

AUSTRALIAN WHEAT CHARTER 1990



Recommended by
The Documentary Committee of the
Baltic and International Maritime
Council (BIMCO), Copenhagen



"AUSTWHEAT 1990"
(amended 1991)

Dated at this day

of 19

It is agreed between

the *Owners/Disponent Owners("Owners") of the good
Motorship called the of the measurement of gross tonnage,
and net tonnage register, and tonnes summer deadweight, or thereabouts,
classed and to be of that class when the Vessel sails with her cargo under this charter, and the Vessel is now

and *Australian Wheat Board of Melbourne, Charterers.

*

(*Delete/Complete as necessary)

Shippers 1—It is understood by Owners and by Charterers of the Vessel that throughout this Charterparty the party referred to as "**Shippers**" shall be the **Australian Wheat Board of Melbourne**.

Loading Port (This Clause may be varied as regards loading port at the time of chartering) 2—That the Vessel, being in every way fitted for the voyage shall, with all convenient speed, after completion of her present voyage, proceed, as ordered by the **Shippers**, to one or two ports out of **Fremantle, Geraldton, Albany, Esperance in Western Australia**, or to one or two ports out of **Port Ciles, Wallaroo, Port Lincoln, Port Pirie, Port Adelaide, Thevenard in South Australia**, or to **Geelong and/or Portland in Victoria**, or to **Port Kembla and/or Newcastle in New South Wales**, or to one or two ports out of **Brisbane, Gladstone, Mackay in Queensland** and there load according to the custom of the port, always afloat, at such safe dock, pier, wharf or berth, as ordered by the **Shippers**, a cargo of wheat in bulk ex silo from the **Shippers** or their Agents, which the **Charterers** bind themselves to provide, not exceeding what the Vessel can reasonably stow and carry in addition to her tackle, apparel, provisions, fuel and furniture.

Shifting of Vessel 3—**Shippers** shall have the option of ordering the Vessel to shift loading berths at Owners' expense on one occasion at each loading port. All time used for shifting between first and second loading berths shall count as laytime, or, if the vessel is on demurrage, as time on demurrage.

Should the Vessel be ordered to move by the Port Authority all costs arising shall be for Owners' account.

Destination 4—Being so loaded, the Vessel shall proceed with all reasonable speed to discharge at and there deliver the cargo in accordance with Clause 18 at any customary dock, wharf, pier or berth as ordered by Receivers or their agents, where the Vessel can safely lie, always afloat, having been paid freight at the rate hereinafter mentioned.

Orders for discharge at a second port, if any, unless given earlier, shall be given by Receivers within 48 hours of arrival at the first port of discharge.

Rotation of Ports of discharge 5—If the Vessel discharges at more than one port the discharging ports shall be in geographical (mileage) rotation from the port or point where first discharging port orders are given.

Capacity 5—The Owners undertake that the Vessel shall load more or less at Owners' option. tonnes of 1,000 kilos (**the mean cargo quantity**) 5%

Cargo Delivery 6—At the loading port the cargo shall be delivered into the holds, loaded, stowed and trimmed, at the expense of the **Shippers**.

Freight 7—Freight shall be payable at the rate of:
all per tonne of 1,000 kilos Bill of Lading weight.
The said freight shall be paid

Declaration of Loading Area if in Ballast 8—The Owners of a Vessel proceeding in ballast to Australia shall advise the **Shippers** of the outward route. In the event of the Charterers having full range of loading ports, the **Shippers** shall declare whether the Vessel is to load in Eastern States, or Western Australia 48 hours before the Vessel is due off Cape Town, Aden or Panama, provided that the Master has given radio notice to the **Shippers** (telegraphic address "3MWheatbd Melbourne") 96 hours before she is so due. In the case of Vessels proceeding from the Indian Ocean or Pacific Ocean area, the **Shippers** (telegraphic address as above) shall declare Eastern or Western Australia loading upon receipt of the Master's application, which is to be made up to 24 hours before sailing from final port.

	Upon receipt of the foregoing declaration, the Master or Owners shall telegraph "3MWheatbd Melbourne" advising (A) estimated date of arrival at the loading area/loading port, (B) whether or not the Vessel is expected to be ready to load on arrival in accordance with Australian Grain Loading Standards. Owners' local agents to keep "3MWheatbd Melbourne" advised of any change in the Vessel's movements.	48 49 50
Orders for Loading Port	9 —If proceeding in ballast the Master shall apply to the Shippers (telegraphic address "3MWheatbd Melbourne") for loading port orders by radio 96 hours before arrival at the loading area nominated under Clause 8 and orders for loading port shall be given by the Shippers by radio within 48 hours of receipt of Master's application.	51 52 53
	Orders for a Vessel with cargo for, or discharging in, Australia shall be given to the Master or Owners' Agents at the Vessel's final discharging port upon the Master or Owners' Agents giving the Shippers written, telexed or telegraphic notice of the Vessel's position and expected readiness, such notice to be given at least three days before her expected departure from final discharging port.	54 55 56
	Failure so to radio or telegraph or telex under this Clause shall not be considered a breach of this Charterparty, but if the Shippers are not so notified, three days shall be added to the time allowed for loading.	57 58
	Upon receipt of loading port orders by a Vessel in Australian waters, if the Master does not intend thereafter to proceed to the loading port direct, but via another port for the purpose of bunkering, he shall so inform the Shippers . If after orders for loading port are given the Vessel is delayed for at least 48 hours in all, the Master shall inform the Shippers by telegram or radiogram of such delay and they shall have the right of ordering Vessel by telegram or radiogram to a different loading port in the same State, if such orders are given within 24 hours (Sundays, holidays and Saturdays excepted) of receipt of the Master's telegram or radiogram; and such orders shall be acknowledged to the Shippers by telegram or radiogram as soon as possible after receipt thereof by the Master.	59 60 61 62 63 64
	Orders for second loading port (if any) shall be given by the Shippers within 24 hours after commencement of loading at the first port, unless previously given.	65 66
Survey at Loading Port	10 —Before loading is commenced the Vessel shall pass the customary survey of an Australian Commonwealth Government Marine Surveyor, and a recognised Marine Surveyor approved by the Shippers . Additionally, the Vessel shall pass any survey/inspection required under State and/or Federal Legislation.	67 68 69
Loading	11(a) —The cargo shall be loaded within the time allowed stipulated below, based on the mean cargo quantity specified in Clause 5 provided that the Vessel can receive at the appropriate pro-rata rate.	70 71
	(i) For a mean cargo quantity above 5,000 tonnes up to 10,000 tonnes the time allowed for loading shall be three (3) days;	72
	(ii) For a mean cargo quantity above 10,000 tonnes up to 25,000 tonnes the time allowed for loading shall be four (4) days;	73
	(iii) For a mean cargo quantity above 25,000 tonnes up to 60,000 tonnes the time allowed for loading shall be five (5) days;	74
	(iv) For a mean cargo quantity above 60,000 tonnes, the time allowed for loading shall be six (6) days;	75
	All weather working days of 24 consecutive hours (except Saturdays, Sundays, holidays and days on which no work is performed owing to weather conditions during normal and customary working hours at the port) provided that Saturday shall count as a full day if work is performed on that day, subject to a reduction of half a day if no work is performed after 1200 hours. Any time lost on a working day owing to weather conditions shall not count provided work is actually stopped or prevented thereby.	76 77 78 79
	(b) —At the first loading port the time for loading shall count (unless loading is commenced earlier) from 24 hours after Shippers have received the Master's written or telegraphic notice between 0900 hours and 1700 hours on ordinary working days and between 0900 hours and 1200 hours on Saturdays, that the Vessel has passed survey in accordance with Clause 10 and is ready to load at such berth as may be ordered by Shippers , whether in berth or not. Orders as to loading berth shall be given to the Vessel upon receipt of notice of her arrival in the port.	80 81 82 83 84
	Notice shall be given at the first port or place of loading only.	85
	If the loading berth is congested on Vessel's arrival at or off the first or sole port of loading or so near as she may be permitted to approach, the Vessel shall be entitled to give Notice of Readiness during ordinary office hours on arrival there, with the effect that laytime counts as if she were in berth and in all respects ready for loading provided that the Master warrants that she is in fact ready in all respects. Actual time occupied in moving from place of waiting to loading berth not to count as laytime. If after berthing the Vessel is found not to be ready in all respects to load, the actual time lost between the time of this discovery to the time that she is in fact ready to load shall not count as laytime.	86 87 88 89 90
	At the second or subsequent loading port (if any) the time for loading shall count (Sundays, holidays and Saturdays excepted) from 1200 hours of the day of arrival at the port or so near as she may be permitted to approach if the Vessel arrives before 1200 hours, and from 0900 hours of the following day if the Vessel arrives at or after 1200 hours, unless loading is commenced earlier, in which case the time shall count from commencement of loading.	91 92 93 94
	Time occupied in changing ports shall not count as loading time.	95
	If separations are required the cost of such separations shall be paid by the Charterers.	96
	The Shippers shall have the right of sending the cargo alongside continuously (Sundays and holidays excepted) and the Vessel shall be bound to proceed with the loading if so required. In such cases all additional stevedoring costs incurred as a result of working outside	97 98

	ordinary working hours shall be for Shippers account.	99
Loading and Cancelling Dates	12 —Time for loading shall not commence before earlier, and if the Vessel is not ready to load at all hatches at (first) loading port by 1200 hours of the the Charterers shall have the option of cancelling this charter, which shall be declared upon notice of readiness being given, unless more time has been lost waiting for orders than mentioned in Clause 9, in which case the cancelling date shall be correspondingly extended. For the purpose of this Clause the preliminary 24 hours' notice of readiness to load, stipulated for in Clause 11, shall not be obligatory, and in no case shall the absence of a ready loading berth as per Clause 11 constitute a reason for cancelling this Charterparty.	100 101 102 103 104 105 106
Stevedores	13 — Shippers shall appoint the Stevedores at their expense. Without prejudice to the other provisions of this Charterparty, in particular Clause 6, all other costs of loading, together with any incidental charges shall be borne by the Owners. The cargo shall be stowed under the supervision and direction of the Master.	107 108 109
Agents	14 —At the port or ports of loading the Vessel shall be consigned to the Owners' agent. At the port or ports of discharge the Vessel shall be consigned to the Receivers'/Owners'* agent at the customary fee. (*Delete as appropriate.)	110 111
Demurrage and Dispatch (Loading)	15 —Should the cargo not be loaded within the time stipulated in Clause 11, demurrage shall be paid at the rate of per running day, and pro rata for any part of a day. Such demurrage shall be paid by the Shippers to the Owners day by day, when and where incurred. For all laytime saved at port or ports of loading dispatch money shall be due by the Owners to the Shippers on completion of loading and shall be paid on the first business day following completion of loading at the rate of one half of the above rate of demurrage.	112 113 114 115 116 117
Bill of Lading	16 —Without prejudice to this Charterparty, the Master shall sign Bills of Lading for the cargo on the " Austwheat Bill " Bill of Lading form (freight and all terms, conditions, clauses, and exceptions as per this charter). Owners shall release signed Bills of Lading to Shippers immediately upon completion of loading and, if required by Shippers , at each load port.	118 119 120 121
Strikes and Civil Blockades	17 —If the cargo cannot be loaded or discharged by reason of a strike or lock-out of any class of workmen essential to the berthing of the Vessel or to the loading or discharging of the cargo (which includes any stopwork meeting not included in the relevant Industrial Award or determination covering such workmen) or as a result of any blockade of the port arising other than as a result of war, any time lost by reason thereof shall not count during the continuance of such strike, lock-out, or blockade unless the Vessel is already on demurrage, but a strike, lock-out or blockade by the Shippers' or Receivers' men shall not prevent demurrage accruing if by the use of reasonable diligence they could have obtained other suitable labour. In the case of any delay by reason of the before mentioned causes, no claim for damages in respect thereof shall be made by the Shippers or the Receivers of the cargo, the Owners of the Vessel, or by any other party under this Charterparty. For the purpose of settling dispatch money accounts, any time lost by the Vessel through any of the above causes shall be counted as time used in loading, or discharging.	122 123 124 125 126 127 128 129 130
Time for Discharging	18 —Time for discharging shall commence (unless discharging is commenced earlier) twenty-four hours after Notice of Readiness has been given during ordinary office hours, whether in berth or not at the first or sole port of discharge and on arrival at the second port, if any, or so near as she may be permitted to approach. Cargo is to be discharged free of expense to the Vessel at the average rate of _____ tonnes per weather working day of twenty-four consecutive hours (Saturdays unless used, Sundays and holidays excepted) provided Vessel can deliver at this rate. If the discharging berth is congested on Vessel's arrival at or off the first or sole port of discharge or so near as she may be permitted to approach, the Vessel shall be entitled to give Notice of Readiness during ordinary office hours on arrival there, with the effect that laytime counts as if she were in berth and in all respects ready for discharging provided that the Master warrants that she is in fact ready in all respects. Actual time occupied in moving from place of waiting to discharging berth not to count as laytime. If after berthing the Vessel is found not to be ready in all respects to discharge, the actual time lost between the time of this discovery and the time that she is in fact ready to discharge shall not count as laytime.	131 132 133 134 135 136 137 138 139 140 141
Demurrage Dispatch (Discharging)	19 —Should the Vessel not be discharged at the rate stipulated, demurrage shall be paid at the rate of per running day and pro rata for any part of a day. For all laytime saved at port or ports of discharge dispatch money shall be paid at the rate of one-half of the above rate of demurrage. Dispatch money, if any, at discharging port or ports shall be calculated on the basis of a weather working day of 24 consecutive hours but any time lost on a working day owing to weather conditions shall not count provided work is actually stopped or prevented. Demurrage or dispatch, if any, at discharging port or ports shall be paid when and where incurred, and settlement to be made on completion of discharge. Laytime at ports of loading and discharging to be non-reversible.	142 143 144 145 146 147 148 149 150

Lighterage at Port of Discharge	20 —Any lighterage incurred to enable the Vessel to reach the place of discharge shall be at the risk and expense of the Receivers of the cargo, any custom of the port or place to the contrary notwithstanding, but time occupied in proceeding from the anchorage to the place of discharge shall not count.	151 152 153
Supervising Cargo	21 —The Charterers, Shippers , Receivers or their respective agents shall have the right of being on board the Vessel whilst at loading port(s) and/or discharging port(s) for the purpose of inspecting the cargo, checking the weight(s), and supervising their interests.	154 155
Exceptions, etc.	22 —The provisions of Section 17 of the Australian Carriage of Goods by Sea Act 1991 and of Articles 3 (except Clause 8 thereof), 4, 4 Bis, 8 and 9 of Schedule 1 thereto and any subsequent amendment thereto shall apply to this Charterparty and shall be deemed to be inserted in extenso herein. This Charterparty shall be deemed to be a contract for the carriage of goods by sea to which the said Section and the said Articles apply and no regard shall be had to Article 1 of the said Schedule or to any subsequent amendment thereto. Nothing in this Clause shall be deemed to prejudice or limit Clauses 7, 17, 23, 24, 25, 28, 29, 30 and 31 hereof.	156 157 158 159 160
Liberties	23 —The Vessel shall also have liberty to sail without pilots, to call at any port or ports on the way for fuel, supplies, or any reasonable purpose, to tow and be towed, and to assist vessels in distress, all as part of the contract voyage.	161 162
War Risks Clauses	24 — (A) If (i) the nation under whose flag the Vessel sails shall be at war whereby the free navigation of the Vessel is endangered; Or (ii) the loading port shall, as a result of war or war-like operations be blockaded or export therefrom prohibited at any time prior to the cargo being shipped this Charter shall be null and void. (B) No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the Vessel has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the Vessel is or shall be prohibited from going by the Government of the Nation under whose flag the Vessel sails or by any other Government, the Owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the Vessel had discharged at the port or ports of discharge to which she was originally ordered. (C) The Vessel shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the Vessel sails or any department thereof, or by any other Government or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the Vessel, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfilment of the contract voyage and the freight shall be payable accordingly.	163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178
Prohibition	25 —In case of prohibition of export or in case of any executive or legislative act done by or on behalf of the Government of the State, Country or Territory of export where the port or ports of shipment named in this Charterparty is/are situated, prohibiting export, any such prohibition shall be deemed by both parties to apply to this Charterparty and to the extent such prohibition prevents fulfilment of this Charterparty to that extent shall the provisions of this Charterparty be of no effect. Charterers shall advise Owners without delay of the reasons therefor and, if requested, shall provide proof to justify the cancellation thereof.	179 180 181 182 183
Sub-letting	26 —No cargo other than that provided by Charterers shall be carried without Charterers' written consent, unless the Vessel is sublet. The Charterers shall have the right of sub-letting the whole or part of the Vessel, but shall remain responsible for the due fulfilment of the Charterparty.	184 185 186
Cesser Clause	27 —The Owners shall have a lien on cargo for freight, deadfreight and demurrage (including damages for detention if any) at port or ports of discharge, and unless the Owners establish that the same cannot be effectively exercised for reasons beyond the Owners' control, the liability of the Charterers under this Charterparty shall cease, except as regards Clause 7 (viz. payment of freight) when the cargo is shipped (provided it is worth the freight, deadfreight and demurrage upon arrival at the port of discharge).	187 188 189 190
Bunkering	28 —Before loading the Vessel shall have the right of proceeding to and bunkering at any usual bunkering port in Australia and/or bunkering at the loading port. After loading the Vessel shall have liberty as part of the contract voyage to bunker at the loading port and/or to proceed to any port or ports at which bunker oil is available for the purpose of bunkering at any stage of the voyage whatsoever and whether such ports are on or off the direct and/or customary route or routes between any of the ports of loading or discharge named in this Charterparty and may there take oil bunkers in any quantity in the discretion of Owners even to the full capacity of fuel tanks and deep tanks and any other compartment in which oil can be carried whether such amount is or is not required for the chartered voyage.	191 192 193 194 195 196
General Average and the New Jason Clause	29 —General average shall be payable according to the York-Antwerp Rules, 1974 as amended 1990 or any modification thereof for the time being in force, but where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply:	197 198 199

NEW JASON CLAUSE

"In the event of accident, danger, damage or disaster before or after 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 agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special

charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery." 207

Both to Blame Collision Clause 30—If the liability for any collision in which the Vessel is involved while performing this Charterparty falls to be determined in accordance with the Laws of the United States of America, the following clause shall apply: 208 209

BOTH TO BLAME COLLISION CLAUSE

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier. 210 211 212 213 214 215

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact." 216 217

Oil Pollution Clause 31—The Owners agree to indemnify the Charterers, their agents, or any other party against any liability which may be imposed on them or which they may incur under any statute regarding liability for pollution of navigable waters by oil, by reason of any contravention of such statute by the Vessel, the Master or any servant or agent of the Owners provided that such contravention shall not have been caused or contributed to by the party seeking to be indemnified under this Charterparty and provided that the facts and matters giving rise to the contravention do not constitute a defence under Article 3 Section 2 of the International Convention on Civil Liability for Oil Pollution Damage 1969. The Owners' total aggregate liability in respect of any oil pollution incident shall under no circumstances exceed US Dollars 400,000,000 and the extent of the indemnity under this clause shall be limited to the difference between any liabilities, costs and expenses incurred directly by the Owners and US Dollars 400,000,000. The Owners warrant that the Vessel is entered in a P and I Association with cover for liabilities arising out of any contravention as aforesaid. 218 219 220 221 222 223 224 225 226

No liability for demurrage shall arise from any delay or loss of time to the Vessel at the port(s) of loading and/or discharge caused by any such contravention nor shall any time lost by any such contravention count when calculating despatch. 227 228

Nothing in this clause shall prejudice or deprive the Owners of their rights of limitation or exclusion of liability under any applicable or relevant law. 229 230

Commission 32—4.25 percent commission upon the freight and dead freight (if any) is due by the Owners to the Charterers on the completion of loading (at the last loading port if more than one) and shall be deducted from the freight payable under this Charterparty. If the Vessel is lost on passage between loading ports, then in lieu of the foregoing, 4.25 percent commission upon the freight on the Bill of Lading weight of the cargo already shipped shall be paid by the Owners to the Charterers on the basis aforesaid. 231 232 233 234

Arbitration 33(a)—Any dispute arising under this Charterparty from events which occur in Australia shall be settled by arbitration, at the Australian Centre for International Commercial Arbitration, Melbourne in the State of Victoria, Australia in accordance with the provisions of the Commercial Arbitration Act 1984 (Victoria) or any Statutory modification or re-enactment thereof for the time being in force. Each party may appoint an arbitrator. On the receipt by a party of the nomination in writing of the other party's arbitrator, that party shall appoint its arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall apply. In the event of the arbitrators not agreeing they shall appoint an umpire whose decision shall be final and binding. 235 236 237 238 239 240

(b)—Any dispute arising under this Charterparty or any Bill of Lading issued hereunder other than provided for in paragraph (a) hereof shall be referred to arbitration in London, one arbitrator being appointed by each party, in accordance with the Arbitration Acts 1950 and 1979 or any Statutory modification or re-enactment thereof for the time being in force. On the receipt by a party of the nomination in writing of the other party's arbitrator, that party shall appoint its arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall apply. If arbitrators properly appointed shall not agree they shall appoint an umpire whose decision shall be final and binding. 241 242 243 244 245 246

(c)—The arbitrators and umpire shall be commercial men normally engaged in the Shipping Industry. Any claim must be made in writing and the claimant's arbitrator appointed within six months of the Vessel's arrival at the final port of discharge, otherwise all claims shall be deemed to be waived. 247 248 249

Brokerage 34— percent brokerage is due upon shipment of cargo, to 250

It is understood that Clauses 1 to inclusive are incorporated in this Charterparty as far as applicable. 251 252

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Signature (Owners)

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Signature (Charterers)