

ALPHA SHIPPING AGENCY (PTY) LTD  
REG NO- 2004 / 023698 / 07

STANDARD TRADING CONDITIONS

All transactions entered into by ALPHA SHIPPING AGENCY (PTY) LTD (Hereinafter “the Company”) in connection with or arising out of the Company’s business shall be subject to the following terms and conditions (hereinafter “the Conditions”) unless otherwise agreed or stated by the Company in writing.

THESE CONDITIONS CONTAIN PROVISIONS RELATING TO THE EXCLUSION AND LIMITATION OF LIABILITY AND TIME LIMITATION AND PROVISIONS WHICH REQUIRE THE PRINCIPAL AND MERCHANT TO INDEMNIFY THE COMPANY. YOU MAY WISH TO INSURE AGAINST THESE RISKS.

If any international convention or transport law or other regulation or directive is compulsorily applicable to the Services provided by the Company, these Conditions shall be construed as a waiver by the Company of any of its rights or an increase of any of its responsibilities or liabilities under such legislation. If any part of these Conditions is in any way contrary to such legislation, such part shall, with such Services, be overridden to that extent and no further.

- (1) In these Conditions the following expressions have the following meanings respectively:
- a. “Services” means the services which are provided by the Company to the Merchant and Principal or Merchant through the Company.
  - b. “Supplier” means the company firm or person who contracts to supply Services or Goods to the Principal or Merchant through the Company.
  - c. “Merchant” means the company firm or person (or any agent thereof) who ships, receives, own or forwards Goods or holds the bill of lading in respect of which the Company, whether as agent or principal. Has agreed to provide or procure services.
  - d. “Principal” means the company firm or person who has or whose representatives have instructed the Company and who is the owner or charterer or operator of the vessel represented by the Company and or the carrier under the bill of lading in connection with which Services are provided by the Company.
  - e. “Goods” means any wares, merchandise and articles of every kind whatsoever including any container, chassis, trailer or similar equipment used for the purpose of carrying cargo.
  - f. “SDR” means a Special Drawing Right as defined by the International Monetary Fund.

- g. “Direct Representative” means the Company acting in the name of and on behalf of the Merchant and/or the Principal with the South Africa Revenue Service (SARS).
- h. Words importing the singular number shall include the plural and vice versa, words importing the masculine shall include the feminine and neuter and vice versa and words importing persons shall incorporate bodies’ corporate, unincorporated associations and partnerships.
- i. The headings in these Conditions are for convenience only shall not affect their interpretation

### **Transactions with the Principal**

The following terms and Conditions shall apply to transactions with the Principal:

- (2) The Principal shall indemnify the Company in respect of all liabilities incurred by the Company when acting as a port agent or liner agent or booking agent on the Principal’s behalf. This indemnity shall include but not be limited to all third party claims, charges, losses, damages, taxes, duties and expenses that the Company may incur during the performance of the Services, notwithstanding any termination of the contract between the Principal and the Company. This indemnity shall not extend to matters arising by reason of the negligence or wilful misconduct of the Company.
- (3) The Principal shall pay forthwith by telegraphic transfer to the Company’s bank account such sums as the Company may request as an advance on port disbursements which the Company estimates will be incurred whilst the Principal’s vessel is in the Company’s agency. If the Principal should fail to comply with the Company’s request, the Company may at any time give notice of the termination of its agency.
- (4) The Company shall be entitled to deduct from sums held by the Company for the Principal’s account any amounts due to the Company from the Principal.
- (5) The Company, with the consent of the Principal, shall have authority to appoint sub-agents to perform Services on behalf of the Principal, including such Services as may be subject to these Conditions, remaining at all times responsible for the actions of the sub-agent.
- (6) Where the Company acts as liner agent and / or booking agent for the Principal, the Principal shall give six months’ written notice of termination of the agency. For the purposes of this clause “written notice” shall also include notice by facsimile transmission or by electronic means.
- (7) In the event that the Company is required by the Principal to file data with a port facility in compliance with the ISPS Code, the Company will exercise reasonable skill and care to file the data correctly and within the prescribed filing deadlines. However, the Company cannot accept any responsibility or liability for the correctness and accuracy of the information provided by the Principal or if the Principal fails to provide the data in a timely manner or there are technical problems or human error beyond the Company’s control. The Company provides the filing process as a data

exchange service only. Any losses or liabilities resulting from the filing of such data, whether of not ht Company was or is claimed to have been negligent or at fault in any way, rest with the Principal.

## **Transactions with the Supplier**

The following terms and conditions shall apply to transactions with the Supplier:

- (8) Unless otherwise stated in writing, when the Company is acting as a port agent or liner agent or booking agent it acts at all time as agent for and on behalf of the [Principal and has authority to enter into contracts with the Supplier as agent for Principal. The Company shall not be personally liable to pay any debt or expense to the Supplier from the Principal.
- (9) Where the Company is acting as a forwarding agent, unless it is acting as agent for the Principal in accordance with clause (8) hereof or otherwise agreed in writing, it acts at all times as agent for and on behalf of the Merchant and has authority to enter into contracts with the Supplier as agent for the Merchant. The Company shall not be personally liable to pay any debt due from the Merchant.

## **Transactions with the Merchant**

The following terms and conditions shall apply to transaction with the Merchant:

- (10) When acting as port agent or liner or booking as agent, the Company acts at all times as agent for and on behalf of the Principal and has authority to enter into contracts with the [Merchant as agent for the Principal. The Company shall not be personally responsible for the Principal's liabilities.
- (11) The Company may provide the Services to the Merchant as its agent or as a principal. The Merchant warrants that it is either the owner of the Goods or the authorised agent of the owner and that it accepts these terms for itself and as agent for and on behalf of the owner.
- (12) (a) Where the Company arrange Services for the Merchant's Good's which are or will be carried in accordance with a contract wit the Principal contained in or evidenced by a bill of lading, charterparty or other contract of affreightment, all Services including forwarding Services are arranged by the Company as agent for and on behalf of the Principal. The provision of such Services shall be subject to the terms and conditions of the Principal's bill of lading and tariff rules (if any), which may be inspected on request, or other contract between the Principal and the Merchant.  
  
(b) Where the Company arranges Services for the Merchant's Goods as a forwarder (whether as principal agent) the provision of such Services are subject to these Conditions.

- (c) The Company may from time to time issue a house bill of lading covering the transportation of the Merchant's Goods. In the event of any conflict between these Conditions and the house bill of lading, the latter shall prevail.
- (13) When the Company contracts as a principal for any Services, the Company shall have full liberty to sub-contract the whole or any part of its contracted Services to third parties as may be necessary to fulfil the customer's instructions and subject to the trading conditions of the sub – contractors.
- (14) The Company shall be relieved of any liability, and the Merchant shall hold the Company harmless, for loss or damage if such loss or damage resulted from:
- a) The act or omission of the Merchant or his representative or any other party from whom the Company took charge of the Goods;
  - b) Inherent vice of the Goods, including improper packing, labelling or addressing (except to the extent that the Company undertook to be responsible therefore);
  - c) Handling, loading, stowage or unloading of the Goods by the Merchant or any person acting on his behalf other than the Company;
  - d) Seizure, forfeiture or detention under legal process;
  - e) Riot, civil commotion, strike, lock out, general or partial stoppage or restraint of labour from whatever cause;
  - f) Any consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, acts of terrorism or sabotage, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to any property or Goods by or under the order of any Government or public or local authority
  - g) Any cause or event which the company was unable to avoid and the consequences whereof the Company was unable to prevent by the exercise of due diligence.
- (15) The Company shall not arrange insurance for the subject matter of the Services save upon express instructions given in writing by the Merchant in relation to which there shall be a specific agreement as to charge. All insurance, it acts as agent of the Merchant in doing so.
- (16) Where the Company agrees to provide or arrange Services for the Merchant's Goods, the Merchant shall be deemed to have authorised the Company to conclude all and any contracts necessary to provide those Services. The Merchant shall reimburse on demand the Company with all taxes, charges or fines whatsoever incurred by the Company as a result of providing or arranging the Services, or undertaking any liability in connection with the Services, particularly in respect of any bond issued to Customs or any other statutory authority by the Company.

- (17) The Company is deemed to be appointed as and acts as a Direct Representative only in all and any dealings with SARS, and any other authority, for and on behalf of the Merchant.
- (18) Unless the Company has previously so agreed in writing, the Company will not provide Services for Goods of a dangerous or damaging nature. If such Goods are accepted pursuant to a special arrangement, and, thereafter (in the opinion of the Company) constitute a risk to health or to other goods or property, the Company shall, where reasonably practicable, contact the Merchant in order to require him to remove or otherwise deal with the Goods, but reserves the right, in any event, to do so at the expense of the Merchant. Should the Merchant fail to provide such details at the time of contract the Merchant shall be responsible for all costs and damages arising as a result thereof and the Company shall have the right exercisable on behalf of itself or its Principal to rescind the contract.

## **Liability**

- (19) The Company shall exercise reasonable care and diligence in providing Services.
- (20) Unless otherwise agreed in writing, the liability of the Company shall in all circumstances be limited to the lesser of sums calculated in the following manner:-
- a) where Goods are lost or damaged:
    - (i) the value of Goods so lost and damaged; or
    - (ii) a sum calculated at the rate of SDRs 2.00 per kilo for the gross weight of any Goods lost or damaged;
  - b) In all other circumstances the amount of the direct loss or SDRs 75,000.
- (21) The Company will not provide Services in connection with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human, remains, livestock, pets, or plants but if the Company should, in the course of providing the Services, handle or deal with such Goods (otherwise than under special arrangements previously made in writing) the Company shall be under no liability whatsoever for or in connection with such Goods however arising.
- (22) The Company shall perform the Services with due despatch but shall not be liable for any loss or damage arising from any delay which it could not reasonably prevent. Without prejudice to the foregoing, in the event that the Company is deemed to be liable for delay its liability shall not exceed the amount of the Company's charges in respect of the transaction.
- (23) Except in those cases of loss or damage referred to in Clauses (21) and (22) above and (24) below, no liability whatsoever for consequential loss, be it direct or indirect, shall attach to the Company. Such loss shall include (but not be limited to)

loss of profit, loss of market or the consequences of delay or deviation, however caused,

- (24) The Company not liable for loss of or damage to Goods unless it is advised thereof in writing within three days after the completion of provision of the Services and the claim is made within 42 days, provided always that these limits shall not apply if the Merchant or Principal can establish that it was not reasonably possible for him to make a claim in writing within the time limit and notice was given within a reasonable time Notwithstanding the above provision, the Company shall in any event be discharge from all liability whatsoever and howsoever arising in connection with the Services unless suit is brought within nine months of the delivery of the Goods or of the date they should have been delivered or of the date of the event giving rise to any other loss.

## **General**

- (25) If the Merchant or the Principal, as the case may be, fails to make payment in full of any sum Due to the Company on demand or within any period agreed in writing, the Company shall be entitled to recover interest on any sums outstanding with effect from the date of first demand at the rate of 2 % above the average of the South Africa Reserve Bank base lending rate applicable during the period when the sums are outstanding.
- (26) The Company shall have a general lien on all Goods and documents relating to Goods in its possession, custody or control for all sums due at any time from the Merchant or Principal and shall be entitled to sell or dispose of such Goods or Documents as agent for and at the expense of the Merchant or Principal and apply the proceeds towards the monies due and the expenses of the retention, insurance, sale and disposal of the Goods. Reasonable notice of 28 days of the intention to sell will be given by the Company to the Merchant or Principal unless the Goods are liable to perish or deteriorate in which case the Company shall have the right to sell or dispose of the Goods immediately. The Company shall upon accounting to the Merchant or Principal for any balance remaining, be discharged from all liability whatsoever in respect of the Goods.
- (27) Where liability for General Average arises in connection with the Goods, the Customer shall promptly provide security to the Company or any other party designated by the Company in a form acceptable to the Company.
- (28) It is hereby expressly agreed that no servant of agent of the Company (which for the purpose of this clause includes every independent contractor from time to time employed by the Company) shall in any circumstances whatsoever be under any liability whatsoever under these Conditions for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment.
- (29) Without prejudice to the generality of the foregoing provisions, every exemption from liability, limitation, condition and liberty herein contained and every right, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled, shall also be available and shall extend to protect every such servant and agent of the Company acting as foresaid.

- (30) The Company shall be entitled to retain and be paid all customary brokerage, commission, allowances and other remuneration.
- (31) The Merchant, the Supplier and the Principal each undertake with the Company that no claim or allegation of kind shall be made against any of the Company's directors officers employees servants or agents (herein collectively called "the Beneficiaries") for any loss damage or delay of whatsoever kind arising or resulting directly or indirectly from any negligent act error or omission of the Beneficiaries in the performance of the Services the subject of these Conditions. The Beneficiaries shall have the benefit of this undertaking and in entering into this contract the Company, to the extent of this provision, does so not only on its own behalf but also as agent or trustee for the Beneficiaries, who shall to the extent of this clause only be or be deemed to be parties to this contract.
- (32) These conditions and any act or contract to which they apply shall be subject to English Law. Any dispute arising in connection with the Company's business shall be determined by arbitration in London pursuant to the LMAA Terms for the time being in force by a sole arbitrator appointed for that purpose by the parties. Failing agreement as to the identity of the sole arbitrator, each part shall nominate its own arbitrator, and the two so chose, if they cannot agree shall nominate an umpire, whose decision shall be final.
- (33) If there is any conflict between the terms set out herein and any other terms and conditions agreed between the parties these Conditions shall prevail unless the Company specifically agrees otherwise in writing.