

## Standard Terms and Conditions for the Provision of Agency Services

### 1 DEFINITIONS

“**Affiliate**” means, in relation to the Agent and the Company,

- (i) in the case of the Agent, Wilhelmsen Ships Service AS or any company owned or controlled by Wilhelmsen Ships Service AS or any company managed by Wilhelmsen Ships Service AS pursuant to a management agreement irrespective of whether such company is owned or controlled by Wilhelmsen Ships Service AS; and
- (ii) in the case of the Company, any company owned or controlled by the Company or its ultimate parent,

where control means direct or indirect ownership of at least 50% of the voting stock or interest in the company or control of the composition of the board of directors.

“**Agent**” means Wilhelmsen Ships Service AS or any relevant Affiliate of Wilhelmsen Ships Service AS entering into an Agreement with a Company for the provision of the Services.

“**Agreement**” means any agreement for the provision of Services entered into between the Agent and a Company upon these Standard Terms and Conditions as amended from time to time.

“**Company**” means any relevant legal or natural person entering into any Agreement with the Agent for the provision of any Services.

“**Confidential Information**” means each item of confidential and proprietary information, and the intellectual property rights therein, disclosed by one party to another, including without limitation any financial information, procurement and purchasing requirements, business forecasts, sales and marketing plans and information and customer lists relating to that party or any of its Affiliates.

“**Disbursements**” means any and all amounts which the Agent pays out to a

third party on behalf of the Company in relation to any of the Services it provides.

“**Force Majeure**” shall have the meaning given to it in Condition 13.

“**Out of Pocket Expenses**” shall mean any additional costs, not constituting Disbursements, incurred by the Agent in providing the Services.

“**Public Official**” means (i) any official or employee of any government agency or government-owned or controlled enterprise, (ii) any person performing a public function, (iii) any official or employee of a public international organisation, (iv) any candidate for political office or (v) any political party or an official of a political party.

“**Service(s)**” means all or some of the services listed in the Ships Agency Services Catalogue shown at [www.wilhelmsen.com/shipsservice](http://www.wilhelmsen.com/shipsservice) which are agreed to be provided by the Agent to the Company pursuant to any Agreement.

### 2 APPOINTMENT AND SCOPE OF WORK

- 2.1 The Company appoints the Agent to provide the Services, in consideration for the commissions and fees separately agreed between the Agent and the Company and all reasonable and documented Out of Pocket Expenses.

### 3 AGENT’S OBLIGATIONS

- 3.1 In relation to the Service(s) to be provided by the Agent, the Agent undertakes for the benefit of the Company:
  - (a) to exercise all proper skill and care in the performance of its responsibilities in accordance with the best practice of those engaged in the provision of agency services;
  - (b) to use all reasonable endeavours to comply with all reasonable specific instructions which the Company may give; and
  - (c) in consultation with the Company, to recommend and/ or appoint on the Company’s behalf stevedores, watchmen, tallymen, hauliers and other third party

suppliers, provided that the Agent will not have any responsibility for the negligent acts or defaults of any such companies.

#### **4 SUB-AGENTS**

**4.1** The Agent shall be entitled, without prior consultation with the Company, to appoint an Affiliate of the Agent or an independent agent, as sub-agent. The Agent shall remain responsible for the actions of its sub agents appointed pursuant to this Condition 4.1.

#### **5 COMPANY'S OBLIGATIONS**

**5.1** In relation to the Service(s) to be provided by the Agent, the Company undertakes for the benefit of the Agent:

- (a) well in advance of the time at which the Service(s) are to be provided, to provide all necessary information (including as to cargo) to the Agent in order for it to provide the Service(s) on a timely basis;
- (b) to provide the Agent immediately on its request with all necessary funds to cover any agency fees, Disbursements and Out of Pocket Expenses;
- (c) if requested to do so by the Agent, to take over the conduct of any dispute which may arise between the Agent and any third party as a result of the provision of Service(s), unless the dispute arose directly by reason of the wilful misconduct or gross negligence of the Agent;
- (d) to provide all documentation, information and funding necessary for the Agent to provide the Service(s);
- (e) Upon a request for the Service(s) by the Company to the Agent, the Agent will provide the Company with an estimate of the commissions, fees Disbursements and Out of Pocket Expenses likely to fall due in connection with the provision of the Service(s);

**5.2** The Company will pay the amount estimated or agreed between the parties under Condition 5.1 to such bank account as the Agent may specify, by way of advance funding, in advance of the provision of the Service(s);

**5.3** Following the provision of the Service(s), the Agent shall submit to the Company a final statement of account reflecting the advance payment made and any remaining balance due for settlement and the Company shall pay any such balance due.

#### **6 REMUNERATION**

**6.1** The Company undertakes for the benefit of the Agent to pay to the Agent, as consideration for the Service(s) provided by the Agent, the commissions, fees and Disbursements separately agreed between the Agent and the Company and to reimburse the Agent for all reasonable and documented Out of Pocket Expenses.

**6.2** The Agent shall not be responsible for any tax, duty, levy or charge of any kind imposed by the state or state authority where the Services are rendered, by reason of the provision of the Service(s) (other than tax on its overall net income) and the Company shall fully indemnify the Agent in respect of any claims or expenses incurred in connection with such taxes.

**6.3** The payment terms for all invoices issued by the Agent shall be within 7 days of the date of the invoice. The Agent shall be entitled to interest at 2% per month (before as well as after judgement) on any amount overdue from the Company from the due date of payment until the Agent receives payment in full. The Agent shall be entitled to claim and recover all costs and expenses, on a full indemnity basis, incurred in the collection of payments due.

**6.4** In the event that:

- (a) any fees, commission, Disbursements or expenses due from the Company to the Agent under any Agreement remain outstanding following the expiry of the period for settlement of invoices specified in Condition 6.3; and
- (b) the Agent or any Affiliate of the Agent is in possession of funds belonging to any Company or any Affiliate of the Company in any jurisdiction regardless of whether such funds were paid to the Agent or the relevant Affiliate of the Agent in connection with the relevant Agreement,

then the Agent and such Affiliate of the Agent may set off such funds against the due and unpaid fees, commission, Disbursements or Out of Pocket Expenses outstanding under the Agreement referred to in Condition 6.4(a).

## **7 LIMITATION OF LIABILITY**

**7.1** The Agent shall not have any liability to the Company in respect of losses incurred by the Company in respect of the Service(s) provided, except to the extent that the loss has resulted from sole negligence, sole gross negligence or wilful default on the Agent's part and in any event the liability of the Agent shall not in any circumstances exceed the amount of the direct loss incurred by the Company or the amount of US\$500,000, whichever is the lesser amount. The Agent shall have no liability whatsoever for consequential loss, be it direct or indirect. Such consequential loss shall include (but not be limited to) loss of profit, loss of market or the consequences of delay or deviation, however caused.

**7.2** Any claims against the Agent by the Company shall be deemed to be waived and absolutely time barred upon the expiry of one year from the provision of the relevant Services giving rise to such claims.

## **8 INDEMNITIES**

**8.1** The Company shall at all times indemnify the Agent and hold it harmless against all claims, charges, losses, damages and expenses which it may incur in connection with the performance by the Agent of the Service(s), unless any such matter arises solely and directly by reason of the wilful misconduct or gross negligence of the Agent.

**8.2** If the Agent at any time provides any bond, guarantee or other form of security to any customs or other local authorities in any country in connection with the Service(s) provided, the Company shall indemnify the Agent and hold it harmless from any claims made and otherwise reimburse it immediately upon any such claims being made, unless any such claim arises solely

and directly by reason of the wilful misconduct or gross negligence of the Agent.

**8.3** Without limiting the foregoing terms, if the Agent finds itself, whether by law or otherwise in any country, jointly or severally liable for any liabilities of the Company or any other party seeks to hold it liable for any liabilities of the Company, then the Company shall indemnify the Agent and hold it harmless for any claims made in respect thereof and shall not in any way assert any claim for a contribution from the Agent.

## **9 INSURANCES**

**9.1** The liabilities assumed by the Agent on the provision of the Service(s) shall be covered by a liability insurance policy on such terms with such insurers and in such amount as may reasonably be regarded as customary in the indemnity by a prudent first class provider of such services.

**9.2** Without limitation to its general obligation to maintain insurances, the Company shall ensure that each of its Ships is fully insured against protection and indemnity risks by entry into a protection and indemnity club on conventional terms.

## **10 CONFIDENTIALITY**

**10.1** The Agent and the Company agree to keep any Confidential Information confidential, not to use it for any purpose (other than in the context of the Service(s) to be provided) and not to disclose it without the prior written consent of the other party to any third party, unless:

- (a) the information was public knowledge at the time of the disclosure;
- (b) the information becomes public knowledge other than by breach of the confidentiality undertaking contained in this Condition 10.1;
- (c) the information subsequently comes lawfully into its possession from a third party; or
- (d) required to do so by any laws or regulations to which the disclosing party is subject.

**11 ASSIGNMENT**

**11.1** Neither the Agent or Company may assign or transfer any of its rights and obligations under any Agreement without the prior written consent of the Agent or the Company, as the case may be.

**12 TERMINATION**

**12.1** Either party may terminate any Agreement with immediate effect if the other party to such Agreement commits a material breach of its obligations under such Agreement. For the avoidance of doubt non-payment of fees, commission or expenses due from the Company to the Agent shall amount to a material breach of an Agreement.

**12.2** Any Agreement may be terminated with immediate effect by either party if the other party to such Agreement is declared bankrupt, becomes insolvent or is unable to pay debts as they fall due.

**13 FORCE MAJEURE**

**13.1** In relation to the provision of the Service(s), the obligations of the Agent or the Company shall be suspended during the period and to the extent that that party is prevented or hindered from complying with them by any cause beyond its reasonable control including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs, labour disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, port security, port authorities and security restrictions in ports, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials, goods or raw materials in connection with the provision of the Service(s).

**13.2** In the event of any such party being so hindered or prevented, the party concerned shall give notice of suspension as soon as reasonably possible to the Agent or the Company (as the case may be) stating the date and extent of the suspension and its cause and the omission to give such notice shall forfeit the right of that party to claim

suspension. Any party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the Agent or the Company (as the case may be).

**14 “HIMALAYA”**

**14.1** It is hereby expressly agreed that every Affiliate, employee, agent, subagent and subcontractor of the Agent shall have the benefit of all exceptions, limitations, provisions, conditions and liberties herein benefiting the Agent as if such provisions were expressly made for their benefit and in entering into any Agreement the Agent, to the extent of these provisions, does so not only on his own behalf, but also as the agent and trustee for all such Affiliates, employees, agents, subagents and subcontractors.

**15 NOTICES**

**15.1** Any notice or other communication given or made by the Agent or the Company or otherwise in the provision of the Service(s) shall be in writing and may be delivered to the relevant party or sent by courier, first class prepaid recorded delivery letter, telex, facsimile transmission or email to the address or communication number of that party as may be notified by that party from time to time for this purpose and shall be effective notwithstanding any change of address not so notified.

**15.2** Unless the contrary is proved, each such notice or communication shall be deemed to have been given or made and delivered, if by letter on the second working day after posting, if by delivery during working hours when left at the relevant address and otherwise on the next working day after delivery and if by facsimile, telex or email during working hours when transmitted and otherwise on the next working day after transmission.

**16 MISCELLANEOUS**

**16.1** No amendment or variation of these Standard Terms and Conditions shall be

effective unless in writing and signed by a duly authorised representative of each of the relevant Agent and Company.

- 16.2** Any consent given by a party shall operate as a consent only for the particular matter to which it relates and in no way shall be construed as a waiver or release of any provision of any Agreement nor shall it be construed as dispensing with the necessity of obtaining the specific written consent of the relevant party in the future unless expressly so provided.
- 16.3** The failure of a party to exercise or enforce any right under any Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any times thereafter.
- 16.4** If any part of any Agreement becomes invalid, illegal or unenforceable the parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible gives effect to their intentions as expressed in that Agreement. Failure to agree on such a provision within six months of commencement of those negotiations shall result in automatic termination of that Agreement.
- 16.5** Save as expressly provided in Condition 6.4 and Condition 14, a person who is not a party to an Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of that Agreement. Notwithstanding that any term of an Agreement may be or become enforceable by a person who is not a party to it, the terms of that Agreement or any of them may be varied, amended or modified or that Agreement may be suspended, cancelled or terminated by agreement in writing between the parties or that Agreement may be rescinded (in each case), without the consent of any such third party.
- 16.6** Subject always to the terms of Condition 8, if and to the extent that any of the terms of any Agreement conflict with the national laws of the country where the Agent is domiciled, then such national laws shall prevail.

**16.7** [The Company shall not offer employment to any person then employed by the Agent without the prior consent of the Agent.]

## **17 ETHICAL STANDARDS**

- 17.1** The parties agree that neither party shall:
- (a) offer or agree to give any person working for or engaged by the other party any gift or other consideration, which could act as an inducement or a reward for any act or omission to act in connection with the Agreement or any other agreement between the parties;
  - (b) enter into the Agreement or any other agreement with the other party if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the other party or that an agreement has been reached to that effect unless (i) details of any such arrangement have been disclosed in writing to the other party prior to the execution of the Agreement and (ii) approval of such arrangement by an authorised representative of the other party has been obtained;
  - (c) offer, pay or promise to pay either directly or indirectly, anything of value to a Public Official in connection with the Agreement. The parties further agree that in the performance of their respective obligations under the Agreement, the parties and their respective agents, sub-contractors and employees shall comply with all applicable laws, rules, regulations and orders of any applicable jurisdiction, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Company shall notify the Agent immediately in writing with full particulars in the event that the Company receives a request from any Public Official requesting illicit payments; or
  - (d) take any other action which results in a breach by either party of any applicable anti-corruption legislation.

**17.2** If the Company or any of its agents, sub-contractors or employees breaches Condition 17.1, the Agent may terminate the Agreement by written notice with immediate effect. Any termination pursuant to this Condition 17.2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Agent.

**17.3** Notwithstanding Condition 19 (Law), any dispute relating to:

- (a) the interpretation of Conditions 17.1 and 17.2; or
- (b) the amount or value of any gift, consideration, inducement or reward referred to in Condition 17.1,

shall be determined by the Agent and such determination shall be final and conclusive.

## **18 OFAC COMPLIANCE**

Pursuant to the U.S. Department of Treasury, Office of Foreign Assets Control (“OFAC”) regulations respecting USD payments, the Agent cannot facilitate USD payments in any transaction related to OFAC sanctioned entities, either directly or indirectly. As of the effective date of these Standard Terms and Conditions, sanctioned entities include the countries of Burma, Cuba, Iran, North Korea, Sudan and Syria, and certain named persons linked to those countries. The Agent may be required to request information from the Company which supports a verification statement which New York intermediary banks may require according to the OFAC regulations, including whether a person is a “specially designated national” listed by OFAC or any executive order, or a “national” of any country with which transactions are regulated by OFAC. The Company shall provide timely and truthful responses to any such reasonable enquiries the Agent may make to support any required verification statements.

## **19 LAW**

**19.1** These Standard Terms and Conditions and (unless otherwise agreed by the Agent and the Company in writing) any Agreement shall be governed by and construed in accordance with English law.

**19.2** Any dispute arising out of or in connection with any Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Condition.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and gives notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time

when the arbitration proceedings are commenced.

**19.3** Nothing in these Standard Terms and Conditions shall preclude the Agent from the right to seek in any jurisdiction security or interim orders (by means of an appropriate remedy of relief including, without limitation, *in rem* arrests, injunctions, attachments, seizures, sales, detention, exercise of any lien or otherwise howsoever) in each case in accordance with any relevant local law or regulation in respect of claims arising in any jurisdiction.

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