

## Appendix 2 - General Terms and Conditions

### 1. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings when used herein:

"**Agreement**" shall mean the Enabling Agreement, these General Terms and Conditions and any Appendices to these Agreement documents.

"**Buyer**" shall mean a company that are purchasing goods, services etc using the EComm Services provided by WSS.

"**Confidential Information**" shall mean any information provided by WSS, Supplier or Buyer in the course of the use of the EComm Services, represented by any media, which has not become part of the public domain through lawful means. Confidential Information includes, but is not limited to, documentation, source or object code, drawings, know-how, technical knowledge, experience, discoveries, models, ideas, marketing plans, sales plans, customer lists, business strategies, financial and technical information, prices, trading practices and terms and conditions.

"**Customer**" shall mean a company with a signed agreement for using the EComm Services provided by WSS.

"**WSS eCommerce Material**" shall mean all the software, databases, documents, trademarks, and other material and intellectual property owned or licensed by WSS for use in conjunction with the EComm Services, including any amendments, up-dates, additions to and new releases of the WSS eCommerce Material which is implemented by WSS for the preparation and operation of the EComm Services.

"**Force Majeure**" shall mean circumstances which are beyond the reasonable control of the Parties and which could not reasonably have been foreseen by the relevant Party at the time the Agreement was entered into.

"**EComm Services**" shall mean the transaction services listed in this Agreement and the product information and literature, offered by WSS to the marine industry as enabling communication protocol between Suppliers and Buyers through its web site at [www.MTShub.com](http://www.MTShub.com) or another nominated website as notified by WSS in writing.

"**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.

"**Required Installations**" shall mean the minimum technical and other requirements as defined in 'Technical Requirements' on [www.MTShub.com](http://www.MTShub.com) or another nominated website as notified by WSS in writing, with which the Customer shall comply according to this Agreement.

"**Supplier**" shall mean a company that are selling goods, services etc using the EComm Services provided by WSS.

"**Supplier Data / Buyer Data**" shall mean all data and information provided by Supplier/Buyer as may reasonably be required by WSS, in order to provide the EComm Services according to this Agreement.

"**Transaction Data**" shall mean all data documenting a specific transaction made using EComm Services between a Supplier and a Buyer.

"**WSS**" shall mean Wilhelmsen Ships Service AS, a private limited company incorporated in Norway, enterprise number 917 019 215 and having its registered place of business at Strandveien 20,1324 Lysaker, Norway, with its subsidiaries.

### 2. PROVISION OF THE ECOMM SERVICES

#### 2.1 The EComm Services

Unless otherwise stated in the Agreement, WSS shall provide only the EComm Services stated in the Enabling Agreement. The Customer shall provide, at the Customer's expense and risk, any hardware, equipment, software and any other necessary material not included in the EComm Services that WSS has stated in the Technical Requirements necessary for the Customer's use of the EComm Services.

WSS shall on a continuous basis operate and maintain the EComm Services as defined in the Agreement and any related product documentation and literature, to enable the communication and processing of orders and transactions between Supplier and Buyer.

## **2.2 Technical Requirements**

The Customer shall accept the WSS eCommerce standards and the requirements specified in the 'Technical Requirements'. The Customer acknowledges that compliance with these requirements is a prerequisite for the Customer to use the EComm Services.

## **3. INSTALLATION AND TRAINING**

### **3.1 Required Installations**

As a condition to make use of the EComm Services, the Customer shall install and use such hardware, telecommunications infrastructure, Internet service providers and installed software with the minimum requirements as defined in the 'Technical Requirements'.

The purchase and installation of the Required Installations is the sole responsibility of the Customer. WSS shall to a reasonable extent assist and provide consulting services to the Customer for the purchase and installation of the Required Installations. Such consulting services shall be provided as specified in Appendix 1 'Fee Structure'.

The Required Installations shall be installed and ready for use when the Customer commences its use of the EComm Services. The Required Installations shall be inspected and approved by WSS before the use of the EComm Services may commence.

### **3.2 The Customer personnel requirements**

The Customer shall ensure that all its personnel who are assigned to operate the EComm Services and use the WSS eCommerce Material for the Customer, shall be trained. WSS shall if needed offer training for the Customer's employees

## **4. THE CUSTOMER'S ACCEPTANCE**

The EComm Services are deemed to be delivered and accepted when the Customer takes the EComm Services into use from a testing environment to a production environment. Minor defects which do not prevent the Customer from using the EComm Services in a meaningful way shall not constitute a defect and shall not prevent the Customer's acceptance. WSS shall endeavour to correct such minor defects after acceptance without unreasonable delay.

## **5. REMUNERATION AND PAYMENT**

### **5.1 Fees**

The EComm Services shall be provided to the Customer in accordance with the terms and price structure for the EComm Services described in Appendix 1 'Fee Structure'. At the end of each calendar year WSS may adjust the fees for the EComm Services. Fees do not include VAT, customs, import duties or other taxes or duties, which shall be the sole responsibility of the Customer.

### **5.2 Payment**

All payment shall be paid in accordance with the terms specified in Appendix 1 'Fee Structure'. Payment made more than 30 days after the date of the invoice shall be subject penal interest in accordance with the Norwegian Act on Penal Interest.

## **6. INTELLECTUAL PROPERTY RIGHTS**

### **6.1 WSS eCommerce Material**

WSS is the owner and/or licensee of the WSS eCommerce Material. WSS or the relevant licensor shall retain ownership to all intellectual property rights of all WSS eCommerce Material, including but not limited to all amendments, updates, additions to and new releases of the WSS eCommerce Material.

### **6.2 License to the Customer**

WSS hereby grants to the Customer a royalty-free and non-exclusive license to use the WSS eCommerce Material in connection with its and its Buyers' / Suppliers' use of the EComm Services pursuant to this Agreement, for the term of this Agreement. The WSS eCommerce Material shall be made available by WSS to the Supplier and the Buyers in accordance with the terms of this Agreement. The licence includes use of the WSS eCommerce Material by the Customers' Buyers / Supplier provided that the Buyer / Supplier in question has signed the Enabling Agreement with

WSS. The Customer shall not use the WSS eCommerce Material for any purpose other than as provided for in this Agreement.

The Customer is not entitled to make copies in any form of any of the WSS eCommerce Material, except with WSS' explicit prior written approval. The Customer is not entitled to make or attempt to make any changes or alterations in the WSS eCommerce Material. The Customer shall ensure that no such copies or changes/alterations of the WSS eCommerce Material are made by the Customer's personnel or others who are given access to the WSS eCommerce Material by the Customer.

## **7. CONFIDENTIAL INFORMATION**

### **7.1 Confidential Information – General**

Except to the extent expressly authorised by this Agreement or otherwise agreed upon in writing by the Parties, each Party agrees that, for the term of this Agreement and for five (5) years thereafter, it shall keep confidential and shall not publish or otherwise disclose, and shall not use for any purpose other than as provided for in this Agreement, any Confidential Information furnished to it by the other Party pursuant to this Agreement, except to the extent the receiving Party can demonstrate by competent proof that such Confidential Information:

- a. was already known to the receiving Party, other than under an obligation of confidentiality, at the time of disclosure by the other Party;
- b. was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;
- c. became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party in breach of any obligation of confidentiality with respect thereto;
- d. was disclosed to the receiving Party, other than under an obligation of confidentiality to a third party, by a third party without breach of any obligation of confidentiality with respect thereto; or
- e. was independently discovered or developed by the receiving Party prior to the disclosure of Confidential Information by the disclosing Party.

Notwithstanding the foregoing, either Party may disclose Confidential Information of the other Party to its employees, agents and consultants who require such information to perform such Party's obligations under this Agreement, only provided that such employees, agents and consultants are bound by obligations of confidentiality and non-use with respect to such Confidential Information at least equivalent in scope to those provided for under this Clause 7.

### **7.2 Confidential Information belonging to the other Party**

Each Party may disclose Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following instances:

- a. filing or prosecuting patents relating to the WSS eCommerce Material or the Technical Requirements;
- b. making regulatory filings;
- c. prosecuting or defending litigation; or
- d. complying with applicable governmental regulations.

Notwithstanding the foregoing, in the event a Party is required to make a disclosure of the other Party's Confidential Information pursuant to this Clause it shall, wherever possible, give reasonable advance notice to the other Party of such disclosure and shall use all endeavours in good faith to secure confidential treatment of such information. In any event, the Parties agree to take all reasonable action to avoid disclosure of Confidential Information hereunder.

### **7.3 Limiting access to Confidential Information**

WSS will not disclose to any third party any Transaction Data or other Confidential Information of the Customer, unless obliged to do so by law. If WSS is under a legal obligation to share such information, WSS will inform the Customer in writing.

In respect of any Transaction Data or other Confidential Information, WSS' shareholders, the shareholders' board members and the shareholders' employees, and all WSS' employees, agents or consultants that are not working with support, technical operation and implementation of the WSS eCommerce services shall be considered as third parties.

## **8. TRANSACTION DATA**

### **8.1 Handling**

No Transaction Data may be irrevocably amended by WSS, without the written approval of all Parties to the relevant Transaction Data in advance of such amendments.

## 8.2 Use

Transaction Data may not be used by any Party for any other purpose than that of this Agreement. Transaction Data may not be communicated to third parties except as agreed in writing between the Supplier and the Buyer.

## 9. FORCE MAJEURE

### 9.1 Force Majeure events

Neither Party shall be liable for its failure to perform hereunder as a result of any events of Force Majeure.

If either Party's performance is prevented in whole or in part by any such event, such Party shall be excused for any of its obligations hereunder during the period of delay of performance resulting from such event.

### 9.2 Notification

Promptly following the date of commencement of any event of Force Majeure, the Party affected by such event shall promptly advise the other Party in writing of the date and the nature of such event of Force Majeure. The term of the Agreement shall then be suspended for a period of time equal to the total period of said Party's delay in performance.

### 9.3 Right to termination

If a Force Majeure event has exceeded or is reasonably estimated to exceed a period of three consecutive months, then either of the Parties shall have the right to terminate this Agreement with immediate effect.

## 10. WARRANTY AND LIABILITY

### 10.1 Warranty and defects

Subject to the other provisions stated herein, WSS warrants that the EComm Services have the functionality stated in the Agreement and in WSS' product literature and related documents. WSS shall rectify defects without unreasonable delay either by correction or by providing instructions on how to circumvent such defects.

### 10.2 Systems availability

The EComm Services shall be available as per "Support and Service Description" found on the [www.MTShub.com](http://www.MTShub.com) or another nominated website as notified in writing. The warranted availability does not cover outages due to factors not within the control of WSS.

### 10.3 Limitations of liability

#### 10.3.1 Circumstances outside WSS' control

WSS shall not be liable for defects caused by the Customer's use of the EComm Services not in accordance with the terms of this Agreement, or caused by a third party or circumstances beyond the control of WSS.

WSS shall bear no risk and shall not be liable for any breakdowns, defects, or malfunctions of any kind of the Customer's own equipment and software, including without limitation the Required Installations.

WSS shall bear no risk and shall not be liable for breakdowns, defects or malfunctions of any kind of the telecommunication connection or the Internet service provider's necessary for operation of and communication using the EComm Services.

WSS shall bear no risk and shall have no liability with respect to the contents of the Supplier Data as provided by the Supplier, or with respect to any Buyer Data provided by the Buyers.

Notwithstanding the foregoing, in no event shall WSS have any liability for defects or malfunctions not within the control of WSS.

### 10.3.2 Minor defects

WSS shall in no event not be liable for, and shall not be required to correct, defects of marginal or no significance for the operation of the EComm Services and their intended use by the Customer.

### 10.3.3 Indirect loss – liability cap

WSS shall have no liability whatsoever for any indirect losses of any kind arising out of, or in connection with the Agreement, including but not limited to consequential losses and loss of profits or loss of data, suffered by the Customer or any third party damages,

The liability of WSS for any damages and losses in relation to this Agreement shall be limited to NOK 50,000 per incident.

### 10.3.4 Notification of claim

Any claim the Customer should want to make against WSS shall be made in writing without undue delay. Under no circumstances may a claim be made later than [30 days] after the event resulting in the claim.

### 10.4 Indemnity

To the extent any third party, including without limitation the Buyer / Supplier, claims compensation for damages or losses from WSS for which WSS is not liable pursuant to the provisions in this Agreement, the Customer shall defend and hold WSS harmless for any such claims.

## 11. THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

WSS guarantees that the EComm Services provided in accordance with the Agreement do not infringe the right of any third party to any patent, copyright or trademark. The Customer agrees to notify WSS in the event any claim of third party infringement is made regarding any part of the EComm Services.

## 12. BREACH OF CONTRACT - TERMINATION

### 12.1 In general

If either of the Parties is in breach of this Agreement, the other Party may require that the breaching Party use its best efforts to rectify the breach as soon as possible.

Subject to the provisions of Clause 10 (Force Majeure) and Clause 11 (Warranty and Liability), the Party not in breach may claim documented damages from the Party in breach as provided in this Agreement. In the event of breach by the Buyer or Supplier of any of the provisions of Clause 6 (Intellectual Property Rights), the Parties agree to minimum damages, regardless of documentation, in the amount of NOK 50,000.

### 12.2 Customer in breach

If the Customer is in substantial breach of this Agreement, WSS may withhold the provision of EComm Services to the Customer until the Customer has established to the satisfaction of WSS that the breach has been rectified and is not likely to be repeated.

Such substantial breach by the Customer shall include, without limitation, the occurrence of any of the following events:

- (i) non-compliance with the provisions of Clause 2 which continues after the Customer has received a written notification of such non-compliance from WSS;
- (ii) Customer's non-payment of WSS' outstanding charges more than 30 days after due date;
- (iii) any breach by the Customer of the provisions of Clause 8 Confidentiality; and
- (iv) any breach by the Customer of Clause 6 Intellectual Property Rights.

### 12.3 Right to termination for substantial breach

The Agreement may be terminated with immediate effect if either Party has committed a substantial breach of its obligations under the Agreement. If such breach can be rectified, termination can only take place if the Party in breach has been given [30] days' written notice of the breach and has not succeeded in rectifying the breach within that time limit.

## 12.4 Insolvency

The Agreement may be terminated with immediate effect if either Party is declared bankrupt, becomes insolvent or is unable to pay debts as they fall due.

## 13. WORK FORCE

### 13.1 Subcontractors

WSS may use subcontractors for WSS's various obligations under this Agreement, and such work performed by subcontractors shall for the purposes of this Agreement be considered as being performed by WSS.

### 13.2 Employment

The Parties undertake not to solicit employees nor offer to employ any employee or consultants of the other Party. This undertaking is valid for the duration of this Agreement and continues for a period of 6 months following the termination of this Agreement.

## 14. ASSIGNMENT

### 14.1 Subsidiaries

WSS may assign its rights and/or obligations according to this Agreement to any third parties upon 30 days prior written notice to the Customer. The Customer may not assign its rights and/or obligations according to this Agreement, unless prior approval is obtained in writing from WSS.

## 15. REPRESENTATIVES - NOTICES

The Customer and WSS shall designate their representatives in the Enabling Agreement.

Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing to the other Party's designated representative, but it shall be competent to give notice by telefax and email if supported by evidence that such notice actually was received.

## 16. ETHICAL STANDARDS

### 16.1 Compliance

The Parties agree that neither Party shall:

- (i) 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;
- (ii) 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;
- (iii) 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 Customer shall notify WSS immediately in writing with full particulars in the event that the Customer receives a request from any Public Official requesting illicit payments; or
- (iv) take any other action which results in a breach by either Party of any applicable anti-corruption legislation.

### 16.2 Breach of ethical standards

If the Customer or any of its agents, sub-contractors or employees breaches clause 16.1, WSS may terminate the Agreement by written notice with immediate effect. Any termination pursuant to this clause 16.2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to WSS.

### 16.3 Determination by WSS

Notwithstanding clause 18 (Governing law and jurisdiction), any dispute relating to:

- (i) the interpretation of clauses 16.1 and 16.2; or
- (ii) the amount or value of any gift, consideration, inducement or reward referred to in clause 16.1,

shall be determined by WSS and such determination shall be final and conclusive.

## **17. OFAC COMPLIANCE**

Pursuant to the U.S. Department of Treasury, Office of Foreign Assets Control (“OFAC”) regulations respecting USD payments, WSS cannot facilitate USD payments in any transaction related to OFAC sanctioned entities, either directly or indirectly. As of the effective date of these General 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. WSS may be required to request information from the Customer 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 Customer shall provide timely and truthful responses to any such reasonable enquiries WSS may make to support any required verification statements.

## **18. GOVERNING LAW AND JURISDICTION**

### **18.1 Governing law**

This Agreement, its interpretation, performance or any breach thereof, and any dispute arising with respect to this Agreement, shall be governed by and construed in accordance with the laws of the Kingdom of Norway.

### **18.2 Dispute settlement**

Both Parties are obliged to attempt to solve any dispute under this Agreement amicably by negotiations before submitting the dispute to the courts. If the Parties do not succeed in solving the dispute in an amicable manner, the dispute shall be referred to arbitration in Oslo in accordance with the procedures of the Norwegian Arbitration Act No 25 of 14 May 2004.