



**DALRYMPLE BAY**  
**COAL TERMINAL**  
PTY LTD

## Terminal Regulations

Approved

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In these Regulations, the following terms have the meanings specified below:

“**Access**” means access under an Access Agreement to Terminal Services.

“**Access Agreement**” means an agreement between DBCT Management and an Access Holder entitling the Access Holder to the Handling of coal at the Terminal.

“**Access Holder**” means a person who has an entitlement to Access pursuant to an Access Agreement. Where the context allows, in respect of any communication to be given by or to an Access Holder, it means a person authorised by the Access Holder to give or receive that communication on its behalf.

“**Access Protocol**” means the agreement named *Access Protocol for Coal Unloading Facilities* dated 31 May 2013 relating to the Terminal, as updated and acceded to from time to time.

“**Ad Hoc Handling Instructions**” means instructions for Handling coal, of the kind contemplated in Regulation 2.4(a)(ii).

“**Agreed Specification**” means coal in a form which:

- (a) is capable of passing through a 300 mm grizzly; and
- (b) meets the parameters outlined in Schedule 3 (Coal Characteristics) of these Regulations.

“**Annual Contract Tonnage**” means, for an Access Holder in relation to a Financial Year, the number of tonnes of coal in that Financial Year that the Access Holder is entitled to have Handled under its Access Agreement:

- (a) including tonnage which the Access Holder is entitled to have Handled but which may not, at a practical level, be able to be Handled due to circumstances such as a force majeure event or relevant provisions of the Terminal Regulations; but
- (b) excluding ad-hoc over shipments which may be permitted under an Access Agreement subject to available capacity.

“**Annual Railing Entitlement**” means, for an Access Holder in relation to a Financial Year, the aggregate number of tonnes of coal which the Access Holder is entitled to have railed to the Terminal in that Financial Year under a rail haulage agreement with a Rail Freight Provider:

- (a) including tonnage which the Access Holder is entitled to have hauled but which may not, at a practical level, be able to be hauled due to circumstances such as a force majeure event, DBCT Coal Chain

constraint or relevant provisions of the relevant rail haulage agreement; but

- (b) excluding ad-hoc tonnages which may be permitted to be railed under the relevant rail haulage agreement subject to available capacity.

If the entitlement of an Access Holder under its rail haulage agreement is different from its entitlement under a relevant rail access agreement in respect of a period, the entitlement for that period will be taken to be the lesser of those tonnages.

**“Approved Handling Instructions”**, in respect of an Access Holder means Standing Handling Instructions or Ad Hoc Handling Instructions which have been approved by the Operator in respect of that Access Holder.

**“ATA”** means, in respect of a relevant arrival of a Vessel, the time when the last of the following occurs:

- (a) the Vessel has reached the "commercial area of the port" or the "normal waiting place" identified by the Hay Point Harbour Master,
- (b) the Vessel is ready in all respects to be towed, berthed, deballasted and loaded without delay; and
- (c) a copy of the Notice of Readiness (such notice is customarily presented to a shipper or their agent by the Master or the ship's agent) has been tendered to the Operator by the Master or ship's agent, confirming the readiness of the arrived Vessel to undertake the operations in (b) above.

**“Business Day”** means a day other than a Saturday, Sunday or public holiday in Mackay, Queensland.

**“Cargo Assembly”** means scheduling of the delivery of coal to the Terminal with the principal objective of it being Handled in an order and way which facilitates and is in alignment with the loading of Vessels in their order of entitlement to load.

**“Cargo Availability Date”** (CAVD) means the date on which all coal called for by the Master for a nominated Parcel is available at the respective mine train load-out (TLO) for immediate and continuous railing to the Terminal.

**“Certificate of Weight”** means a certificate of weight issued by an independent, qualified marine surveyor, certifying the weight of coal loaded on board a Vessel.

**“Code of Practice for the Safe Loading and Unloading of Bulk Carriers”** means the *Code of Practice for the Safe Loading and Unloading of Bulk Carriers* promulgated by the International Maritime Organisation pursuant to IMO Resolution A.862(20), as amended or replaced from time to time and incorporated into the International Maritime Solid Bulk Cargos (IMSBC) Code as a supplement.

**“Consignment Note”** means a delivery docket issued by Rail Freight Providers in respect of a train delivering coal to the Receiving Point.

**“Contamination”** means, in the context of coal, any substance or object that is not coal and causes, or has the propensity to cause, a Material delay to the unloading of trains or the loading of Vessels

**“DBCT Coal Chain”** means all infrastructure between, and including, the respective rail loading facilities at mines which rail coal to the Terminal and the Delivery Point at the Terminal, required for the transportation of coal relating to the Terminal – from commencement of loading at a mine site to the departure of a loaded Vessel from the Terminal (and, for clarification, includes locomotives and rolling stock, as well as loading, unloading, stacking, reclaiming and rail and Terminal infrastructure).

**“DBCT Holdings”** means DBCT Holdings Pty Ltd (ACN 096 395 783) and its successors as long-term head-lessee of the Terminal.

**“DBCT Management”** means (DBCT) Management Pty Ltd (ACN 097 698 916), and any successor of it as the long-term sub-lessee of the Terminal, responsible for the provision of Terminal Services.

**“Delivery Point”** means the end of the shiploader spout over a Vessel’s rail at the Terminal.

**“Financial Year”** means each period of 12 months beginning on 1 July and ending on the next 30 June.

**“Good Operating and Maintenance Practice”** means, with respect to the operation and maintenance of the Terminal, adherence to a standard of practice which includes the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a competent, experienced and qualified operator of a facility comparable with the Terminal.

**“Handle”** means the receiving by rail, unloading, stacking, storing, reclaiming and loading of Vessels with coal, including any other relevant Terminal Services.

**“Handling Instructions”** means Standing Handling Instructions or Ad Hoc Handling Instructions.

**“Hay Point”** means the port of Hay Point (near Mackay), Queensland.

**“Hybrid or Hybrid Operation”** means the utilisation of Hybrid Stockpiles by any Access Holder at the Terminal at the same time as Cargo Assembly at the Terminal.

**“Hybrid Stockpile”** means a stockpile of uniform grade coal intended to be used for the loading or part-loading of a number of Vessels over a period of time, in circumstances where a queue of Vessels for the same Access Holder has formed off the Terminal.

**“Master”** means the captain, master or ship’s master whatever they are called who is in ultimate charge of a Vessel. Where context allows it



includes a person carrying out the functions of a captain, master or ship's master.

**"Material"**, in the context of a change or impact, means a change or impact resulting in, or having the propensity to result in an alteration or delay to a rail or berthing schedule.

**"Miscellaneous Services"** means:

- (a) those Terminal Services described as such in Schedule 3 (Services) of the Standard Access Agreement; and
- (b) Terminal Services provided to an Access Holder to the extent that they are materially different (in nature, extent or cost) to the Terminal Services provided to other Access Holders including as a result of a particular Access Holder's coal (or any contaminants in it) or requirements in respect of its handling, storage, blending, unloading or loading which result in materially additional costs or delays

**"Month"** means a calendar month.

**"Notice of Readiness"** or **"NOR"** means a notice given by or on behalf of the Master of a Vessel to the shipper or shipper's agent, that the Vessel has arrived for loading at DBCT at the "commercial area of the Port", "normal waiting place" or similar term used from time to time by the Hay Point Harbour Master in respect of Hay Point, and that the Vessel is ready to be loaded in all respects without delay (if the Operator, considers that there is evidence that the Vessel at the time a notice of readiness purports to be given:

- (a) has not so arrived;
- (b) is not so ready; or
- (c) is unlikely to continuously remain in that state until towing of it to the Terminal commences,

or if it subsequently departs Hay Point, (except solely for bunkering and/or replenishing fresh water and/or if the Vessel's Master is advised by the Regional Harbour Master to vacate its original mooring in response to impending adverse weather conditions and returns immediate to a mooring at Hay Point when it is safe to do so), or ceases to be ready to load, then, for the purposes of these Regulations there will be deemed to be no Notice of Readiness.

**"NQB"** means North Queensland Bulk Ports Limited (ACN 136 880 218).

**"Operation & Maintenance Contract"** means the contract in force between DBCT Management and the Operator under which the Operator is appointed to operate and maintain the Terminal on a day to day basis, and includes any other agreement in substitution for it under which DBCT Management agrees with a person to operate the Terminal.



“**Operator**” means the operator of the Terminal appointed by DBCT Management (currently Dalrymple Bay Coal Terminal Pty Ltd ACN 010 268 167)

“**Parcel**” means a quantity of coal (whether or not it is a full Vessel load) of a single Product Grade or multiple Product Grades (blended) required by an Access Holder to be loaded on one Vessel.

“**Parcel Stem Change**” means the making of a Material change to an original or previously changed nominated Parcel.

“**Pre-loading Requirements**” means the notices and other requirements specified in Schedule 2.

“**Product Grade**” means, in respect of relevant coal, the grade (quality) of that coal (including a grade created by blending) in accordance with the Operator’s system for differentiating coal by product grades.

“**Quarter**” means a period of three months beginning on 1 January, 1 April, 1 July or 1 October.

“**Rail Freight Provider**” means a rail freight provider delivering (or intending to deliver) coal to the Terminal for or in respect of an Access Holder.

“**Rail Coordinator**” means the Terminal Operator acting in the role described in clause 1 of Schedule 3 – Services, in the Standard Access Agreement.

“**Railway Manager**” means the person who is an accredited rail infrastructure manager in relation to railway operations relating to the railway which passes through the Terminal.

“**Receiving Point**” means the bottom dump rail receipt stations at the Terminal.

“**Regulations**” means these Terminal Regulations, as amended from time to time and a reference to a “**Regulation**” means a clause within these Terminal Regulations.

“**Remnant Management Strategy**” means, at any relevant time, the policy adopted and notified to Access Holders by the Operator at that time to minimise remnant cargos within the Terminal stockyard.

“**Service Provider**” means:

- (a) DBCT Management, as the provider of Terminal Services;
- (b) each provider, at a relevant time, of railway infrastructure (“below rail”) for any part of the DBCT Coal Chain;
- (c) each provider, at a relevant time, of railway freight services (“above rail”) for any part of the DBCT Coal Chain.

**“Standard Access Agreement”** means the standard access agreement for the Terminal from time to time pursuant to an access undertaking given by DBCT Management to the Queensland Competition Authority.

**“Standing Handling Instructions”** means instructions for Handling coal, of the kind contemplated in Regulation 2.4(a)(i).

**“Terminal”** means the land and port infrastructure located at the Port of Hay Point which is owned by DBCT Holdings Pty Ltd or the State of Queensland and subleased by DBCT Management, known as *Dalrymple Bay Coal Terminal* including, where the context permits, all buildings, stockpile areas, industrial water storage areas, unloading and loading facilities, piers, wharves, roads, conveyors, plant, equipment, and apparatus, and the area occupied in relation to such facilities.

**“Terminal Information Booklet”** means, at a relevant time, the then current Dalrymple Bay Terminal Information Booklet (available via the Dalrymple Bay Coal Terminal website).

**“Terminal Information System”** means the system from time to time utilized by the Operator for information relating to the operation of the Terminal and associated matters (e.g. train and Vessel scheduling) to be given to and provided by Access Holders and others.

**“Terminal Service”** means each service which DBCT Management agrees to provide at the Terminal under a relevant Access Agreement, which will (in general) comprise the services listed in Schedule 1 of these Regulations.

**“Train Consignment”** means a consignment of coal consigned to or for an Access Holder and received at the Receiving Point (whether or not it is a full train load).

**“Utilisation Advice”** means a notice in the form in Schedule 4 of the Standard Access Agreement, to be given by an Access Holder to DBCT Management and the Operator under the Access Holder's Access Agreement (usually in clause 6.1 of that Access Agreement) or any other form of notice acceptable to the Operator and DBCT Management.

**“Vessel”** means a ship or other craft capable of transporting bulk coal by sea.

## 1.2 Interpretation

In the interpretation of these Regulations, where the context permits:

- (a) singular includes plural and vice versa;
- (b) reference to any gender includes all genders;
- (c) reference to a person includes a body corporate, association of persons, government or governmental authority; and
- (d) reference to "writing" includes printing, typing, email and other means of reproducing words in a visible and tangible form; it also includes electronic communication to and from the Operator under a communication system established by the Operator principally for the operation of the Terminal.

## 1.3 Notices and other communications

- (a) Wherever any notice or information required to be provided to or by the Operator can be given by way of input into the Terminal Information System, that notice or information must be given in that way.
- (b) Any notice or information which cannot practically be given by way of a relevant entry in the Terminal Information System must be in writing and must be given by mail or email transmission as follows:

**To the Operator:**

Address: Dalrymple Bay Coal Terminal Pty Ltd, MSF 283, Martin Armstrong Drive, Hay Point MACKAY Q 4740

Attention: Executive Manager Operations

Email: Execmgrops@dbct.com.au

**To DBCT Management:**

Address: DBCT Management Pty Limited, Level 15, Waterfront Place, 1 Eagle Street, Brisbane Q 4740

Attention: Chief Executive Officer

Email: enquiries@dbctm.com.au

**To an Access Holder** – in the same manner as is provided for notices to an Access Holder in the standard Access Agreement for the Terminal.

- (c) All notices or communications given in accordance with Regulation 1.3(b) will be deemed to have been duly given or made:
  - (i) on the date on which the notice or communication would, in the ordinary course of the post, have been delivered to the address to which it was posted;
  - (ii) when delivered; or
  - (iii) if sent by email transmission, at the conclusion of an apparently successful transmission,

but, if the delivery or email is effected on a day which is not a Business Day or after 5:00pm in the place of receipt on a Business Day, it will be taken to have been given or made on the next Business Day.

- (d) If the Operator, DBCT Management or an Access Holder initiates a communication by email, then an email response to the address of the initiator of the email will be taken as a response to the initiating email.

#### 1.4 Relationship to Access Agreements

In respect of each Access Holder, these Regulations are overridden by any expressly contrary term of that Access Holder's Access Agreement.

## 2. OPERATION OF TERMINAL

### 2.1 Continuous operation

The Terminal is intended to operate for 24 hours a day, 7 days a week (except when not operating to full capacity or at all because of repairs, maintenance, adverse weather conditions or other relevant circumstances) to accept:

- (a) Train Consignments for unloading and stockpiling; and
- (b) Vessels for berthing, loading and sailing.

### 2.2 Cargo Assembly

- (a) The Terminal will operate predominantly on a Cargo Assembly basis (subject to any other Regulation or contrary agreement from time to time by all Access Holders, the Operator and DBCT Management), including a limited use of Hybrid Stockpiles from time to time where agreed with the relevant Access Holders who are to utilise those Hybrid Stockpiles).
- (b) Accordingly, the Operator will (subject to the qualifications in Regulation 2.2(a) above) use reasonable endeavours to allocate Train Consignments to align with the order of Vessel loading entitlements. However, should there be a constraint in the provision of any Terminal Services, the Operator will direct either train unloading or Vessel loading as a priority, to endeavour to minimise the impact of such Terminal constraints, but as far as is practicable and efficient, to maximize Terminal throughput without materially affecting the order of Vessel loading entitlements.

### 2.3 Order of loading of Vessels

Vessels will be berthed and loaded in the order of their respective ATAs , except to the extent that the Operator amends that order of entitlement to load, having determined in good faith that any of the following considerations should override that order of priority:

- (a) the terms of a relevant Access Agreement - for example:
  - (i) all or part of an Access Holder's Annual Contract Tonnage may be discretionary (i.e. available only subject to spare capacity of the Terminal); or
  - (ii) a requirement in the Access Agreement for the Access Holder to use reasonable endeavours to achieve shipping of coal through the Terminal at an even rate may mean that Vessels arriving at a rate which exceeds the Annual Contract Tonnage of an Access Holder may lead to a Vessel losing the priority it would otherwise have had for loading, if loading it causes any additional expense or unreasonable interference to a comparatively even rate of shipping by another Access Holder
- (b) a requirement of any other Regulation (for example Pre-loading Requirements and Regulation 6.10) has not been or is not expected to be met in respect of a Vessel or Access Holder;
- (c) the Vessel consignment plus 10% (or such other discretionary variance as is allowed under the relevant sale contract) of the tonnage nominated by the Access Holder must be available at the Terminal and/or on a train scheduled to arrive at the Terminal within 24 hours (or such other time as the Operator determines) when berthing commences, unless the Access Holder notifies the Operator in writing before berthing commences that the Access Holder accepts the risk of coal not being available and the Vessel being required to vacate the berth when not fully loaded;
- (d) the Operator must be satisfied that the Vessel is in all respects ready to commence loading, before it is accepted for berthing;
- (e) the Operator may assign a Vessel to load at a particular berth, meaning that its priority will be determined in relation only to other Vessels assigned to load at that berth;
- (f) priority of loading is also subject to alteration at the discretion of the Operator having regard to:
  - (i) tidal constraints;
  - (ii) loading constraints;
  - (iii) prevailing weather conditions;

- (iv) any measure expected to optimise operation and efficiency of the DBCT Coal Chain (but not so as to materially adversely affect a Vessel otherwise entitled to priority under all other terms of these Regulations);
- (v) the exercise of the Operator's discretion on other grounds pursuant to Regulation 10.1; and
- (g) a Vessel will retain its priority for berthing (as originally determined in accordance with this Regulation 2.3, but subject to any further discretion of the Operator under this Regulation) if it immediately returns to a mooring at Hay Point when safe to do so after having been required by the Regional Harbour Master to vacate its original mooring there in response to impending adverse weather conditions.

## 2.4 Handling Instructions

- (a) An Access Holder may submit to the Operator a set of proposed Handling Instructions requesting special requirements applicable to a Product Grade of the Access Holder:
  - (i) each time it is Handled (**Standing Handling Instructions**); or
  - (ii) on a nominated occasion on which that Product Grade is to be Handled (**Ad-hoc Handling Instructions**).
- (b) The Operator must consider each such proposal (except where the terms of such proposal would not comply with these Regulations), and may approve them, reject them (but only if the Operator provides written reasons for doing so) or (if relevant) suggest amendments. All Handling Instructions approved by the Operator must be immediately entered by the Access Holder in the Terminal Information System in a form acceptable to the Operator. Any Handling Instructions approved by the Operator on a standing basis and entered into the Terminal Information System at the time this Regulation 2.4(b) first became operative will be taken to have been approved and entered into the Terminal Operating System as Standard Handling Instructions pursuant to this Regulation at that time.
- (c) Approved Handling Instructions taken must be set out in full (even if Standard Handling Instructions) in the Parcel nomination information detailed in the first notice given in each Pre-loading Requirement, or they will be taken not to apply.
- (d) If the Operator carries out Approved Handling Instructions, doing so may incur charges on the part of the relevant Access Holder for Miscellaneous Services, in accordance with the terms of a relevant Access Agreement.

## 2.5 Access Holders to advise moisture values

- (a) Each Access Holder must provide to the Operator details of the following moisture criteria for each Product Grade to be Handled in



respect of that Access Holder at the Terminal as early as practicable prior to the commencement of Handling of that Product Grade (or as soon as practicable after the commencement of this Regulation in the case of a Product Grade already being Handled when this Regulation commenced) and as soon as practicable after any of the following are revised by the Access Holder for any Product Grade, to assist the Operator in ensuring appropriate calibration of inloading and unloading moisture analysers for each Product Grade:

- (i) dust extinction moisture (DEM) level;
  - (ii) optimum moisture value;
- (b) When requested, each Access Holder must also provide to the Operator, all total moisture analysis data collected in respect of all train and Vessel sampling of coal immediately after it is received by the Access Holder - to be used by the Operator as reference base data for periodic analyser calibrations and systems verification checks.

### 3. SCHEDULING

#### 3.1 Access Holders to advise Annual Forecasts

- (a) (i) By no later than 15 February in each Financial Year; or
- (ii) If the Access Holder has not previously delivered coal to the Operator, as soon as practicable after the execution of its Access Agreement,

each Access Holder must give a notice (the **Annual Forecast**) - either as part of or in addition to the Utilisation Advice required under the standard Access Agreement.

- (b) The notice provided in accordance with Regulation 3.1(a) must specify each of the following:
  - (i) the quantities and types of coal, and respective mine origins, which the Access Holder proposes to ship through the Terminal during the next Financial Year, on a monthly basis;
  - (ii) any special Handling Instructions the Access Holder requests in relation to its coal, including any special equipment or particular Handling processes;
  - (iii) the Access Holder's estimates of the coal it intends to ship through the Terminal for the 3 Financial Years of the Term following the Financial Year in 3.1(a);
  - (iv) if the Access Holder is not at the time of the notice regularly delivering coal to the Terminal, when the Access Holder proposes to commence delivering coal to the Terminal;



- (v) subject to the consent of the relevant Rail Freight Provider (which the Access Holder must use reasonable endeavours to obtain), the Access Holder's Annual Railing Entitlement for the relevant period of the Annual Forecast; and
  - (vi) to the extent possible, the number, type and respective gross and dead weight tonnages of Vessels and number of Parcels for full and part shiploads, on a month by month basis, expected to ship the Access Holder's coal in the next Financial Year.
- (c) On a monthly basis in each Financial Year, the Access Holder must update the information in the Annual Forecast relating to that Financial Year, and include projections of similar information for the 12 Month period commencing on the date of that update. This information is to be entered into the Terminal Information System by each Access Holder or provided by the Access Holder in a format that is agreed by the Operator.
- (d) Annual Forecasts and their updates advised by an Access Holder will form the basis for the Operator's operating plans and forecasts and interim Handling charges.

### 3.2 Access Holders to advise monthly shipping requirements

Each Access Holder must also submit to the Operator on or before 12 noon on the twenty fifth day of each month, its estimated shipping requirements for the next three months, in Parcel increments or weekly totals, detailing tonnes to be shipped by:

- (a) Access Holder/Product Grade;
- (b) Mine origin.

This information must be entered into the Terminal Information System by each Access Holder or provided by the Access Holder in a format that is agreed by the Operator.

### 3.3 Access Holders to comply with Pre-loading Requirements

Each Access Holder must provide to the Operator in respect of each Parcel the Access Holder requires to be handled all notices in the form and at the times specified in the Pre-loading Requirements.

### 3.4 Failure to comply with Pre-loading Requirements

- (a) If an Access Holder fails to meet a milestone in the Pre-loading Requirements or notifies an alteration of information after a milestone or attempts to re-stem tonnages on a Vessel due to all or part of the cargo not being available when the Vessel is due to berth (or for any other reason), then its Pre-loading Notification will be taken to be 'non-conforming'. Should such action impact other Access Holders, the relevant Vessel may be required to cede berthing priority to successive Vessels, at the discretion of the Operator.

- (b) It is recognised that, on occasions, Pre-loading Requirements milestones may not be able to be met if an Access Holder is required to arrange a shipment or Vessel at short notice. In such circumstances, the relevant Access Holder must give as much notice as possible to the Operator. If the Access Holder's Parcel Notice or notice of a Parcel Stem Change is given less than 14 days before the ATA of a Vessel and accepting the notice or change would result in a Material impact on other Access Holders then, at the discretion of the Operator and for the purposes of scheduling berthing and loading, then, if and as the Operator so determines, the Vessel may be deemed to have arrived on:
- (i) a day up to 14 days after the date the notice is given; or
  - (ii) the earliest date on which a suitable berth becomes available for a sufficient time to allow full loading of the Vessel under the scheduling in place at the time the notice was received (as subsequently varied by unforeseen changes).

### 3.5 Operator to advise Vessel loading schedules

The Operator, must develop, regularly update, and make available to Access Holders, Vessel loading schedules over a seven day horizon relevant to loading, detailing in respect of each Vessel:

- (a) Vessel name;
- (b) Parcels and total tonnes scheduled for loading
- (c) ATA or ETA date/time;
- (d) scheduled pilot boarding date/time for berthing;
- (e) scheduled pilot boarding date/time for sailing;
- (f) scheduled sailing date/time;
- (g) berth number;
- (h) individual Access Holder tonnes;
- (i) anticipated minimum deballasting time;
- (j) anticipated gross loading time;
- (k) anticipated planned sailing draft;
- (l) nominated shipping agent;
- (m) current/planned Product Grade loading sequence and status; and
- (n) constraints to Vessel berthing due to extraordinary events (e.g. Vessel berthing restrictions due to adverse weather).

In developing and updating loading schedules the Operator will take into account Masters' requests and advice. The Operator is entitled to rely on those requests and advice but also to disagree with them where it considers them to be inaccurate.

### 3.6 Access Holders to advise weekly railing constraints

Each Access Holder must submit to the Operator each Tuesday by 12 noon for the next three weeks, commencing the following Monday, a notice identifying all its railing constraints that have the potential to impact or will impact the Terminal or Terminal planning, including:

- (a) shifts unavailable to load trains;
- (b) mine and/or mine load-out maintenance that may affect loading of trains; and
- (c) other train loading/unloading constraints (e.g. split trains or trains scheduled for other ports),

or if there are no constraints, a notice to that effect.

### 3.7 Operator to advise railing plan

- (a) The Operator will act as the Rail Coordinator on behalf of each Access Holder, and will order trains based on Terminal capability to deliver coal to the Delivery Point as required for the loading of that Access Holder's Vessels, taking into consideration:
  - (i) the predominant Cargo Assembly operation of the Terminal;
  - (ii) any Hybrid Operation of the Terminal at a relevant time;
  - (iii) compliance by Access Holders with Pre-loading Requirements and all other Regulations;
  - (iv) each Vessel's latest estimated time of arrival, (ETA);
  - (v) Terminal stockpile capacity;
  - (vi) Terminal operating constraints;
  - (vii) individual Access Holder railing constraints notified under Regulation 3.6.
- (b) The Operator must submit to each Rail Freight Provider a railing plan for the week commencing the following Monday, or any other rolling plan agreed by the Operator, Access Holders and supply chain stakeholders from time to time, detailing:
  - (i) number of trains required for the period for each mine;
  - (ii) daily train arrival and preferred sequence at the Terminal for each mine;

- (iii) any changes to the critical asset summary relating to the Terminal for that week which may impact on scheduling or performance of trains.
- (c) The Operator must also submit the following week's tentative rail plan as an indication for upcoming demand.
- (d) The Operator (working as far as practicable in conjunction with Rail Freight Providers, the Railway Manager and Access Holders or their representatives) must use reasonable endeavours to work to develop weekly railing plans, having regard to each of:
  - (i) the Cargo Assembly, and/or (when relevant) Hybrid Operation, operation of the Terminal;
  - (ii) these Regulations and respective compliance with them by Access Holders;
  - (iii) equity amongst all Access Holders;
  - (iv) achieving a balance in the performance of train unloading and Vessel loading in order to optimise the operation and efficiency of the DBCT Coal Chain; and
  - (v) other factors which the Operator considers relevant (including requests for Train Consignments, railing constraints, Terminal constraints, and potential Vessel demurrage).
- (e) Each Access Holder must use reasonable endeavours to ensure that their Rail Freight Provider provides to the Operator a conforming rail schedule in accordance with the Operator's weekly railing plan, no later than COB each Thursday for the following week (Mon–Sun) detailing:
  - (i) Mine;
  - (ii) Number of trains; and
  - (iii) Terminal arrival date
- (f) Each Access Holder must use reasonable endeavours to ensure that their Rail Freight Provider provides to the Operator, no later than 2000hrs each day, a railing plan in conformity with trains ordered by the Operator (acting as the Access Holders' Rail Coordinator) for the following 96hrs detailing:
  - (i) Mine;
  - (ii) Service ID
  - (iii) Scheduled empty train departure Jilalan date/time
  - (iv) Scheduled mine arrival date/time

- (v) Scheduled Terminal loop arrival date/time

### 3.8 Operator to advise daily railing schedule

- (a) The Operator must consult with Rail Freight Providers and Access Holders on a continual basis regarding rail schedules and any proposed changes, taking into account:
- (i) variation in Vessel arrival times and/or loading conditions; and
  - (ii) the Cargo Availability Date (CAVD) of Access Holders' coal products; and
  - (iii) changes to any aspect of the DBCT Coal Chain; and
  - (iv) an intention of achieving the optimum practicable operation and efficiency of the DBCT Coal Chain,
- and use reasonable endeavours to generally achieve equity amongst DBCT Coal Chain stakeholders in respect of any changes.
- (b) The Operator must make available, through the Terminal Information System, to all Access Holders the daily train schedules supplied by Rail Freight Providers and update/amend those schedules on a timely basis to reflect changes and amendments. Each Access Holder must use all reasonable endeavours to comply with such train schedules.

## 4. RECEIPT BY RAIL

### 4.1 Loading at mine and notification to Operator

Each Access Holder must load only single Product Grade Train Consignments (unless otherwise required or approved by the Operator). The Access Holder must, immediately upon completion of loading of each Train Consignment, provide to the Operator a copy of the Rail Freight Provider's consignment note for that train and must input the consignment data into the Terminal Information System, including the following details as a minimum:

- (a) Consignment Note number;
- (b) number of rakes;
- (c) number of wagons loaded;
- (d) first loaded wagon number;
- (e) last loaded wagon number;
- (f) mine origin;
- (g) Access Holder code;
- (h) Product Grade code;

- (i) total tonnage to be received from that Train Consignment, date and timestamps of train;
- (j) number of wagons loaded by wagon type;
- (k) number of wagons not loaded by wagon type;
- (l) Access Holder comments (to alert the Operator to all special Product Grade Handling characteristics, known contamination, dust and Receiving Point hazards presenting a potential risk to Terminal personnel, plant or equipment for example hot coal or wagon damage).

#### 4.2 Train tonnages used for stockpile records

Train tonnages, as declared by the Access Holder will be recorded by the Operator. The Operator will use the Terminal's weighing equipment for recording stockpile additions. For clarification, recording of tonnes by the Operator, using the Terminal's weighing equipment, will also be used for reconciliation and validation purposes.

#### 4.3 Stockpiling and direct loading

Subject to the Approved Handling Instructions, the Operator, at its sole discretion, may:

- (a) establish stacking strategies for each Train Consignment to stack the coal onto any stockpile at the Terminal established for the Product Grade of the relevant Access Holder; or
- (b) direct load the Product Grade to a Vessel.

#### 4.4 Coal to meet Agreed Specification

- (a) Each Access Holder must use all reasonable endeavours to ensure that all coal delivered to the Terminal meets the relevant Agreed Specification and is free of contaminants which may damage Terminal plant and equipment or prevent or delay the unloading of trains.
- (b) If coal presented for unloading at the Receiving Point does not meet its Agreed Specification:
  - (i) DBCT Management may impose additional charges on the Access Holder to recover DBCT Management's or the Operator's estimate of all resulting additional costs (in accordance with the relevant Access Agreement); or
  - (ii) the Operator may reject the relevant train (or a relevant part of its load), if attempting to Handle it would incur Material delays or breach or potentially breach any environmental or safety law or obligation.

#### 4.5 Product non-conformance

- (a) Without limiting Regulation 4.4, if an Access Holder delivers coal to the Terminal that:
- (i) is of a nature such that the level of coal dust lift-off is greater than  $50 \text{ ug/m}^3$  (as required by the Operator's environmental licence); or
  - (ii) contains any Contamination that may damage Terminal plant and equipment or constitute a material safety or environmental risk:

(collectively **Non-compliance**), the Operator may advise the Access Holder of a Non-compliance and (to the extent that the Operator is able to do so) it must also endeavor to identify and advise the mine train load-out which has been the source of the Non-compliance. After the Operator does so, the Access Holder must, before the departure of the next scheduled train to rail coal from the relevant mine train load-out to the Terminal, take rectification actions to prevent a Non-compliance in respect of the coal on that train and subsequent trains from that load-out and notify the Operator of details of all rectification action taken.

- (b) DBCT Management may charge the Access Holder an additional Miscellaneous Service charge equal to the Operator's bona-fide estimate of the additional costs to be incurred by the Operator relating to each occurrence of a Non-compliance (being \$10,000 per occurrence as at 1 January 2015), where that Non-compliance occurs after a notice given pursuant to Regulation 4.5(a). DBCT Management may also charge the Access Holder any further cost to the Operator associated with the repair of any damage incurred arising out of the Non-compliance. The imposition of either charge does not limit any other remedy of DBCT Management or the Operator in respect of any actual or anticipated Non-compliance.
- (c) The Operator may reject a relevant train (or a relevant part of its load), if unloading or otherwise Handling its coal is likely, in the opinion of the Operator, to incur a Material delay or breach or potentially breach any environmental or safety law or obligation.
- (d) Real time monitoring will be provided by the Operator for each Access Holder to enable the observation of the coal dust lift-off for their respective trains. The Operator will also record and monitor the average daily dust levels to provide feedback to Access Holders on a monthly basis.
- (e) Despite Regulation 4.5(b), an additional Miscellaneous Service charge of the kind referred to in it will not be charged in respect of a Non-compliance comprised in Regulation 4.5(a)(i) before the introduction of the real time monitoring referred to in Regulation 4.5(d).



#### 4.6 Access Protocol

- (a) Each Access Holder must use reasonable endeavours to have each of its Rail Freight Providers execute or accede to the Access Protocol.
- (b) The Operator may notify the relevant Access Holder if its Rail Freight Provider has not executed or acceded to the Access Protocol.
- (c) If a Rail Freight Provider has not acceded to the Access Protocol within the period of 14 days following a notification to the Access Holder in accordance with Regulation 4.6(b), the Operator may decline access to the Terminal to that Rail Freight Provider until it has become a party to the Access Protocol.

### 5. STORAGE

#### 5.1 Allocation of stockpiles

Subject to availability and any other terms of these Regulations, the Operator will allocate stockpile space to each Access Holder in accordance with its Access Agreement to maximise DBCT Coal Chain efficiency.

#### 5.2 Cargo Assembly and Hybrid Operation stockpiles

- (a) The Operator will create and utilise Cargo Assembly stockpiles and Hybrid Stockpiles with the intention of achieving the maximum practicable Terminal throughput using available yard space. The Operator will allocate specific Cargo Assembly/Hybrid Operation areas for Vessel loadings based on (among other things):
  - (i) notices duly given pursuant to Pre-loading Requirements; and
  - (ii) the relevant Product Grade being (as far as practicable) able to be stacked for live-reclaiming.
- (b) In Cargo Assembly mode, the Operator will normally allocate two Cargo Assembly stockpiles to each Parcel (comprising ideally of 90% of the maximum cargo requested by the Vessel's Master) with the balance, plus any surplus remaining in the last Train Consignment relevant to the Parcel, loaded in the Access Holder's remnant management area.
- (c) Hybrid Stockpiling will be utilised with the intention of maximising yard efficiency and achieving a balanced railing profile to build/maintain Hybrid Stockpiles, but only so that such balanced railing will not delay the berthing of Vessels beyond their original berthing time had railings not been balanced.
- (d) Products approved to be stacked in Hybrid Stockpiles will not be given any remnant allocation (including trimming tonnages) in the relevant Access Holder's remnant management area of the Terminal.

- (e) Cargo-assembly may involve pre-railing of Access Holders' coal where an opportunity exists to better balance the daily drawdown of trains across the system (i.e. avoiding excessive demand on one section of the rail system).
- (f) The Terminal will be operated with the objective of minimising remnants within Cargo Assembly areas. Without limiting the foregoing:
  - (i) The Operator may endeavour to achieve this objective by (among other things) ordering trains such that a Product Grade is "railed short" where an Access Holder nominates that Product Grade for loading in a Parcel and an appropriate "top-up" amount of that Product Grade is not at that time available within the remnant area; and
  - (ii) An Access Holder must, if required by the Operator, ensure that an alternative Product Grade that is within the remnant area at the relevant time, is provided to the Operator for finalising a Parcel tonnage for a nominated Product Grade. The amount of that alternative Product Grade must be not less than 1000 tonnes.

For example, the amount of coal railed should ideally be less than the anticipated Parcel, with the balance of the Parcel being topped up from the Access Holder's remnant area. If there is insufficient coal in the remnant area, the remainder of the coal in the last Train Consignment relevant to the Parcel, after completing the Cargo Assembly stockpiles, will be stacked into the Access Holder's remnant area.

- (g) To achieve the objective in Regulation 5.2(b), account must be taken of a Vessel Master's discretion to load less than the originally scheduled cargo (i.e. normally not more than 90% of a cargo should be stockpiled in a Cargo Assembly stockpile).
- (h) With the objective of maximising cargo velocity through the Cargo Assembly stockyard and in the event of any residual stockpile in the Cargo Assembly area after loading of a Vessel, the Operator has complete discretion in determining the next cargo to be allocated to that area, subject to contamination with unsuitable coals and endeavouring, as far as reasonably practicable, to maintain the same Product Grades of coal. However, if it is, in the opinion of the Operator, impractical to maintain the grade of coal between Cargo Assembly stockpile builds and immediately upon identification of a residual Cargo Assembly stockpile, the Operator must consult with the Access Holder to whom the residual belongs as to the next cargo to overlay that residual, in order to facilitate trading.

### 5.3 Remnants in Cargo Assembly area

- (a) Where a remnant has eventuated or will eventuate within a Cargo Assembly Area and is outside the control of the Access Holder, the Access Holder whose coal comprises that remnant must advise the Operator which Vessel this remnant will be reclaimed onto and

ensure that the remnant is reclaimed onto a Vessel no later than 14 days after delivery of the relevant coal to the Terminal (or such later time as is approved by the Operator). Any remnant not so reclaimed from a Cargo Assembly area may be moved by the Operator to a remnant stockpile, or otherwise disposed of by the Operator, and relocating or disposing of it will be taken to be a Miscellaneous Service requested by the Access Holder.

- (b) Where there is a variance greater than 1000 tonnes or 1% (whichever is the greater) between the readings on the Terminal's inloading weighing equipment and outloading weighing equipment in respect of a Parcel, the Operator will maintain a database of events, which will be made available to the Access Holder on request.

#### 5.4 Allocated Cargo Assembly Remnant Management

To achieve optimum yard utilisation, a residual stockpile/remnants area will be established in the stockyard and managed by the Operator, separate from Cargo Assembly/Hybrid Operation areas. The following process will (amongst others) be used to manage such residual stockpiles/remnants areas:

- (a) At the discretion of the Operator, an area of the Terminal stockyard will be dedicated primarily for managing remnant coal. The rest of the stockyard will operate predominantly for Cargo Assembly/Hybrid Operation mode (including live remnants within Cargo Assembly areas).
- (b) Each Access Holder will be allocated a portion of the total volume of the assigned stockyard for remnant management in accordance with its share of Aggregate Annual Contract Tonnage, represented by the following formula:

$$R = SV \times (ACT/AACT)$$

Where:

R = remnant area;

SV = the volume of the stockyard rows dedicated to remnant control;

ACT = Annual Contract Tonnage of the Access Holder; and

AACT = Aggregate Annual Contract Tonnage of all Access Holders,

except that there will be no remnant management allocation from a Hybrid Stockpile, and the area otherwise available to an Access Holder at the Terminal specifically for remnant management will be reduced according to the proportion of their coal being Handled by way of Hybrid Operation at a relevant time.

- (c) Each Access Holder will be responsible for managing the quantity and quality of remnant coal in its dedicated area, including separation requirements pertaining to different Product Grades.

### 5.5 Operator to maintain stockpile records

The Operator must maintain records of Cargo Assembly/Hybrid Operation stockpiles and remnant stockpile inventories and advise each Access Holder from time to time of that Access Holder's respective:

- (a) train consignments stockpiled;
- (b) ship consignments reclaimed;
- (c) remnant stockpile area;
- (d) stockpile reconciliations;
- (e) current stockpile balances;
- (f) stockpile identification; and
- (g) stockpile effective dates.

Reconciliations will be based upon Terminal weighing equipment information.

### 5.6 Reconciliation of stockpiles by survey

An Access Holder may at any time conduct a survey with the intention of confirming or re-determining its Cargo Assembly/Hybrid Operation and/or remnant stockpile balance at the Terminal, after notice to the Operator. It must promptly advise the Operator of the outcome of such survey.

### 5.7 Stockpile height and width

The Operator has total discretion in stockpile operating practice and (subject to any expected adverse weather or other circumstances which it considers relevant) will use reasonable endeavours to stack stockpiles to bench 3 (13.2m) to:

- (a) minimise risk of stockpile slumping during wet weather;
- (b) minimise dust lift off; and
- (c) maximise reclaiming rates and reduce operating requirements for dozing.

### 5.8 Blending

- (a) The Operator cannot be required to blend from more than two stockpiles at a time, nor to blend in a ratio having a greater divergence than 60/40, where to do so would cause Material delay to another Access Holder or reduce Terminal efficiency.

- (b) Subject to Regulation 5.8(a), Access Holders required by their sales contracts to provide blended coal may do so, but:
  - (i) coal will only be blended in accordance with Handling Instructions approved by the Operator prior to rail ordering and planning which precedes railing of that coal;
  - (ii) any blending of coal from a single mine to the extent practicable, must take place at or before railing; and
  - (iii) to the extent practicable, coal must be blended at or prior to stockpiling at the Terminal, in preference to blending on outloading.

### 5.9 Veneering

- (a) In order to meet any environmental requirements applicable to the Terminal, the Operator may, in its discretion, spray any coal stockpile with water or an approved veneering agent, in order to suppress coal dust lift off into the atmosphere, and the relevant Access Holder will have no entitlement to compensation, damages or any other recourse in respect of such spraying.
- (b) The Operator will consult with an Access Holder to approve veneering agents before their initial application on coal of that Access Holder. The Access Holder must not unreasonably withhold or delay its approval.

## 6. SHIPPING

### 6.1 Vessel specifications

A Vessel will only be accepted to load coal at the Terminal if the Operator is satisfied that all of the following criteria apply in respect of the Vessel:

- (a) classification as bulk carrier only with exceptions applying to log carriers and open hatch carriers that may have been classified as bulk carriers;
- (b) less than 20 years old (or 20 or more years old with satisfactory past performance and the ability to meet all other relevant vessel standards criteria being demonstrated to the satisfaction of the Operator);
- (c) single deck;
- (d) self-trimming i.e. excludes open hatch carriers as suitable;
- (e) without pontoon type hatch covers;
- (f) minimum weight 40,000 dwt, maximum weight 220,000 dwt;
- (g) maximum length 320 metres;

- (h) maximum breadth 52 metres;
- (i) maximum berthing displacement 110,000 tonnes;
- (j) minimum clearance between deck obstructions of 15 metres;
- (k) uses only polypropylene mooring lines;
- (l) complies with the Rightship and Operator Vetting Questionnaire specifications (as evidenced by complete and accurate answering of the Terminal questionnaire in respect of the foregoing);
- (m) previous loading performance at the Terminal satisfactory to the Operator;
- (n) able to safely enter, load without shifting or warping, always remain afloat, receive a cargo in bulk with minimal deballasting delays and depart from the Terminal following completion of loading;
- (o) in survey and meeting all requirements of the Australian Maritime Safety Authority;
- (p) otherwise able to comply with all other berthing and unloading requirements in these Regulations; and
- (q) meets (or favourably exceeds) all criteria in the following matrix:

DEBALLASTING MATRIX					
Deadweight 000's tonnes	Average Load Time - No Deballast Stop (Mid Range)	Average Ballast on Board (Mid Range) MT	Average Pump Rate MT/Hour	Acceptable Deballast time including stripping (maximum)	Expected Maximum Loading Time
40 - 60	13	12,500	900	14	16
60 - 80	16	21,000	1,450	16	18
80 - 100	20	30,000	1,800	18	20
100 - 150	28	43,000	2,400	22	24 to 30
150 plus	34	plus 50,000	plus 2,600	28	30 +

## 6.2 Terminal limitations

The following estimated limitations apply to the Terminal as at 1 February 2015, but each of them may be subject to variation over time as conditions change, and are not warranted by DBCT Management or the Operator:

Loading draft	Minimum	16.24 M
Air draft (distance from 0.0 LWD to underside of shiploader boom in +12° position at fender face)	Maximum	30.3 M



Arrival trim with propeller fully immersed	Maximum	2.5 M
Underkeel Clearance	Minimum	1 M + 5% draft
Depth of water alongside (based on design)		
<ul style="list-style-type: none"> <li>• Berths 1 and 2</li> <li>• Berths 3 and 4</li> </ul>		-19.62 M LWD -19.00 M LWD

### 6.3 Only complying Vessels to be nominated

Access Holders must use their best endeavours to secure Vessels using the Terminal which meet the specifications and accommodate the limitations in Regulations 6.1 and 6.2 when nominating or accepting Vessels for loading at the Terminal,

### 6.4 Operator may refuse non-complying Vessels

The Operator may refuse to allow a Vessel to berth or, if already berthed require the berth be vacated, should the Operator consider that the Vessel does not meet the requirements in Regulations 6.1 and 6.2 or otherwise creates a hazard to the Terminal or its operations. Each Access Holder associated with a non-complying Vessel must indemnify both DBCT Management and the Operator against any cost incurred by them arising out of any delay relating in any way to the Vessel's non-compliance, including any cost in respect of sailing and re-berthing and any other loss, expense, liability incurred or claim against them and all legal costs. DBCT Management and the Operator may each recover such costs from the relevant Access Holder (and, if more than one, wholly from any of them or alternatively from them in such proportions as the Operator determines to be equitable) and those costs will constitute charges for Miscellaneous Services.

### 6.5 Minimum Parcel size

Unless the Operator otherwise consents, the minimum Parcel size for each Vessel shall be in 20,000 tonne lots, except for Cape size Vessels where a 17,000 tonne Parcel size is acceptable. Where possible a minimum Parcel size of two hatches is preferred to minimise the number of product changes and stockyard movements.

Vessels must lodge stow plans that, where possible, allow each Parcel to fully load before changing to the next Parcel.

### 6.6 Maximum number of Parcels

Access Holders must (other than in exceptional circumstances agreed to by the Operator) restrict Parcel mixes to:

- (a) maximum two (2) Parcels for Vessels with five (5) holds loading or less;
- (b) maximum three (3) Parcels for Vessels with six (6) or seven (7) holds loading; and



- (c) maximum four (4) Parcels for Vessels with eight (8) or more holds loading.

#### **6.7 Number of Parcels on a Pre-Loaded Vessel**

If a Vessel arrives part loaded at the Terminal, the number of holds left to be loaded at the Terminal will be taken to be the number of holds on the Vessel, for the purposes of Regulation 6.6.

#### **6.8 Loading in Parcels**

As far as is practicable, and subject to the IMO Loading Code, Vessels nominated to load more than one Parcel must complete each Parcel before starting the next, and may take advantage of an increase in under keel clearance only on those Parcels remaining to be loaded. Part cargos must only be loaded into empty holds (unless otherwise directed by all relevant Access Holders).

With respect to Vessels nominated to load more than one Parcel, the Operator reserves the right to refuse to accept any Vessel loading request submitted by the Vessel's Master or owners that could not be achieved by normal operations including, but not limited to:

- (a) all Parcels loading to maximum stem;
- (b) all Parcels loading to minimum stem; or
- (c) final Parcel (trimming) of a multiple Parcel Vessel loading to maximum stem.

#### **6.9 Dead Freight Claims**

Having regard to contemporary loading practices, equipment design capability, tidal impacts and load rates of up to 2.5 tonnes per second Parcel variances not exceeding 500 tonnes (as determined by final draft survey) will be disregarded in respect of any claim or potential claim against DBCT Management or the Operator for dead freight.

#### **6.10 Delays because of excessive draft when loaded**

If the tonnage of coal which an Access Holder wishes to load in a Vessel would cause the draft of that Vessel to exceed 16.24 metres, and the time and duration that the Operator expects for such loading would prevent the Vessel from sailing on the next high tide after a draft of 16.24 metres is attained, the Access Holder whose cargo is to be loaded on the Vessel may proceed with that loading only if:

- (a) it submits to the Operator the prior written approval of the Access Holders (if any) whose Vessels may be affected by delaying the Vessel's departure;

- (b) it agrees to forego the Vessel's position in queue to wait until the Vessel can be fully loaded and sail on the first high water after completion of loading; or
- (c) the tonnage of coal to be loaded is reduced such that the Vessel can sail on the next high water tide.

#### **6.11 Operator to be given general arrangement plan**

Access Holders must endeavour to obtain and supply to the Operator a general arrangement plan of each Vessel if requested by the Operator as part of the process of "ship vetting".

#### **6.12 Operator is shipper's agent in absence of other nomination**

Unless otherwise requested by an Access Holder, the Operator may (at its discretion) act as the shipper's agent for each Parcel and be responsible to each Access Holder for preparing and processing all shipping documentation required by each Access Holder / shipper. Each Access Holder must ensure the payment of the appropriate costs, fees, duties and expenses incurred or charged in relation to such agency, and indemnify the Operator in respect of any liability incurred by it as shipper's agent.

#### **6.13 Access Holder responsible for satisfying all legal requirements**

Each Access Holder is responsible for obtaining export permits and complying with all laws and regulations in respect of each Parcel from the Terminal, and prior to a Vessel's arrival, providing the Operator with all necessary authorities and instructions to allow lawful loading and export and for the execution of all tasks to be performed in connection with that loading and export.

#### **6.14 Surveyor to determine weight loaded**

Each Access Holder may engage the services of an independent surveyor to determine the weight of the Access Holder's coal loaded onto a Vessel, and to issue to DBCT Management (with a copy to the Operator) a Certificate of Weight based on Vessel draft measures at the Terminal, immediately loading of a Vessel is completed.

If an Access Holder chooses not to engage an independent surveyor to determine the weight of the Access Holder's coal, the Access Holder's coal will be determined by the Terminal outloading weighing equipment for the purposes of export documentation.

#### **6.15 Surveyor may advise on loading**

The Operator may require the engagement by the Master of a Vessel of a marine surveyor to provide loading and trimming advisory services in relation to loading at the Terminal. The Operator will not be responsible for any advice given by that marine surveyor, who will be an independent contractor of the Master.

#### **6.16 Sampling and quality determination by Access Holders**

Each Access Holder may arrange sampling and quality determination of the Access Holder's coal Handled at the Terminal, but must provide personnel acceptable to the Operator, and operate and maintain the Terminal's sampling equipment properly and leave it in a clean and tidy condition. Access Holders engaging third parties to carry out sampling and quality determination activities must ensure those third parties have signed a DBCT Site Access Obligations document and comply with all laws relevant to the Terminal (i.e. workplace health and safety laws) and any lawful requests or directions by the Operator (including any requirement of the Operator that the third party assume "PCBU" status).

#### **6.17 Code of Practice for the Safe Loading and Unloading of Bulk Carriers**

In accordance with the Australian Maritime Safety Authority (AMSA) requirements, each Vessel (and each Access Holder in respect of each Vessel relevant to it) must comply with all or part of the Code of Practice for the Safe Loading and Unloading of Bulk Carriers in respect of loading of Vessels at the Terminal.

#### **6.18 Notice of Readiness – copy to Operator**

Each Access Holder must ensure that the Operator is provided with a copy of the Notice of Readiness relating to a Vessel which will load its coal, at the time the Notice of Readiness is issued.

### **7. RISK AND PROPERTY, LIABILITY AND LOSSES**

#### **7.1 Risk and property in respect of coal at the Terminal**

- (a) Neither NQBP, DBCT Holdings, DBCT Management nor the Operator will be liable for any changes in the analysis or mass of any coal, and the entire risk and property in coal at the Terminal will at all times remain with the relevant Access Holder. Neither NQBP, DBCT Holdings, DBCT Management nor the Operator will at any time be liable for any loss of and/or damage to coal or any loss sustained by an Access Holder, caused by fire, weather, Handling by the Operator and any other cause, except to the extent that such loss and/or damage is caused by the negligence, or intentionally wrongful act or omission of NQBP, DBCT Holdings, DBCT Management or the Operator (as the case may be).
- (b) It is recognized that small amounts of coal and coal fines from the coal of all Access Holders will, over time, intermingle and collect in pits, drains and water storage facilities at the Terminal. The Operator may, as part of Terminal maintenance, retrieve and sell such coal and coal fines in such way and on such terms as it sees fit. It will sell free from any interest of an Access Holder or any other person in the product sold, but on the basis that the proceeds from such sales will be credited against the operating costs of the Terminal (which determine the handling charges payable by Access Holders).

#### **7.2 Indemnity for breach, negligence or intentionally wrong act**

The Access Holder will be liable to NQBP, DBCT Holdings, DBCT Management and the Operator for any loss or damages suffered by them (including as a result of damage to the Terminal) caused by the Access Holder's breach of a Terminal Regulation or otherwise by any negligence or intentionally wrongful act or omission action of the Access Holder. Each Access Holder must also hold harmless and indemnify NQBP, DBCT Management and the Operator from and against any action and/or claim from third parties for loss and/or damages suffered by third parties as a result of that Access Holder's breach of a Terminal Regulation, negligence or intentionally wrongful act or omission.

### 7.3 Inaccurate scheduling information

It is recognised that trains and Vessels do not always operate as scheduled or anticipated and that coal sales cannot always be accurately predicted. DBCT Management, the Operator and an Access Holder will not be liable to each other should information provided by them pursuant to these Regulations in respect of scheduling transpire to be incorrect, as long as the information was given in the reasonable belief at the time that it was not misleading.

## 8. CHARGES BY OPERATOR

In addition to charges payable to the DBCT Management in respect of Handling of coal, the Operator may also impose charges in respect of the berthing of Vessels at the Terminal, including:

- (a) Shipper's agent fees (if the Operator is the shipper's agent);
- (b) Wharfage charges; and
- (c) Line handling charges.

## 9. TERMINAL INFORMATION BOOKLET

### 9.1 Operator may issue booklet

The Operator has issued and may amend from time to time (following prior notification to relevant stakeholders) a Terminal Information Booklet dealing with (amongst other things) Terminal infrastructure, conditions of arrival, and loading and departure of Vessels from the Terminal. This booklet is available at [www.DBCT.com.au](http://www.DBCT.com.au)

### 9.2 Booklet forms part of Terminal Regulations

Any terms and conditions in the Terminal Information Booklet from time to time will form part of these Regulations, and will be binding on the Access Holders and Masters, agents, owners and charterers of Vessels nominated to load at the Terminal.

## 10. OPERATOR DISCRETIONS, PROTECTIONS AND GENERAL POWERS

### 10.1 Operator's discretion for Terminal efficiency reasons

- (a) The Operator may, at its discretion, make minor departures from the strict operation of any Regulation if doing so is reasonably expected to increase the efficiency of the Terminal in the relevant circumstances but not (in the opinion of the Operator) materially adversely affect any Access Holder.
- (b) For example, a departure causing a short delay (i.e. postponement of priority) in respect of one Access Holder may in some circumstances allow a number of other Access Holders to avoid a significant delay.

### 10.2 Protection of Operator and DBCT Management

- (a) Neither the Operator nor DBCT Management will be liable to any Access Holder nor to any person claiming through an Access Holder for any failure by the Operator or DBCT Management to comply with any of these Regulations except where such failure arises out of bad faith on the part of the Operator or DBCT Management (as the case may be).
- (b) Without in any way limiting Regulation 10.2(a), nothing in these Regulations requires the Operator to incur any capital expenditure to enable it to operate or maintain the Terminal or provide Terminal Services.

### 10.3 Compliance with site conditions and procedures

All Access Holders and other persons visiting the Terminal from time to time must comply with all laws relevant to the Terminal (for example workplace health and safety laws), site conditions and procedures issued by the Operator from time to time and all lawful directions of the Operator in respect of their being within the Terminal.

## SCHEDULE 1

### TERMINAL SERVICES PROVIDED BY DBCT MANAGEMENT AND PERFORMED BY THE OPERATOR AS ITS CONTRACTOR PURSUANT TO THE OPERATING AND MAINTENANCE CONTRACT

#### 1. TRAIN SCHEDULING

DBCT Management must (subject to availability of trains and factors beyond its control) co-ordinate the scheduling of trains and ensure sufficient unloading capacity is made available at the Terminal, to allow each Access Holder to ship its Annual Contract Tonnage of coal in each Financial Year.

#### 2. TRAIN UNLOADING

If a train carrying an Access Holder's coal arrives at the Terminal as scheduled (or within a reasonable time before or after it is scheduled, where it can reasonably be unloaded at that time), DBCT Management must ensure that the train is unloaded at a rate (consistent with the type and condition of the coal) consistent with achieving Handling of the Annual Contract Tonnage of coal for an Access Holder.

#### 3. RECLAIMING AND VESSEL LOADING

DBCT Management must:

- (a) make the Terminal available for berthing by Vessels (which are satisfactory in all respects to receive coal) nominated by each Access Holder, such that not less than the Annual Contract Tonnage can be Handled by DBCT Management on behalf of that Access Holder in each Financial Year (as long as the Vessel mix required by the Access Holder does not unreasonably impact on the efficiency of the Terminal). It is agreed that historical Vessel mixes prior to 30 June 2005 will be taken generally not to have unreasonably impacted on efficiency.
- (b) load each Access Holder's coal into a Vessel as per the Master's stow plan, which is nominated by the Access Holder and is available for loading so as to achieve the objective in paragraph (a).

#### 4. INCIDENTAL TERMINAL SERVICES

DBCT Management must provide the following services, incidental to coal Handling (unless provided directly by the Operator):

- (a) sampling and survey services
- (b) Vessel monitoring
- (c) coordination with Vessel's agents, Masters, customers and other relevant entities
- (d) crew disembarkation and embarkation assistance



- (e) wharfage and line services.

## 5. MISCELLANEOUS TERMINAL SERVICES

If required by an Access Holder, DBCT Management must provide the following miscellaneous services to the Access Holder:

- (a) moisture adding
- (b) compacting
- (c) surfactant adding
- (d) dozing
- (e) blending (subject to Clause 6(d) below)
- (f) any other services reasonably requested from time to time in writing by an Access Holder to DBCT Management, provided that such services will not unreasonably impact on the efficiency of the Terminal.

## 6. STOCKPILING AND BLENDING

- (a) DBCT Management must provide to each Access Holder sufficient stockpile areas to allow Cargo Assembly (and, where relevant, Hybrid Operation), for Vessels onto which the Access Holder's coal is to be loaded.
- (b) If the Operator determines that for a relevant period, there are significant areas of the Terminal which are not required for Cargo Assembly or Hybrid Operation and which can be made available for additional dedicated stockpiling without materially affecting efficiency of the Terminal, then DBCT Management must ensure that for that period each Access Holder is offered the opportunity to use a proportion of that stockpiling area which accords with its proportion of the Aggregate Annual Contract Tonnage under all Access Agreements and Existing User Agreements (as defined in the Access Undertaking for the Terminal).
- (c) The stockpiling rights in paragraphs (a) and (b) are subject to any other obligation of DBCT Management under an Access Holder Agreement with another Access Holder entered into prior to 1 July 2004 (to the extent that such obligation has not been waived).
- (d) DBCT Management must blend coal (as a miscellaneous Terminal Service) if so requested, but subject to requirements in the Terminal Regulations from time to time, which may:
  - (i) require coal to be blended before it is received at the Terminal, where reasonably practicable;
  - (ii) require coal to be blended into a stockpile where reasonably practicable (rather than being blended from stockpile); and



(iii) limit the proportions in which coal may be blended (to limit the increase in consumption of capacity of the Terminal consumed because of blending).

(e) DBCT Management must transfer each Access Holder's coal from the train unloading facility at the Terminal to the relevant stockpile area and stockpile an Access Holder's coal in that area (except to the extent that a quality plan under the Terminal Regulations has been agreed to which provides for direct loading from train to Vessel).

## 7. PREVENTION OF CONTAMINATION

DBCT Management must take all practicable measures to maintain the integrity of each Access Holder's coal at the Terminal, including (without limitation) by:

- (a) avoiding contamination of the Access Holder's coal, including (without limitation) contamination with other coal or waste material; and
- (b) minimising Handling and associated degradation of the Access Holder's coal.

## 8. DATA PROVISION

DBCT Management must provide such information and access to systems as are reasonable to inform Access Holders of relevant data relating to Handling of their coal.

## 9. CO-ORDINATION

Subject to the Access Holder providing relevant information to DBCT Management within a reasonable time, DBCT Management must ensure, as far as practicable, that it discharges its obligations in this Schedule in accordance with the requirements of the Access Holder's reasonable quality plans, shipping programs and contracts as notified to DBCT Management or the Operator from time to time consistent with Terminal Regulations, and (having regard to equity amongst Access Holders) to use its best endeavours to minimise the aggregate cost to the Access Holder arising out of Handling at the Terminal (including demurrage and rail freight).

## 10. TERMINAL REGULATION, FORCE MAJEURE, OPERATION & MAINTENANCE CONTRACT AND LAWS

The provision of each the above Terminal Services by DBCT Management is subject to (and DBCT Management's obligations are modified to the extent of):

- (a) any relevant provisions of the Terminal Regulations in so far as they:
  - (i) require scheduling of Access Holder's railing in and shipment of coal in ways which promote Terminal efficiency and endeavours to achieve the objective of even shipments;
  - (ii) temporarily reduce the tonnage of coal which may be Handled or Terminal Services provided, during such periods as capacity of the

Terminal or relevant Terminal Services becomes restricted, provided that such reductions and restrictions affect all Access Holders equitably (but this does not relieve the Access Holder or DBCT Management respectively from any liability which they might have in respect of causing capacity or Terminal Services to have become restricted);

- (iii) prescribe requirements for trains, unloading of trains, stockpiling and Cargo Assembly/Hybrid Operation, Vessels, arrival of Vessels, loading of Vessels, Pre-Loading Requirements and order of loading and unloading and other matters (including matters of the type dealt with in the Terminal Regulations as at the Commencement Date) which promote the efficient, safe and equitable utilisation of Terminal capacity and Terminal Services;
  - (iv) require Access Holders to co-operate with the Operator and other Access Holders in relation to scheduling, loading, unloading, priorities and other matters relating to the operation of the Terminal; and
  - (v) allow the exercise of discretions on the part of the Operator in limited cases, where it is reasonable to do so, to optimise Terminal efficiency and the power is required to be exercised in good faith and in a non-discriminatory way; and
- (b) in respect of an Access Holder, any specific provision of their Access Agreement or Existing User Agreement (as defined in the Access Undertaking for the Terminal) including any event of force majeure;
- (c) DBCT Management being able to require the Operator under the Operation & Maintenance Contract to provide such services.

The provision of the above Terminal Services by DBCT Management must be carried out in accordance with Good Operating and Maintenance Practice and all applicable laws.

## SCHEDULE 2

### PRE-LOADING REQUIREMENTS

#### 1. 28+ DAYS TO 14 DAYS

##### 1.1 Parcel nomination

1.1.1 **Access Holder** to advise of intended application for Terminal Services with the following shipping information:

- (a) Vessel Name
- (b) IMO Number
- (c) ETA
- (d) Maximum nominated tonnage (which includes the Master's discretion) authorised by the Access Holder for each Parcel
- (e) Destination details
- (f) Export Declaration Number (EDN)
- (g) Shipping agency (if appointed)
- (h) Vessel part loading
- (i) Nominated draft surveyor
- (j) Nominated cargo superintendent company
- (k) Bill of lading
- (l) Product Grade details
- (m) Parcel details (e.g. tonnage)
- (n) Handling Instructions (consistent with these Regulations)
  - (i) Remnant Management Strategy
  - (ii) Blending / mixing (ratio and mine source)
  - (iii) Stockpile management requirements
  - (iv) Nominate the Rail Freight Provider. If more than one Rail Freight Provider is to be utilised, nominate the tonnage split
  - (v) Product availability – updates required at 14, 10 and 7 days prior to berthing

1.1.2 **Operator** will approve (or reject) Parcel

## 2. 14 DAYS PRIOR TO VESSEL ETA

### 2.1 Vessel Nomination

2.1.1 **Access Holder** to finalise nominated Parcel and Vessel details. (Alterations requested thereafter are likely to cede loading priority.)

2.1.2 **Operator** to:

- Complete vetting of Vessels according to Operator's ship vetting procedure
- Approve (or reject) Vessel

### 2.2 Berthing Plan

2.2.1 **Operator** to:

- Consider opportunity for Hybrid Operation in respect of the berthing
- Create and publish an indicative rolling 21 day berthing plan based on information received
- Advise indicative railing requirements

## 3. 10 DAYS PRIOR TO VESSEL ETA

### 3.1 Vessel Arrival Notification

3.1.1 **Vessel** to notify:

- Departed last Discharge Port
- ETA
- Vessel loading sequence plan
- Deballasting requirements
- Arrival and departure drafts (stage 2 UKC)

3.1.2 **Operator** to:

- Review and approve Vessel information
- Establish communications with Master (or agent if appointed)

- Update Vessel status
- Confirm Vessel ATA, including receipt of a Notice of Readiness (see definition of **ATA**)

#### 4. 7 DAYS PRIOR TO VESSEL ETA

##### 4.1 Vessel Arrival Notification

###### 4.1.1 Vessel to update ETA

#### 5. 7 DAYS PRIOR TO INTENDED BERTHING

##### 5.1 Parcel assembly plan

###### 5.1.1 Access Holder to:

- Provide final confirmation of coal availability and grade
- Confirm Rail Freight Provider/s and allocated tonnes

###### 5.1.2 Operator to:

- Advise if Cargo Assembly or Hybrid stockyard operation
- Provide an updated 7-day rolling berthing plan for input into rail plan
- Advise Rail Freight Provider of railing requirements
- Publish 7-day Parcel assembly plan in accordance with Regulation 3.5

#### 6. 5 DAYS PRIOR TO VESSEL ETA

##### 6.1 Vessel arrival notification

###### 6.1.1 Vessel to update ETA

#### 7. 72 HOURS PRIOR TO VESSEL ETA

##### 7.1 Vessel arrival notification

###### 7.1.1 Vessel to update ETA

#### 8. 48 HOURS AND 24 HOURS PRIOR TO VESSEL ETA

##### 8.1 Vessel arrival notification

###### 8.1.1 Vessel to update ETA

## 9. 96 HOURS PRIOR TO INTENDED BERTHING

### 9.1 Authority to Load

#### 9.1.1 Access Holder/Vessel to:

- Authorise berthing and loading of Vessel
- Issue Authority to Load (ATL)
- Re-confirm maximum and minimum tonnages
- confirm ship loading sequence plan (Ship's Master to provide this)
- Issue instructions for all commercial documentation

#### 9.1.2 Operator to:

- Issue pro forma Bill(s) of Lading
- Confirm acceptance of Vessel loading sequence plan
- Confirm and publish berthing schedule
- Lockdown Access Holder(s) Parcels in transaction system
- Remove scheduled railings for Vessels which have not been issued an ATL following notification to the Access Holder

### 9.2 Berthing schedule

#### 9.2.1 Operator to:

- Create berthing schedule
- Advise Rail Freight Provider of rail requirements
- Publish 96hr schedule
- Monitor and review performance to schedule

## 10. 48 HOURS PRIOR TO COMMENCEMENT OF 48 HOUR SCHEDULE

### 10.1 48 hour schedule

10.1.1 **Access Holder** to confirm product availability and readiness to load all trains in 48 hour schedule.

#### 10.1.2 Operator to:

- Create berthing schedule

- Advise Rail Freight Provider of rail requirements
- Publish rolling 48 hour schedule
- Monitor and review performance to schedule

## 11. ADMINISTRATION FUNCTIONS

11.1 **Shipper's Agent** to provide all commercial shipping documentation instructions.

11.2 **Operator** to execute all commercial documentation and dispatch documents after loading as instructed.

## 12. REPORT AND REVIEW FUNCTIONS

12.1 **Operator** to review on a rolling basis:

- Variations from plan
- Railing
- Stacking
- Reclaiming
- Potential for Through-loading
- Vessel loading
- Inventory (stockpile and handling)
- Berthing / sailing
- Non-conformances initiated by, associated with or as a result of: Access Holders, Rail Freight Providers, Vessel Master, cargo, Superintendent Companies, Draft Surveyors and the Operator.



**SCHEDULE 3****COAL CHARACTERISTICS**

Terminal equipment is capable of handling coal crushed to a nominal size of minus 50mm.

The following table outlines typical properties for coals that meet an Agreed Specification, matching Terminal equipment design.

**Physical Properties**

<b>Specification</b>	<b>Range</b>
Solid Density (t/m <sup>3</sup> )	1.32 – 1.45
Bulk Density (kg/m <sup>3</sup> )	830 – 900 (Loose)
Angle of Repose (°)	37 – 38
Hard-grove Index	60 – 95
Surcharge Angle (°)	25