Rules. To the extent that the Owner incurs any liability under a bill of lading issued pursuant to the terms of this Charter, which, by reason of such bill of lading being compulsorily subject to the application of the Hamburg Rules or Rotterdam Rules pursuant to the provisions of this Charter or of such bill of lading being subject to the application of any other compulsorily applicable law or legislation, in excess of such liability that the Owner would have incurred if such bill of lading had been subject to the Hague-Visby Rules, the Charterer shall have no liability to the Owner in respect of the same.

## **5. RATE OF FREIGHT**

- 5.1 The freight shall be paid at the rate stated in the Fixture Note based on US\$ per MT.
- 5.2 Full freight shall be deemed earned on completion of loading, shall be non-returnable 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 the Charterer's nominated surveyor, which quantity will be incorporated in the bill(s) of lading. The cost of the Charterer's nominated surveyor shall be paid by the Charterer.

## **6. PAYMENT OF FREIGHT**

- 6.1 Freight shall be remitted electronically by the Charterer to the Owner's nominated bank account as follows:
  - 6.1.1 ninety percent (90%) shall be payable within ten (10) banking days after the completion of loading and the signature and release by the Owner to the Charterer of clean bill(s) of lading to which the freight relates, but in any event before breaking bulk; and
  - 6.1.2 the balance of freight together with settlement of demurrage or despatch shall be payable within thirty (30) days after the completion of discharge of the Cargo at the Discharging Port, provided the requirements of Clause 20.1.3 and 20.2 have been met.
- 6.2 The Charterer may set off despatch, if payable, against freight.

## **7. DEADFREIGHT**

- 7.1 Under no circumstances shall deadfreight be payable, other than in the circumstances set out in Clause 7.2.
- 7.2 Should the Charterer not supply a full and complete Cargo for any reason other than the Owner's fault, or the occurrence of a Force Majeure Event, the Vessel shall, at the request of the Charterer, proceed on the Voyage and shall not load any alternative cargo unless agreed by the Charterer. In this event, deadfreight shall be paid on the difference between the Cargo quantities specified in the Fixture Note and the actual quantity of Cargo supplied by the Charterer for shipment at the Freight Rate unless otherwise agreed in writing. The deadfreight shall be included and clearly indicated in the freight invoice for the relevant Voyage.

## **8. PORT CHARGES, DUES AND TAXES**

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

## 9. ADDRESS COMMISSION AND BROKERAGE

An address commission shall be payable to the Charterer at the rate stated in the Fixture Note and shall be deducted from freight/demurrage. A brokerage fee shall be payable by the Owner at the rate stated in the Fixture Note. Address commission and brokerage shall be payable on all freight, deadfreight and demurrage.

## 10. AGENCY AND DISBURSEMENTS

- 10.1 Port agents at each of the Loading Ports and Discharging Port(s) shall be nominated by the Charterer. All fees, costs and expenses of such port agents shall be for the Owner's account.

The Owner undertakes to provide port agents nominated in accordance with this Clause 10.1 with sufficient funds to cover the Vessel's disbursements prior to arrival at the respective Loading Ports and Discharging Port(s) and acknowledges that, pursuant to the Charterer's worldwide agency arrangements, the Charterer may receive appointment fees from the nominated port agents, which shall be for the Charterer's sole benefit.

## 11. CARGO - SHIPMENT, SIZES AND OPTIONS

- 11.1 The Charterer shall load and the Vessel shall be able to receive the Cargo specified in the Fixture Note.
- 11.2 The Cargo shall be loaded, transported and discharged carefully in accordance with IMO recommendations and the Loadport Regulations and Discharging Port Regulations.
- 11.3 A shipment shall be deemed to be a full and complete cargo, even if the Vessel is not loaded down to her marks.
- 11.4 The Owner warrants and undertakes that if, by reason of the Vessel's construction, the cost of loading or discharge of the Cargo exceeds the customary normal cost, any additional costs and expenses incurred as result shall be for the Owner's account and any additional time used in loading or discharging shall not count as Laytime or time on demurrage.
- 11.5 It is contemplated that the Cargo to be loaded under this Charter originates from mines within the control of the Charterer's Group. Under no circumstances will the Charterer be obliged under this Charter to procure Cargo from alternative sources for any reason.

## 12. SUBSTITUTION

- 12.1 Substitution of Vessel
- 12.1.1 Where a named vessel "or substitute (sub)" has been named as the Vessel in the Fixture Note, the Owner has the right to substitute the Vessel with an alternative Vessel provided that:
- (a) the class, type, size and capacity of the substitute Vessel is similar to that of the original Vessel;
  - (b) the substitute Vessel complies with the requirements of the Charter;
  - (c) the expected time of arrival of the substitute Vessel is within the Laycan; and
  - (d) notice of substitution is received on a Business Day not less than 15 (fifteen) days before the expected time of arrival of both the original Vessel and the substitute Vessel and all information required in Clause 12.2 is provided with the notice of the substitute Vessel.
- 12.1.2 Should it later become apparent that the substituted Vessel is not of a similar class, type, size or capacity to the original Vessel and, as a result, cargo operations of the substituted Vessel are delayed (including where the Vessel is ordered to vacate the berth), all costs and expenses incurred shall be for the Owner's account. Further, all time lost as a result of such substitution shall not count as Laytime, or time on demurrage.
- 12.2 Contents of notice
- 12.2.1 When proposing to substitute a Vessel, the Owner shall provide the Charterer in writing with details of the following and copies of documents, together with any additional particulars and documents/certificates as may be requested by the Charterer from time to time:
- (a) the Vessel's Cargo intake;
  - (b) the Vessel's ETA at the Loading Port (which shall be within the Laycan); and
  - (c) details of the Vessel including:
    - a. name and International Maritime Organisation ship identification number;

- b. Classification Certificate;
- c. Document of Compliance (DOC);
- d. Safety Management Certificate (SMC);
- e. International Ship Security Certificate (ISSC);
- f. Vessel type, flag, year built, length overall, beam, DWT estimated draft on arrival and number, dimensions and location of hatches;
- g. name of the Vessel's P&I Club;
- h. any other information reasonably required by the Charterer or Loading Port authorities from time to time.

### 12.3 Acceptance/rejection of Vessel

12.3.1 The Charterer shall notify the Owner of its acceptance of the substitute Vessel in writing within 2 (two) Business Days from its receipt of the Owner's notice in accordance with Clauses 12.1 and 12.2. The Charterer may require Loading Port acceptance, and uses a vetting system to approve all Vessels. The Charterer may require additional Vessel information to enable acceptance, in which case the time for Vessel acceptance shall run from the provision by the Owner of such additional information.

#### 12.3.2 For the avoidance of doubt:

- (a) the Charterer shall be entitled to reject any Vessel that fails the vetting procedure conducted by or on behalf of the Charterer and/or is not accepted by the Loading Port for any reason, notwithstanding that it complies with the requirements of this Clause 12;
- (b) the Charterer's acceptance of a Vessel shall in no way derogate from the Owner's obligations pursuant to Clause 3 nor constitute acceptance by the Charterer that the Owner has complied with those obligations;
- (c) the Charterer's acceptance of a Vessel for one Voyage shall not be deemed to be continued acceptance of the same Vessel for further Voyages; and
- (d) the Charterer shall incur no liability for rejecting a Vessel in good faith or on the basis of a failure by the Owner to comply with Clauses 12 or 3.

12.3.3 If the substitution is rejected, the Charterer may, in its sole option, without prejudice to its rights under the Charter and at law:

- (a) cancel the subject Voyage; or
- (b) re-schedule the subject Voyage to a new later Laycan.

## 13. LOADING PORTS AND DISCHARGING PORTS

13.1 The Vessel shall proceed with all reasonable despatch to the Loading Port, or such other port(s), as ordered by the Charterer, and there load a full and complete Cargo pursuant to the provisions of Clause 15.

13.2 Upon completion of loading and final draft survey, the Vessel shall proceed with all reasonable despatch, maintaining full service speed, via the direct and customary route to the Discharging Port.

13.3 The Charterer shall have the option to change the Discharging Port(s), against paying freight which gives the Owner the same time charter equivalent return as the base freight rate originally agreed. The alternative Discharging Port(s) freight calculation shall be conducted on an open book basis starting with the original freight, adjusted up or down according to any increase or decrease in the cost of performance of the voyage. The starting point shall be the Vessel's last discharge port, with no repositioning advantage or disadvantage based on the Discharging Port to be allowed.

13.4 All costs of shifting directly between berths at the Loading Ports and/or Discharging Ports shall be for the Owner's account and shifting time shall not count as Laytime or as time on demurrage, as the case may be.

13.5 Where the Discharging Port is in China, South Korea, Japan, Taiwan, Indonesia, Malaysia or the Philippines and has not been nominated upon the issuance of the bill(s) of lading, the Charterer shall give orders at the latest:

13.5.1 upon the Vessel passing Singapore or Sunda Strait as to whether the Vessel should proceed to North or South China, South Korea, Japan or Taiwan; and

- 13.5.2 ten (10) days after the Vessel sails from the Loading Port as to whether the Vessel should proceed to Indonesia, Malaysia or the Philippines,

and within forty-eight (48) hours of such orders shall nominate the Discharging Port(s) upon which the Owner shall, at the Charterer's request and upon surrender or the original bill(s) of lading, issue new bill(s) of lading for discharge at such Discharging Port(s) identifying a named consignee or order.

#### **14. NOTICES BY MASTER**

- 14.1 The Owner shall procure that the Master of a Vessel proceeding to a Loading Port or Discharging Port, as the case may be, shall notify the Charterer, agent and other parties as advised by the Charterer as follows:

##### **14.1.1 Loading Port:**

- (a) on the earlier of sailing from the port preceding the Loading Port and ten (10) days prior to the Vessel's arrival at the Loading Port:
  - (i) giving ETA;
  - (ii) advising the Cargo intake on deepest departure draft;
  - (iii) advising the hatch loading order and quantities of Cargo by holds in BLU format; and
  - (iv) advising expected fore and aft drafts on arrival at the Loading Port;
- (b) seventy two (72) hours prior to the Vessel's ETA at the Loading Port confirming or revising the information set out in (a) above;
- (c) forty eight (48) hours prior to the Vessel's ETA at the Loading Port confirming or advising a revised ETA;
- (d) twenty four (24) hours prior to the Vessel's ETA at the Loading Port confirming or advising a revised ETA;
- (e) and provide such other notices and other information and documentation as required under the Loadport Regulations or Loadport Terms.

##### **14.1.2 Discharging Port(s):**

- (a) on departure from the Loading Port, giving the Vessel's ETA at the relevant Discharging Port and its estimated arrival draft;
- (b) ten (10) days prior to arrival at the relevant Discharging Port, giving the Vessel's ETA and expected arrival drafts;
- (c) seventy two (72), forty eight (48) and twenty four (24) hours prior to arrival at the relevant Discharging Port, giving the Vessel's ETA at such Discharging Port; and
- (d) and provide such other notices and other information and documentation as required under the Discharging Port Regulations.

- 14.1.3 In addition to the information set out in Clauses 14.1.1 and 14.1.2, provide only to the Charterer, each day, a position report as at noon that day giving the following information:

- (a) the position of the Vessel;
- (b) the average speed of the Vessel over the previous 24 hours;
- (c) ETA at the next Discharging Port; and
- (d) distance to the next Discharging Port.

- 14.2 The Charterer may, by radioed notice to the Master (which notice is deemed to be notice to the Owner for the purposes of this Clause 14.2), advise the Owner of any change in the order of the Discharging Port(s) provided that such notice is given at least five (5) days prior to the Vessel's ETA at the first Discharging Port; and that either:

- (a) the Vessel as loaded will be able to enter such port; or

- (b) if such alteration necessitates lightening and/or the use of lighterage at the relevant Discharging Port, the provisions of Clause 17 shall apply.

- 14.3 If the Vessel encounters severe weather or is the subject of an accident, breakdown or any other incident or occurrence which it is estimated will result in more than twenty four (24) hours delay to the ETA at the Loading Port or Discharging Port, the Master or the Owner shall give notice immediately to the Charterer of the incident or occurrence and of a revised, additional ETA.

## **15. LOADING AND DISCHARGING**

- 15.1 The Owner shall at all times remain responsible for ascertaining, verifying and complying with the Loadport Regulations, the Loadport Terms and the Discharging Port Regulations.
- 15.2 The Cargo shall be loaded, belt or spout trimmed and discharged free of expense to the Owner, under the 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 the Master.
- 15.3 Subject to the provisions of this Charter, the Owner and the Master shall be responsible for:-
- 15.3.1 the declaration of the quantity of Cargo to be loaded within the range of Cargo specified;
- 15.3.2 nomination of the hatch loading sequence with quantities and monitoring of the quantities as loaded in each hold;
- 15.3.3 the calculation and determination of the Vessel's drafts at the Loading Port(s) and Discharging Port(s), but always subject to any limitations and restrictions at those ports; and
- 15.3.4 maintaining a seaworthy condition of the Vessel at all times.
- 15.4 The Vessel's hatches shall be available for loading and discharging when and as required by the Charterer.
- 15.5 The Owner shall provide and maintain in good working order the Vessel's lights and all other equipment required for loading and discharging.
- 15.6 The Owner undertakes that the Owner and/or the Master of the Vessel:
- 15.6.1 shall at all times be solely responsible for establishing the applicable Vessel size, draft and air-draft requirements for Loading Ports and Discharging Ports, and for ensuring that the Vessel is loaded so as to comply at all times with the Vessel requirements set out in this Charter; and
- 15.6.2 should the Owner and/or the Master cause or permit the Vessel to be loaded with a quantity of Cargo such that on arrival at any Discharging Port, the Vessel has a draft in excess of the permissible entry draft at that port, the 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. Where the relevant restriction could reasonably have been anticipated by the Master, e.g. given the Discharge Port nominated or the range of potential Discharge Ports specified, before completion of loading of Cargo, 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 the Owner's account and shall not count as laytime or time on demurrage.

## **16. COVERING AND UNCOVERING OF HATCHES**

- 16.1 All costs, expenses and time lost in relation to the opening and closing of hatches shall be for the Owner's account, and shall not count as laytime or time on demurrage.
- 16.2 The Master shall cover the hatch(es) of each hold as soon as loading of the relevant part of the Cargo into that hold has finished.
- 16.3 The Master shall ensure that all hatches are closed when cargo operations are not in progress and/or where required as a result of adverse weather conditions.

## **17. LIGHTERAGE AND LIGHTENING**

The Charterer may, at its option, discharge the Cargo into lighters and/or otherwise lighten the Vessel if it so requires. All time and expenses relating to such option shall, be for the Charterer's account and time so used shall count as Laytime. Otherwise all other terms, conditions and exceptions of this Charter shall apply to lighterage and lightening.

## **18. NOR AND CANCELLATION**

- 18.1 CANCELLATION

18.1.1 If the Master or the Owner fails to tender a valid NOR at the Loading Port on or before the last day of the Laycan, the Charterer may, by written notice to the Owner, at its option and without prejudice to the Owner's obligations under this Charter:

- a) treat a Charter for a single Voyage as cancelled; or
- b) where the Charter is for multiple voyages, treat the Voyage as unperformed.

18.1.2

The Charterer's option to cancel is to be exercised within 24 hours of the tender of a valid NOR.

## 18.2 LOADING PORTS

See the applicable Loadport Terms.

## 18.3 DISCHARGING PORTS

18.3.1 Subject to any contrary provisions in the Discharging Port Terms (if any), the following provisions apply:

18.3.2 NOR for discharging Cargo may be tendered at any time, day or night, SHINC, by the Master or the Owner when the Vessel has arrived at the berth to which the Vessel has been ordered or, if the berth is unavailable, at the place where waiting vessels usually lie, whether the Vessel is in berth or not, whether the Vessel is in port or not, whether the Vessel is in free pratique or not, whether the Vessel is customs cleared or not, and provided that the Vessel is in all respects ready to load or discharge Cargo, as the case may be, and otherwise in accordance with the terms and conditions of this Charter.

18.3.3 In the event that free pratique and /or customs clearance is not granted and/or the Vessel is not ready in all respects to discharge the Cargo when requested, the previously tendered NOR shall be deemed null and void and no Laytime or time on demurrage shall have accrued, and a new NOR must be tendered.

## 19. COUNTING OF LAYTIME & DEMURRAGE

### 19.1 AT LOADING PORTS

19.1.1 Subject to any contrary provision in the Loadport Terms, at each Loading Port Laytime shall commence after expiry of Turn Time, after a valid NOR has been tendered in respect of the Vessel, unless loading is commenced sooner in which case time used to count.

19.1.2 See the applicable Loadport Terms.

### 19.2 AT DISCHARGING PORTS

19.2.1 Laytime shall commence after expiry of Turn Time, after a valid NOR has been tendered in respect of the Vessel, unless discharging is commenced sooner in which case time used to count. If the relevant period expires on a day that is not a Working Day, Laytime will commence at 0800 hours on the next Working Day. Time shall not count as Laytime or, if the Vessel is on demurrage, as time on demurrage, if such time is spent or lost:

- (a) on inward passage from the Vessel's waiting area to the discharging berth, including awaiting daylight, tide, opening of locks, pilot or tugs and moving from anchorage, even if lightening occurred at such waiting area, from anchor up until the Vessel is securely moored at the berth or other discharging place specified by the Charterer;
- (b) in connection with hatch operations (including any delays resulting therefrom), including first opening, last closing and all interim opening and closing;
- (c) in connection with the correction of air draft during discharging where it exceeds that permitted by Discharging Port Regulations;
- (d) during any interruption to discharging in connection with the Vessel having insufficient ballast pump capacity relative to its loading capacity;
- (e) in ballasting or deballasting, lining up and/or draining of pumps/pipelines, cleaning of tanks, pumps, pipelines, bunkering or for any other purposes of the Vessel only, unless the same is carried out concurrently with the discharging of Cargo, so that no loss of time is involved; or
- (f) in trimming whilst awaiting the Master's instructions to proceed with trimming operations or, additional time spent if the Vessel's gears cannot be used for such.

19.2.2 Time shall not count for the purpose of Laytime or, if on demurrage, demurrage, when lost as a result of:

- (a) any breach of this Charter by the Owner or any other cause attributable to the Vessel or the Owner;

- (b) the suspension of discharge by the Charterer as a result of the Owner's failure to keep the Vessel's holds, gangway, accommodation ladder and hold ladders in good and safe condition throughout discharge;
- (c) intermediate surveys and draft checks;
- (d) stoppage or partial stoppage of labour (for whatsoever cause) of pitmen, drivers, trimmers or other hands connected with the working or discharging of the Cargo for which the Vessel is stemmed; restraint of labour of the Master, officers or crew of the Vessel or tug boats or pilots; quarantine (unless such quarantine was in force at the time the affected port was nominated by the Charterer); riot, accidents to mines (including a roof collapse) or breakdown of machinery, or accidents at or breakdown of discharging facilities, or obstruction or partial obstruction, embargo or delay on the way from the mine or storage place to dock or in the dock; frosts, freezing, fogs, stoppage or partial stoppage caused by a Force Majeure Event (provided always that this Clause 19.2.2 shall not apply to prevent time running in the event of delay by usual congestion at the Discharging Port, but shall apply in the event of delay by consequential congestion resulting from the causes listed herein);
- (e) as a result of the Vessel losing a provisional discharging slot in the event the Owner fails to tender a valid NOR in accordance with the provisions of this Charter;
- (f) overflow, breakdown, inefficiency, repairs or any other conditions whatsoever attributable to the Vessel, the Master, officers, crew and / or the Owner, including inability to discharge the Cargo within the time allowed and/or failure to meet the Vessel warranties stipulated in this Charter;
- (g) the Owner or any port authority prohibiting discharging of the Cargo for reasons relating to the legal or physical state of the Vessel or the acts or omissions of the Owner;
- (h) by reason of local law or regulations, sanctions, action or inaction by local authorities (including, but not limited to, coast guard, naval, customs, immigration or health authorities), with the exception of port closure due to adverse weather and / or sea conditions; or
- (i) escape or discharge of oil, or the threat of an escape or discharge of oil, on or from the Vessel.

### 19.3 GENERAL

- 19.3.1 Laytime for loading and discharging shall be calculated on the basis of the bill(s) of lading quantity plus any quantity in respect of which deadfreight is charged.
- 19.3.2 Laytime or time on demurrage shall cease upon the completion of loading or discharging.
- 19.3.3 Laytime shall be non-reversible between Loading Ports and Discharging Port(s).

## 20. DEMURRAGE AND DESPATCH

- 20.1 At the Loading Ports and Discharging Port(s):
  - 20.1.1 the Charterer shall pay to the Owner demurrage at the rates stated in the Fixture Note for each full day of twenty four (24) consecutive hours and pro rata for part thereof for all time used in excess of Laytime allowed, subject to exceptions; and
  - 20.1.2 the Owner shall pay to the Charterer despatch money at the rates stated in the Fixture Note for each full day of twenty four (24) consecutive hours and pro rata for part thereof for all Laytime saved.
  - 20.1.3 Demurrage and/or despatch, if any, shall be payable within thirty (30) days of completion of discharge, provided the Owner has presented a claim to the Charterer, in writing together with the following signed documents:
    - (a) an NOR at the Loading Port(s) / Discharging Port(s) duly signed by the Master and signed by suppliers/receivers (in the event that suppliers'/receivers' signatures are not obtainable, the Owner must provide a signed notice of protest noting the same);
    - (b) a statement of facts at the Loading Port(s) / Discharging Port(s) duly signed by the Master and confirmed by supplier/receiver; and
    - (c) an invoice for demurrage claimed.
- 20.2 If the Owner fails to present to the Charterer any claim for demurrage within forty five (45) days after completion of discharge in accordance with the requirements of Clause 20.1.3, any such claim shall be deemed waived and / or extinguished and / or time barred for all purposes.

**21. DELIVERY OF CARGO WITHOUT PRODUCTION OF THE BILL OF LADING**

If, upon arrival at the Discharging Port, the bill(s) of lading has/have not yet arrived, the Owner agrees to allow the discharge of the Cargo against a letter of indemnity from the Charterer without any requirement for a bank guarantee, the wording of which to be in accordance with the Owner's P&I Club's Standard Form Letter of Indemnity A, B or C, as the case may be, and signed by the head of the Charterer's Shipping Division, or their delegated signatory to be advised to the Owner in writing. The Charterer remains responsible for presenting the original bill(s) of lading to the Owner in due course, at which time the letter of indemnity will be immediately returned to the Charterer for cancellation.

**22. FORCE MAJEURE EXCEPTIONS**

- 22.1 Subject always to the obligation of the Owner to exercise due diligence to make the Vessel seaworthy before the commencement of the relevant Voyage, neither Party shall be under any liability to the other Party for any delay or failure in the performance of any of its obligations under this Charter nor shall Laytime count, nor shall any other time thereby lost count against the Charterer whether the Vessel is already on demurrage or otherwise, if such delay or failure is due to or results directly or indirectly from a Force Majeure Event.
- 22.2 In the event of an occurrence of a Force Majeure Event affecting or likely to affect the performance of a Party's obligations under this Charter, such Party shall give prompt notice thereof to the other Party and shall, if required, and upon reasonable notice, give to the other Party in writing particulars of the relevant event, together with such supporting evidence as is reasonably available.
- 22.3 In the event of an occurrence of a Force Majeure Event as aforesaid affecting the performance of either Party's obligations herein, such Party shall take reasonable steps to minimise any delay or effect of such Force Majeure Event and make good and resume with the least possible delay compliance with any such obligation affected.
- 22.4 Should a Force Majeure Event or its effects last for a period in excess of 45 (forty five) continuous days, then either Party may, on giving 5 (five) Business Days' prior written notice to the other Party, terminate the Contract without liability or penalty, save that such termination shall be without prejudice to any rights or obligations of the Parties which have accrued prior to the occurrence of that Force Majeure Event.

**23. ELIGIBILITY & COMPLIANCE**

- 23.1 At all times during the continuation of this Charter:
- 23.1.1 the Owner represents and warrants that the Owner and the Vessel are and shall continue to be, during the currency of this Charter, in full compliance with all applicable regulations, rules, guidelines, circulars and recommendations including those which come into force after the date of this Charter (collectively "Applicable Requirements") including any Applicable Requirements of the country of the Vessel's registry and any locale to which the Vessel may be directed or may proceed in connection with this Charter. Without limitation, such compliance shall include Applicable Requirements related to vessel navigation, manning, operations, safety, design, construction, maintenance, equipment, size and capacity, pollution prevention, financial responsibility, spill response and oil and/or other pollution, maritime safety, ISM Code requirements, AMS reporting, and US Bureau of Customs and Border Protection regulations, terminal or port requirements; and
- 23.1.2 the Owner, undertakes, represents and warrants that the Vessel shall have and maintain on board all certificates, records and other documentation, and all fittings and equipment, required by any Applicable Requirements.
- 23.2 Any delays, losses, expenses, damages or claims arising as a result of failure to comply with this Clause 23 shall be for the Owner's account and the Charterer shall not be liable for any damages for delay caused by the Vessel's failure to comply with this Clause 23. Any time so lost shall not count as laytime or time on demurrage.

**24. AMENDED BIMCO PIRACY CLAUSE**

- 24.1 If, after entering into this Charter, in the reasonable judgment of the Master and/or the Owner, any port, place, area or zone, or any waterway or canal (hereinafter "Area") on any part of the route which is normally and customarily used on a voyage of the nature contracted for is dangerous to the Vessel, her cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter "Piracy"), the Owner shall be entitled to take a reasonable alternative route to the Discharging Port and, if it so decides, immediately give notice to the Charterer that such route will be taken. Should the Vessel be within any such place as aforesaid which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, she shall be at liberty to leave it.
- 24.2 In any event, if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owner shall have the liberty:

- 24.2.1 to take reasonable preventative measures to protect the Vessel, her crew and cargo including but not limited to re-routeing within the Area, proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel or equipment on or about the Vessel;
- 24.2.2 to comply with the orders, directions or recommendations of any underwriters who have the authority to give the same under the terms of the insurance;
- 24.2.3 to comply with all orders, directions, recommendations or advice given by the government of the nation under whose flag the Vessel sails, or any other government to whose laws the Owner is subject, or any other government, body or group, including military authorities, whatsoever acting with the power to compel compliance with their orders or directions; and
- 24.2.4 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 Owner is subject, and to obey the orders and directions of those who are charged with their enforcement.
- 24.3 This Clause 24 shall be incorporated into any bill(s) of lading issued pursuant to this Charter. The Charterer shall indemnify the Owner against all consequences or liabilities that may arise from the Master signing bill(s) of lading as presented to the extent that the terms of such bill(s) of lading impose or result in the imposition of more onerous liabilities upon the Owner than those assumed by the Owner under this Clause 24.
- 24.4 If in compliance with this Clause 24 anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charter. In the event of a conflict between the provisions of this Clause 24 and any implied or express provision of these GTCs, this Clause 24 shall prevail to the extent of such conflict, but no further.
- 24.5 The costs of security guards provided by the Owner shall be for the Owner's account. When the Vessel is planned to pass a Piracy Area, the Owner shall keep the Charterer informed about matters related to safe navigation routes, waiting areas, boarding and discharging of security guards in order to provide the Vessel and crew with as much protection from Piracy as possible. All time lost through delay connected with the boarding and discharging of guards, if any, shall be for the Owner's account. The Owner shall indemnify the Charterer in respect of any loss or damage, or any claim whatsoever, arising as a result of the Owner's use of guards.

## **25. VACCINATION CLAUSE**

The Owner shall arrange, at its own cost and expense, for the Master, officers and crew of the Vessel, to hold valid vaccination certificates against yellow fever and cholera, as per the International Health Regulations 1969 or any other future legislation and subsequent amendments, upon delivery of the Vessel and throughout the period of this Charter. Any other vaccination requirement which may arise from time to time worldwide and which is relevant to the Vessel's trading, shall be complied with at the Owner's cost and expense.

## **26. DRUG AND ALCOHOL POLICY**

The Owner undertakes to the Charterer that it has guidelines in place in relation to drug and alcohol abuse applicable to the Vessel with the objective that no seafarer will navigate the 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 Owner undertakes to exercise due diligence throughout the continuation of this Charter to ensure that such guidelines are complied with.

## **27. AMENDED BIMCO ISPS CLAUSE**

- 27.1 The Owner shall comply with the 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 Owner shall also comply with the requirements of the United States Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the "Owner" (as defined by the MTSA).
- 27.2 Upon request the Owner shall provide the Charterer with a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) and the full style contact details of the Company Security Officer (CSO).
- 27.3 Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Owner or the "Company" / "Owner" to comply with the requirements of the ISPS Code/MTSA or this Clause 27 shall be for the Owner's account, except as otherwise provided in this Charter.

- 27.4 The Charterer shall provide the Owner and the Master with its full style contact details and, upon request, any other information the Owner requires in order to comply with ISPS Code/MTSA. Where sub-letting is permitted under the terms of this Charter, the Charterer shall ensure that the contact details of all sub-charterers are likewise provided to the Owner and the Master. Furthermore, the Charterer shall ensure that all sub-charterparties it enters into during the period of this Charter contain the following provision:

"the Charterer shall provide the Owner with its full style contact details and, where sub-letting is permitted under the terms of this Charter, shall ensure that the contact details of all sub-charterers are likewise provided to the Owner."

- 27.5 Loss, damages, expense or delay (excluding consequential loss, damages expense or delay), caused by failure on the part of the Charterer to comply with this Clause 27 shall be for the Charterer's account, except as otherwise provided in this Charter.
- 27.6 Notwithstanding anything else contained in this Charter, all delay, costs or expenses whatsoever arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, vessel escorts, port security fees or taxes and inspections, shall be for the Charterer's account unless such costs or expenses result solely from the negligence, fraud or wilful misconduct of the Owner, the Master or crew. All measures required by the Owner to comply with the Ship Security Plan shall be for the Owner's account.
- 27.7 If either Party makes any payment which is for the other Party's account according to this Clause 27 the other Party shall indemnify the paying Party to the extent of the amount paid.

## **28. LANGUAGE**

The Master, Chief Officer and all personnel involved with cargo operations shall be fluent in English. The Owner undertakes to have English-speaking personnel available to ensure appropriate communication between the Charterer and the Owner.

## **29. RELETTING, SUBLETTING, SUBCONTRACTING AND ASSIGNING**

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

## **30. WAR CANCELLATION**

- 30.1 In case of war involving the states in which the Cargo is to be loaded and discharged or the nation of the Vessel's registry materially affecting either Party's ability to perform, or in case of blockage or prohibition of export of the Cargo from the Loading Port and provided always that such war, blockage or prohibition materially affects such Party's ability to perform its obligations under this Charter over a period of fourteen (14) days, either Party has the right to cancel this Charter. Where it Vessel is part loaded, the Parties shall endeavour to find a mutually acceptable solution prior to cancellation under this Clause 30.
- 30.2 For the purposes of this Clause 30, the re-routeing or deviation of vessels from the usual and customary route will not be an event materially affecting a Party's ability to perform its obligations under this Charter.

## **31. WAR RISKS**

- 31.1 War risk insurance premiums in effect on the date of this Charter shall be for the Owner's account. Any additional war risk premiums incurred as a result of the Vessel entering an excluded war risk area necessary to perform this Charter shall be for the Owner's account for a period of the first fourteen (14) days during which the Vessel is present in such area. Any increase in premiums, net of any and all discounts or rebates, for any period in excess of such fourteen (14) days shall be for the Charterer's account and payable against proper documentation provided always that the Charterer is given written notice of the amount of such additional premiums as soon as possible and, in any event, before such additional premiums are paid by the Owner. The Charterer shall not be responsible for any additional premiums should the Owner fail to give such prior notice. The Owner shall use its best efforts to ensure the lowest possible premiums.
- 31.2 Any premium or increase thereto attributable to closure insurance (i.e. blocking and trapping) as well as any war bonus to officers and crew shall always be for the Owner's account. Any additional costs resulting from a longer stay in an excluded war risk zone for the Owner's / Vessel's purpose not in the Charterer's control, such as but not limited to bunkering, repairs, awaiting the Owner's orders, clearing customs and crew change, will be for the Owner's account.
- 31.3 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 Owner, 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.

- 31.4 If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or the Owner, performance of this Charter, 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 Owner may give notice to the Charterer cancelling this Charter, 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 provides that loading or discharging is to take place within a range of ports, and at the port or ports nominated by the Charterer 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 Owner shall first require the Charterer to nominate any other safe port which lies within the range for loading or discharging, and may only cancel this Charter if the Charterer shall not have nominated such safe port or ports within forty-eight (48) hours of receipt of notice of such requirement.
- 31.5 The Owner shall not be required to continue to load Cargo for any Voyage, or to sign bill(s) 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 Owner, 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 Owner may by notice request the Charterer to nominate a safe port for the discharge of the Cargo or any part thereof, and if within forty-eight (48) hours of the receipt of such notice, the Charterer shall not have nominated such a port, the Owner may discharge the Cargo at any safe port of its choice (including the Loading Port) in complete fulfilment of this Charter. The Owner shall be entitled to recover from the Charterer 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(s) and if the extra distance exceeds one hundred (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 Owner having a lien on the Cargo for such expenses and freight.
- 31.6 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 Owner, 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 Owner shall give notice to the Charterer that this route will be taken. In this event the Owner shall be entitled, if the total extra distance exceeds one hundred (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.
- 31.7 In connection with the reasonable judgement of the Master and/or the Owner that 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, the Vessel shall have the liberty:-
- 31.7.1 to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of the 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 Owner is 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;
- 31.7.2 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;
- 31.7.3 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 Owner is subject, and to obey the orders and directions of those who are charged with their enforcement;
- 31.7.4 to discharge at any other port any Cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;
- 31.7.5 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;
- 31.7.6 where Cargo has not been loaded or has been discharged by the Owner under any provisions of this Clause 31, to load other cargo for the Owner's 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.
- 31.8 If in compliance with any of the provisions of Clauses 31.7.1 to 31.7.6 anything is done or not done, such shall not be deemed to be a deviation, but shall be considered as due fulfilment of this Charter.

**32. EXTRA INSURANCE**

Any extra cost of insurance payable on cargo due to the 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 the Vessel's route and/or flag and/or ownership, shall be for the Owner's account.

**33. OIL POLLUTION CLAUSE**

33.1 The Owner agrees to indemnify the Charterer, shippers, receivers, their agents, or any other party against any liability for or arising out of 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 the Owner, provided that the incident giving rise to such liability shall not have been caused by the party seeking to be indemnified under this Charter and provided that the facts and matters giving rise to the contravention would not constitute a defence under Article 3 Section 2 of the International Convention on Civil Liability for Oil Pollution Damage 1969 if the Vessel were a ship carrying oil in bulk as cargo. The Owner warrants that the Vessel is entered in a P&I Association with cover for liabilities arising under this Clause 33.1.

33.2 No liability for demurrage shall arise from any delay or loss of time to the Vessel at the Loading Port(s) and/or Discharging Port(s) caused by or arising as a result of any such act or omission nor shall any time lost by any such act or omission count when calculating despatch.

33.3 Nothing in this Clause 33 shall prejudice or deprive the Owner of its rights of limitation or exclusion of liability under any applicable law.

**34. THIRD PARTY ARREST**

34.1 In the event of the Vessel's arrest/detention or of any other sanction being levied against the Vessel except where the underlying cause of the arrest / detention or sanction is solely due to fault on the part of Charterer, the Owner shall indemnify the Charterer for any loss, damages, penalties, costs, expenses and consequences and any time lost. Any time lost shall not count for the purpose of laytime or, if on demurrage, demurrage.

34.2 If the arrest/detention or sanction is levied prior to commencement of loading and is not lifted within 3 days, the Charterer shall be entitled, in the Charterer's option, to terminate this Charter. Whether or not the Charterer exercises the option to terminate shall be without prejudice to any claim for an indemnity or damages the Charterer may have against the Owner.

34.3 If the arrest/detention or sanction is levied during loading or discharging operations, the Charterer shall be entitled to require that loading or discharging operations shall be ceased immediately, and that the Vessel be required to vacate the berth (shifting expenses shall be for the Owner, and all time lost shall not count for the purpose of laytime or, if on demurrage, demurrage).

34.4 If the Vessel should remain under arrest at the Loading Port for more than 5 consecutive days, whether by reason of arrest by one or more parties, without prejudice to the Charterer's right to damages and whether or not the cancelling date has passed, the Charterer shall have the right to reject the Vessel and to cancel the Voyage, and the cargo loaded shall be discharged at Owner's risk and expense and the Owner shall be responsible for all losses, damages, costs, expenses and liabilities, and hereby indemnify and holds the Charterer harmless against any such losses, damages, costs, expenses and liabilities.

**35. LIEN**

35.1 If the Vessel is under charter to the Owner, then the Owner shall defend, indemnify and hold the Charterer herein harmless from any lien on cargo, freight or sub-freights exercised by the actual/disponent owner of the Vessel arising from the failure of the Owner to discharge its obligations to the Vessel's actual/disponent owner.

35.2 The Owner shall have a lien upon the Cargo for freight, and general average contributions due under this Charter where 48 hours prior written notice has been provided by the Owner to the Charterer setting out details of the amount due and the lien to be exercised in case of failure to rectify the default within the notice period.

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

General Average shall be payable according to the York/Antwerp Rules, 1994, but where the adjustment is made in accordance with the law and 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 Charter shall contain or by general reference be deemed to incorporate the abovementioned 'General Average and New Jason Clause'.

### **37. STEVEDORE DAMAGE**

- 37.1 Stevedores, although appointed by the Charterer, shipper or receiver(s) or their agents, shall be under the direction and control of the Master of the relevant Vessel. The Charterer, shipper or receiver(s) shall not be responsible for the acts and default of the stevedores at the Loading Port and Discharging Port(s).
- 37.2 All claims for damage allegedly caused by stevedores shall be settled directly between the Owner and stevedores at the relevant Loading Port and/or Discharging Port.
- 37.3 Neither the Charterer nor stevedores shall be responsible for fair wear and tear commensurate with the nature of the trade.
- 37.4 The Owner or the Master shall give written notice to stevedores of any damage immediately.

### **38. ADHERENCE TO VOYAGE INSTRUCTIONS**

- 38.1 The Owner shall be responsible for any time, costs, delays or proven loss suffered by the Charterer due to any failure to comply fully with the Charterer's voyage instructions. Additionally, the Charterer shall not be responsible for any deadfreight for the Owner's failure to lift the minimum quantity specified in the Fixture Note.
- 38.2 The terminal's orders shall never supersede the Charterer's voyage instructions. If a conflict arises between the terminal's orders and the Charterer's voyage instructions, the Master is to contact the Charterer immediately, and must stop cargo operations. The Vessel must not resume cargo operations, or if less Cargo has been loaded by the terminal contrary to the Charterer's voyage instructions, the Vessel is not to sail until in either case the Charterer has directed the Vessel to do so. Time lost during such interruption of cargo operations and delay in departure shall count as Laytime, or time on demurrage if the Vessel is on demurrage.

### **39. INTERIM VOYAGE**

The Owner warrants that the Vessel will not perform any interim voyage and will proceed with utmost despatch to the first Loading Port, where it is expected to be ready to load no later than the last day of the Laycan. The Vessel's schedule shall be provided accordingly.

### **40. ICE CLAUSE**

- 40.1 In the event of the Loading Port being inaccessible by reason of ice when the Vessel is ready to proceed from her last port or at any time during the voyage or upon the Vessel's arrival at the Loading Port or in case frost sets in after the Vessel's arrival at the Loading Port, the Master for fear of being frozen in, is at liberty to leave the Loading Port without Cargo and neither Party shall have any further obligations to perform the Voyage or in respect of the Voyage.
- 40.2 If, during loading, the Master, for fear of being frozen in deems it advisable to leave the Loading Port, he has liberty to do so with what Cargo he has on board the Vessel and to proceed to any other port or ports with the option of completing cargo for the Owner's benefit for any port or ports including the Discharging Port(s). Any part Cargo thus loaded under this Charter is to be forwarded to its destination at the Owner's expense, but against payment of freight, provided that no extra expenses be thereby caused to the receivers, freight being paid on the quantity of Cargo delivered and all other terms and conditions of this Charter shall apply.
- 40.3 In case of more than one Loading Port and, if one or more of these ports is/are closed by ice, the Master or the Owner shall be at liberty to either load the part Cargo at the open port and fill up elsewhere for the Owner's account as under Clause 40.2 or to declare this Charter null and void unless the Charterer agrees to load full cargo at the open port.
- 40.4 Should ice prevent the Vessel from reaching the Discharging Port(s), the Charterer shall have the option of keeping the Vessel waiting until the re-opening of navigation on paying demurrage for time thereby lost, or of ordering the Vessel to a safe and immediately accessible port where it can safely discharge without risk

of detention by ice. Such orders are to be given within forty eight (48) hours after the Master or the Owner has given notice to the Charterer and consignee(s) of the impossibility of reaching the Discharging Port.

40.5 If, during discharging of Cargo the Master, for fear of the Vessel being frozen in, deems it advisable for the Vessel to leave the Discharging Port, he has the liberty to do so with whatever quantity of Cargo he has on board the Vessel. Owner shall forthwith give notice to the Charterer of the situation. Within forty eight (48) hours after receipt of such notice the Charterer shall give notice to the Owner in reply nominating an alternative Discharging Port.

40.6 On delivery of the Cargo at the alternative Discharging Port, all conditions of this Charter shall apply and Owner shall receive the same freight as if the Vessel had discharged at the original Discharging Port, except that if the distance of the alternative Discharging Port from the Discharging Port exceeds one hundred (100) miles, the Charterer shall pay to the Owner any extra expenses incurred by the Owner due to such alteration of destination.

#### **41. DEVIATION, WAITING, INTERIM PORT AND SAMPLING**

41.1 Notwithstanding anything else to the contrary in this Charter and notwithstanding what Loading Port(s) and/or Discharging Port(s) may have been nominated and bill(s) of lading issued, the Charterer shall have the option to instruct the Vessel to wait for orders during the Voyage, to slow steam, or to call at a port en route from Loading Port(s) and/or Discharging Port(s) for cargo loading, discharging and/or sampling, and if the latter then such port(s) not to count as additional Loading Port(s) and/or Discharging Port(s).

41.2 Time for waiting, slow, or additional steaming which exceeds the direct route from the first Loading Port via other Loading Ports and Discharging Ports to the last Discharging Port shall be paid at the Demurrage Rate. Any additional bunkers consumed for additional steaming and actual port costs, if any, shall be added to such payment. Freight shall be calculated on the basis set out in Clause 13.

41.3 The Charterer shall have the right to make as many changes to its nomination or orders as it deems necessary.

41.4 The reasonable estimated costs will be payable as an on account payment together with freight, followed by final invoice together with all supporting documents as soon as possible but not later than one hundred and thirty (130) days after completion of the Voyage(s).

#### **42. CHANGE IN CONTROL OF OWNER**

42.1 The Owner warrants and undertakes that throughout the term of this Charter, the Owner will not permit or allow any, and there shall be no, change in its effective control or ownership.

42.2 For the purposes of Clause 42.1, "effective control or ownership" shall mean:

42.2.1 control of the composition of the Owner's board of directors;

42.2.2 control of more than twenty percent (20%) of the ultimate beneficial ownership or voting power of the Owner; and/or

42.2.3 control of more than twenty percent (20%) of the ultimate beneficial ownership of the share capital of the Owner,

and the Owner further undertakes and agrees to notify the Charterer in writing promptly upon the occurrence of any change at all in the effective control or ownership during the term of the Charter and to provide reasonable details of the same.

42.3 In the event of a change of effective control or ownership of the Owner during the term of this Charter, the Charterer may at its option and without prejudice to the Owner's obligations under this Charter, either:

42.3.1 propose to the Owner revised terms under which it is prepared to continue the performance of this Charter; or

42.3.2 terminate this Charter by giving notice in writing to the Owner.

#### **43. DOUBLE BANKING**

43.1 The Charterer shall have the right to require the Vessel to go, lie at or remain alongside another vessel or vessels of any size or description whatsoever, including floating cranes and barges or to order such vessels to come and remain alongside at the Loading Port(s) or Discharging Port(s) for the loading, discharging or transshipment of Cargo.

- 43.2 The Charterer will reimburse the Owner for the reasonable additional costs of assistance and equipment as may be required to enable any of the operations referred to in this Clause to be completed safely.
- 43.3 The Owner shall be entitled to insure any deductible under the Vessel's hull and machinery insurance for the purpose of operations under this Clause 43 and the Charterer shall reimburse the owner for any additional premium(s) required by the Vessel's underwriters and/or the cost of insuring any deductible under the Vessel's hull and machinery insurance.

#### **44. TERMINATION**

- 44.1 The Charterer shall have the option to terminate upon notice a Charter for more than one Voyage in the event that two consecutive Voyages are not performed by the Owner.
- 44.2 Should the Owner lose its ISM certification, or the Vessel have its Class suspended or withdrawn, the Charterer shall have the option where the Charter is for a single Voyage to terminate the Charter with immediate effect; or, where the Charter is for multiple voyages, to treat the Voyage as unperformed.
- 44.3 For reference only, an express right to terminate is provided for in Clauses 3.3, 22.4, 34 and 42 of Part 2. This list is not to be deemed exhaustive.

### **PART 2 – VOYAGE TERMS**

#### **45. CHARTERER'S NOMINATED BANK ACCOUNT**

- 45.1 .....

#### **46. INSOLVENCY AND SET-OFF**

- 46.1 In the event that the Owner becomes insolvent, or an order is made or resolution passed, or is likely to be so ordered or made, for the Owner's winding up, restructuring, dissolution, liquidation, receivership or bankruptcy, or the Owner enters into an arrangement or composition with or for the benefit of its creditors or to seek protection from its creditors, and/or that the Owner suspends or is unable to make its payments to the officers/crew or other persons or entities connected with the Vessel or there is reasonable evidence of an inability to perform its obligations under this Charter, or an inability to pay its debts as they mature, the Charterer is entitled at its option and without prejudice to any other rights of the Charterer to:
- 46.1.1 send a written notice to the Owner referring to any or all of the events listed above warning that, unless the event(s) complained of are remedied within seven (7) days, the Charterer may terminate this Charter or exercise any of its other rights under this Charter;
- 46.1.2 after the expiry of seven (7) days from giving the notice to the Owner under Clause 46.1.1, and providing that the event(s) complained of still exist, the Charterer may write to the Owner and without prejudice to any of its other rights under this Charter:
- (a) terminate this Charter with immediate effect, and without any liability on the part of the Charterer; and/or
  - (b) declare that the Charterer shall have the right, at its option, to set off any amounts believed in good faith and on reasonable grounds to be payable by the Owner to the Charterer, or likely to be due and payable in any future or current arbitration/mediation/court process by the Owner to the Charterer, whether under this Charter or otherwise, against any undisputed amounts believed in good faith and on reasonable grounds to be payable by the Charterer to the Owner under this Charter. Further, the Parties' respective obligations shall be discharged promptly and in all respects to the extent that they are so set off. The Charterer shall give seven (7) days written notice to the Owner of any intended set-off to be effected under this provision. For this purpose, any undisputed amount payable by the Owner to the Charterer (or the relevant portion of such amount) may be converted by the Charterer into such currency as may reasonably be required in order to effect such set-off at an exchange rate determined by the Charterer acting in good faith and in a commercially reasonable manner. If an obligation is unascertained, the Charterer may in good faith estimate that obligation and set-off in respect of that estimate, subject to the Charterer accounting to the Owner when the obligation is ascertained.

#### **47. ANTI BRIBERY AND CORRUPTION**

- 47.1 Owner's obligations and warranties
- 47.1.1 The Owner shall, and shall procure that each entity in the Owner's Group and all of the Owner's Representatives shall, in the performance of their obligations under this Charter, comply with all applicable Anti-Corruption Laws during the continuation of this Charter.

47.1.2 The Owner shall and shall procure that each entity of the Owner's Group and the Owner's Representatives shall, in the performance of their obligations under this Charter, comply at all times and act in a manner consistent with the Business Integrity Policy and the Prevention of Corruption Performance Standards.

## 47.2 Notification

47.2.1 The Owner shall notify the Charterer immediately in writing upon being aware of any potential or actual breach (including any potential or actual breach by any entity in the Owner's Group or any of the Owner's Representatives) of Clause 47.1 and/or any conduct which may give rise to any breach of this clause, providing full particulars.

47.2.2 The Charterer may, upon receipt of any notice under Clause 47.2.1 and/or should Charterer otherwise become aware and/or have a reasonable suspicion of any breach (actual or potential) and/or any conduct which may give rise to any breach of Clause 47.1 (the "Misconduct") at its sole option:

- (a) request the Owner to provide any further information and/or assist with any investigation which the Charterer may wish to conduct in relation to the Misconduct; and/or
- (b) request the Owner to forthwith implement such remedial measures as may be reasonable to address and/or mitigate the risk and/or damage or potential damage arising from the Misconduct (including but not limited to the termination of any relationship between Owner and any entity in the Owner's Group or any of the Owner's Representatives involved and/or implicated in the Misconduct) and/or to procure the implementation of such measures from any entity of the Owner's Group or any of Owner's Representatives involved and/or implicated in the Misconduct and to confirm to the Charterer in writing that such measures have been implemented; and/or
- (c) in the event that the Owner and/or any entity in the Owner's Group and any of the Owner's Representatives are found guilty in the relevant court of a contravention of the Anti-Corruption Laws (of which the Owner undertakes to notify the Charterer promptly and to provide reasonable details thereof) and/or have admitted fault or accepted liability for a breach of any Anti-Corruption Laws and/or have in fact committed a breach of any of the provisions of this Clause 47.2.2;
  - (i) propose to the Owner any revised terms under which the Charterer is prepared to continue the performance of this Charter and, if such terms are not agreed, terminate this Charter by giving ten (10) days' notice in writing to the Owner; or
  - (ii) terminate this Charter by giving thirty (30) days' notice in writing to the Owner.

47.2.3 Where the Charterer exercises all or any of the rights under Clause 47.2.2 it will not be liable for any loss suffered by the Owner or any entity in the Owner's Group and/or any of Owner's Representatives and the Owner hereby agrees to indemnify and hold harmless the Charterer and entities in the Charterer's Group in respect of any loss incurred by the Charterer and/or any entities in the Charterer's Group as a result of or in connection with the exercise of the rights by the Charterer.

## 47.3 Charterer's Obligations and Warranties

47.3.1 The Charterer shall, and shall procure that each entity in the Charterer's Group and all of the Charterer's Representatives shall, in the performance of their obligations under the Charter, comply with all applicable Anti-Corruption Laws throughout the currency of the Charter.

47.3.2 In the event that the Charterer is, in relation to the performance of any of its obligations under the Charter, found guilty of, or liable in respect of, in the relevant court, a contravention of an Anti-Corruption Law during the term of the Charter (of which the Charterer undertakes to notify the Owner promptly and to provide reasonable details thereof) the Owner may at its sole option either propose to the Charterer revised terms under which it is prepared to continue the performance of the Charter and, if such terms are not agreed, terminate the Charter by giving thirty (30) days' notice in writing to the Charterer.

## 48. PUBLIC RELATIONS CLAUSE

Except as previously agreed in writing with the Charterer in each instance, which consent shall be effective only in the specific instance and for the specific purpose given, the Owner shall not use in advertising or publicity the name of Anglo American or any of its affiliates.

## 49. SANCTIONS

### 49.1 Compliance with Sanctions

49.1.1 The Owner shall ensure that:

- (a) it complies with any Sanction and ensures that the Owner and entities in the Owner's Group are not and do not become Sanctioned Entities;

- (b) it immediately notifies the Charterer upon the Owner becoming aware that any entities in the Owner's Group, have become or are reasonably likely to become, a Sanctioned Entity or have violated any Sanction;
- (c) it immediately notifies the Charterer upon becoming aware of any Representatives of the Owner or the Owner's Group becoming a Sanctioned Entity or being in violation of any Sanction;
- (d) it provides all information that the Charterer reasonably requires from time to time in order for the Charterer to determine whether any of the Owner's Representatives or entities in the Owner's Group has become or is reasonably likely to become a Sanctioned Entity;
- (e) it provides all information that the Charterer reasonably requires from time to time in order for the Charterer to determine whether the nominated Vessel has become or is reasonably likely to become a Sanctioned Entity;
- (f) it provides all information to the Charterer which is requested by a regulatory authority that oversees Sanctions;
- (g) it uses its reasonable endeavours to assist the Charterer in managing the risk of Sanctions being imposed on the Charterer in connection with this Charter;
- (h) the performing Vessel is not owned, chartered, operated or controlled by a Sanctioned Entity; and
- (i) all payments due to the Charterer in connection with this Charter shall be received in the Charterer's bank account in freely available funds and shall not be frozen, attached or blocked as a result of any Sanction.

49.1.2 As at the date of this Charter and for the duration of this Charter the Charterer undertakes:

- (a) to comply with any Sanction and ensure that the Charterer and entities in the Charterer's Group are not and do not become Sanctioned Entities;
- (b) to immediately notify the Owner upon the Charterer becoming aware that any entities in the Charterer's Group, have become or are reasonably likely to become, a Sanctioned Entity or have violated any Sanction;
- (c) to immediately notify the Owner upon becoming aware of any Representatives of the Charterer or the Charterer's Group becoming a Sanctioned Entity or being in violation of any Sanction;
- (d) to provide all information that the Owner reasonably requires from time to time in order for the Owner to determine whether any of the Charterer's Representatives or entities in the Charterer's Group has become or is reasonably likely to become a Sanctioned Entity;
- (e) to provide all information to the Owner which is requested by a regulatory authority that oversees Sanctions;
- (f) to use its reasonable endeavours to assist the Owner in managing the risk of Sanctions being imposed on the Owner in connection with this Charter; and
- (g) that all payments due to the Owner in connection with this Charter shall be received in the Owner's bank account in freely available funds and shall not be frozen, attached or blocked as a result of any Sanction.

## 49.2 Suspension and Termination

49.2.1 If the Owner has reasonable cause to believe that:

- (a) the Charterer has become, or is reasonably likely to become, a Sanctioned Entity or has violated or is reasonably likely to violate any Sanction; or
- (b) one or more entities in the Charterer's Group or representatives of the Charterer are reasonably likely to become a Sanctioned Entity which would result, or reasonably likely result in the Owner and/or any entity in the Owner's Group becoming a Sanctioned Entity or the continued performance of this Charter being in violation of a Sanction; or

then (without limitation to any other right or remedy available to the Owner) the Owner may suspend performance of or withhold any payment due and owing under this Charter or exercise any of the rights granted to it under this Charter.

49.2.2 If the Charterer has reasonable cause to believe that:

- (a) the Owner has become, or is reasonably likely to become, a Sanctioned Entity or has violated or is reasonably likely to violate any Sanction; or

- (b) one or more entities in the Owner's Group or representatives of the Owner are reasonably likely to become a Sanctioned Entity which would result, or reasonably likely result in the Charterer and/or any entity in the Charterer's Group becoming a Sanctioned Entity or the continued performance of this Charter being in violation of a Sanction; or
- (c) the performing Vessel is owned, chartered, operated or controlled by a Sanctioned Entity; and

then (without limitation to any other right or remedy available to the Charterer) the Charterer may suspend performance of or withhold any payment due and owing under this Charter or exercise any of the rights granted to it under this Charter.

- 49.3 Where the Owner exercises its rights under Clause 49.2, it will not be liable for any loss suffered by the Charterer or any entity in the Charterer's Group and the Charterer hereby agrees to indemnify and hold harmless the Owner and entities in the Owner's Group in respect of any loss incurred by the Owner and/or any entities in the Owner's Group as a result of or in connection with the exercise of the rights by the Owner or any breach by the Charterer of this Clause 49.
- 49.4 Where the Charterer exercises its rights under Clause 49.2, it will not be liable for any loss suffered by the Owner or any entity in the Owner's Group and the Owner hereby agrees to indemnify and hold harmless the Charterer and entities in the Charterer's Group in respect of any loss incurred by the Charterer and/or any entities in the Charterer's Group as a result of or in connection with the exercise of the rights by the Charterer or any breach by the Owner of this Clause 49.
- 49.5 Should any funds due to either Party under this Charter be frozen, blocked, attached or delayed, interest will be paid by the other Party for each day of delay.

## **50. NOTICES**

- 50.1 Unless otherwise provided in this Charter or unless otherwise agreed by the Parties in writing, a notice, consent, approval or other communication (each a "Notice") under this Charter must be in the English language, and signed by or on behalf of a duly authorised officer of the Party giving it, addressed to the Party to whom it is to be given and:
  - 50.1.1 delivered by hand to that Party's address; or
  - 50.1.2 sent by first class international courier service to that Party's address; or
  - 50.1.3 transmitted by facsimile to that Party's facsimile number; or
  - 50.1.4 transmitted by e-mail to that Party's e-mail address.
- 50.2 A Notice given to a Party in accordance with this Clause 50 is treated as having been given and received:
  - 50.2.1 if delivered by hand to the Party's address during ordinary business hours on a Business Day at the time when the Notice is delivered or otherwise at the commencement of the next Business Day;
  - 50.2.2 if sent by courier service and in a correctly addressed envelope, on the third Business Day after the date of despatch;
  - 50.2.3 if transmitted by fax and a correct and complete transmission report is received on the day of transmission if a Business Day, or otherwise at the start of the next Business Day; or
  - 50.2.4 If transmitted by e-mail which is correctly addressed, on the day of transmission, if a Business Day or otherwise at the start of the next Business Day.
- 50.3 Notwithstanding anything to the contrary in this Clause 50, Notice actually received by a Party shall be an adequate Notice to it notwithstanding that it was not sent, delivered or transmitted to its chosen address.
- 50.4 Any notice sent by instant messenger shall not constitute a valid notice under this Charter.
- 50.5 For the purpose of this Clause 50, the address of the Charterer is:  
[insert Charterer's address details, including address for service].
- 50.6 the address of the Owner is as set out in the Fixture Note (or such other address which a Party may from time to time give notice to the other Party).

## **51. CONFIDENTIALITY**

- 51.1 Confidentiality Obligations

Each Party agrees that it shall and it shall ensure that its Representatives shall hold in confidence Confidential Information and will not disclose to any third party or use (including to the commercial detriment of the other Party) Confidential Information or any part thereof without the other Party's prior written approval or consent or otherwise as may be specifically contemplated in this Charter, provided that Confidential Information may be disclosed:

- 51.1.1 to any federal, state or local government (including any agency, authority or sub-division of the same) having jurisdiction over the disclosing Party pursuant to any law;
- 51.1.2 if disclosure is required by any rules and regulations of any regulatory body or stock exchange on which the Party's or its Affiliates' shares are listed;
- 51.1.3 to financial institutions, bona fide potential purchasers of a Party's business (directly or indirectly), and a Party's Representatives whose duties reasonably require such disclosure, or to any necessary party pursuant to any applicable listing rules provided that such persons shall first have agreed (on substantially the same terms as set out in this Clause 51) not to disclose the relevant Confidential Information to any other person for any purposes whatsoever; or
- 51.1.4 to Representatives of the Owner's Group and/or the Charterer's Group and to auditors of the Owner's Group and/or the Charterer's Group to the extent required for the proper performance of their work provided that the disclosing Party shall use reasonable endeavours to ensure that such Representatives and auditors keep the Confidential Information confidential on the same terms as provided in this Clause 51.

## 51.2 Exceptions

The obligations set out in Clause 51.1 shall not apply, or shall cease to apply, to any part of the Confidential Information that:

- 51.2.1 is in the public domain other than by reason of a breach of this Clause 51;
- 51.2.2 was in the rightful possession of the recipient Party or an employee, officer, shareholder or director of the recipient Party at or prior to the time of the disclosure;
- 51.2.3 is required to be disclosed to enable that Party to enforce its rights under this Charter (subject to the remaining provisions of this Charter); or
- 51.2.4 was obtained by the recipient Party in good faith from a third party entitled to disclose it.

## 51.3 Public Announcements

No announcement, statement or promotion in connection with this Charter or relating to the existence of this Charter may be made by either Party without the prior approval of the other Party (nor to be unreasonably withheld) save where a Party is obliged to make a public announcement pursuant to an applicable law or securities regulation.

## 51.4 Survival

The obligations contained in this Clause 51 shall survive the termination or expiry of the Charter for a period of two (2) years.

# 52. GOVERNING LAW AND ARBITRATION

## 52.1 Governing Law

This Charter and its construction, validity and performance and any non-contractual obligations arising from or connected with it shall be governed by and construed in accordance with English law to the exclusion of any other law.

## 52.2 Dispute Resolution

- 52.2.1 Any dispute (whether contractual or non-contractual) arising out of or in connection with this Charter shall be referred to arbitration before three (3) arbitrators.
- 52.2.2 The arbitration shall be conducted in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof and in accordance with the London Maritime Arbitrators Association (LMAA) Terms ("LMAA Terms") current at the time when the arbitration proceedings are commenced which LMAA Terms shall be deemed incorporated into this Clause 52. Notwithstanding Clause 52.2.1, in cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the Parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced. All arbitrators, howsoever appointed, shall be members of the LMAA or the London Commercial Bar Association.

52.2.3 The language of the arbitration shall be English.

52.2.4 Notwithstanding any provision in the LMAA Terms to the contrary, either Party to an arbitration shall be entitled to appeal to the High Court in on any question of law arising out of or determined in an award published pursuant to an arbitration commenced in accordance with this Clause 52.

### 53. GENERAL PROVISIONS

#### 53.1 Entire Agreement

53.1.1 This Charter constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements communications and/or understandings, whether made orally or in writing, with respect to the subject matter of this Charter.

53.1.2 No amendments or modifications of this Charter shall be valid unless agreed in writing and duly executed by both Parties.

53.1.3 Nothing in this clause 53.1 operates to limit or exclude any liability for fraud.

53.1.4 Each Party acknowledges that in entering into the Charter, it does not rely on, and shall have not remedy in respect of, any statement, representation, assurance or warranty (whether of fact or of law and whether made innocently or negligently) of any person other than as expressly set out in the Charter.

#### 53.2 Severability

53.2.1 If any term, provision or condition of this Charter is declared to be void, illegal, invalid or otherwise unenforceable (in part or in full) by a court or tribunal of competent jurisdiction, that term, provision or condition is severable from this Charter and the remainder of this Charter shall continue in full force and effect.

53.2.2 If the severance of a term, provision or condition of this Charter means that this Charter is incapable of being enforced, the Parties shall negotiate in good faith to modify this Charter so as to effect the original intent of the Parties as closely as possible.

#### 53.3 Waiver of rights

53.3.1 A waiver of any provision of or right under this Charter must be in writing signed by the Party entitled to the benefit of that provision or right and is effective only to the extent set out in the written waiver. No indulgence, delay or omission granted by a Party shall constitute a waiver or abandonment of any of that Party's rights under this Charter.

53.3.2 No express waiver by either Party of any of the terms of this Charter shall be construed as a waiver of any succeeding breach or of any other term of this Charter.

#### 53.4 No agency

The Charter does not, and shall not at any time constitute or be construed as to constitute any Party as an agent, legal representative or employee of the other Party for any purpose whatsoever, nor shall the Charter be deemed to establish a joint venture, partnership, agency and/or any other association of whatever nature between the Parties.

#### 53.5 Remedies cumulative

Except as provided in the Charter, the rights, powers, remedies and privileges provided in the Charter are cumulative and not exclusive of any other rights, powers, remedies and privileges provided by law.

#### 53.6 Execution

The Charter may be executed and delivered in counterparts (each of which will be deemed an original), which together shall constitute a single binding contract.

Each Party shall afford to the other Party such co-operation, and shall execute such documents, at the request and cost of that Party, as shall reasonably be required in order to give the Party making the request full benefit of the rights, powers and obligations under the Charter.

#### 53.7 Successors

The rights and obligations of the Parties under the Charter shall continue for the benefit of, and shall be binding on, their respective successors and assigns.

## SCHEDULE 1:

## DEFINITIONS AND INTERPRETATION

## Definitions

In this Charter:

**"Affiliate"** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

**"Anti-Corruption Laws"** means:

- (a) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 ("**OECD Convention**");
- (b) the Foreign Corrupt Practices Act ("**FCPA**") of 1977 of the United States of America (as amended by the Foreign Corrupt Practices Act Amendments of 1988 and 1998);
- (c) the Bribery Act 2010 of the United Kingdom;
- (d) the United Nations Convention against Corruption 2003;
- (e) any other applicable law which:
  - (i) prohibits the offering of any gift, payment or other benefit on any person or any officer, employee, agent or adviser of such person; and/or
  - (ii) is broadly equivalent to the FCPA and/or the Bribery Act 2010, or was intended to enact the provisions of the OECD Convention, or which has as its objective the prevention of corruption and which is applicable in the jurisdiction in which the Owner and/or Charterer are registered, conduct business and/or in which any aspect of this Charter is to be performed.

(each an "**Anti-Corruption Law**").

**"Applicable Requirements"** has the meaning given to such term in Clause 23.1.1;

**"Area"** has the meaning given to such term in Clause 24.1;

**"Business Day"** means a calendar day ending at 1700 hours, other than a Saturday, Sunday or public holiday in Singapore;

**"Business Integrity Policy"** means the Charterer's Group policy named as such and found at <http://www.angloamerican.com> which has the purpose of combating corrupt behaviour amongst, inter alia, those with whom the Charterer's Group does business or who work on their behalf. The same may be updated, replaced or amended from time to time and published on the external website referred to herein;

**"Cargo"** means the cargo specified in the Fixture Note (and "Cargoes" shall be construed accordingly);

**"Charter"** means an agreement by way of charterparty or contract of affreightment, comprising the Fixture Note, these General Chartering Terms and Conditions and any other terms mentioned in the Fixture Note;

**"Charterer's Group"** shall mean the Charterer and any Subsidiary and any Holding Company and any Affiliate of the Charterer and shall include Anglo American plc and any Subsidiary of Anglo American plc;

**"Classification Clause"** means any provision or provisions in a cargo insurance policy open cover which details the minimum age and/or classification for a vessel that is acceptable to insurers for carriage of the Cargo at the premium or the rates agreed in the policy, without payment of an additional premium;

**"Confidential Information"** means the terms of this Charter and all information, documentation, data or know-how disclosed by a Party to the other Party whether before or after the date of this Charter or created in the course of any dispute resolution pursuant to Clause 51 whether oral or written or in any other form including without limitation, information relating to either Party's products, operations, pricing practices, processes, plans or intentions, know-how, design rights, trade secrets, market opportunities and business affairs;

**"Country-based Sanction"** means any program that prohibits and/or restricts (i) trade with or investment in, or the transfer of property or assets to or from, a specified country, including its government, government subdivisions, agencies and other entities under the control or acting on behalf of government or (ii) engaging in transactions that relate to investing in and/or provision of advice or assistance in relation to, a specified country which, in each case, is maintained, amended and imposed by any Sanction Authority;

**"Country-based Sanctioned Entity"** means any person, being an individual, corporation, company, vessel, association, government or other entity who is the subject or target of a Country-based Sanction or in respect of which a Country-based Sanction has been imposed or targeted;

**"Discharging Port(s)"** means those specified in the Fixture Note or nominated by the Charterer as an alternative, and unless the context expresses a contrary intention, any berth to which the Vessel is ordered at such port;

**"Discharging Port Regulations"** means the shipping regulations in force at the Discharging Port, and any rules, regulations, restrictions and procedures which the Discharging Port or terminal authorities may impose from time to time;

**"Dollars", "\$" and "US\$" means the currency of the United States of America;**

**"ETA"** means estimated time of arrival;

**"FIOST"** means free in and out stowed and trimmed;

**"Fixture Note"** means the fixture note for a single voyage, multiple voyages or a contract of affreightment, used with these General Terms & Conditions and together comprising the Charter;

**"Force Majeure Event"** means the occurrence or effect of any event or circumstance (or any combination of events and/or circumstances) that: (a) is beyond the control of a Party; and (b) partly or wholly prevents, hinders or delays due performance by that Party of its obligations under this Charter (other than an obligation to pay money); and, provided that the above conditions are satisfied, includes but is not limited to:

- (a) fire, flood, washout, storm, lightning, windstorm, hurricane, tempest, perils of the sea or other acts of God;
- (b) acts of public enemies, war (whether declared or undeclared), civil war, piracy, terrorist activities, embargo, blockage, revolution, political disturbance, sabotage, explosion, riot, insurrection, mobilisation, civil commotion;
- (c) strikes, lockout, labour disputes or other form of industrial action or industrial disturbances, stoppages of workmen or tugboat men or any other hands essential to the working, carriage, delivery and shipment of the Cargo whether partial or general;
- (d) acts, orders or restrictions of government or of local authorities (including interruptions occurring as a result of such acts or orders of governmental or local authorities) or of any court, or controls on exports; and
- (e) in the case of the Charterer, any circumstance or event which affects the ability of any of the Charterer's Group or any of the Charterer's suppliers or Representatives to load the Cargo at the Loading Port (including a force majeure event under the applicable supply contract) and/or loss of or damage to or failure of any of the Charterer's suppliers' facilities or transportation for the production and delivery of Cargo at the Loading Port, accidents or breakdowns at the Loading Port, mine (including a roof collapse) or the rail line and/or roads and/or any other facilities used or involved in the transportation of the Cargo from the mine to the Loading Port, stoppage or slowdown in production of the Cargo for any reason whatsoever.

**"General Chartering Terms & Conditions"** has the meaning given to it in Clause 1.1.

**"Holding Company"** means, in relation to a person, any other person in respect of which the first mentioned person is a Subsidiary;

**"Laycan"** means the period during which the Vessel must arrive at the Loading Port in readiness to load and tender a valid NOR;

**"Laytime"** means the time allowed for loading or discharging of the Vessel as determined in accordance with Clause 19 and the Loading or Discharging Rates for the Loading Port or Discharging port as specified in the Fixture Note or Special Conditions;

**"Loading Port"** means the port(s) specified in the Fixture Note at which a Vessel loads pursuant to the terms of this Charter;

**"Loadport Regulations"** means the shipping regulations in force at the Loading Port, and any rules, regulations, restrictions and procedures which the Loading Port port or terminal authorities may impose from time to time, including any specified in the Loadport Terms;

**"Loadport Terms"** means the Anglo American Loadport Terms current at the date of this Charter applicable to the Loading Port;

**"LMAA Terms"** has the meaning given to it in Clause 52;

**"MT"** means metric ton. For cargoes other than coal, MT shall mean a wet metric ton unless otherwise specified; and

**"NOR"** means a notice of readiness to be tendered by the Owner to the Charterer under Clause 18;

**"Overtime"** means time spent over and above standard and or agreed hours of work;

**"Owner's Group"** shall mean the Owner and any Subsidiary and any Holding Company and any Affiliate of the Owner;

**"Parties"** means together the Owner and the Charterer, "Party" shall mean either one;

**"Piracy"** has the meaning given to such term in Clause 24.1;

**"Prevention of Corruption Performance Standards"** shall mean the performance standards described in the Business Integrity Policy, as the same may be updated, replaced or amended from time to time;

**"Public Official"** means:

- (a) any official or employee of any government agency or government-owned or controlled enterprise;
- (b) any person performing a public function;
- (c) any official or employee of a public international organization, such as the World Bank;
- (d) any candidate for political office; or
- (e) any political party or an official of a political party;

**"PWWD"** means per weather Working Day;

**"Representatives"** means, in relation to a person (or group of persons), its (or their representatives) employees, officers, directors, agents, advisers, consultants, contractors and sub-contractors (and includes in the case of a Party, any person performing that Party's obligations under this Charter);

**"RightShip"** means RightShip Pty Limited, a company engaged by the Charterer to screen, inspect, survey and/or vet, assess and approve vessels as being ships acceptable for the carriage on the Cargo(es);

**"Sanction"** means any SDN Sanction, a Country-based Sanction and any other similar sanctions, regulations, statutes, prohibitions and official embargo measures that relate to the enforcement of economic and trade sanctions which are maintained, amended and imposed by any Sanction Authority;

**"Sanction Authorities"** means any of the United Nations, the European Union, Her Majesty's Treasury in the United Kingdom, the United States Department of Treasury's Office of Foreign Assets Control, the governments of the Commonwealth of Australia, Switzerland, South Africa or any replacement or other regulatory body enforcing economic and trade sanctions legislation in such countries or by any state, supranational or international government organisation;

**"Sanctioned Entity"** means a SDN Sanctioned Entity or a Country-based Sanctioned Entity;

**"SDN Sanction"** means any Sanction appearing on 'Specially Designated Nationals' or 'Blocked Persons' lists and or any replacement lists which are maintained, amended and imposed by any Sanction Authority;

**"SDN Sanctioned Entity"** means any person, being an individual, corporation, company, vessel, association, government or other entity who:

- (f) is the subject or target of a SDN Sanction or in respect of which a SDN Sanction has been imposed or targeted; or
- (g) is owned, chartered, operated or controlled by any person who is the subject or target of a SDN Sanction or in respect of which a SDN Sanction has been imposed or is targeted;

**"SHINC"** means Sundays and holidays included;

**"Special Conditions"** means any terms set out or referred to in the Special Conditions box in the Fixture Note and therefore incorporated into the Fixture Note;

**"Subsidiary"** means an undertaking (the "subsidiary undertaking") in respect of which another undertaking:

- (a) holds a majority of the voting rights in the subsidiary undertaking;
- (b) holds a membership interest and has the right to appoint or remove the majority of the members of the executive body of the subsidiary undertaking;

- (c) has a right to exercise a dominant influence over the undertaking, by virtue of provisions contained in the subsidiary undertaking's constitutional documents or in any contract dealing with control or management of the subsidiary undertaking; or
- (d) is a member of the subsidiary undertaking and controls alone, or pursuant to an agreement with the other members, a majority of the voting rights in the subsidiary undertaking,

and an undertaking is a Subsidiary of another undertaking if the undertaking is a Subsidiary of an undertaking that is itself a Subsidiary of that other undertaking;

**"Turn Time"** means the time between tender of the NOR and commencement of Laytime, as specified either in the Fixture Note or in the Special Conditions;

**"Vessel(s)"** means a vessel or vessels nominated or provided by the Owner to perform any part of this Charter;

**"Voyage(s)"** means the carriage of the Cargo in the Vessel from the Loading Port(s) to the Discharging Port(s); and

**"Working Day"** means any day or part of a day, on which work can normally be expected to be carried out at the relevant port and which is not expressly excluded from Laytime under the terms of this Charter.

### Interpretation

In this Charter, unless otherwise stated:

- (a) clause headings in this Charter are inserted for the Parties' convenience only and shall be disregarded for the purposes of interpretation;
- (b) any references:
  - (i) to any document or agreement (including this Charter) shall be construed at any particular time, as including a reference to the relevant document or agreement by which it may have been amended, modified, supplemented or assigned;
  - (ii) to a day, month or quarter shall be a reference to a calendar day, month or quarter;
  - (iii) in the Fixture Note, GTCs or Loadport Terms to a particular Clause or Schedule shall be a reference to the relevant clause or schedule in or to the Fixture Note, GTCs or Loadport Terms as the case may be;
  - (iv) to a Person or Party shall be deemed to include a reference to the relevant Person or Party's successors and permitted assignees;
- (c) the words "include" and "including" are to be construed as being without limitation, unless the context otherwise requires.

## APPENDIX 1 – VESSEL'S FULL DESCRIPTION

Ship's name				
Previous Name				
Call Sign				
Port of Registry				
Inmarsat F Phone+Fax				
Head owner				
P&I Club				
H&M insurer and value				
Operators				
Builder				
Date Launched				
Classification Society				
IMO Number				
Type of Ship				
International GRT/NRT				
Suez Canal GRT/NRT				
Panama Canal GRT/NRT				
LOA/LBP				
Distance waterline to top of hatch coamings in full ballast				
Gear information				
Yard / ships constant				
TPC @ Summer Draft				
Service Speed				
Load Line	FREEBOARD	DRAFT(ext)	DISPLAC.	DEADWEIGHT
Summer				
Tropical				
Freshwater				
Tropical FW				
Winter				
Number of hatches/holds				
Hatch sizes				
Permissible tons per hold in mt				
Strengthen for heavy cargoes / alternate hold loading - please indicate which holds may be empty				
Deballasting requirements				
date of last dry dock				
date of last special survey				
has the vessel been detained by PSCA in last 12 months,if yes please attach Detention report copy and details of deficiencies rectified				
was there any deficiency found in vessel's last PSC inspection, if yes please advise if those deficiencies have been fully rectified or not				
Is there any mast pole on deck, if yes, please advise position, height				

from deck, and distance from shipside to the mast	
Vessel's last three voyage (ports of call, date, shipper)	

**ANGLO AMERICAN LOADPORT TERMS****DATED DECEMBER 2012****FOR USE WITH ANGLO AMERICAN MARKETING LIMITED GENERAL CHARTERING TERMS**

The definitions and interpretive provisions set out in Schedule 1 of the Anglo American General Chartering Terms and Conditions and Fixture Note shall apply to these Loadport Terms.

**SALDANHA BAY IRON ORE TERMINAL**

These provisions apply where the Loading Port is Saldanha Bay Iron Ore Terminal.

**1. LOADPORT REGULATIONS AND CHARTERER'S NOMINEE**

- 1.1 The applicable Loadport Regulations are the Saldanha Port Operations Conditions for Vessel Loading Iron Ore at the Port of Saldanha, as amended from time to time and any rules, regulations and procedures which the port or terminal authorities may impose from time to time.
- 1.2 For the purposes of this Loading Port, "Charterer's Nominee" means FECAT, or any other nominee of the Charterer the name of which nominee the Charterer shall advise the Owner of in writing from time to time.

**2. NOTICES**

- 2.1 The Owner shall ensure that the Vessel's Master shall advise the Charterer and the Charterer's nominee (by email unless otherwise advised by the Charterer in writing) of the Vessel's expected time of arrival at the Loading Port:

- 2.1.1 at the time of departure from the last port preceding the voyage to the Loading Port; and

- 2.1.2 at intervals of 10 (ten) days, 7 (seven) days, 48 (forty-eight) hours and 24 (twenty-four) hours prior to the Vessel's expected time of arrival at the Loading Port.

**2.2 Vessel arrival**

The Owner shall advise the Charterer and the Charterer's Nominee at the Loadport as early as possible, but not later than 72 (seventy two) hours before the expected time of arrival, of the following:

- 2.2.1 the Vessel's hatch plan, the final tonnage required, the type of cargo required and the number and size of consignments or parcels;

- 2.2.2 the final stowage plan and cargo mass in tonnes as well as the loading sequence based on the requirement of either utilizing a single or dual loading cargo operation;

- 2.2.3 the forward and aft draft of the Vessel on arrival and estimated draft forward and aft for departure and the estimated air draft on arrival and departure;

- 2.2.4 the amount of ballast on arrival and the Vessel's de-ballasting time required after berthing; and

- 2.2.5 whether the Vessel is:

- 2.2.5.1 ore/ore or ore/bulk/oil;

- 2.2.5.2 whether or not it is in possession of a Gas Free Certificate;

- 2.2.5.3 whether it is holding slops; and

- 2.2.5.4 how the slop tanks are inserted.

- 2.2.6 Vessels not complying with all requirements of arrival notices as set out above will be penalised by the extension of the commencement of Laytime to 30 (thirty) hours after the Vessel tenders NOR at the Loading Port. Any expenses incurred as a result of such non-compliance, including delays in berthing and/or loading, shall be for Owner's account.

**3. TERMINAL INFORMATION:**

- 3.1 The following restrictions currently apply at the Loading Port:

- 3.1.1 maximum length overall - 310m;

- 3.1.2 maximum laden draft - 19m;

- 3.1.3 *minimum beam - 40m;*
- 3.1.4 *maximum beam - 55m;*
- 3.1.5 *minimum deadweight capacity - 65,000 MT*
- 3.1.6 *maximum deadweight capacity - 300,000 MT*
- 3.1.7 *mast pole not in excess of - 9 meters, and*
- 3.1.8 *maximum air draft - 20m from the top of the waterline to the top of the hatch cover on berthing.*

3.2 *The Owner shall procure that the Vessel's Master shall obtain, and comply with, the most current detailed technical information on port facilities, vessel and berthing requirements from its port agent and the Charterer shall not be responsible for inaccuracy in the description of facilities set out above.*

#### **4. NOTICE OF READINESS**

4.1 *A Vessel will be considered to have "arrived" at the time of crossing the Official Arrival Line as specified in the Loadport Regulations . The crossing is monitored, and this time is recorded by Port Control VTS Centre and as provided for in the Loadport Regulations. Vessels may not cross the Official Arrival Line without a pilot on board.*

4.2 *NOR may be tendered, by fax or e-mail, to the addresses provided by the Charterer and the Charterer's Nominee when the Vessel crosses the Official Arrival Line, at any time in or out of office hours, Saturdays, Sundays and holidays included, provided that the Vessel:*

4.2.1 *has arrived within the agreed Laycan (unless otherwise agreed by the Charterer in writing);*

4.2.2 *has had free pratique granted (request for free pratique by radio 48 hours prior to arrival);*

4.2.3 *has the necessary ISPS Code clearance;*

4.2.4 *is gas free;*

4.2.5 *is cleared by the Loading Port authorities;*

4.2.6 *in all respects is ready to load in accordance with the Loadport Regulations.*

4.2.7 *Vessels that have discharged cargo at Saldanha prior to loading iron ore will only be permitted to tender NOR once alongside the ore loading jetty.*

4.3 *If after inspection, including any survey as required, the Vessel is found not to be ready in all respects to load, then the NOR will be deemed to be void and will have to be re-tendered, once the Vessel is in all respects ready to load. Such NOR must be re-tendered to the Charterer's Nominee between 07:30 and 16:15, local time.*

4.4 *Notwithstanding the above, if a Vessel is compelled to wait for a berth or inner anchorage outside of the Official Arrival Line referred to above, for reasons other than those attributable to the Vessel, the Master and/or her crew, NOR may be tendered 1.5 (one and a half) hours after the Vessel passes The 12 Mile Limit before arriving at the outer anchorage - (Vessels not passing The 12 Mile Limit and anchoring at St. Helena Bay may tender 6 (six) hours from anchor down, or should the Vessel anchor at Cape Town, 7.5 (seven and a half) hours from anchor down) at any time irrespective of official office hours, Saturdays, Sundays and holidays included, provided the Vessel is:*

4.4.1 *cleared by the Loading Port authorities,*

4.4.2 *in possession of a Gas Free Certificate, an ISPS certificate and a clean de-ballasting water certificate satisfying the Loading Port authorities; and*

4.4.3 *ready to load in every respect, including with an air draft below the maximum permissible air draft of 20 (twenty) metres from the waterline to the top of the hatch cover.*

4.5 *A Vessel which, after tendering NOR, proceeds back to sea when a berth or anchorage is available within the Loading Port regardless of the reason for the Vessel proceeding back to sea, is not considered arrived and must re-tender NOR on arriving at the Official Arrival Line.*

4.6 *Vessels arriving with a draft in excess of 13 (thirteen) metres, or a length in excess of 300 (three hundred) meters and/or a deadweight above 250 000 (two hundred and fifty thousand) tonnes, must arrive before 16h00 to be handled during daylight hours. Such Vessels arriving later than 16h00 hours will be handled only during subsequent daylight hours, good visibility and weather permitting, and shall accordingly remain at sea and await handling at a position indicated by the harbour master. For such Vessels, NOR can only be tendered on crossing the Official Arrival Line the following morning, 30 (thirty) minutes after sunrise*

except that in the event of no berth or inner anchorage being available when such Vessels are due to be handled, they shall remain at sea to wait their turn for berthing or inner anchorage. The exact time of sunset and sunrise is deemed to be the time as determined in the Nautical Almanac for Saldanha.

- 4.7 In the event that a berth is not available at the time a Vessel arrives at The 12 Mile Limit, the Vessel must proceed to the inner anchorage at the Loading Port and tender NOR while crossing the Official Arrival Line. If the Vessel is unable to proceed to the inner anchorage due to congestion at the Loading Port, the Vessel must proceed to anchor at St Helena Bay or Cape Town, awaiting further instructions.
- 4.8 In the event that the NOR is not accepted due to the Vessel not being in free pratique, or having an air draft of more than 20 (twenty) meters from the waterline to the top of the hatch cover, or due to any causes whatsoever attributable to the Vessel, then:
- 4.8.1 such NOR shall be null and void and of no effect;
- 4.8.2 a subsequent valid NOR must be tendered within the agreed Laycan and time shall not start to count until this is done;
- 4.8.3 any delays will be for Owner's account;
- 4.8.4 subsequent tendering of NOR shall not be accepted until the Vessel has shown proof that all causes have been rectified; and
- 4.8.5 where the cause is that the Vessel has an air draft of more than 20 (twenty) meters from the waterline to the top of the hatch cover, the Vessel will lose its arrival turn and will be loaded on a no Demurrage basis.

## 5. INSPECTIONS

- 5.1 Inspections of Vessels shall be conducted by independent surveyors as follows:
- 5.1.1 regardless of their age or frequency of calling, Vessels that appear suspect or concerning to the Charterer for any reason whatsoever may be subjected to an inspection;
- 5.1.2 all Vessels of age between 15 (fifteen) and 20 (twenty) years (ex shipyard) will be inspected at least once a year and on first arrival; and
- 5.1.3 the Charterer reserves the right to require a Vessel to be inspected at the final port of sailing before leaving for Saldanha Bay, regardless of the Vessel's age.
- 5.2 The inspections will follow, as a minimum, the procedures and inspection requirements of the Loading Port as set out in the Loadport Regulations.
- 5.3 All costs of the inspection survey/s referred to in this Clause shall be for the Owner's account. All costs incurred and delays whilst waiting for the Vessel to be approved by the surveyor shall be for the Owner's account and shall not count as Laytime or time on demurrage.
- 5.4 The time used for any surveys (other than the usual initial and final draft surveys and those deemed necessary by the South African Maritime Safety Authority or any other bodies (Classification Society Survey etc.)) shall not count as Laytime, nor time on demurrage, if the Vessel is on demurrage. The time for any such surveys will stop from the anchor down to completion.
- 5.5 Should a Vessel fail the survey, any NOR tendered shall automatically be deemed invalid. Any time accumulated shall be cancelled. In such circumstances, a subsequent, valid NOR must be tendered within the agreed Laycan, and time shall only start to run from the tendering of the valid NOR.

## 6. DETERMINATION OF LOADING RATE

- 6.1 When the Vessel is to be fully loaded at the Loading Port, the size of the Vessel will be used to determine the applicable loading rate, in accordance with the Loadport Regulations, per Weather Working Day of 24 (twenty-four) consecutive hours (including Sundays, local and public holidays).
- 6.2 When the Vessel is only partially loaded at the Loading Port, the loading rate will be determined in accordance with the Loadport Regulations by the tonnage to be loaded onto the Vessel at the Loading Port. "Partial loading" includes where a hatch remains empty or less than 80% (eighty percent) of the hatch has been loaded.

<u>Size of Vessel</u>	<u>Metric tons per day (natural basis)</u>
Up to 50,000 DWT	35,000

Over 50,000 DWT and up to 60,000 DWT	40,000
Over 60,000 DWT and up to 70,000 DWT	45,000
Over 70,000 DWT and up to 90,000 DWT	55,000
Over 90,000 DWT and up to 110,000 DWT	65,000
Over 110,000 DWT and up to 130,000 DWT	70,000
Over 130 DWT and up to 150,000 DWT	80,000
Over 150,000 DWT and up to 170,000 DWT	85,000
Over 170,000 DWT	90,000

## **7. LAYTIME**

- 7.1 *Laytime shall commence 18 (eighteen) hours after the NOR has been accepted or when loading commences whichever is the soonest  
In case the vessel arrives at load port earlier than the layday agreed, Charterer shall have the option to load before layday commencement and in which case, time actually used to count as laytime.*
- 7.2 *Laytime (or time on demurrage) terminates upon completion of loading in all cases.*

## **8. EXCEPTIONS TO LAYTIME AND DEMURRAGE**

- 8.1 *Any time that is lost arising out of, relating to or as a result of any of the events, circumstances or occurrences mentioned below shall not be counted as Laytime or time on demurrage:*
- 8.1.1 *Weather Interference;*
  - 8.1.2 *insufficiency of the Vessel's ballast pump capacity or performance in relation to the actual loading rate;*
  - 8.1.3 *breakdown of the Vessel and / or her machinery or equipment and/or the inability of the Vessel to load the cargo including shifting on or between berths;*
  - 8.1.4 *any cause whatsoever which is attributable to the Vessel, her Master, her crew, Owner (including, but not limited to, a failure to comply with the Loadport Regulations and / or inward formalities and / or due to labour dispute, strike, go slow, work to rule, lock out, stoppage or restraint of labour involving the Master, officers or crew of the Vessel);*
  - 8.1.5 *opening and closing of hatches at the commencement and completion of cargo operations;*
  - 8.1.6 *intermediate surveys and draft checks;*
  - 8.1.7 *stoppages for draft and/or trim checks requested by the Charterer or the Charterer's Nominee up to a maximum time of 45 (forty five) minutes (any time taken in excess of this shall be counted as Laytime or time on demurrage);*
  - 8.1.8 *any stoppages to loading ordered by any duly authorized person representing the Loading Port authorities, the South African Maritime Safety Authority or the Charterer's appointed surveyor, where the continued loading of the Vessel may:*
    - 8.1.8.1 *endanger the Vessel's allowable stress limitations;*

- 8.1.8.2 *affect the ability of the Vessel to de-ballast; or*
- 8.1.8.3 *result in the submergence of the summer load line mark;*
- 8.1.9 *time used to conduct a draft survey on the completion of loading;*
- 8.1.10 *any cause of whatsoever nature beyond the Charterer's reasonable control which prevents cargo preparation, loading or berthing of a Vessel;*
- 8.1.11 *during and as a result of any Force Majeure Event as provided for in the Charter;*
- 8.1.12 *the arrest, attachment or detention of the Vessel and/or her bunkers and/or cargo;*
- 8.1.13 *time taken to move the Vessel from anchorage to the berth; or*
- 8.1.14 *compliance with statutory and or class requirements for such Vessel.*
- 8.1.15 *stoppage or partial stoppage of labour (for whatsoever cause) of pitmen, drivers, trimmers or other hands connected with the working, delivery or loading of the cargo for which the Vessel is stemmed; restraint of labour of master, officers or crew of the vessel or tug boats or pilots; quarantine (unless such quarantine was in force at the time the affected port was nominated by Charterers); riot; accidents to the mines(including a roof collapse) or breakdown of machinery, or disruption to or breakdown of loading facilities, or obstruction or partial obstruction, embargo or delay on the way from the mine or storage place to dock or in the dock; frosts, freezing, fogs, stoppage or partial stoppage caused by a Force Majeure Event or any other cause of any nature whatsoever beyond the control of the Charterers and/or its Affiliates affecting mining, transportation, delivery, loading of the Cargo (provided always that this clause shall not apply to prevent time running in the event of delay by usual congestion at the Loading Port, but shall apply in the event of delay by consequential congestion resulting from the causes listed herein);*

## **9. TIDES**

- 9.1 *The time used waiting for the tides after the completion of loading will not count as Laytime or time on demurrage.*
- 9.1 *Notwithstanding the above, if the operator of the Loading Port permits the Vessel to wait in berth to take advantage of a higher tide, the Owner must ensure that loading is stopped at a draft which will enable the Vessel to leave the berth at any intervening high tide and loading is resumed at the predicted time of high water on that intervening high tide.*
- 9.3 *Where the Vessel is required to stop loading to maintain sufficient under keel clearance over low water in accordance with the Loadport Regulations, the time incurred as a result of such a stoppage will not count as Laytime or time on demurrage.*

## **10. EARLY COMMENCEMENT OF LOADING**

- 10.1 *If the Charterer commences loading of the Vessel prior to the commencement of Laytime, only the time actually used in loading will count as Laytime.*

## **11. VESSEL OPERATIONS**

### **11.1 De-Ballasting**

- 11.1.1 *The Vessel shall have sufficient ballast pump capacity in relation to loading capacity and the Vessel's air draft should be kept within Loadport Regulations throughout the loading process. Should a Vessel stop loading for the purposes of de-ballasting, the Charterer or Charterer's Nominee may discontinue the planned loading for a minimum of 8 (eight) hours before resuming loading to the Vessel.*
- 11.1.2 *The Master of the Vessel shall give 8 (eight) hours' (one normal shift) notice to the Charterer before loading can be resumed, after stoppage due to de-ballasting problems or any other interruptions caused by the Vessel.*
- 11.1.3 *Should the Vessel stop loading more than once for the purposes of de-ballasting, or any other reason whatsoever, then the Charterer or the Charterer's Nominee may discontinue the planned loading until such time as the Charterer or the Charterer's Nominee at its sole discretion deems it fit to return to loading the Vessel.*
- 11.1.4 *In the event that the loading of the Vessel slows down or is suspended for reasons attributable to the condition and/or capacity of the Vessel and without prospect of prompt recovery, the Owner shall immediately, upon the Charterer or the Charterer's Nominee's request and at its own cost, cause the Vessel to leave the berth if the loading of other vessels in the Loading Port is required. The Vessel shall only be allowed to re-berth once its facilities have been restored to normal and*

*the docked vessel has vacated the berth. The time and cost of shifting in and out of berth, and the time and cost incurred whilst the Vessel is off-berth, shall be for the Owner's account and such time shall not be counted as Laytime, or time on demurrage.*

## **11.2 De-Berthing**

### **11.2.1 In the event of:**

*11.2.1.1 the Vessel being unable to commence loading; or*

*11.2.1.2 the Vessel ceasing loading operations due to breakdown of the Vessel's machinery that materially inhibits the rate of loading; or*

*11.2.1.3 any labour dispute arising which involves only the Vessel's crew; or*

*11.2.1.4 a Force Majeure Event being declared in respect of the Vessel; or*

*11.2.1.5 any other causes howsoever attributable to the Vessel which adversely affect the efficient use of the loading terminal at the Loading Port, then the Charterer may without prior notification, require the Vessel to vacate the berth promptly, at the Owner's expense.*

**11.2.2** *If the undocking in such circumstances is delayed due to any event, then the Owner shall be responsible for compensating Charterer in respect of any additional cost or damages incurred by the Charterer as a result of the delay.*

**11.2.3** *In the event that the Vessel has caused a stoppage and the berth it is occupying is required by another vessel, the Vessel causing the stoppage may be moved to anchorage and may only be re-berthed when it is ready and able to continue loading. All risk and expenses resulting from delays of this nature and all resultant movements will be for the account of the Owner and such time lost, including the time off berth, shall not count as Laytime or time on demurrage.*

**11.2.4** *The Owner shall procure that the Master forthwith communicates any event or circumstance which may affect the loading operations and/or the Vessel's safety or integrity to the Charterer.*