

# **BULK WHEAT AND BULK GRAIN (NON-WHEAT) PORT TERMINAL SERVICES PROTOCOLS**

**WAGNER CORPORATION PTY LTD**



[www.wagnercorporation.com.au](http://www.wagnercorporation.com.au)

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**BULK WHEAT and BULK GRAIN (NON-WHEAT) PORT TERMINAL SERVICES PROTOCOLS**

Hereinafter referred to as '**Port Terminal Services Protocols**'

Document Date: Effective from 1 July 2022

Season: 2022 / 23

Appended as **Annexure B** to: The Bulk Wheat Port Terminal Services Agreement;  
The Bulk Grain (Non-Wheat) Port Terminal Services Agreement; and  
Long Term Port Terminal Services Agreement.

These Port Terminal Services Protocols set out the terms and conditions that apply to the provision of access to Port Terminals (other than Exempt Port Terminals) and the handling of regulated grain (bulk wheat) and other non-regulated grains through the Port Terminals.

These Port Terminal Services Protocols are structured as follows:

**Part A – Terms and Acronyms**

Part A sets out defined terms and acronyms used in these Port Terminal Services Protocols.

**Part B – Long Term Elevator Access Protocols**

Part B sets out the methodology by which Wagner Corporation will supply Customers with access to Long Term Capacity at Port Terminals.

**Part C – Terminal Operating Protocols**

Part C applies to the handling of regulated grain (bulk wheat) and other non-regulated grains at Port Terminals.

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## PART A – TERMS AND ACRONYMS

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Any terms not defined in these Port Terminal Services Protocols have the same meaning as the corresponding terms defined in the following agreements: Bulk Wheat Port Terminal Services Agreement; Bulk Grain (Non-Wheat) Port Terminal Services Agreement; Long Term Port Terminal Services Agreement and the Country Storage and Handling Agreement, each for the relevant season.

**ACCC.** The Australian Competition and Consumer Commission.

**Acknowledgement of Acceptance (AOA).** The acknowledgement issued by Wagner Corporation to a Customer following receipt and approval of a CNA which constitutes an 'offer' by Wagner Corporation to confirm the booking of Elevation Capacity at the applicable Port Terminal during the Confirmed Elevation Period. By accepting an AOA, the Customer is liable to pay the relevant Booking Fee and is assuming responsibility for advising Wagner Corporation of the manner by which the specified Elevation Capacity is to be supplied.

**Assigned Load Date (ALD).** The date allocated by Wagner Corporation which determines the order in which vessels will be loaded within a Confirmed Elevation Period.

**Booked Elevation Capacity (BEC).** The Elevation Capacity (in Tonnes) for the Confirmed Elevation Period at the Port Terminal as specified in the AOA accepted by a Customer. BEC can consist of one or more 'lifts' of 'cargos' onto vessels.

**Booking Fee.** Subject to Part C, clause 12, the non-refundable per Tonne fee a Customer is liable to pay Wagner Corporation on acceptance of an AOA.

**Cargo Nomination Application (CNA).** The application submitted by a Customer via the Workflow Online Platform in accordance with Part C, clause 3.

**Code of Conduct.** The *Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014*.

**Confirmed Elevation Period (CEP).** The Elevation Period in which Elevation Capacity is confirmed under an accepted AOA.

**Customer.** A customer that has entered into or intends to enter into a *Bulk Wheat Port Terminal Services Agreement*, *Bulk Grain (Non-Wheat) Port Terminal Services Agreement* or a *Long Term Port Terminal Services Agreement* for the relevant season.

**Elevation Capacity.** The Tonnage of grain elevated by Wagner Corporation during an Elevation Period at a Port Terminal.

**Elevation Period.** A period of half a calendar month, which (a) commences on the first day of the month and concludes on the 15th day of that month; or (b) commences on the 16th day of the month and concludes on the last day of that month.

**Estimated Time of Arrival (ETA).** The estimated time provided by the Customer for the cargo's arrival at the Load Port.

**ETA Nomination.** This has the meaning given in Part C, clause 16.

**Exempt Port Terminal.** The Port Terminal(s) that have been determined by the ACCC to be an exempt port terminal service provider under Part 1, clause 5(2) of the Code of Conduct.

**Indicative Elevation Capacity.** The indicative Elevation Capacity at Port Terminal for a period of three Shipping Years are announced in accordance with Part B, clause 2.



**Indicative Long Term Nomination.** A nomination for Long Term Capacity for a period of three years in accordance with Part B, clause 3.1(c).

**Insufficient Capacity.** Where there is insufficient Elevation Capacity at a Load Port to meet demand sought under Long Term Nominations in accordance with Part B, clause 2(b).

**Load Port.** The port (which may be a Port Terminal) at which the cargo is to be loaded.

**Long Term Allocated Capacity.** The Long Term Capacity which is allocated to a Customer at each Port Terminal under a Long Term Port Terminal Services Agreement.

**Long Term Capacity.** The capacity for a period of three years which is offered to a Customer under a Long Term Port Terminal Services Agreement.

**Long Term Nomination Year.** A year in which Wagner Corporation enters into Long Term Port Terminal Services Agreements and will occur every three years commencing in 2013.

**Maximum Vessel Tonnage.** This has the meaning given in Part C, clause 2(c).

**Mtpa.** Million tonnes per Shipping Year.

**Nominated Elevation Capacity.** The Tonnage of Elevation Capacity published on the Wagner Corporation website that is available during an Elevation Period at a Port Terminal.

**Nominated Vessel.** The vessel identified in an ETA Nomination and/or the Vessel Nomination.

**Port Blockage.** The situation where a Port Terminal is unable to either receive additional grain and/or load grain onto a waiting vessel due to a delay in the loading of the previous vessel caused by circumstances such as the previous vessel(s) failing regulatory survey, the grain to be loaded failing AQIS requirements or a disruption in the upcountry supply chain.

**Port Terminal.** This means the Wagner Corporation terminal located at Pinkenba QLD unless the Port Terminal is an Exempt Port Terminal.

**Requested Elevation Period (REP).** The Elevation Period in which a Customer has requested Elevation Capacity.

**Shipping Stem.** This has the meaning given in Part C, clause 2.

**Shipping Year.** This has the meaning given in Part C, clause 10(c).

**Short Term Capacity.** The capacity which is offered by Wagner Corporation to Customers under either a Bulk Wheat Port Terminal Services Agreement or a Bulk Grain (Non-Wheat) Port Terminal Services Agreement.

**Site Assembly Plan (SAP).** This has the meaning given in Part C, clause 25.

**Sufficient Capacity.** Where there is sufficient Elevation Capacity available at a Load Port to meet demand sought under Long Term Nominations in accordance with Part B, clause 2(b)

**Tonne or Tonnage.** A metric tonne.

**Transfer Fee.** This has the meaning given in Part C, clause 11(b)(5).

**Vessel Nomination.** This has the meaning given in Part C, clause 18.

## **PART B – LONG TERM ELEVATOR ACCESS PROTOCOLS**

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### **1. INTRODUCTION**

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- (a) Part B of these Port Terminal Services Protocols set out the methodology by which Wagner Corporation will provide Customers access to Long Term Capacity at Port Terminals.
- (b) Wagner Corporation will offer to supply Customers with access to Long Term Capacity at its Port Terminals under a Long Term Port Terminal Services Agreement.
- (c) Long Term Capacity will be offered to Customers:
  - (1) at a minimum of one Port Terminal;
  - (2) for a minimum of 40,000 Tonnes per nominated Port Terminal on an even monthly spread basis for a minimum of three months per Shipping Year over three Shipping Years, being a minimum of 0.09 Mtpa per nominated Port Terminal; and
  - (3) for a maximum of 40,000 Tonnes per nominated Port Terminal on an even monthly spread basis for a minimum of ten months per Shipping Year over three Shipping Years, being a maximum of 0.5 Mtpa per nominated Port Terminal.
- (d) At all times, Wagner Corporation will reserve at least 70% of Nominated Elevation Capacity at each Port Terminal for supply to all Customers under Short Term Agreements.
- (e) Every three years Wagner Corporation will undertake a demand assessment process with Customers and enter into Long Term Port Terminal Services Agreements under which Wagner Corporation will provide access to Long Term Capacity at its Port Terminals.
- (f) Wagner Corporation will accept Indicative Long Term Nominations for Port Terminals and allocate Long Term Capacity to Customers in accordance with Part B of these Protocols.

### **2. ANNOUNCEMENT AND VARIATION OF CAPACITY**

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- (a) Wagner Corporation will set the Indicative Elevation Capacity for each Port Terminal by 31 December in each year prior to the Long Term Nomination Year, for the next three Shipping Years. For example, Wagner Corporation will set the Indicative Elevation Capacity for the three Shipping Years commencing on 1 October 2023 by 31 December 2022.
- (b) The Indicative Elevation Capacity of Port Terminals:
  - (1) will be set at a level where no more than 30% of the Indicative Elevation Capacity and Nominated Elevation Capacity for each Port Terminal is allocated to Customers under Long Term Port Terminal Service Agreements; and
  - (2) may be varied from time to time by Wagner Corporation in its sole discretion, provided that no more than 30% of the Indicative Elevation Capacity and Nominated Elevation Capacity for each Port Terminal is allocated to Customers under Long Term Port Terminal Service Agreements.
- (c) Wagner Corporation will publish on its website the Indicative Elevation Capacity and any variations to the Indicative Elevation Capacity.



### **3. NOMINATION AND ALLOCATION PROCEDURE**

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#### **3.1 Invitation of Indicative Long Term Nominations**

- (a) In each Long Term Nomination Year, immediately after the announcement of Indicative Elevation Capacity in Part B, clause 2(a), Wagner Corporation will invite Indicative Long Term Nominations from all grain exporters who have exported from Port Terminals in the previous year, as well as other grain exporters who make themselves known to Wagner Corporation.
- (b) An Indicative Long Term Nomination must be submitted to Wagner Corporation no later than ten business days following the invitation.
- (c) In order to be valid, an Indicative Long Term Nomination submitted under Part B clause 3.1(b) by each Customer must be in the form determined by Wagner Corporation and must comply with the following:
  - (1) Port Terminals sought for Long Term Capacity: The Long Term Capacity sought must be at a minimum of one Port Terminals;
  - (2) Distribution of Long Term Capacity sought: The Long Term Capacity sought must be for a minimum of 40,000 Tonnes per nominated Port Terminal on an even monthly spread basis for a minimum of ten months per Shipping Year over three Shipping Years, being a minimum of 0.3 Mtpa per nominated Port Terminal.
  - (3) Maximum monthly volume of Long Term Capacity sought: The Long Term Capacity sought at each Port Terminal must be for a maximum of 40,000 Tonnes per nominated Port Terminal, being a maximum of 0.5 Mtpa tonnes per nominated Port Terminal; and
  - (4) Total volume of Long Term Capacity sought: The total volume of Long Term Capacity sought must be for a minimum volume of 0.30 Mtpa and a maximum volume of 2 Mtpa.

#### **3.2 Assessment of Indicative Long Term Nominations**

- (a) Wagner Corporation will complete an assessment of Indicative Long Term Nominations by no later than 50 business days following the last day for submission under Part B, clause 3.1(b).
- (b) Following receipt of an Indicative Long Term Nomination under Part B, clause 3.2(a), if there is Sufficient Capacity, Wagner Corporation will accept the Indicative Long Term Nomination.
- (c) Following receipt of an Indicative Long Term Nomination under Part B, clause 3.2(a), if there is Insufficient Capacity, Wagner Corporation has sole discretion to either:
  - (1) consult with the Customer, and the Customer may re-submit its Indicative Long Term Nomination with a reduced monthly Tonnage at a Port Terminal(s) or move its Tonnage to another Port Terminal; or
  - (2) accept the Indicative Long Term Nomination following a variation in the Indicative Elevation Capacity in accordance with Part B, clause 2(b); or
  - (3) following consultation with the Customer, accept the Indicative Long Term Nomination following the pro-rata reduction of each Customer's Indicative Long Term Nomination on a Port Terminal by Port Terminal basis and on a non-discriminatory basis. To ensure capacity for shippable parcels in each month at each Port Terminal, the reduction may be applied by regularly spacing the provided capacity, such as every third month.



- (d) Wagner Corporation will notify each Customer of the result of Wagner Corporation's assessment of their Indicative Long Term Nomination and any pro rata reduction under Part B, clause 3.2(c)(3) and the Customer's Long Term Allocated Capacity on the date of completion of the assessment in accordance with Part C, clause 3.2(a) or the following business day.
- (e) The Customer will be required to confirm the Long Term Allocated Capacity and enter into a Long Term Port Terminal Services Agreement within two business days of Wagner Corporation accepting the Indicative Long Term Nomination.
- (f) If a Customer does not confirm the Long Term Allocated Capacity and enter into a Long Term Port Terminal Services Agreement within two business days of Wagner Corporation accepting the Indicative Long Term Nomination, the Customer will forfeit their Long Term Capacity Allocation. This capacity will be made available to any Customers whose Indicative Long Term Nomination was reduced under Part B, clause 3.2(c)(3), up to the Tonnage in their original Indicative Long Term Nomination.
- (g) Wagner Corporation will publish on its website each Customer's Long Term Allocated Capacity within ten business days of Wagner Corporation accepting the Indicative Long Term Nomination.

#### **4. ELEVATION OF GRAIN USING LONG TERM CAPACITY**

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- (a) Wagner Corporation will advise Customers with Long Term Allocated capacity when the Shipping Stem in respect of Long Term Capacity for each Shipping Year will open.
- (b) Upon the opening of the Shipping Stem for Long Term Capacity under Part C, clause 2, if a Customer requests elevation of grain onto a vessel at a Port Terminal using its Long Term Allocated Capacity:
  - (1) the Customer must submit a CNA under Part C, clause 3(a) up to the Long Term Allocated Capacity; and
  - (2) upon the Customer submitting a CNA, the procedures under Part C for requesting Elevation Capacity and an Elevation Period, accepting or declining a CNA, modifying a CNA and for managing the allocation of Terminal Elevation Capacity at Port Terminals will apply.
- (c) A Customer must submit a CNA under Part C, clause 3(a) for use of its Long Term Allocated capacity by seven business days prior to the opening of the Shipping Stem in respect of Short Term Capacity. A Customer who fails to do this forfeits the Long Term Allocated Capacity but will remain liable for the Booking Fee in respect of that Long Term Allocated Capacity. Any Long Term Allocated Capacity for which a CNA is not submitted will be returned to the Shipping Stem and made available as Short Term Capacity.

#### **5. BOOKING FEE**

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- (a) Notwithstanding any clause in Part C of these Port Terminal Services Protocols, A Customer that enters into a Long Term Port Terminal Services Agreement, will be liable to Wagner Corporation for the Booking Fee in respect of its total Long Term Allocated Capacity.
- (b) A Customer that requests elevation of grain onto a vessel using its Long Term Allocated Capacity, and books Elevation Capacity under the Cargo Nomination Procedure in Part C clause 3, will be liable to pay the Booking Fee in accordance with Part C, clauses 9(c), 9(e) and 9(f).

## PART C – TERMINAL OPERATING PROTOCOLS

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Part C of these Port Terminal Services Protocols apply to the handling of regulated grain (bulk wheat) and to other non-regulated grains handled through the Port Terminals.

### 1. APPLICATION AND NOTICES

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- (a) If the Customer requests Wagner Corporation to load grain on a vessel at a Port Terminal, the Customer must seek to book Elevation Capacity and indicate their Requested Elevation Period by submitting a CNA. The following procedures apply to requesting Elevation Capacity and an Elevation Period, accepting or declining a CNA, modifying a CNA and for managing the allocation of Terminal Elevation Capacity at Wagner Corporation's Port Terminals.
- (b) All CNA applications, AOAs, amendments to CNAs, 21 to 42 day ETA Nominations, ten day Vessel Nominations, and other related matters and modifications and other relevant notices, must be completed and sent to Wagner Corporation using the email addresses for the applicable Port Terminal(s) set out below. Wagner Corporation shall make available on its website PDF document versions of all forms relevant to these Protocols.

For the avoidance of doubt, all notices and applications are to be directed to the email addresses of any relevant Port Terminal, details of which are set out below.

PORT	EMAIL ADDRESS
Pinkenba	<a href="mailto:shipping@wagnerco.com.au">shipping@wagnerco.com.au</a>

- (c) As a provider of port terminal services under the Code of Conduct, Wagner Corporation is subject to audit by ACCC. Therefore, Wagner Corporation must ensure that all actions relating to the provision of port terminal services are recorded and that an 'audit trail' is established.
- (d) Wagner Corporation staff have been instructed not to act on, or confirm, any verbal instruction from Customers unless those instructions are confirmed in writing or via the Workflow Online Platform system.

### 2. SHIPPING STEM

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Wagner Corporation will publish on its website shipping stem information in accordance with Schedule 1, Part 5 of the Code of Conduct (**Shipping Stem**).

- (a) Opening of the Shipping Stem
  - (1) Wagner Corporation will open the Shipping Stem in respect of both Long Term Capacity and Short Term Capacity by the end of June each year for the following Shipping Year commencing June 2023.
  - (2) Wagner Corporation will open the Shipping Stem in respect of Long Term Capacity at least two weeks prior to the date on which it opens the Shipping Stem in respect of Short Term Capacity.
- (b) Provision of Announcement of Stem Opening
  - (1) At least two weeks prior to the day on which the Shipping Stem will be opened either for Long Term Capacity or for Short Term Capacity, Wagner Corporation will provide all Customers with a current Bulk Wheat Port Terminal Services Agreement and/or Bulk Grain



(Non Wheat) Port Terminal Services Agreement and/or Long Term Port Terminal Services Agreement together with a notice in writing of the date and time upon which the Shipping Stem will open, and will place a copy of the announcement on the Shipping Stem web page.

- (2) The Indicative and Nominated Elevation Capacity will be determined from time to time, and the Indicative and Nominated Elevation Capacity of each Port Terminal will be published on the Wagner Corporation website.
- (3) Wagner Corporation will inform Customers in writing of any changes to Indicative Elevation Capacity two weeks prior to any capacity change being implemented.
- (c) For each Port Terminal, Wagner Corporation will publish the maximum Tonnes that can be loaded per vessel (**Maximum Vessel Tonnage**).

### **3. CARGO NOMINATION APPLICATION PROCEDURE**

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- (a) If a Customer requests elevation of grain onto a vessel at a Port Terminal operated by Wagner Corporation, the Customer must submit a Cargo Nomination Application (CNA) to Wagner Corporation via email.

#### *28 Day Rule*

- (b) A CNA must be submitted to Wagner Corporation by a date not less than 28 days prior to the commencement date of the Requested Elevation Period.
- (c) For the avoidance of doubt, the Customer is responsible for nominating the Requested Elevation Period.

#### *Variation of the 28 Day Rule*

- (d) The Customer may submit a CNA less than 28 days prior to the commencement date of the Requested Elevation Period, but should only seek to do so after consulting with Wagner Corporation.
- (e) Should a Customer fail to consult with Wagner Corporation in compliance with Part C, clause 3(d), any CNA submitted within the 28 day period will be automatically rejected.
- (f) Acceptance of a CNA is subject to the Customer meeting all of the relevant criteria in these Port Terminal Services Protocols.

### **4. CARGO NOMINATION APPLICATION**

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- (a) A CNA submitted under Part C, clause 3 must include the following minimum information.
  - (1) The Load Port.
  - (2) A separate CNA is required for each Load Port if a Customer requires a two port load.
  - (3) A Requested Elevation Period.
  - (4) The Tonnage of the nominated cargo.
  - (5) Whether the CNA relates to Long Term Capacity or Short Term Capacity.



- (b) The CNA may include other information (if known) as outlined in Part C, clause 16(d).
- (c) Each cargo nominated under a CNA must have an upper Tonnage limit equal to the Maximum Vessel Tonnage for the relevant Load Port.

## **5. CARGO NOMINATION APPLICATION – TIME OF LODGEMENT**

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- (a) A CNA sent to Wagner Corporation outside business hours (8.00am to 4.00pm AEST) Monday to Friday or on public holidays, is taken to have been received at the commencement of the next business day.
- (b) Wagner Corporation will place all CNAs received on the Shipping Stem the next business day following receipt. Each CNA will be noted as 'Pending Assessment'.
- (c) All matters related to the management of CNAs will be recorded in an individual 'shipping file', which will include a copy of the original CNA upon which the date and time of receipt of the CNA will be recorded.

## **6. CARGO NOMINATION APPLICATION ASSESSMENT TIMING**

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- (a) CNAs will be assessed in chronological order of receipt, where the chronology will be determined by the time and date allocated to a CNA by the Workflow system.
- (b) Wagner Corporation will complete an Assessment of a CNA within a maximum of five business days following receipt, commencing from 8.00am on the first business day following receipt of a CNA.

## **7. CARGO NOMINATION APPLICATION - ASSESSMENT CRITERIA**

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The initial CNA assessment will take consideration of the following:

- (a) That the Customer has used the approved method of lodging a CNA (Part C, clause 3).
- (b) That, in the case of the export of regulated grain (bulk wheat), the Customer has signed and lodged with Wagner Corporation a Bulk Wheat Port Terminal Services Agreement or a Long Term Port Terminal Services Agreement.
- (c) That, in the case of the export of non-regulated grain, the Customer has signed and lodged with Wagner Corporation a Bulk Grain (Non-wheat) Port Terminal Services Agreement or a Long Term Port Terminal Services Agreement.
- (d) Whether Wagner Corporation has available sufficient intake, grain segregation, storage and Elevation Capacity at the Port Terminal that will allow accumulation of the cargo at the Port Terminal, taking into account other Booked Elevation Capacity previously accepted by Wagner Corporation that appears as 'accepted' on the Wagner Corporation Shipping Stem.
- (e) Any Regulatory and Market risks (Refer to relevant definition of these terms in the Bulk Wheat Port Terminal Services Agreement, Bulk Grain (Non-Wheat) Port Terminal Services Agreement and/or Long Term Port Terminal Services Agreement).
- (f) Confirmation that the Customer will/has contract(ed) sufficient rail and/or road transport prior to the Requested Elevation Period to accumulate the grain Tonnage at the Port Terminal for the Booked Elevation Capacity.

- (g) If the CNA relates to Long Term Capacity, that the Customer has sufficient Long Term Allocated Capacity for the relevant period.

## 8. NOTIFICATION OF A CNA ACCEPTANCE OR REJECTION

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- (a) If Wagner Corporation completes the assessment of a CNA and accepts it on the same day it will issue an AOA (Part C, clause 9).
- (b) If Wagner Corporation completes the assessment of a CNA and rejects the CNA, Wagner Corporation will on the day of rejection, notify the Customer of the decision to reject and will provide to the Customer in writing reason(s) for the decision.

## 9. ACKNOWLEDGEMENT OF ACCEPTANCE OF A CNA

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- (a) To confirm the booking of Elevation Capacity and the Confirmed Elevation Period, the Customer must complete and return to Wagner Corporation an AOA within two business days of 5.00pm AEST of the day of notification of acceptance of a CNA (Part C, clause 8).
- (1) If a Customer fails to submit an AOA within the time specified in Part C clause 9(a), the CNA will lapse and become invalid. The Booked Elevation Capacity related to a lapsed CNA will become available for booking by another Customer from the commencement of the first business day following the end of the period specified in Part C, clause 9(a).
- (b) A Customer is only able to either accept or reject the offer of Elevation Capacity and the Confirmed Elevation Period made by Wagner Corporation. No amendments to the requested Elevation Capacity or Confirmed Elevation Period can be made to an AOA.
- (c) Upon acceptance of AOA by the Customer, the Customer shall be liable for the Booking Fee and will agree to the payment terms of Booking Fee invoicing and payment contained within Annexure A of either the Bulk Wheat Port Terminal Services Agreement, Bulk Grain (Non - Wheat) Port Terminal Services Agreement and/or Long Term Port Terminal Services Agreement.
- (d) On the business day after the acceptance of AOA by the Customer, Wagner Corporation will change the status of any relevant CNA(s) on the Shipping Stem, from 'Pending Assessment' to 'Accepted'.
- (e) The Booking Fee payable upon the return of an AOA to Wagner Corporation is in addition to any other fees that may be applicable to the receipt, storage, and elevation of grain for the Booked Elevation Capacity.
- (f) Failure to make payment in cleared funds within seven days of the date on which a tax invoice for a Booking Fee is provided to the Customer by email will cause the Customer to lose any allocated Booked Elevation Capacity and Confirmed Elevation Period relevant to the unpaid invoice(s).
- (g) If the Customer:
- (1) fails to comply with the requirements of Part C clauses 9(f), 16, 18, 20, **Error! Reference source not found.**, 22, 23, **Error! Reference source not found.**, 25 or 37(e), or
- (2) cancels the Booked Elevation Capacity,

the Booked Elevation Capacity and Confirmed Elevation Period may be cancelled by Wagner Corporation and the Customer will forfeit any Booking Fee previously paid, and/or remain liable for any Booking Fee agreed to under Part C, clauses 9(c), 9(e) and 9(i) (even if not yet invoiced).



- (h) Where a Customer executes Booked Elevation Capacity and the total Tonnage elevated is less than the booked Tonnage for which a Booking Fee has been paid, Wagner Corporation will reimburse the Customer an amount at the relevant Booking Fee rate equivalent to the difference between the booked Tonnage and the actual Tonnage elevated, up to an amount not exceeding 10% of the original Booking Fee amount.
- (i) Where a Customer executes Booked Elevation Capacity and the total Tonnage elevated is more than the booked Tonnage for which a Booking Fee has been paid, Wagner Corporation will invoice the Customer an amount at the relevant Booking Fee rate equivalent to the difference between the actual Tonnage elevated and the original Booking Fee.

## **10. EXECUTION OF BOOKED ELEVATION CAPACITY**

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- (a) Booked Elevation Capacity will not be executed prior to the first day of a Confirmed Elevation Period, and (subject to clause 23) must be executed before the last day of a Confirmed Elevation Period.
- (b) If, due to factors within the control of the Customer, that Customer is unable to execute Booked Elevation Capacity within the Confirmed Elevation Period (plus five business days from the last day of that Period), or the Elevation Period to which Booked Elevation Capacity has been moved, the Booking Fee related to any unused Booked Elevation Capacity is forfeited.
- (c) Elevation Capacity booked between 1st October and 30th September (**the Shipping Year**) must be used within that Shipping Year.
- (d) Elevation Capacity not executed during a Shipping Year cannot be carried forward into the next Shipping Year.
- (e) Any Booking Fees related to unused Booked Elevation Capacity will be forfeited after the end of a Shipping Year (30th September) and Booking Fees relating to forfeited Booked Elevation Capacity is also forfeited.

## **11. REALLOCATION OF CONFIRMED ELEVATION CAPACITY**

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- (a) A Customer that has been allocated:
  - (1) non-commercial or non-standard ship size capacity under the pro rata reduction rules contained in Part B, clause 3.2(c)(3); or
  - (2) Booked Elevation Capacity based on its good faith forecasts but which, for reasons beyond its control, it does not foreseeably require,may request Wagner Corporation to transfer, by way of reallocation, Booked Elevation Capacity for a Load Port to another Customer that agrees to accept that allocation by amending the relevant CNA(s) using Workflow.
- (b) Wagner Corporation will update the Shipping Stem to reflect a requested reallocation under clause 11(a) within five business days of Wagner Corporation being reasonably satisfied that the following conditions have been met:
  - (1) The Customer transferring the Booked Elevation Capacity no later than 42 days prior to the first day of the Confirmed Elevation Period; or
  - (2) The Customer transferring the Booked Elevation Capacity between 42 and 21 days prior to the first day of the Confirmed Elevation Period subject to Wagner Corporation approval.



Wagner Corporation will approve (at its sole discretion) the transfer of Booked Elevation Capacity if the Customer has not received an ALD under Part C, clause 17 and it will not impact the efficient provision of Port Terminal services to all Customers; and

- (3) The Customer advising Wagner Corporation the details of the new Customer receiving the Booked Elevation Capacity; and
  - (4) The Customer receiving the transferred Booked Elevation Capacity having agreed to accept that Booked Elevation Capacity and having in place a Bulk Wheat Port Terminal Services Agreement or Bulk Grain (Non-Wheat) Port Terminal Services Agreement or Long Term Port Terminal Services Agreement with Wagner Corporation ; and
  - (5) The Customer requesting the transfer of the Booked Elevation Capacity having paid to Wagner Corporation a fee of \$517.50 for the transferred Booked Elevation Capacity (**Transfer Fee**).
- (c) If Wagner Corporation receives a request to transfer Booked Elevation Capacity to another Customer and Wagner Corporation reasonably determines the requirements of clause 11(b) have been met, the request will be deemed final and cannot be reversed by the requesting Customer.
- (d) For the avoidance of doubt:
- (1) Booked Elevation Capacity reallocated to a new Customer under this clause 11, is not considered a 'new' booking; and
  - (2) Booked Elevation Capacity transferred from another Load Port under clause 12, or from another Elevation Period at the same Load Port, by a Customer is not considered a 'new' booking.

## **12. REQUEST FOR A CHANGE TO LOAD PORT AND/OR CONFIRMED ELEVATION PERIOD**

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- (a) A Customer may seek to make a Load Port and/or Confirmed Elevation Period change to a CNA shown as 'Approved' on the Wagner Corporation Shipping Stem by:
  - (1) Consulting with Wagner Corporation Logistics and discussing the details of the change to the Load Port and/or Confirmed Elevation Period required by the Customer; and
  - (2) Amending the relevant CNA in Workflow and submitting the request to Wagner Corporation.
- (b) A request to change a Confirmed Elevation Period and/or Load Port must be lodged no later than the date on which the Customer provides an ETA Nomination and associated information under Part C, Clause 16 (being no later than 21 days prior to the first day of the Confirmed Elevation Period. Refer to Part C, clauses 9 and 14 of these Port Terminal Services Protocols).
- (c) Assessment of a request to make a Load Port or Confirmed Elevation Period change will be made subject to all relevant clauses in Part C.

## **13. MANAGING ELEVATION CAPACITY**

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- (a) Once Elevation Capacity has been booked, the period of time in which the capacity is to be delivered becomes the Confirmed Elevation Period.
- (b) A Customer that has accepted Elevation Capacity by accepting any or all AOAs sent to them by Wagner Corporation, has 'Booked Elevation Capacity'.

- (c) Booked Elevation Capacity can be divided by the Customer into more than one parcel during the Confirmed Elevation Period. For example, if a Customer has Booked Elevation Capacity of 40,000 Tonnes, in a Confirmed Elevation Period, they can elect to have that capacity delivered as multiple lifts into multiple vessels. Booked Elevation Capacity cannot be increased by dividing the booked capacity into multiple lifts and adding the +10% cargo elevation allowance to each multiple. Multiple lifts shall collectively equal no more than the sum of the Booked Elevation Capacity. If a Customer wishes to divide Booked Elevation Capacity into multiple lifts, they must:

- (1) Contact Wagner Corporation shipping operations and provide advice on their intentions.
- (2) Amend existing CNAs to reflect the change in vessel Tonnes.
- (3) Submit new 'supplementary' CNAs via Workflow for the relevant Tonnages, making note of the reference number of the existing original CNA that refers to the Booked Elevation Capacity that appears on the Shipping Stem.
- (4) Ensure that Wagner Corporation shipping operations is aware of the request of the Customer. Wagner Corporation will then assess the 'supplementary' CNA(s) against Part C, clause 7(d) of these Port Terminal Services Protocols.

AOA(s) will be forwarded to the Customer after the assessment of the CNA(s) is complete.

- (d) The ability of Wagner Corporation to divide Booked Elevation Capacity into multiple lifts during the Confirmed Elevation Period will depend upon other elevation bookings during that period.

#### **14. REDUCING BOOKED ELEVATION CAPACITY**

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- (a) To decrease the Booked Elevation Capacity requested for an Elevation Period, a Customer must firstly accept an AOA and then submit an amended CNA via email to Wagner Corporation to reflect the reduced Elevation Capacity required. Wagner Corporation will then assess the amended CNA against criteria noted in Part C, clause 7 of these Port Terminal Services Protocols, with reference to Part C, clause 7(d).

**Please Note:** Reducing the Booked Elevation Capacity does not reduce the liability for the Booking Fee applied to the original CNA. The amount that represents the difference between the CNA tonnage accepted by the Customer through the submission of an AOA and any subsequent reduction to Booked Elevation Capacity made by a Customer is forfeited.

Where a Customer requests a reduction in the Booked Elevation Capacity and the actual Tonnage elevated to vessel is more than 10% above the Booked Elevation Capacity, the Customer will be liable to pay a Booking Fee on the difference between the Booked Elevation Capacity plus 10%, and the actual Tonnage elevated to vessel.

#### **15. INCREASING BOOKED ELEVATION CAPACITY**

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- (a) To increase the Booked Elevation Capacity requested for an Elevation Period, a Customer must firstly submit a CNA, then accept the related AOA and then submit an amended CNA via the Wagner Corporation Workflow system requesting that additional Elevation Capacity be added to the Booked Elevation Capacity. Customers should consult the Shipping Stem prior to submitting additional requests for Elevation Capacity, to ensure that the relevant Port Terminal has sufficient Elevation Capacity to meet additional demand in the Requested Elevation Period.
- (b) Wagner Corporation will assess an amended CNA against the criteria noted in Part C, clause 7 of the Protocols, with reference to Part C, clause 7(d). Should sufficient grain Elevation Capacity be available, Wagner Corporation will send an AOA to the Customer relating to the CNA requesting



additional Elevation Capacity.

- (c) If a Customer accepts the offered Elevation Capacity, they will be liable to pay a Booking Fee equal to the total of the additional elevation tonnage requested (refer to Part C, clause 9).

## **16. ESTIMATED TIME OF ARRIVAL (ETA) NOMINATION – 21 TO 42 DAY NOTICE**

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- (a) Subject to Part C, clause 16(b), following the return of an AOA to Wagner Corporation by a Customer (Part C, clause 9), but no earlier than 42 days up to and no later than 21 days prior to the first day of the nominated Confirmed Elevation Period, the Customer must lodge a formal ETA Nomination by updating the information in the original CNA (refer to Part C, clause 4).
- (b) A Customer may lodge a formal ETA Nomination earlier than 42 days prior to the first day of the Confirmed Elevation Period, but in doing so forfeits its right to request a transfer of its Booked Elevation Capacity to another Customer under Part C clause 11.
- (c) Customers are encouraged to lodge an ETA Nomination 42 days before the first day of the Confirmed Elevation Period to enable Wagner Corporation to commence a stock and logistics risk assessment for the vessel.
- (d) The ETA Nomination must contain the following information (unless already provided in the CNA):
  - (1) Estimated Time of Arrival (ETA) for the vessel;
  - (2) The grain and grade(s) (if known) (refer to Part C, clause 25);
  - (3) The name of the Nominated Vessel (if known) (refer to Part C, clause 18); and
  - (4) Whether the vessel involves a two port load.
- (e) The ETA nominated by the Customer must be within the Confirmed Elevation Period.
- (f) Should a Customer fail to comply with this minimum notice period, the Customer will forfeit their Booked Elevation Capacity and Booking Fee (Part C, clause 9(g)).
- (g) An ETA nomination received by Wagner Corporation outside business hours (8.00am to 4.00pm AEST) Monday to Friday or on public holidays is taken to have been received at the commencement of the next business day.

## **17. ASSIGNED LOAD DATE**

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- (a) Following the nomination of a vessel ETA (Part C, clause 16(a)) and within one business day of receipt of an ETA Nomination, Wagner Corporation will notify the Customer of an Assigned Load Date, as close as possible to the ETA provided in Part C, clause 16(d)), which is the date on which Wagner Corporation has scheduled the commencement of vessel loading. On provision of such advice to a Customer, Wagner Corporation will update the shipping stem with the relevant information.
- (b) Where required and in the order in which ETA Nominations were received and with reference to Part C, clauses **Error! Reference source not found.**, 22, 23, **Error! Reference source not found.**, 25, 36, 37, and 37(e), Wagner Corporation will update the Assigned Load Date taking into account:
  - (1) Other Booked Elevation Capacity previously accepted by Wagner Corporation that appear as 'accepted' on the Shipping Stem, and



- (2) The sufficiency of capacity to receive and handle the Customer's grain at the time of the anticipated commencement of cargo accumulation at the Port Terminal.
- (c) Wagner Corporation will provide Assigned Load Dates to customers on a first-come first-served and non-discriminatory basis. If the Assigned Load Date is not acceptable to the Customer, the Customer can request another Assigned Load Date and Wagner Corporation, subject to availability, may provide another Assigned Load Date.
- (d) In order to maximise port elevator efficiency, the Assigned Load Dates will be provided on an even spread basis for each Elevation Period at each Load Port that takes into account vessel size, port capacity and other operating factors (such as planned non-grain ships at the berth and planned port elevator maintenance).
- (e) Where a Customer seeks an Assigned Load Date in the final seven days of the Confirmed Elevation Period, and that capacity is not available, Wagner Corporation (at its sole discretion) may provide an Assigned Load Date in the following Elevation Period on a first come first served and non-discriminatory basis.
- (f) If there is a change to the ETA for a vessel, Customers are encouraged to provide an updated ETA for the vessel to enable Wagner Corporation to efficiently manage Port Terminal capacity. The Assigned Load Date, provided under this clause 17 will not be changed.
- (g) Wagner Corporation reserves the right to change the Assigned Load Date and will immediately notify the Customer of any such decision, taking into account factors mentioned in Part C, clauses 17(b)(1), 17(b)(2) and other relevant factors.

#### **18. VESSEL NOMINATION – MINIMUM TEN-DAY NOTICE**

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- (a) At any time from the ETA Nomination (Part C, clause 16(a)) up to but no later than ten days prior to the date of the ETA, the Customer must lodge a Vessel Nomination by adding the information required in Part C, clauses 18(a)(1) to 18(a)(4) to the original CNA.
  - (1) The name of the Nominated Vessel;
  - (2) Details of the vessel length, depth, and maximum air draft, or any other vessel characteristic that may inhibit or affect loading performance;
  - (3) Details of the last three cargoes carried and the last three ports of call,
  - (4) Information relating to any preparations made to the vessel to ensure it passes the regulatory marine and AQIS pre-loading surveys.
- (b) Should a Customer fail to comply with this minimum notice period, the Customer forfeits their Booked Elevation Capacity and Booking Fee.
- (c) A Vessel Nomination received by Wagner Corporation outside business hours (8.00am to 4.00pm AEST) Monday to Friday or on public holidays is taken to have been received at the commencement of the next business day.

#### **19. VARIATIONS TO ETA NOMINATION OR VESSEL NOMINATION NOTICE PERIODS**

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- (a) At the request of a Customer Wagner Corporation may vary or waive the minimum notice periods noted in Part C, clauses 16 and / or 18 following consultation with a Customer.
- (b) Wagner Corporation will not consider any variation to, or waiving of, the notice periods noted in

Part C, clauses 16 and / or 18 unless a Customer provides a written request seeking Wagner Corporation to do so, before the notice period expires.

- (c) The action of submitting a request under Part C, clause 19(a) does not guarantee that Wagner Corporation will grant a variation or waiver. In making any decision to vary or waive the minimum notice periods noted in Part C, clauses 16 and/or 18, Wagner Corporation will consider the extent to which Customer's inability to comply with the notice periods is within the Customer's control and the impact of the variation on the efficient operation of the Port Terminal and will notify the Customer in writing of the relevant decision within one business day of receipt of a request.

## 20. SUBSTITUTING NOMINATED VESSELS

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- (a) Subject to Part C, clause 18, the Customer may, by submitting amendments to Section 1 of the relevant CNA, substitute a Nominated Vessel with another vessel at the nominated Port Terminal for the Booked Elevation Capacity (+/- 10% tolerance on elevated tonnes), provided the substituted vessel is a 'similar performing' vessel<sup>1</sup>.
- (b) The Customer will not be required to pay a new Booking Fee, or to submit a new CNA if a vessel substituted under Part C, clause 20(a) will arrive within five days of the most recent nominated ETA (Part C, clause 16).
- (c) If the Customer's substitution involves an increase in Booked Elevation Capacity of more than 10%, commodity or grade substitution, or any alteration to the SAP that will impact upon the accumulation or elevation of other Customers' cargo, the Customer, if demand for elevation at the Port Terminal is committed to other Customers or if the substitution request requires activities that will decrease the efficiency of grain elevation at the Port Terminal, may be required to pay a new Booking Fee and/or may be required to submit a new CNA (Part C, clause 4).
- (d) Notification of a request for substitution of a Nominated Vessel received by Wagner Corporation outside business hours (8.00am to 4.00pm AEST) Monday to Friday or on public holidays is taken to have been received at the commencement of the next business day.

## 21. NOT USED

## 22. VESSEL LOADING ORDER

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- (a) Where a Customer's vessel is delayed due to late arrival or is cancelled (Part C, clause 37(e)), where a Customer notifies Wagner Corporation of a requirement to change a Load Port (Part C, clause **Error! Reference source not found.**), where a Customer's vessel fails regulatory or related surveys (Part C, clause 37), or where a Customer has failed to accumulate sufficient grain at a Port Elevator to complete loading (Part C, clause 27), Wagner Corporation shall have the right to change the Assigned Load Date or ETA (Part C, clause 17) of a vessel or to change the order in which vessels are loaded from the order shown on the shipping stem. Wagner Corporation will only make changes to the vessel loading order to:
  - (1) Ensure efficient provision of Port Terminal services to all customers.
  - (2) Avoid situations arising where a Customer or Customers with a vessel or vessels scheduled to load after a vessel that is affected by occurrences noted under Part C, clauses 26, 27, 29, 35, 36, 37, or 37(e) would suffer delays and / or additional costs that could be avoided

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<sup>1</sup> 'Similar performing' is a vessel of similar size and capacity, with similar rates of ballasting and loading capability, as the originally nominated vessel.



by changing the order in which vessels are loaded.

- (b) In making a change to vessel loading order, Wagner Corporation shall notify all affected parties in writing, where such notice will contain details of:
  - (1) The specific changes to vessel loading order and the affected parties.
  - (2) The reason(s) for the changes made to vessel loading order.
- (c) Where Wagner Corporation changes an Assigned Load Date, or changes the order in which vessels are loaded, Wagner Corporation shall make appropriate changes to the shipping stem on the next business day after the notification referred to in Part C clause 22(b) has been issued.

### **23. LATE VESSELS ARRIVING OUTSIDE THE CONFIRMED ELEVATION PERIOD**

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- (a) If a vessel presents for loading more than five days after the end of a Confirmed Elevation Period, and no amendment to the Confirmed Elevation Period or Assigned Load Date has been requested, the following will apply.
  - (1) If there is sufficient capacity in the following Elevation Period, Wagner Corporation may, in its sole discretion, load the vessel in the next Elevation Period. Where a vessel is loaded in the following Elevation Period, Wagner Corporation will not be required to comply with Part C, clauses 10, 13-15, 17, 22-25, 27, 33 or 35-38 of the Port Terminal Services Protocols, so long as Wagner Corporation does not discriminate between Customers in favour of its own trading division.
  - (2) If there is insufficient capacity in the following Elevation Period, the Customer will forfeit their Assigned Load Date and, the Booking Fee will also be forfeited.
  - (3) Loading priority will be given to vessels that already have Booked Elevation Capacity in the relevant Elevation Period.
  - (4) Wagner Corporation will apply the Additional Terminal Storage Fee detailed in Annexure A of either the Bulk Wheat Port Terminal Services Agreement or the Bulk Grain (Non-Wheat) Port Terminal Services Agreement to the total Tonnage of an assembled cargo for each day from the first day of the Elevation Period following the Confirmed Elevation Period until the commencement of vessel loading.
- (b) Wagner Corporation will not apply the abovementioned fee where delays caused by rain, elevator mechanical failure or other factors that can reasonably be described as relating to the failure of Wagner Corporation to meet the Assigned Load Date may be the cause of a vessel rolling back into the following Elevation Period.

### **24. NOT USED**

### **25. CARGO ASSEMBLY PLANNING – SITE ASSEMBLY PLAN**

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- (a) The Customer will work with Wagner Corporation shipping and will be required to compile the detailed content of a Site Assembly Plan (SAP) prior to commencement of accumulation of a cargo Tonnage at the nominated Port Terminal at any time from the date on which the Customer is notified of its Assigned Load Date (Part C, clause 9), up to, but no later than, and 28 before the Assigned Load Date (Part C, clause 16).
- (b) Should a Customer fail to comply with this minimum notice period, the Customer forfeits their



Booked Elevation Capacity and Booking Fee (Part C, clause 9(g))

- (c) The SAP will contain details of:
  - (1) The grain and grade(s);
  - (2) The location of the commodity(s); and
  - (3) The method of accumulation of the cargo Tonnage.
- (d) Wagner Corporation is under no obligation to receive grain at any of its Port Terminals for Booked Elevation Capacity or allow the Customer access to the Port Terminal more than 4hrs in advance of the Assigned Load Date.
- (e) Where both Wagner Corporation and the Customer agree, a SAP may allow for the accumulation of cargo Tonnage at a Port Terminal more than 21 days in advance of an Assigned Load Date.

## **26. CARGO ASSEMBLY BY ROAD FROM NON-WAGNER CORPORATION STORAGE**

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Where a Customer intends to accumulate cargo Tonnage by road from non- Wagner Corporation Storages, the Customer may request to accept sampling and testing services offered by Wagner Corporation at a site other than the nominated Load Port.

## **27. INSUFFICIENT GRAIN ACCUMULATED TO LOAD VESSEL**

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- (a) A Customer shall accept full responsibility for the accumulation of all cargo Tonnage at a Port Terminal and for procuring all transport for the accumulation of such cargo Tonnage.
- (b) Recognising the responsibilities of the Customer for the accumulation of cargo(s) (Part C, clause 34) Wagner Corporation is not liable for, and does not guarantee, that individual cargo Tonnage will be available at a Port Terminal by the Assigned Load Date, regardless of the date(s) upon which CNA(s) were lodged by the Customer.
- (c) If a Customer has not accumulated sufficient grain to complete loading of the vessel at a Port Terminal by the Assigned Load Date, and the vessel has berthed and passed all required marine, AQIS or other relevant surveys, Wagner Corporation may commence to load the vessel with any and all applicable grain owned by the Customer at the Port Terminal, in such a manner as to comply with the directions of the captain of the vessel and/or stevedore that will ensure the stability of the vessel. Wagner Corporation may then request the movement of a part loaded vessel off the berth at the Customer's expense, if the next vessel on the Shipping Stem is ready to berth and has sufficient cargo Tonnage assembled to commence and complete loading.
- (d) A relocated vessel may be allowed back on the berth for the recommencement of loading when the balance of the cargo Tonnage has been accumulated at the Port Terminal, taking into account:
  - (1) Other Booked Elevation Capacity; and
  - (2) The sufficiency of capacity to receive and handle the Customer's grain at the time of the anticipated commencement of cargo Tonnage accumulation at the Load Port.

**28. NOT USED**

**29. NOT USED**

**30. GRAIN ORIGINATION – EX NON–WAGNER CORPORATION STORAGE**

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- (a) Wagner Corporation will not assume any liability for any losses associated with grain sent to the Port Terminal that do not meet the quality specifications specified in an accepted CNA and related SAP.
- (b) If grain received fails to meet the quality specifications defined by the Customer in the relevant CNA and related SAP, or such grain is rejected by AQIS as being unfit for elevation onto a vessel, the Customer remains the owner of the grain and must immediately remove such grain from the Port Terminal. Until such grain is removed, the grain will be subject to any applicable storage and related fees detailed in Annexure A of either the Bulk Wheat Port Terminal Services Agreement or the Bulk Grain (Non-Wheat) Port Terminal Services Agreement.

**31. TREATED OR FUMIGATED GRAIN**

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- (a) The Customer must advise, prior to the dispatch of any grain to a Port Terminal, if that grain is to be, or has been, treated or fumigated with any grain protectants or insecticides approved for application to grain.
- (b) The Customer must also provide advice on the chemical treatment used, or planned to be used on grain, and must not deliver grain to the Port Terminal:
  - (1) until advised that such treatments are acceptable to Wagner Corporation, or
  - (2) that poses any significant market risks that may cause AQIS to reject the grain on inspection, or would cause the grain to fail Australian or importing country residue surveillance.

**Note** - Port Terminals have a nil tolerance for fumigant residues above accepted Maximum Residue Levels.

**32. FUMIGATION CLEARANCE CERTIFICATE**

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- (a) Where grain has been fumigated, the Customer must provide a 'Clearance Certificate' stating that the commodity is free from all fumigant residues, issued by a licensed fumigator.

**33. NOT USED**

**34. PROVISION OF TRANSPORT FOR THE ACCUMULATION OF CARGO TONNAGE**

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- (a) For the avoidance of doubt, the Customer is responsible for organising all matters related to the booking and/or provision of transport.
- (b) By accepting a CNA, Wagner Corporation does not undertake to provide to the Customer any grain transportation services associated with the accumulation of grain for an accepted CNA.
- (c) Where a Customer specifically contracts Wagner Corporation, or its nominee, agent or contractors, to provide cargo Tonnage accumulation services, or where Wagner Corporation, or its nominee, agent or contractors, is specifically contracted to supply grain transportation services to a



Customer, a contract for the provision of such services will be entered into, and such a contract will be separate to the provision of Port Terminal services described under these Port Terminal Services Protocols.

### **35. VESSEL READINESS TO LOAD – IN TRANSIT MARINE SURVEY**

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- (a) If Wagner Corporation assesses that a vessel presents a higher than acceptable risk of failing a marine, AQIS or related survey required under regulation, Wagner Corporation may request that the Customer provide assurance of the fitness or readiness of a vessel to load by procuring an 'in transit' marine surveyor report, either at the previous discharge port or at anchor at the Load Port. Wagner Corporation may refuse to accept a vessel 'alongside' to present for the marine, AQIS or related survey required under regulation if such a request is not complied with, within three business days.
- (b) Any costs incurred in relation to Part C, clause 35(a), shall be the responsibility of the Customer.
- (c) Wagner Corporation may record all information relating to the vessel readiness to load performance of the Customer, its shipping agents and shipping lines, and may incorporate this information into relevant CNA assessment procedures in the future.

### **36. VESSEL AUTHORITY TO LOAD**

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- (a) Prior to calling a vessel to the berth and commencing loading, Wagner Corporation will forward to the Customer an Authority to Load for the Customer's approval. The Authority to Load will include all quality information relating to the Customer's cargo.
- (b) The Customer must approve the Authority to Load and return it to Wagner Corporation prior to the commencement of elevation of grain to a vessel.
- (c) The Customer acknowledges that Wagner Corporation has the right to mitigate dust emissions at the Port Terminal.
- (d) Such mitigation may include moisture conditioning of grain paths.
- (e) Notwithstanding any other provision in this Protocol, the Customer understands and accepts that matters and events beyond Wagner Corporation's control may occur, including but not limited to, changes in vessel scheduling and arrival or departure times, failure of vessels to pass any quarantine requirements or other inspections, grain quality related matters, harbour / port congestion, berth occupation by vessels under the direction of a Port Authority, lack of performance and delays due to freight or other service providers and rain or high winds, that prevent vessel loading which means Wagner Corporation cannot guarantee that cargo Tonnage will be ready for loading, or that they can or will be loaded as scheduled. Wagner Corporation will try to avoid any changes or delays where possible, and will keep the Customer informed.

### **37. VESSELS FAILING REGULATORY SURVEY**

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- (a) The Customer is responsible for the condition and state of readiness of vessels presented to Wagner Corporation for loading and for a vessel passing relevant marine, AQIS and any other survey required by regulation relating to the export of grain from Australia.
- (b) In the event of the Customer's vessel failing a marine, AQIS or other survey that may be required by regulation, Wagner Corporation reserves the right to give berthing and elevating priority to other vessels on its Shipping Stem, and to assign any vessel that has failed a survey, which is re-presented for loading, a new ETA or Assigned Load Date.



- (c) Where a vessel fails marine, AQIS or other survey and loading is delayed until the Elevation Period following the Confirmed Elevation Period, the following will apply.
  - (1) On the 11th day after the original Assigned Load Date, Wagner Corporation will apply the Additional Terminal Storage Fee detailed in Annexure A of either the Bulk Wheat Port Terminal Services Agreement or the Bulk Grain (Non-Wheat) Port Terminal Services Agreement to the total Tonnage of the assembled cargo until the commencement of vessel loading.
  - (2) Wagner Corporation will load the ship in a later Elevation Period in accordance with Part C, clauses 7 and 17.
- (d) Where a vessel is not able to load until the Elevation Period following the end of a Confirmed Elevation Period, loading priority will be given to vessels that have Booked Elevation Capacity in the relevant Elevation Period.
- (e) Where a vessel fails marine, AQIS or other survey and the failure results in Wagner Corporation making changes to the order in which vessels are to be loaded to avoid the Port Terminal having no capacity to receive grain, any vessel costs which are incurred by other Customers arising from their vessel being moved off and/or onto the berth and which can be demonstrated by Wagner Corporation, or the Customer, shall be the responsibility of the Customer of the failed vessel to a maximum of \$50,000 per vessel failure. This clause 37(e) will only apply where the vessel failure:
  - (1) would otherwise result in a Port Blockage; and
  - (2) requires another vessel to be moved off and/or onto the berth.

### **38. LATE OR CANCELLED VESSELS**

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- (a) If a vessel fails to be available for loading within ten days of the Assigned Load Date or if a vessel has been cancelled by the Customer then:
  - (1) The Customer forfeits any Booking Fee previously paid and remains liable for any Booking Fee not paid (even if not yet invoiced).
  - (2) If the Customer wishes to make a new Elevation Capacity booking, the Customer must submit a new CNA per Part C, clauses 3 to 9 inclusive and must pay a new Booking Fee.
- (b) All grain in a Port Terminal accumulated for a vessel that is late or cancelled, will accrue additional storage charges (in addition to the standard storage charges detailed in Annexure A of either the Bulk Wheat Port Terminal Services Agreement or the Bulk Grain (Non-Wheat) Port Terminal Services Agreement.
- (c) Such charges will apply from the 11th day after the Assigned Load Date relating to late or cancelled Booked Elevation Capacity (Part C, clauses 38(a) and 38(b)) until the grain is either elevated to a vessel or removed from the Port Terminal.
- (d) Any additional fees accrued are payable prior to the elevation of the relevant grain to a vessel or other transport.

### **39. DISPUTE RESOLUTION**

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- (a) If a Customer wishes to dispute a decision to reject a CNA (refer to Part C, clause 7 for CNA assessment criteria) or to change the vessel loading order (refer to Part C, clause 22), this clause 39 will apply.

- (b) The Customer must notify Wagner Corporation in writing of their intent to dispute, the reason(s) for the dispute and any requested resolution (**Dispute Notice**) by 4.00pm AEST of the next business day following issue of a notice of rejection of a CNA or the publication of a change to the vessel loading order.
- (c) Wagner Corporation must respond to the Customer raising a dispute within two business days after 4.00pm AEST of the day of receipt of a Dispute Notice (**Response**).
- (d) A Response must set out whether Wagner Corporation intends to reverse its decision to reject a CNA, or to change the vessel loading order, and if not, must provide a written explanation or basis for Wagner Corporation's decision.
- (e) If the Customer is not satisfied with the Response, or Wagner Corporation fails to respond in the manner set out in Part C, clause 39(d), the customer may serve a notice to escalate (**Escalation Notice**) on Wagner Corporation no later than two business days after 4.00pm AEST of the day of receipt of a Response or from the last day the Response should have been received.
- (f) Upon receipt of an Escalation Notice, Wagner Corporation must at the request of the Customer, arrange a meeting within five business days of receipt of the Escalation Notice between Wagner Corporation's General Manager, Ports and the Customer to discuss and resolve the dispute.
- (g) To avoid doubt, Part C, clauses 39(b) to 39(f) do not apply to any other dispute under these Port Terminal Services Protocols including, to avoid doubt, a dispute relating to the grade, quality, sampling, testing, or classification of grain that accumulated for or has been accumulated for elevation onto a vessel.