

## Standard Terms and Conditions for the Provision of Ships Spares Logistics

### 1 DEFINITIONS

“**Agent**” means Wilhelmsen Ships Service AS, a corporation incorporated under the laws of Norway with its registered address at Strandvein 20, 1324, Lysaker, Norway.

“**Agreement**” shall mean any relevant Order to which the Standard Terms and Conditions shall apply.

“**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.

“**Consignee**” shall mean any person, agent or employee nominated by the Customer in the Purchase Order to take delivery of the Goods at a Port.

“**Customer**” means the relevant company contracting with the Agent to provide the Services pursuant to any Services Contract or any Agreement.

“**Delivery Point**” means the premises of either the Consignee or the Relevant Operator or the quayside in the relevant Port, alongside the relevant vessel to which any Goods are to be delivered as specified in the Purchase Order.

“**Good Commercial Practice**” means in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances in a manner consistent with applicable laws, reliability, safety, environmental protection, economy and expediency.

“**Goods**” means any consignment of spare parts or other related freight to which the

Services relate, which are the subject of an Order and includes any packaging, containers or equipment.

“**Order**” means the relevant Purchase Order as accepted by the Order Confirmation.

“**Order Confirmation**” means the communication from the Agent to the Customer accepting the Customer’s request for Services contained in the relevant Purchase Order.

“**Person**” means any individual, corporation, partnership, association, joint stock company, trust, unincorporated organisation, joint venture, government or political subdivision or agency thereof.

“**Port**” means the port to which the Customer has stated in the Purchase Order that delivery of the Goods shall be made and Ports shall be construed accordingly.

“**Port Authority**” means the organisation responsible for managing and maintaining the traffic and regulations at the relevant Port.

“**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.

“**Purchase Order**” means each relevant purchase order submitted by the Customer to the Agent requesting the provision of Services by the Agent.

“**Relevant Operator**” means the operator or operators of any vessel nominated by the Customer to take delivery of the Goods at a Port.

“**Services**” means those Services specified in the relevant Purchase Order. Such Services may include but not be limited to

the provision of appropriate Transport, storage facilities, processing and packaging of Goods, together with the forwarding and delivery of such Goods to the relevant Delivery Point or appropriate Port.

**“Services Contract”** means, where relevant, any term contract for the provision of Ships Spares Logistics entered into between the Agent and a Customer for multiple Orders to which the Standard Terms and Conditions shall apply, together with these Standard Terms and Conditions and any other appendices to such contract, as amended from time to time.

**“Standard Terms and Conditions”** shall mean these Standard Terms and Conditions for the Provision of Ships Spares Logistics Services, as amended by the Agent from time to time

**“Transport”** means the transport of Goods by air, water, rail or road.

## 2 APPLICATION

2.1 All and any activities of the Agent in the course of business whether gratuitous or not are undertaken subject to the Standard Terms and Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Customer may purport to apply under any confirmation of order, acceptance document or similar document).

## 3 APPOINTMENT AND SCOPE OF WORK

3.1 The Customer appoints the Agent to provide the Services, in consideration for the fees specified in the relevant Order Confirmation and reimbursement of all related out of pocket expenses in accordance with Condition 6.

3.2 The Agent is entitled at its discretion to sub-contract or employ agents to carry out the whole or any part of the Services without restriction. The Agent shall remain fully liable for the performance of the Services notwithstanding any such sub-contract or agency agreement.

## 4 THE AGENT’S OBLIGATIONS

4.1 In relation to the Services to be provided, the Agent undertakes for the benefit of the Customer:

- (a) to exercise all reasonable skill and care in the performance of its responsibilities in accordance with Good Commercial Practice;
- (b) to comply with and act in accordance with any mandatory local law; and
- (c) to use all reasonable endeavours to comply with all reasonable specific instructions in writing which the Customer may give.

4.2 The Agent reserves the right to deviate without notice from any specific instructions given by the Customer, or from any stated means by which it will provide the Services if any event or situation arises rendering the provision of the Services in that manner not commercially viable, despite the reasonable endeavours of the Agent to the contrary. In such an event the additional cost of such alternate means of providing the Services shall fall within the out of pocket expenses to be paid by the Customer in accordance with Condition 6, provided that such events were, to the reasonable knowledge of the Agent, not foreseeable, predictable or anticipated as at the date on which the Order Confirmation for such Services was issued.

4.3 The Customer shall have no recourse against the Agent in respect of any deviation by the Agent from the instructions of the Customer in accordance with Condition 4.2.

4.4 The Agent reserves the right to determine the manner in which it will provide the Services without giving notice to the Customer, including but not limited to determining the route and means of Transport, by whom and how the Goods are to be carried, processed, packaged or stored and to employ any means of Transport owned by any third party.

4.5 The Agent shall deliver the Goods to such a Delivery Point as is specified by the Customer in the Purchase Order.

**4.6** Delivery of the Goods to the Consignee or Relevant Operator shall be deemed to have been effected when:

- (a) the Agent has delivered to the Consignee or the Relevant Operator any necessary authorisation (capable of being given by the Agent) from the Agent which is required to enable the Consignee or the Relevant Operator to obtain release of the Goods; and
- (b) the Goods have been delivered to customs or other any authorities as required by applicable law or customs regulations.

## **5 THE CUSTOMER'S OBLIGATIONS**

**5.1** In relation to the Services to be provided by the Agent, the Customer undertakes for the benefit of the Agent:

- (a) to comply with and act in accordance with any mandatory local law;
- (b) to provide the Agent in good time and in advance with all information necessary for the Agent to provide the Services on a timely basis, including but not limited to details of the Consignee or the Relevant Operator and the make and serial numbers of all of the spare parts that make up the Goods and timings of delivery;
- (c) to notify the Agent of the appointment of any Consignee at the time of placing the Order or at the earliest subsequent point;
- (d) to provide all documentation and information necessary for the Agent to provide the Services pursuant to the Agreement within a reasonable time of any request for such information being made; and
- (e) to cooperate with the Port Authority on all matters relating to the provision of Services including allowing any representatives of the Port Authority to inspect Goods entering their port as part of the Services.

**5.2** The Customer will accept, and use its best endeavours to procure that any Consignee or Relevant Operator accepts, delivery of the Goods in accordance with the terms of the Agreement.

**5.3** Should the Customer, Consignee or Relevant Operator fail to take delivery of the Goods at the Delivery Point, the Agent shall be entitled to store the Goods or any part thereof at the sole risk of the Customer, Consignee or Relevant Operator, whereupon the liability (if any) of the Agent in respect of the Goods or that part thereof shall wholly cease. All costs (including but not limited to storage costs and legal fees) incurred by the Agent as a result of the failure to take delivery shall be paid by the Customer to the Agent upon demand.

**5.4** Receipt by the Consignee or Relevant Operator entitled to delivery of the Goods without complaint is *prima facie* evidence that the Goods have been delivered in good condition and in accordance with the Agreement.

**5.5** The Agent shall be entitled at the expense of the Customer to dispose of the Goods (by sale or otherwise as may be reasonable in all the circumstances):

- (a) following at least 14 days' notice in writing to the Customer, or (where the Customer cannot be traced and reasonable efforts have been made to contact any parties which may reasonably be supposed by the Agent to have any interest in the Goods) without notice, any goods which have been held by the Agent for 30 days and which cannot be delivered as instructed; and
- (b) any such sale shall be on the basis of a reasonable offer immediately available, which may or may not amount to a sum which the Customer (or any other person interested) considers the Goods to be worth in any specialist market place. The Agent may or may not, in its absolute discretion, advertise the Goods for sale.

## **6 REMUNERATION**

**6.1** The Customer undertakes to pay the Agent, as consideration for the Services provided by the Agent, the fees set out in the Order Confirmation and to reimburse the Agent for all related out of pocket expenses in accordance with this Condition 6. Such fees and expenses shall not be refundable.

- 6.2** The Customer will pay the amounts specified in the Order Confirmation to such bank account as the Agent shall specify in the Order Confirmation.
- 6.3** The Company shall issue an invoice to the Customer detailing all out of pocket expenses incurred by the Company in relation to the provision of the Services.
- 6.4** Payment of the amounts specified in (i) the Order Confirmation and (ii) any invoices issued by the Agent pursuant to Condition 6.3 shall be made within 7 days of the date of the Order Confirmation or relevant invoice or within such other date as the Agent may in writing agree. The Agent shall be entitled to interest at 2 per cent. per month (before as well as after judgment) on any amount overdue from the Customer from the due date of payment until the Agent receives payment in full. The Agent shall be entitled to claim and recover compensation on a full indemnity basis for all costs and expenses of collection of payments due.
- 6.5** The Agent shall not be responsible for any tax, duty, levy or charge of any kind imposed by any state or state authority by reason of the provision of the Services (other than tax on its overall net income imposed in a state in which the Agent is based for tax purposes) and the Customer shall fully indemnify the Agent in respect of any claims or expenses incurred in connection with such taxes, duties, levies, charges or similar items of expenditure.
- 6.6** The Agent shall have a general right of lien in respect of any Goods or any documents relating to Goods in its possession or control at any time, for all sums which are due from the Customer at any time.
- 6.7** The Agent shall be entitled at the expense of the Customer to dispose of the Goods (by sale or otherwise as may be reasonable in all the circumstances) if following 30 days' notice in writing to the Customer for payment of all the sums due, the Customer has not made payment of such sums. In such circumstances, the Agent has the right to dispose of the Goods and apply the proceeds towards the balance of the payments owed by the Customer. The reasonable costs of sale and/or dealing with the Goods in respect of which a

power of sale is exercised by the Agent shall be borne by the Customer and may be deducted by the Agent from the balance of the proceeds of sale of the Goods payable to the Customer.

- 6.8** The Agent shall be free to exercise the power of sale referred to in Condition 6.7 without further notice to the Customer where it is apparent that the Customer and/or Consignee and/or Relevant Operator are unable to honour their obligations and/or have indicated a refusal to do so.
- 6.9** The Customer shall pay to the Agent all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off.
- 6.10** In the event of default of any payment due, or in the event of the levying of any distress or execution against the Customer or the making by it of any composition or arrangement with creditors or the Customer's liquidation or any analogous insolvency procedure in any jurisdiction, the Agreement shall be terminated immediately and all sums owed (whether invoiced or not) by the Customer to the Agent shall become due and payable immediately. Such termination is without prejudice to the accrued rights and liabilities of the parties prior to termination.

## **7 LIMITATION OF LIABILITY**

- 7.1** The liability of the Agent shall:
- (a) in the case of claims for loss or damage to Goods, the lower of:
- (i) the value of any loss or damage, or
  - (ii) a sum at the rate of US\$3 per kilo of the gross weight of any Goods lost or damaged;
- (b) subject to (c) below, in the case of all other claims, the lower of:
- (i) the value of the Goods the subject of the relevant Order, or
  - (ii) where the weight can be defined, a sum calculated at the rate of US\$3 per kilo of the gross weight of the subject Goods of the said transaction, or

- (iii) US\$100,000 in respect of any one Order;
- (c) in the case of an error and/or omission, or a series of errors and/or omissions which are repetitions of or represent the continuation of an original error, and/or omission, the lower of:
  - (i) the loss incurred, or
  - (ii) US\$100,000 in the aggregate of any one trading year commencing from the time of the making of the original error and/or omission;

For the purpose of clause 7.1, the value of the Goods shall be their value when they were, or should have been, shipped.

**7.2** Subject to clause 7.4 below, the Company's liability for loss or damage as a result of failure to deliver, or arrange delivery of Goods, in a reasonable time shall not in any circumstances whatever exceed a sum equal to twice the amount of the Agent's charges in respect of the relevant Order.

**7.3** For the avoidance of doubt, the Agent shall not be held liable for any liabilities, incidents or indirect or consequential losses such as (but not limited to) loss of profit, loss of market or the consequences of delay or deviation however caused.

**7.4** On express instructions in writing declaring the Goods and their value, received from the Customer and accepted by the Agent, the Agent may accept liability in excess of the limits set out in clauses 7.1 to 7.3 above upon the Customer agreeing to pay the Agent additional charges for accepting such increased liability. Details of the Agent's additional charges will be provided upon request.

## **8 INDEMNITIES**

**8.1** The Customer shall at all times indemnify the Agent and hold it harmless against all claims, charges, losses, damages and expenses which the Agent may incur in connection with the performance of the Services under the Agreement, 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 authority in any country in connection with the Services provided, the Customer shall indemnify the Agent and hold it harmless from any claims made thereunder and otherwise reimburse the Agent 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 Customer or any other party seeks to hold the Agent liable for any liabilities of the Customer, then the Customer 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 in respect of the provision of the Services hereunder shall be covered by a liability insurance policy taken out by the Agent 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** No insurance of the Goods will be effected by the Agent. The arrangement of adequate insurance of the Goods shall be the sole responsibility of the Customer.

## **10 CONFIDENTIALITY**

**10.1** Subject to Condition 10.2, the Agent and the Customer agree to keep all Confidential Information confidential, not to use it for any purpose (other than in the context of the Services) 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 set out in this Condition 10.1;

- (c) the information subsequently comes lawfully into its possession from a third party; or
- (d) such disclosure is required pursuant to any laws or regulations to which the disclosing party is subject.

**10.2** Each party shall be entitled to disclose Confidential Information to its directors, shareholders, officers, employees, advisers and consultants having a need to know the same. The Agent may disclose the Confidential Information to potential assignees or transferees.

## **11 ASSIGNMENT**

**11.1** The Customer may not assign or transfer all or any part of the Agreement without the prior written consent of the Agent.

## **12 FORCE MAJEURE**

**12.1** In relation to the provision of the Services, the obligations of the Agent and/or the Customer shall be suspended during any period and to the extent that a party to the Agreement is prevented or hindered from complying with such obligations by any cause beyond its reasonable control including, without prejudice to the generality of the foregoing, strikes, lock-outs, labour disputes, acts 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, supplies or raw materials in connection with the provision of the Services.

**12.2** In the event of either party being so hindered or prevented in accordance with Condition 12.1, the party concerned shall give notice of suspension as soon as reasonably possible to the other party, stating the date and extent of the suspension and its cause and the omission to give such notice shall forfeit the right of such 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 of

suspension and shall so notify the other party.

**12.3** Conditions 12.1 and 12.2 do not apply to the payment obligations of the parties contained in Condition 6.

## **13 “HIMALAYA”**

**13.1** It is hereby expressly agreed that every employee, agent, sub-agent or sub-contractor of the Agent shall have the benefit of all exceptions, limitations, provisions, conditions and liberties herein benefiting the Agent as if such provision were expressly made for their benefit. In entering into the Agreement, the Agent, to the extent of these provisions, does so not only on its own behalf, but also as agent and trustee for all such employees, agents, sub-agents and sub-contractors.

## **14 NOTICES**

**14.1** Any notice or other communication given or made by the Agent or the Customer under the Agreement or otherwise in connection with the provision of the Services shall be in writing and may be delivered or sent by courier, first class prepaid recorded delivery letter, facsimile transmission or email:

(a) in the case of the Agent, to the physical address, electronic address or fax number of the Agent specified in any Services Agreement or the relevant Order Confirmation; and

(b) in the case of the Customer to the physical address, electronic address or fax number of the Customer specified in any Services Agreement or the relevant Purchase Order,

or such other address as may be notified by one party to the other party from time to time for this purpose.

**14.2** 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 or email during working hours when transmitted

and otherwise on the next working day after transmission.

## **15 MISCELLANEOUS**

**15.1** Save as expressly provided in the Agreement, no amendment or variation of the Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

**15.2** 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 the 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.

**15.3** The failure of a party to exercise or enforce any right under the 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.

**15.4** If any provision of the Agreement including any provision of the Standard Terms and Conditions is or subsequently becomes void, unenforceable or illegal, that shall not affect the validity, enforceability or legality of the other provisions of the Agreement.

**15.5** Save as expressly provided in Condition 13, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of the Agreement. Notwithstanding that any term of the Agreement may be or become enforceable by a person who is not a party to it, the terms of the Agreement or any of them may be varied, amended or modified or the Agreement may be suspended, cancelled or terminated by agreement in writing between the parties or the Agreement may be rescinded (in each case), without the consent of any such third party.

**15.6** The Customer shall not offer employment to any person then employed by the Agent without the prior consent of the Agent.

## **16 ETHICAL STANDARDS**

**16.1** 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 relevant 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 Customer shall notify the Agent immediately in writing with full particulars in the event that the Customer 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.

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

**16.3** Notwithstanding Condition 18 (Law and jurisdiction), any dispute relating to:

- (a) the interpretation of Conditions 16.1 and 16.2; or
- (b) the amount or value of any gift, consideration, inducement or reward referred to in condition 16.1,

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

## **17 OFAC COMPLIANCE**

**17.1** 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 the 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 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 the Agent may make to support any required verification statements.

## **18 LAW AND JURISDICTION**

**18.1** The Agreement shall be governed by and construed in accordance with English law.

**18.2** Any dispute arising out of or in connection with the Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof.

**18.3** 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.

**18.4** The reference to arbitration 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 such 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 calendar days specified. If the other party does not appoint its own arbitrator and does not give notice that it has done so within the 14 calendar 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 such sole arbitrator had been appointed by agreement. If both parties appoint an arbitrator, then the two arbitrators shall appoint the third arbitrator who will act as chairman.

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

**18.6** 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.

**18.7** Nothing in the Agreement 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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