

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

WAGNER CORPORATION PTY LTD



www.wagnercorporation.com.au

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PART A – TERMS AND ACRONYMS

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 **Error! Reference source not found..**

PART B – NOT USED

PART C – TERMINAL OPERATING PROTOCOLS

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

- (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	shipping@wagnerco.com.au

- (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

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

- (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

- (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

- (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

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

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

- (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

- (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 **Error! Reference source not found.**; 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

- (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

- (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

- (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.

- (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

- (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

- (a) At the request of a Customer Wagner Corporation may vary or waive the minimum notice periods

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 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

- (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

- (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).

28. NOT USED

29. NOT USED

30. GRAIN ORIGINATION

- (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

- (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

- (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

- (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

- (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

- (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

- (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.