

IN THE MATTER OF:

MARKKA TRADING COMPANY

Claimant

AND:

LIRA STEAMSHIP COMPANY

Respondent

AND:

THE SHIP 'DRACHMA'

AND:

**A CHARTER PARTY DATED 30
NOVEMBER 2010**

Procedural Order 2

This procedural order contains answers to requests for clarifications. Where questions have not been answered, it should be assumed either that they are not relevant, the answer is apparent on the facts already provided or that the resolution of the issue is a matter for the parties to determine by reference to the law and by drawing suitable inferences. Parties should also note that minor typographical errors and mix ups occur in any business context.

1. For the convenience of the arbitral panel, the parties have agreed to a 'bench copy' of the Voyage Charterparty which corrects a number of formatting errors, including the repetition of box numbers on the first two pages of the Charterparty and the numbering of certain clauses. The bench copy is attached to this Order.
2. Peseta is a City State which has adopted the laws of the State of Queensland together with the Australian Commonwealth laws.
3. The reference to 'US\$40' on page 50 is a typographical error, it should be a reference to 'US\$40m'.
4. All correspondence between the parties took the form of letters which were transmitted by email.
5. The references to the dates of previous correspondence in the letters on pages 53 – 55 of the problem is a typographical error.
6. The *Drachma* complies with the requirements set out in Box 18 of the Charterparty.
7. The parties to the Charterparty are incorporated in the State in which they respectively signed the Charterparty.
8. The Bill of Lading has been lost and discharge occurred pursuant to a LOI. However, Markka was the Shipper and Lira was the Carrier of the cargo described in the Charterparty.
9. All procedural requirements for the Owners' General Average claim have been complied with.

VOYAGE CHARTER PARTY

Lira Steamship Company
A.B.N 68 776 009 625
Level 4, West Circle, Peseta
TELEPHONE: +76 888 5555

1. Place and Date of Agreement. (Cl 1) 30 November 2010, Peseta	15. Vessel (Cl 1) MV Drachma	
2. Owners/Disponent Owners/T/C Owners (Cl 1) Lira Steamship Company	16. Sailing from and ETD (Cl 1) Escudo 30 December 2010	
3. Charterers (Cl 1) Markka Trading Company	17. Estimated readiness to load (Cl 1) 22 December 2010	
4. Cargo (Cl 1) (commodity, quantity, margin percentage and in whose option, and whether being shipped in bulk or otherwise). Commodity: Ammonium Nitrate, in bags Quantity: 15,000mt	18. Description of vessel (Cl 1) TBA Vessel to be modern (max 15 years old) s.d. bulk carrier In addition : 1. p and i club: owners gtee that vsls p and i club is a full member of the international group of p and i clubs and will remain so throughout the duration of this c/p: 1. classification: owners guarantee that vsls classification soc is a full member of the international association of classification societies and will remain so throughout the duration of this c/p.	
5. Loading Places (Cl 1) 1 Safe Berth, Escudo SEE CLAUSE 39	19. Maximum loaded Draft (Cl 7 and 39) 7.8m	20. Waterline to hatchcoaming (Cl 7). On Summer Draft 5.3m
6. Opening Laydays (Cl 4) 15 December 2010	21. Suppliers (Cl 3)	22. Agents at Loadports (Cl 2) Forward Freighters, Escudo
7. Cancelling Date (Cl 4) 20 December 2010	23. Hook Clearances (Cl 16) 1. 21 METRES HOOK/WATERLINE AT 5.9 METRES OUTREACH FROM SHIP'S SIDE.	

<p>8. Loading Rate (Cl 10)</p> <p>5,000mt / WWD SHINC</p> <p>Load Terms: NOR to be tendered wipon, wibon, wifpon, however, the NOR can only be tendered during working hours (0900 hours to 1700 hours Mondays to Fridays on ordinary working days). Laytime to commence 12 hours after presentation of NOR during office hours.</p>	<p>2. 23 METRES HOOK/WATERLINE AT 4.8 METRES OUTREACH FROM SHIP'S SIDE.</p>
<p>9. Discharging Ports (Cl 1)</p> <p>1 safe berth, Schilling</p>	<p>3. 12.5 METRES HOOK/HATCHCOAMING AT THE MID HATCH POSITION.</p>
<p>10. Discharging rate (Cl 9)</p> <p>5,000mt / WWD SHEX</p>	<p>24. Deepest draft on arrival @Discharge Ports (Cl.17)</p> <p>7.8m</p>
<p>11. Freight Rate(Cl.31.)</p> <p>US\$50/mt</p>	<p>25. Freight Payable to: (Cl 31)</p> <p>Banking details as per owners' invoice</p>
<p>12. Agency Fee at Discharge Ports (Cl 14)</p> <p>AS AGREED DIRECTLY BETWEEN AGENTS AND OWNERS.</p>	
<p>13. Owners P and I Club (Cl 30 and 36))</p> <p>North of Peseta P&I</p>	<p>26. Demurrage Rate (Cl 11) US\$ 10,500/day</p>
<p>14. Signature (Charterers)</p> <p>Markka Trading Company, Schilling</p>	<p>27. Extra Clauses</p>
	<p>28. Signature (Owners)</p> <p>Lira Steamship Company, Peseta</p>

CHARTER PARTY

1. INTRODUCTION

IT IS THIS DAY MUTUALLY AGREED BETWEEN the Owners, Disponent Owners or Timecharter Owners nominated in Box 2 (hereinafter referred to as "Owners") of the vessel named in Box 15, classed + 100 A.I. or equivalent and described in Box 18 be covered by P & I Club Risks, and the party nominated as Charterers in Box 3, that the said ship, warranted tight, staunch and strong and in every way fitted for the voyage, and being in the position stated in Box 16, shall, after completion of discharge of all previous cargo and after completion of any necessary repairs and/or drydocking, forthwith sail, and proceed with all convenient speed to the loading place or places nominated in Box 5, as ordered by Charterers to two or more berths which may include a layby berth for hold cleanliness inspection, where expected ready to load under this Charter Party on or about the date indicated in Box 17, and there load in the usual and customary manner, always afloat, at one or more places, in turn if necessary, from the Agents of the said Charterers, the cargo stated in Box 4 such cargo not exceeding what she can reasonably stow over and above here tackle, Apparel, Provisions and Furniture, and being so loaded shall therewith proceed with all reasonable speed, at Charterers' option to a berth or berths at one or more discharge ports out of the range of such ports agreed and specified in Box 9, Charterers also having the option of discharging out of geographical rotation, and deliver the same always afloat, on being paid freight pursuant to Clause 31 per tonne of cargo delivered (subject to clauses 20 and 21).

2. AGENTS AT THE LOADING PLACE

At the loading place(s) the ship shall be consigned to the Agents nominated by Charterers and specified in Box 22, and Owners shall pay the customary agency fee(s).

3. LOADING PORT NOTICES

The Master or Owners shall keep Charterers and/or their Agents at the loading place fully informed of the vessel's progress en route to the loading place but in any event:-

- (a) The Master or Owners shall notify Charterers in Escudo, (Fax +78 333 8888) promptly upon departure of the ship from her last port of call en route to the loading place(s) stating the time of departure and the expected time of arrival at the loading place(s), and
- (b) If loading elsewhere, the Master or Owners shall:-
 - (i) Cable to the Suppliers nominated in Box 21 and Charterers' Agents nominated in Box 22 at least 15 (fifteen) calendar days before the vessel's arrival at the loading port, stating the vessel's name, the approximate date on which she will arrive at the loading port and the estimated quantity of cargo required to within 5 (five) percent more or less, within the nominated tonnage.
 - (ii) Cable to the Suppliers nominated in Box 21 and Charterers' Agents nominated in Box 22 at least 10 (ten) calendar days before the vessel's readiness to load, stating the vessel's name, the definite date of the vessel's arrival at the loading port and readiness to load and the exact quantity of cargo required. The definite date of

the vessel's arrival at the loading port shall not be earlier than the approximate date under paragraph (e)(i), unless otherwise agreed.

If through any inaccuracy in this notice, demurrage or detention becomes payable on rail cars or barges, or if there are any extra warehousing or transport charges the same to be for Owners' account unless such inaccuracy results from circumstances beyond Owners' control.

- (iii) Advise Charterers' Agents nominated in Box 22 - 7/5/3/2/1 days notice of ETA at the Pilot Station, or
- (iv) If the vessel is already at the loading port discharging cargo or for other reason, the Master or Owners shall give corresponding notice when the vessel is expected to be ready to load the cargo under this Charter Party.
- (v) Should any wilful misrepresentation be made respect of the size, position etc, or should owners fail to cable shipper and appointed agents giving 14 days notice prior to cancelling date of expected readiness to load of without limitation, should the vessel not be in the loading port and ready to load on or before noon on the cancelling date, it shall be at the option of Charterer whether or not they will load the vessel declarable after receipt by Shipper or their agents of the Master's written notice of its readiness to receive cargo. Should Charterer decide to maintain the vessel all additional costs incurred by Charterer as a consequence of the vessel missing her cancelling shall be for Owner's account.

4. LAYTIME

Laytime not to count before 0700 hours on the date shown in Box 6. Having regard to Owners' responsibility to keep Charterers fully informed of vessel's progress to the loading port, if it appears that the vessel will not be ready to load on or before the date shown in Box 7, Owners shall notify Charterers thereof, stating the probable date of the vessel's readiness to load.

5. HOLDS ON ARRIVAL AT LOADING PORT

Prior to tendering Notice of Readiness at loadport, the vessel's holds and hatchways are to be clean, dry, free from rust, free from smell and free from residue of all previous cargoes and suitable in every respect to receive the intended cargo to the satisfaction of an independent surveyor appointed by the Charterer. However, this survey does not relieve the responsibility of the Master and/or owners to ensure that the vessel is free of all previous cargo residues. If after tendering/accepting Notice of Readiness the vessel is found not to be ready in all respects to load, the actual time lost from the discovery thereof until she is in berth and in fact ready to load shall not count as laytime or time on demurrage. All costs, including the cost of labour standing-by to be for Owners' account.

6. RESTRICTED HOLDS.

No cargo is to be loaded in holds with openings less than 10 metres x 10 metres or any other places inaccessible to grabs. The Master shall have the liberty of loading in such places if this is critical to the stability of the vessel, but any extra time/expenses involved in loading and/or discharging cargo in/from such places to be for Owners' account.

7. LOADING RESTRICTIONS

Owners guarantee that the vessel's draft at the loading port will not exceed the limit specified in Box 19 when loaded to the maximum specified in Box 4 and the height of the ship from the light water line to the top of the hatch coamings will not exceed the limit specified in Box 20.

8. BILLS OF LADING

Bills of Lading to be signed as and when presented in any number of sets required by Charterers for any portion of the cargo on board, such Bills of Lading being deemed to incorporate and remain subject to all terms, conditions, clauses and exceptions as per this Charter Party. The cargo actually shipped, whether correctly estimated in Bill of Lading or not, shall be deemed a full and complete cargo under this Charter, unless the Master shall, before signing Bills of Lading, demand in writing in due time, a further specific quantity of cargo in order to complete the cargo up to the agreed maximum amount provided for in Box 4. All Bills of Lading issued under this Charter Party are to incorporate the Australian Carriage of Goods by Sea Act 1991 incorporating the Hague-Visby rules.

9. LOADING AND DISCHARGING

(a) Costs

The cargo to be loaded free of expense to the vessel.

(b) Equipment

Owners guarantee that the said vessel is equipped with cargo gear as described in Box 18 and that such gear is now and will be prior to presentation of the vessel for loading and will remain for the period of this Charter Party, in good, safe working order. Ship to give full free use of power, cranes and/or grabs, and all other equipment which is normally furnished by ships for loading and discharging cargo including lighting on deck and in cargo compartments. In the event of any time lost during loading and/or discharging occasioned by lack of power, breakdown of cranes and/or grabs or any equipment furnished by the ship, time shall not count nor demurrage accrue, and any extra expenses incurred, including the cost of labour ordered and not used, to be for Owners' account. If required, ship shall also provide full free use of winchmen and/or crane drivers, but at ports of discharge, Charterers will employ crane drivers for the purpose of discharging the cargo under this Charter Party.

Charterers shall have the option of shipping stevedoring equipment between discharge ports in Australia, freight free and at their risk. Any time used in loading and/or unloading such equipment, including lashing and/or unlashings shall count as laytime.

(c) Time Counting

(i) Loading:-

Cargo to be loaded (provided the ship can take it in) at the average rate or rates specified in Box 8.

(ii) Discharge:-

Cargo to be discharged (provided the ship can put it out) at the average rate or rates specified in Box 10.

If Charterers wish to load or discharge before or during notice time, or at times that otherwise do not count Master shall allow work to be done (extra expense being paid by Charterers) and the time actually used shall count. Holidays shall be holidays officially recognised or proclaimed at the place of loading and/or discharging.

In case Charterer / Shipper can arrange to load or discharge in excepted time or before time commences to count, Master to allow work to be done, but actual time used to count. If upon berthing, the vessel fails to pass the survey, then time shall not count even if the vessel is on demurrage until the vessel is ready to receive cargo to the surveyor's satisfaction. All costs, including the cost of labour standing-by to be for Owners' account.

(d) Notices of Readiness

The aforesaid notices of readiness must be given as prescribed by box 8 and box 10, as applicable.

(e) Laytime

The laytime allowed for loading shall be calculated on the outturned tonnage at the rate stipulated in Box 8. The laytime allowed for discharging shall be calculated on the outturned tonnage at the rate stipulated in Box 10.

(f) Interruptions to Laytime

Time occupied in shifting ports or berths or changing positions not to count as lay-time and demurrage not to accrue even if on demurrage and in the event of any delay or hindrance in procuring, preparing, carrying, loading, stowing, shipping or discharging the particular cargo intended for shipment or the cargo actually shipped by reason of Acts of God, war, public enemies, arrests; interruption, stoppage or shortage of shippers' fuel supply now or hereafter under contract, delay or stoppage of goods in transit; fire; ice; frosts; rain; floods; bad weather; disturbed condition of sea; breakdown, or stoppage of railways; accident to piers, or moorings; epidemics; labour or political disturbances; riots or insurrection; quarantine; strike or lockout of miners or workmen or industrial action (including strike) by or lockout of labour usually employed in connection with the mooring of ships or the loading or discharge of ships; scarcity of labourers or labour ordered but not available; insufficiency of lighters, railway wagons or motor trucks; intervention of constituted authorities, actions of governments including but not limited to customs or quarantine authorities; accidents at or stoppage of the mines or any part of the works from which the cargo is supplied, including loading and/or discharging installation and/or equipment; or from any other cause whatsoever beyond the control of the Charterers, Shippers or Consignees; or from congestion of shipping or shore traffic consequent upon any one of the aforesaid causes; or from inability or inefficiency of the ship to load or discharge, the laytime not to count during the period of such delay or hindrance and demurrage not to accrue even if the vessel is already on demurrage.

(g) Hatches

At each port, the Master and/or his crew, at the expense of the vessel, shall uncover all hatches before commencing to load or discharge as the case may be, and shall cover the hatch of each hold as soon as the loading into same has finished, and also cover all hatches when the loading or discharging has finished for the day if the weather be wet or threatening, and upon completion of discharge. He shall also, during rain or snow, cover up all hatches at which loading and/or discharging is not actually going on. Time not to count opening and closing of hatches during load or discharge operations.

(h) Separations

Unless otherwise agreed, different grades and/or types of material shipped simultaneously under this Charter Party to be separated by holds. Where applicable the minimum quantity will be calculated to the nearest railcar, railwagon or barge.

(i) Seaworthy Trim

The Master to remain solely responsible for the seaworthy trim of the ship. If more than one place of loading or more than one port of discharge is used, cargo is to be left stowed according to Master's requirements.

(j) Night Work

If required, ship to work by night as well as by day at the loading place(s) and/or discharging port(s), but any extra expense to be paid by the party ordering it, but should overtime be ordered by the Port Authorities, any extra expense resulting therefrom is to be borne by the parties in equal shares. Notwithstanding the foregoing, overtime for ship's officers and crew to be for Owners' account in all cases.

10. NOT USED**11. DEMURRAGE AND DESPATCH MONEY**

Demurrage over and above the lay-days calculated and allowed for both loading and discharging, to be paid to ship at the rate specified in Box 26 per day or part thereof pro-rata and Despatch Money to be paid by Owners at the rate of one half of the Demurrage rate per day or part thereof pro-rata, on all laytime saved in loading and discharging.

Laytime to be fully reversible between load berths and laytime not to count while moving between individual load berths even if on demurrage. Laytime between loading /discharging ports to be non-reversible; however laytime between individual discharging ports to be fully reversible.

12. LIEN

Charterers' liability to cease on Shipment of cargo, the Master and Owners having an absolute lien on the cargo for all freight, dead freight and demurrage due to the ship under this Charter.

13. DESTINATION

Orders for port or ports of discharge to be given on signing Bills of Lading if practicable, otherwise communicated as soon as possible after sailing. Ship to discharge at such safe docks, wharves, or places, always afloat, within the limits of the port or ports of discharge, as Charterers or their Agents may name on or before the ship's arrival. Provided that Charterers or their Agents may change such nomination at any time prior to berthing. In default of any nomination by Charterers, on arrival ship to discharge at a usual berth in the discharge port or ports.

14. AGENTS AT LOAD & DISCHARGE PORTS

- a) The ship shall be consigned to Charterers' Agents at the port or ports of load and discharge, paying all customary fees at each port, for attending to matters concerning the cargo and the vessel
- b) If the ship calls at any port or ports on passage in distress, the Master is to advise Charterers in Schilling, who will advise the name of their Agents at such port, to whom the ship is to be consigned for cargo purposes only.

15. DISCHARGING PORT NOTICES

The following notices are required:-

- a) On completion of loading, the Master or Owners shall notify Charterers in Schilling (by Fax 61-7-3333-9999) stating the date and time of departure from the loading place, the quantity of cargo loaded and the hatch quantities, the expected time of arrival at the first port of discharge and the vessel's deepest draft on arrival. The Master shall also confirm that his vessel complies with all applicable provisions of the Australian Navigation Act 1912 and all Regulations made thereunder.
- c) 72 (seventy-two) hours before arrival the Master shall advise Charterers' Agents at the first discharging port stating the vessel's estimated time of arrival there, followed by confirmation 48 (forty-eight) and 24 (twenty-four) hours before arrival. The master shall also advise Charterers' Agents at any time there is an appreciable change in the estimated time of arrival.

16. BUNKERING

Provided that there are no disruptions to the load and / or discharge of the vessel and the charterer is advised accordingly, the ship shall have the liberty as part of the contract voyage to proceed to any port or ports enroute at which bunker oil is available for the purpose of bunkering at any stage of the voyage whatsoever, and at any of the ports of loading or discharge named in this Charter and may there take subject to compliance with the provisions of Clause 17, 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 on the chartered voyage.

17. DISCHARGING PORT RESTRICTIONS

Owners guarantee to deliver always afloat as customary to the nominated discharge port or ports, bearing in mind the individual port / berth restrictions to which the vessel must comply.

In the case of a vessel not fitted with its own grabs, Owners further guarantee that each ship's crane has a minimum 25mt SWL and can maintain the minimum hook to waterline and hook to hatch coaming clearances specified in Box 23. Any additional cost (including cost of labour ordered and not used) and/or time lost by vessel's failure to comply (which time shall not count as laytime), shall be for Owners' account.

Charterers warrant that the discharge port nominated in Box 9 carries all necessary licences for the discharge of the particular cargo specified in Box 4.

18. STEVEDORING

Charterers will nominate and employ stevedores at their expense at ports of discharge. Stevedore damage, if any, is to be settled directly between Owners and Charterers' stevedores. Owners or Master to give written notice to Stevedores of any damage claimed, not later than 24 (twenty-four) hours after occurrence. Charterers will render assistance to Owners, if necessary, in obtaining prompt settlement of their substantiated claims.

Stevedores shall not be responsible for fair wear and tear commensurate with the nature of the trade.

Owners guarantee that the nominated vessel is a standard modern single deck bulk carrier with mechanical or electric - hydraulic steel folding hatch covers and holds suitable in all respects for the nature of the trade and for grab discharge with tank tops clear of all obstructions including cleats, guides and other such fittings for containers. Any additional expenses (including damage to the ship and/or equipment supplied from the shore) and/or time lost by vessel's failure to comply, shall be for Owners' account.

Holds to be shovelled clean by Charterers or their Agents/Stevedores on completion of discharge in accordance with the custom of the trade and in the discharge process shall have the option to use machinery / excavators for trimming cargo in the vessel holds at the ports of discharge.

19. SAMPLING

Charterers' Agents to be allowed all facilities for sampling during discharge, and portions taken as samples to be retained and delivered separately as required.

20. WEIGHING

The weight of the cargo loaded on board and/or outturned at the port of discharge shall, in accordance with the custom of the port, be established by weighing (whether by rail and/or road truck certificates or belt weight certificates) or by draft survey. Master to be allowed to appoint a check weigher at the expense of the ship.

If required, for the purposes of establishing the quantity of cargo loaded or discharged by draft survey, the Master shall furnish all appropriate hydrostatic and statistical information, including calibration scales for all tanks, capacity plans, displacement scales and deadweight scales. Plimsoll marks amidships and draft marks on port and starboard sides, bow and stern are to be clearly cut and marked on the vessel's shell plating.

21. MOISTURE

If any part of a rock phosphate cargo is delivered in a wet condition which condition arises from any cause whatsoever operating during the voyage, no freight to be paid on the excess moisture contained in the damaged cargo as compared with the sound portion. The moisture of the sound and damaged portions of the cargo shall be determined at the port of delivery.

22. REGULATIONS

(a) Owners to ensure that the ship complies with:-

- (i) the applicable requirements of the Commonwealth of Australia Navigation Act 1912 and the Regulations thereunder including the Navigation Orders, Regulations and Marine Orders, Part 32 (Cargo and Cargo Handling Equipment and Safety Measures) pursuant thereto.
- (ii) Owner must only nominate and provide vessels complying with all of the provisions of this Contract.
- (iii) The Owner shall procure that both the Vessel and "the Company" (as defined by the ISM Code) shall comply with the requirements of the ISM Code. Upon request the Owner shall provide Charterers with a copy of the relevant Document of Compliance (DOC), Safety Management Certificate (SMC), and, all documents associated with and/or comprising the Safety Management System (SMS) and/or the Safety Management Manual (SMM) as referred to in the ISM Code.
- (iv) Vessels' cranes are to be suitable for grab discharge.
- (v) The Owner also guarantees that the vessel shall be at all times in possession of valid and up-to-date certificates on board to comply with statutory regulations and/or requirements. Vessel to provide safe access between wharf and vessel at all times.
- (vi) Cranes and cargo gear are to specifically meet the Australian Marine Orders Part 32 which are listed but not limited to those contained in Appendix A of this contract.

- (vii) If stevedores or other workmen are not permitted to work by reason of any failure of the Master, the Owner and/or their Agents to comply with government / local regulations or by reason that the vessel is not in possession of such valid and up to date certificates then Owner shall make immediate corrective measures.
- (b) The vessel is to comply with all the requirements and regulations for all ports and countries of call under this charter party. In the event of any delay as a consequence of the ship failing to comply with any aforementioned Statutes or Regulations, time shall not count nor demurrage accrue during the period of such delay and any extra expenses incurred, including cost of stevedoring / receival labour, equipment and truck demurrage, ordered and not used, to be for Owners' account.

23. VESSEL'S HOLD AND CRANE ACCESS LADDERS

Vessel's hold and crane access ladders to comply with the requirements as laid down by the Australian Navigation Act 1912 and amendments thereto in particular but not limited to Marine Orders Part 32, (cargo and cargo handling equipment and safety measures) which govern vessel's hold and crane ladders as well as ship's cargo handling equipment, and Marine Order Part 23 (equipment - miscellaneous and safety measures) which govern gangways. Should the vessel not so comply then responsibility for any modification required entirely at Owners' cost and risk, and time shall not count nor demurrage accrue during the period of such delay and any extra expenses incurred, including cost of labour ordered and not used, to be for Owners' account.

24. CREW WAGES AND CONDITIONS

- a) The minimum terms and conditions of employment of the ship's company are now, or will be prior to presentation for loading and will remain for the duration of this Charter Party, covered by an ITF agreement or other bona fide trade union agreement acceptable to the ITF.
- b) Owners declare that to the best of their knowledge the vessel has never been involved in any action or dispute or been blacked by any maritime or transport organisation in or in connection with crew wages or conditions.
- c) Owners agree that in the event of any delay caused by any dispute or industrial action in or in connection with the ship's flag or crew wages and/or conditions of employment, time shall not count nor demurrage accrue during the period of such delay and any extra expenses incurred, including cost of labour ordered and not used, to be for Owners' account.

25. FORCE MAJEURE :

Neither party shall be liable for any failure to perform or delay in performing its obligations under this Contract, where the party is being delayed, interrupted or prevented from doing so by reasons of any Force Majeure Event.

For the purposes of this Contract, the term "Force Majeure Event" means:

- (a) any strike, labour difficulty, lock-out, stoppage, dispute or difference with workmen, long shore men, railways or railway men, lightermen, tugboatmen, MUA labour or other hands essential to the provision or loading or discharging of the cargo or the working of the vessel;
- (b) acts of God, accidents, fire, explosions, flood, landslips, ice, frost or snow, bad weather at the mines or Shipper's or Receiver's works or berths;
- (c) mobilisation, war (declared or undeclared), hostilities, rebellion, revolution, blockade, or any acts of any government or any sub-division or agency thereof, acts of public enemies, civil commotions, insurrections, political disturbances, epidemics, quarantine, riots, or intervention of sanitary, customs, and/or other constituted authorities, acts of the queen's enemies, arrest and/or restraints of rulers, princes and people, quarantine, barratry of the master and crew, enemies, pirates, robbers by land or sea;
- (d) inability to obtain or delays in securing transportation facilities, stoppages of the Shipper's fuel supply, hindrances of whatsoever nature in mining, processing, loading, shipping or discharging of products occurring without the negligence of the Charterer;
- (e) any other cause whether or not the nature of character specifically enumerated above which is beyond the control of such party.

The Charterer shall not be answerable for any negligence, default or error in judgement of trimmers or stevedoring employed in loading/discharging the cargo.

Vessel has liberty to deviate for the purpose of saving life or property (including the vessel), with leave to sail without Pilots, and tow or to be towed and assist vessels or to be assisted in all situations whatsoever. Charterers shall not be held liable in any way howsoever for such deviation. Salvage and/or towage for Owner's sole benefit.

Ship not answerable for losses through explosion, bursting of boilers, breakage of shafts, or any latent defect in the machinery or Hull not resulting from want of due diligence by the Owners of the ship or any of them or by the ship's husband or manager.

The Shipper and/or Charterer and/or Receiver shall not be liable on any basis whatsoever, without limitation, whether it be in contract, tort or otherwise, in damages or otherwise responsible for failure or delay in delivery for loading or in discharging if prevented, delayed or obstructed by any Force Majeure Event. In the event of the cargo not being available through any Force Majeure Event, the vessel has the liberty to sail without the cargo, or sail with any cargo forming part or parcel of the intended shipment on expiration of reasonable notice of Owners' intention so to do in order to enable the vessel to keep her itinerary.

Nothing herein contained shall exempt the Shipowners from liability to comply with any Government, State or Provincial Regulations or to pay for damage to cargo occasioned by bad stowage, by improper or insufficient ventilation, or by improper opening of valves, sluices and ports, or by causes other than those above excepted; and all the above exceptions are conditional on the ship being seaworthy and properly manned when she sails on the voyage.

In the event of a Force Majeure Event arising:

- (i) the affected party shall give the other party prompt written notice of such cause or causes and shall take all reasonable steps to minimise any delay so caused;
- (ii) the performance of those obligations shall be resumed as soon as practicable after such disability is removed. If deliveries are suspended for more than 30 days the shipments in arrears may be cancelled at the option of either party who must inform the other party of such cancellations within 15 days after termination of the 30 days. Either party may likewise cancel in respect of any immediately succeeding periods of 30 days during which disability may continue; and
- (iii) where by virtue of a Force Majeure Event any deliveries are cancelled, the Charterer's obligation under this Charterparty shall be reduced by the quantity of the cancelled shipments.

26. BOTH TO BLAME COLLISION CLAUSE

If the liability for any collision in which the vessel is involved while performing this Charter Party fails to be determined in accordance with the laws of the United States of America, the following clause shall apply:-

"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 the said goods, paid or payable by the other nor non-carrying ship or her Owners to the Owners of the said goods and set off, recouped or recovered by the other on non-carrying ship or her Owners as part of their claim against the carrying ship or carrier.

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

and the Charterers shall procure that all Bills of Lading issued under this Charter Party shall contain the same clause.

27. GENERAL AVERAGE AND THE NEW JASON CLAUSE

All claims for General Average to be settled in Tolar in accordance with the York/Antwerp Rules 1994 as amended, modified or subsequent version thereof for the time being in force. General Average shall be payable according to the York/Antwerp Rules, but where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply:-

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences 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"

and the Charterer shall procure that all Bills of Lading issued under this Charter Party shall contain the same clause.

28. WAR RISKS CLAUSE

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 ship has been ordered to discharge either on signing Bills of Lading or thereafter, be one to which the ship is or shall be prohibited from going by the Government of the nation under whose flag the ship sails or by any other Government, the Owners shall discharge the cargo at any other port covered by this Charter Party 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 ship had discharged at the port of discharge to which she was originally ordered.

The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destinations, 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 of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, 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.

29. JETTISON CLAUSE

The Master shall report any instance of jettison to the Charterers as soon as practicable.

30. OIL POLLUTION

The Owner agrees to indemnify the Charterer, his 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 any reason of any contravention of such statute by the ship, the Master or any servant or Agent of the Owners and provided that such contravention shall not have been caused or contributed to by the party seeking to be indemnified under this Charter Party 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 of Civil Liability for Oil Pollution Damage, 1969 or Article 4 of the International Convention for the Prevention of Pollution of the Sea by Oil 1954 (as amended in 1962).

The Owners warrant that the ship is entered in the P & I Association named in Box 13 and will remain adequately insured at all times with cover for liabilities arising out of any contravention aforesaid. No liability for demurrage shall arise from any delay or loss of time to the vessel at the port of loading and/or discharge caused by any such contravention nor shall any time lost by any such contravention count when calculating despatch.

If required to do so by the United States Oil Pollution Act 1990 or other applicable legislation, Owner will ensure that the vessel holds a Certificate of Financial Responsibility and otherwise complies with all of the requirements of the legislation.

31. FREIGHT

Freight to be paid by telegraphic transfer in United States Dollars to Owner's account 90%, less full commissions, within five banking days of signing and releasing Bills of Lading and after presentation of Owner's written freight invoice discountless and non-returnable, ship and/or cargo lost or not lost at the rate or rates as specified in Box 11.

Freight to be calculated on Bill of Lading weight on completion of load (Shipper's weights according to independent surveyor provided by the Suppliers to be accepted as tonnage shipped, the Master having the right to check the weights during loading), in full of all port charges, pilotages, light dues and all other dues usually paid by vessels.

Final freight balance to be paid upon the delivered tonnage as determined by a certified weigh bridge, certified belt scale or independent draft survey as per the custom of the port and nominated by the charterer, with agreement of laytime statements supported by duly signed documentation by Shipper or their agents within three weeks on completion of discharge of the vessel.

Should Owners not agree laytime and balance of freight calculation within six months of completion of discharge then Owner's claim for balance of freight against Charterer shall be time barred.

All liability of Charterer and Shipper shall cease on shipment of cargo, with the exception of freight, deadfreight and demurrage, if any.

If the vessel is under charter to the party described as "Owner" then the "Owner" shall defend, indemnify and hold Charterers harmless from any lien on cargo exercised by the registered Owner of the vessel arising from failure of the "Owner" to discharge its obligation to the vessel's registered Owner under such charter.

In the event a lien is or may be asserted upon the cargo and/or freight to be carried or paid hereunder, Charterers shall have the liberty to pay such freight, which would normally be payable to the Owner hereunder, directly to the registered Owner of the carrying vessel or the person asserting such lien and such amounts so paid shall be credited against any freight otherwise payable by Charterers under this Charter.

32. CHARGES

Owners shall pay any dues or charges levied on the ship by reason of cargo being on board and all other dues or charges whatsoever. Wharfage, if any, at load and discharge port to be for Charterers' account. Any deep draft surcharge imposed at load / discharge port to be for owners account. Berthage for Owners account, and site occupation fee in New South Wales for Charterers' account.

Any extra insurance incurred by reason of vessel's age, class, flag, Owner or type of build shall be for account of Owner. War Risk Insurance premium if any, on vessel for Owner's account

33. COMMISSION

A commission of 2.5 % address commission / brokerage for division, is due on the actual gross freight, deadfreight and demurrage under this Charter Party is due by the ship to the Charterer and their brokers and maybe deducted by Charterer from the initial freight payment.

34. RELET

Charterer shall have the right to relet all or part of this Charter Party to others subject to Owners' approval which shall not be unreasonably withheld.

35. CLAIMS

Any claim that Master or Owners consider they may have on Charterers or Shippers arising at a port of loading and/or discharge shall be notified in writing by the Master to the Charterers or Shippers as the case may be before sailing from the port at which the claim arose.

Any claim for deadfreight shall be supported by an independent surveyor's report arranged at the expense of the Owners. If such independent survey is conducted after completion of loading, time used shall not count, nor demurrage accrue and any extra expenses incurred by virtue of the vessel's departure being delay, shall be for Owners' account.

36. ARBITRATION

- (a) Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity, or termination, shall be referred to arbitration in Brisbane by ~~a sole arbitrator~~/a tribunal of 3 arbitrators **(strike out whichever is inapplicable)** in accordance with the Arbitration Rules of the Maritime Law Association of Australia and New Zealand.
- (b) Notices requiring a party to appoint an arbitrator in accordance with paragraph (c) hereof shall be served:-
 - (i) Upon the Charterers at their office at 10 Crow Street, Schilling during business hours.
 - (ii) Upon Owners either:-
 - (A) at their place of business or registered office; or

- (B) to their P & I Club named in Box 13; or
 - (C) to the correspondents of the P & I Club in Schilling.
- (c) One Arbitrator is to be appointed by each of the parties hereto and a third by the two so chosen. The Arbitrators shall be recognised by the Maritime Law Association of Australia and New Zealand as having expertise in shipping or maritime matters.
- (d) The arbitration shall be conducted in accordance with the Commercial Arbitration Act, 1990 (Qld) ("the Act") save and except that the parties hereby agree that:-
- (i) the Arbitrators may determine any questions by reference to consideration of general justice and fairness;
 - (ii) a party may be represented by duly qualified legal practitioners or other representative;
 - (iii) the Arbitrators shall not have the powers conferred by Section 27 of the Act;
 - (iv) the Arbitrators shall include in the arbitration award their findings on the material questions of law and fact, including references to the matters on which the findings of fact were based;
 - (v) the parties shall give any necessary consent to an appeal to the Supreme Court of Queensland on any questions of law arising in the course of the arbitration or arising out of the arbitration award.

37. LAW :

The laws of Schilling shall govern this Charter Party.

38. COMBINATION CARGO

This cargo to be shipped as full cargo however should the charterer of this charter party agree to combine cargo with another parties cargo, charterer's cargo is to be loaded before and discharged before other part cargoes are worked, unless otherwise agreed charterer's cargo is to be stowed in separate holds.

In the event the combination cargo is destined for the same discharge ports as charterer's cargo, then charterer has the option of which cargo is first discharged at that port.

In the event of part cargoes being loaded, Master, Shipper and charterer to ensure fertilisers under this contract are stowed so that full use of ship's gear as on board is available at discharging port(s).

Owners will indemnify Charterers against any loss or liability whatsoever incurred by Charterers as a result of or in connection with the exercise by Owners of their rights under this clause.

39. VESSEL'S' DRAFT

Owner to ensure that vessels arrive at load port(s) on drafts applicable to the nominated ports and berths.

40. HOLD CLEANLINESS

Vessel's holds and hatches are to be clean of any previous cargo residues and Owner acknowledges the Schilling Quarantine and Inspection Services ('SQIS') requirements that on arrival at Schilling there is zero tolerance for any foreign organic matter. Owners must ensure the vessel's compliance with, SQIS' zero tolerance policy. If any residues of previous cargoes carried on board the performing vessel are found in the holds of the vessel, Owners agree to indemnify Charterers with respect to any loss Charterers suffer as a result whatsoever, including, but not limited to, loss of profits and consequential loss.

Loose paint and rust scale are to be removed from all internal structures and any painted surfaces must be properly applied and cured. Holds are to be washed and dried prior to inspection.

Preferable for the vessel's holds to be inspected and cleaned at the last discharge or at the load port, with all the appropriate mechanical equipment as is necessary; prior to survey.

Charterer may, as soon as reasonably practicable after receipt of Notice of Readiness at load ports, cause the holds to be inspected by a surveyor appointed by the charterer to determine whether it appears that the vessel's holds are sufficiently clean as required by the contract. Owners shall provide all necessary access and assistance to enable the inspection to be carried out.

Charterer's designated Representative and/or Surveyor will have the authority to act to ensure charterer's interests are protected. This Representative/Surveyor will only be certifying that the holds were inspected and found to have been presented clean, dry and apparently grain free in accordance with the terms and conditions of this Contract; as stated by the Master.

If necessary, this authority includes:

- (a) The ability to delay loading of the vessel so that an inspection is performed in daylight hours
- (b) Calling for extra ship's lighting to assist with the inspection.
- (c) The utilisation of a mechanical man-lifting machine to facilitate inspection where available
- (d) Vessel to allow a "walk over" inspection before cargo subsequently fills the hold.

Vessel to be inspected alongside by Charterer's appointed surveyor alongside load berth, or at a layby berth in case load berth is unavailable, or at vessel's previous port as Charterer may require, subject to head Owner's approval.

Berth and shifting costs are for Owner's account in case a layby berth is required for survey. Any time lost waiting for inspection to be performed shall count in accordance with NOR/Laytime provisions, regardless of survey outcome.

Inspection to be performed in daylight hours only. Time taken for inspection after laytime has commenced, (or after discharge at prior port has been completed,) shall count towards laytime, otherwise inspection time shall not count. Should vessel fail inspection then time from failing to passing inspection shall not count/be added to laytime.

In the event the inspection reveals that the vessel does not meet the requirements of this charter party, the parties agree that the vessel is not ready in all respects to load and laytime or time on demurrage, even if already on demurrage, will not count from the time of discovery until the vessel is at the loading berth.

Vessel's holds to be cleaned and dried in accordance with the requirements of this charter party and without limitation to the satisfaction of Charterer.

Any approval or rejection by the charterer following such inspection or any failure by the charterer to appoint a surveyor or arrange an inspection, will not relieve Owner of his obligations under this Contract.

41. SUBLETTING

It is understood that the Owner does not have the right to sublet this Contract or any part of it without the prior written approval of the charterer.

42. HEALTH AND SAFETY

The Owner shall have on board the vessel an effective occupational health and safety policy with the object that due care and attention is given by crew members to safe working practice in all operations pertaining to the vessel. The Owner shall have a policy regarding drug and alcohol abuse on board the vessel with the object that no crew member will navigate the vessel or operate its on-board equipment whilst impaired by drugs and alcohol. The policy will also have the objective of strictly prohibiting the possession, use, transport and distribution of illicit or non-prescribed drugs by crew members. The Owner shall exercise due diligence throughout the currency of the nominated voyage to ensure that such policies are complied with.

43. CONFIDENTIALITY

The terms and conditions of this contract are confidential and are to remain the property of the charterer and are not to be passed to third parties by the Owners or their agents. It is understood both charterer and Owner have the right to give extracts of this contract to their port agents and/or Master.

44. QUALITY

Without detracting from the obligations of the Owner with regard to the condition of the vessel and ship's gear as appearing elsewhere in this contract, the Owner warrants to the charterer that the vessel and ship's gear will at presentation for both loading and discharge, conform with the quality standards applicable for the nominated cargo to be imported into Schilling and be suitable in all respects for the nature of the trade.

45. NON WAIVER CLAUSE

Failure by the Owner to observe and/or perform its obligations and/or covenants under this Agreement, or failure by the charterer to exercise any or all of its rights, remedies or powers hereunder, shall not constitute a waiver by the charterer of that, or any subsequent or other failure by Owner, nor a waiver by the charterer of any right, remedy or power which Charterers may exercise in relation to that or any subsequent or other failure.

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OWNER	CHARTERER
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CHARTERER