

# STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF FREIGHT & LOGISTICS SERVICES

## 1 INTERPRETATION

**1.1** In this Services Agreement the definitions set out below shall apply:

“**Bill of Lading**” shall mean either:

- (i) where the Company is acting as the principal carrier in respect of the Goods, the bill of lading issued by the Company in respect of the Goods; or
- (ii) where the Company is acting as an agent pursuant to Condition 3, the bill of lading issued by a Third Party carrier in respect of the Goods.

“**Charges**” means:

- (i) the Company’s rates for the provision of the Services as set out in the FLSA or otherwise notified to the Customer; and
- (ii) all fees, costs, surcharges, pass-through costs, out of pocket expenses and any other expenses incurred by the Company in connection with the provision of the Services to the Customer.

“**Confidential Information**” means each item of proprietary information which would reasonably be regarded as confidential, and the intellectual property rights therein, disclosed by one Party to another, including but not limited to 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.

“**Company**” shall either:

- (i) have the meaning given to it in the FLSA; or
- (ii) where the Parties have not entered into a FLSA, mean the entity providing the Services under these STCs.

“**Consignee**” shall mean any person, agent or employee appointed by the Customer or named in the Bill of Lading to take delivery of the Goods being transported.

“**Container**” means, without limitation, any pallet, packing case, container, tank or any other unit or item used to transport Goods.

“**Customer**” shall either:

- (i) have the meaning given to it in the FLSA; or
- (ii) where the Parties have not entered into a FLSA, mean the entity receiving the Services under these STCs.

“**Delivery Point**” means the premises of either the Consignee or the Relevant Operator.

“**FLSA**” or “**Freight and Logistics Service Agreement**” shall mean, where applicable, the agreement with that title entered into between the Company and the Customer.

“**Goods**” means any consignment of freight to which the Services relate, which are the subject of an Order and includes any packaging, containers or equipment.

“**Order**” means a request made by the Customer to the Company for Services to be performed in relation to Goods.

“**Owner**” means the person who owns or is entitled to the possession of the Goods or, where applicable, the Bill of Lading.

“**Party**” means the Company and the Customer and “**Parties**” shall be construed accordingly.

“**Port of Discharge**” means the port to which the Customer has stated in the Order that delivery of the Goods shall be made.

“**Port of Loading**” means the port to which the Customer has stated in the Order that pick up of the Goods shall be made.

“**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.

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

“**Services**” shall mean either:

- (i) the services set out in the FLSA; or
- (ii) where the Parties have not entered into a FLSA, the services that the Company has agreed to provide to the Customer.

“**Services Agreement**” shall mean either:

- (i) the FLSA; or
- (ii) where the Parties have not entered into a FLSA, an agreement for the provision of the Services by the Company to the Customer,

and shall incorporate these STCs and, where applicable, any Bill of Lading.

“**Shipper**” shall mean a person who coordinates the transport of goods.

“**STCs**” or “**Standard Terms and Conditions**” shall mean these standard terms and conditions for the provision of freight and logistics services including its schedule(s), as such are amended from time to time.

“**Third Party**” or “**Third Parties**” shall mean persons other than the Parties.

**1.2** As used in these STCs:

- (i) the masculine includes the feminine and the neuter; and
- (ii) the singular includes the plural and vice versa.

**1.3** Headings are included in these STCs for ease of reference only and shall not affect their interpretation or construction.

**1.4** References to Conditions are, unless otherwise provided, references to conditions of these STCs.

**1.5** Where there is a conflict between a Bill of Lading, the FLSA and these STCs, the conflict shall be resolved in accordance with the following order of precedence:

- (i) the Bill of Lading (where applicable);
- (ii) the FLSA or, if there is no FLSA, any other agreement for services between the Company and the Customer; and
- (iii) these STCs.

**1.6** Any reference to any statute or legislation shall be deemed to include any amendments, re-enactments or replacements of such statute or legislation.

## **2 APPLICATION**

**2.1** If any mandatory laws are applicable to the provision of the Services under these STCs, these STCs shall be construed as being subject to such laws. Nothing in these STCs shall be construed as a waiver by the Company of any of its rights or protections or as an extension of any of its obligations or responsibilities under such mandatory laws.

**2.2** The Company shall be entitled to retain and be paid all amounts customarily retained by, or paid to providers of services similar to the Services. These shall not affect the Charges payable by the Customer.

## **3 APPOINTMENT AND SCOPE OF WORK**

**3.1** The Customer appoints the Company to provide the Services, in consideration for the Charges. The Company reserves the right to refuse any Order.

**3.2** Where the Company is acting as the principal carrier in respect of the Goods, the Company shall act as principal and the Company's Bill of Lading shall apply to the carriage of such Goods in addition to these STCs.

**3.3** Where the principal carrier of the Goods is a Third Party, the Company shall act as the Customer's agent and the relevant Third Party's Bill of Lading shall apply to the carriage of such Goods in addition to these STCs.

**3.4** To the extent required, the Customer hereby appoints the Company as its agent to enter into any contracts on behalf of the Customer which the Company in its absolute discretion believes are necessary for the performance of the Services or as may be necessary or desirable to carry out the Customer's instructions including, where applicable, any services to be performed under a Bill of Lading or pursuant to the FLSA or other agreement for the provision of services between the Company and the Customer.

**3.5** The Company shall, following reasonable written notice from the Customer, provide the Customer with evidence of any contract the Company has entered into on the Customer's behalf as the Customer's agent.

**3.6** The Company may in its absolute discretion subcontract any of its rights and obligations under this Services Agreement without the prior written consent of the Customer.

## **4 THE COMPANY'S OBLIGATIONS**

**4.1** In relation to the Services to be provided, the Company shall:

- (i) comply with and act in accordance with any mandatory law; and
- (ii) exercise reasonable skill and care in the performance of its responsibilities; and

- (iii) use reasonable endeavours to comply with all reasonable specific instructions in writing which the Customer may give (provided that such instructions do not conflict with the Services Agreement).

**4.2** The Company reserves the right to deviate 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 Company to the contrary.

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

## 5 THE CUSTOMER'S OBLIGATIONS

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

- (i) comply with and act in accordance with any mandatory law;
- (ii) provide to the Company in good time and in advance all information necessary for the Company to provide the Services on a timely basis, including but not limited to details of the Shipper/Consignee or the relevant appointed agent, the details of the Goods to be shipped and desired timings for performance of the Services;
- (iii) provide all documentation and information necessary for the Company to provide the Services pursuant to these STCs within a reasonable time of any request for such information being made; and
- (iv) cooperate with all authorities on all matters relating to the provision of the Services.

**5.2** The Customer shall accept, and shall procure that any Shipper/Consignee or appointed agent accepts, delivery of the Services in accordance with these STCs.

**5.3** Should the Consignee or any appointed agent fail to take delivery of the Goods at the Delivery Point, the Company shall be entitled to store the Goods or any part thereof at the sole risk of the Customer, Consignee or appointed agent, whereupon the liability (if any) of the Company 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 Company as a result of the failure to take timely delivery shall be paid by the Customer to the Company upon demand.

**5.4** Receipt by the Consignee 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 this Services Agreement.

**5.5** The Company 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):

- (i) 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 Company to have any interest in the Goods) without notice, any Goods which have been held by the Company for 30 days (or longer if required by mandatory law) and which cannot be delivered as instructed; and
- (ii) 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 Company may, in its absolute discretion, advertise the Goods for sale.

**5.6** The Customer warrants that:

- (i) all information provided by or on behalf of the Customer which relates to required Services or Goods shall be complete and accurate;
- (ii) all equipment and other materials provided by the Customer in relation to or for the purposes of the performance of the Services, including but not limited to any Container, is fully fit for purpose and in good condition;
- (iii) all Goods are fit for carriage and all steps have been taken to ensure the Goods have been appropriately prepared and packaged and are capable of being identified; and
- (iv) any Container provided by the Customer is in good condition and is suitable for the carriage of the Goods.

**5.7** Where the Company provides the Container, the Customer accepts that, by loading the Goods onto or into such Container, the Container is in good condition and is suitable for the carriage of the Goods.

**5.8** The Customer acknowledges that, where the Customer delivers to the Company, or causes the Company to deal with or handle Goods which are or may be considered to be hazardous, dangerous or capable of causing damage or adversely affecting other goods or Goods likely to attract rodents or other animal life whether declared to the Company or not, the Customer shall be liable for all losses or damage that may arise in connection with such Goods.

**5.9** Where Condition 5.8 applies, the Customer:

- (i) shall at all times fully indemnify the Company and hold it harmless against all penalties, claims, damages, losses, costs and expenses (including but not limited to legal expenses) whatsoever arising in connection with any such Goods; and
- (ii) accepts that the Company shall be entitled to deal with the Goods in such manner as the Company, or any other person in whose custody the Goods may be at any relevant time, thinks fit.

## **6 REMUNERATION**

**6.1** The Customer undertakes to pay the Company the Charges, as consideration for the Services provided by the Company in accordance with the FLSA, or if there is no FLSA, as otherwise agreed between the Parties. If no express payment terms have been agreed between the Parties (either in a FLSA or otherwise), the default payment terms in Condition 6.2 shall apply.

**6.2** The Company shall issue an invoice prior to shipment which the Customer must pay prior to shipment. The Company reserves the right to cancel any Order where payment has not been made in accordance with this Condition 6.2.

**6.3** The Company shall have no liability to pay 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 Company is based for tax purposes). Where the Company incurs expenses or is subject to any claims in relation to such payments, the Customer shall at all times fully indemnify the Company and hold it harmless in respect of all penalties, claims, damages, losses, costs and expenses (including but not limited to legal expenses) whatsoever arising incurred in connection with such taxes, duties, levies, charges or similar items of expenditure.

**6.4** Without prejudice to any rights that the Company may have pursuant to the Bill of Lading (if applicable), the Company 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.

- 6.5** The Company 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 Company 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 Company shall be borne by the Customer and may be deducted by the Company from the balance of the proceeds of sale of the Goods payable to the Customer.
- 6.6** The Company shall be free to exercise the power of sale referred to in Condition 6.5 without further notice to the Customer where it is apparent that the Customer and/or Consignee are unable to honour their obligations and/or have indicated a refusal to do so.
- 6.7** The Customer shall pay to the Company all sums immediately when due without any deduction or withholding other than as required by mandatory law (and where any deduction or withholding is required by mandatory law the Customer shall increase the amount payable to the Company to reflect the amount that the Company would have received if no deduction or withholding had been made) and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.
- 6.8** 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, being a company, the Customer's liquidation or any analogous insolvency procedure in any jurisdiction, then all contracts between the Customer and the Company shall be terminated immediately and all sums owed (whether invoiced or not) by the Customer to the Company shall become due and payable immediately provided that, in the Company's absolute discretion, the Company may complete any Orders that have already been placed by the Customer at the date of termination and the Customer shall pay all Charges in relation to such Orders. Such termination is without prejudice to the accrued rights and liabilities of the Parties prior to termination.

## **7 LIMITATION OF LIABILITY**

**7.1** Nothing in this Services Agreement or these STCs shall operate to limit or exclude either Party's liability to the other for any liability which cannot be limited or excluded by mandatory law. All Conditions set out in this Condition 7 shall be subject to this Condition 7.1.

**7.2** To the extent that the Company is acting as the principal carrier in respect of the Goods, the Company's total liability (whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, or otherwise) shall be limited or excluded as set forth in the Company's Bill of Lading, waybill or consignment note (as applicable).

To the extent that the Company is not acting as the principal carrier of Goods, the limits and exclusions set out in Conditions 7.3 and 7.4 shall apply.

**7.3** Subject to Condition 7.4, the Company's total liability (whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, or otherwise) shall be limited to:

- (i) in relation to claims for loss or damage to Goods which are the subject of the relevant Order, the lower of:
  - (a) the value of any loss or damage to such Goods, or
  - (b) where the weight of the Goods can be ascertained, an amount of US\$3 per kilo of the gross weight of such Goods lost or damaged; or
- (ii) in relation to all other claims (including, without limitation, claims relating to delay or incorrect delivery), US\$100,000.

For the purpose of this Condition 7.3, the value of the Goods shall be their value at the commencement of shipment or, if shipment did not commence, the planned date of shipment. If the same loss falls within more

than one of the scenarios set out in (i) or (ii) above, the lowest applicable limit shall apply and the Customer shall not be entitled to claim more than once in respect of the same loss.

**7.4** Under no circumstances shall the Company be liable to the Customer for any of the following types of loss or damage arising under or in relation to this Services Agreement (whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, or otherwise):

- (i) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure, any loss of market, or any loss or corruption of data (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
- (ii) any indirect or consequential loss or damage whatsoever,

even if the Parties were aware of the possibility that such loss or damage might be incurred by the Customer.

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

**7.6** Any claim must be notified to the Company in writing within 14 days of the event giving rise to the claim, and any law suit or claim brought within 9 months from such date.

## **8 THIRD PARTY LIABILITIES**

**8.1** The Customer shall be responsible for and shall at all times fully indemnify the Company and hold it harmless in respect of all claims by any Third Party (including but not limited to damages, losses, costs, expenses and legal expenses) whatsoever arising out of or in connection with death, personal injury or property damage which the Company may incur or suffer as a result of the negligence, default or breach of statutory duty by the Customer, its employees or agents.

## **9 INDEMNITIES**

**9.1** The Customer shall at all times fully indemnify the Company and hold it harmless against all claims, losses, damages, costs and expenses (including but not limited to legal expenses) whatsoever arising which the Company may incur in connection with the performance of the Services under this Services Agreement, unless any such matter arises solely and directly by reason of the wilful misconduct or negligence of the Company.

**9.2** If the Company 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 at all times fully indemnify the Company and hold it harmless from any claims, damages, losses, costs and expenses (including but not limited to legal expenses) whatsoever arising and made thereunder and otherwise reimburse the Company immediately upon any such claims being made, unless any such claim arises solely and directly by reason of the wilful misconduct or negligence of the Company.

**9.3** Without limiting the foregoing terms, if the Company finds itself, whether by mandatory law or otherwise in any country, jointly or severally liable for any liabilities of the Customer or any other party seeks to hold the Company liable for any liabilities of the Customer, then the Customer shall fully indemnify the Company and hold it harmless for any claims, damages, losses, costs and expenses (including but not limited to legal expenses) whatsoever arising and made in respect thereof and shall not in any way assert any claim for a contribution from the Company.

## **10 INSURANCES**

**10.1** The Customer shall take out cargo insurance, at its own expense, for the full replacement value of the Goods, and shall keep such insurance valid and in force for the term of this Services Agreement.

**10.2** The Company shall not be required to take out insurance in relation to the Goods but, in the event of any claim for loss of or damage to Goods, the Company may, in its absolute discretion claim against any cargo insurance policies it may have in place, and then send a liability letter to all service providers related to the shipment under dispute.

## **11 CONFIDENTIALITY**

**11.1** Subject to Condition 11.2, the Company 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:

- (i) the information was public knowledge at the time of the disclosure;
- (ii) the information becomes public knowledge other than by breach of the confidentiality requirements set out in these STCs;
- (iii) the information subsequently comes lawfully into its possession from a Third Party; or
- (iv) such disclosure is required pursuant to any mandatory laws or regulations to which the disclosing Party is subject.

**11.2** 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 Company may disclose the Confidential Information to potential assignees or transferees.

**11.3** Neither Party shall make any announcement, statement or press release concerning this Services Agreement without the prior written consent of the other Party.

## **12 ASSIGNMENT**

**12.1** The Customer may not assign or transfer all or any part of this Services Agreement or any part of its rights or obligations under it without the prior written consent of the Company, such consent not to be unreasonably withheld or delayed.

## **13 FORCE MAJEURE**

**13.1** In relation to the provision of the Services, the obligations of the Company and/or the Customer shall be suspended during any period and to the extent that such Party is prevented or hindered from complying with such obligations by any cause beyond its reasonable control including, but not limited to, strikes, lock-outs, labour disputes, acts of God, war, riot, civil commotion, pandemic, epidemic, malicious damage, compliance with any mandatory 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 or other adverse weather conditions, difficulty or increased expense in obtaining workmen, materials, supplies or raw materials in connection with the provision of the Services.

**13.2** In the event of either Party being so hindered or prevented in accordance with Condition 13.1, 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.

**13.3** Conditions 13.1 and 13.2 do not apply in relation to the payment obligations of the Parties contained in Condition 6.

#### 14 “HIMALAYA”

**14.1** It is hereby expressly agreed that every employee, agent, sub-agent or sub-contractor of the Company shall have the benefit of all exceptions, limitations, provisions, conditions and liberties herein benefiting the Company as if such provision were expressly made for their benefit. In entering into this Services Agreement, the Company, 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.

#### 15 NOTICES

**15.1** Any notice or other communication given or made by the Company or the Customer under this Services Agreement or otherwise in connection with the provision of the Services shall be in writing and may be delivered to the relevant Party or sent by courier (either domestic or international as applicable), 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 courier delivery (either domestic or international as applicable) 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. For the purposes of this Condition 15.2, “**Working Hours**” shall mean between the hours of 9.00am and 5.00pm in the local time of the territory where the notice is delivered.

#### 16 ETHICAL STANDARDS

**16.1** 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 this Services Agreement or any other agreement between the Parties;
- (ii) enter into this Services 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;
- (iii) offer, pay or promise to pay either directly or indirectly, anything of value to a Public Official in connection with this Services Agreement. The Parties further agree that in the performance of their respective obligations under this Services Agreement, the Parties and their respective agents, sub-contractors and employees shall comply with all mandatory laws, rules, regulations and orders of any applicable jurisdiction, including but not limited to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Customer shall notify the Company 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** If the Customer or any of its agents, sub-contractors or employees breaches Condition 16.1, the Company may terminate this Services 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 Company.

**16.3** Notwithstanding Condition 20, any dispute relating to:

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

shall be determined by the Company 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 Company cannot facilitate USD payments in any transaction related to OFAC sanctioned entities, either directly or indirectly. As of the effective date of these STCs, sanctioned entities include the countries of Burma, Cuba, Iran, North Korea, Sudan and Syria, and certain named persons linked to those countries. The Company 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 (but not limited to) 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 Company may make to support any required verification statements.

## **18 ENTIRE AGREEMENT**

**18.1** This Services Agreement constitutes the entire agreement between the Parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the Parties, whether oral or written, in relation to that subject matter.

**18.2** Each Party acknowledges that in entering into this Services Agreement it has not relied upon any oral or written statements, collateral or other warranties, assurances, undertakings or representations which were made by or on behalf of the other Party in relation to the subject-matter of this Services Agreement at any time before its signature (together “**Pre-Contractual Statements**”), other than those which are set out expressly in this Services Agreement.

**18.3** Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements, but for Condition 18.2.

**18.4** Nothing in this Condition 18 shall exclude or restrict the liability of either Party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

## **19 MISCELLANEOUS**

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

**19.2** 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 this Services 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.

- 19.3** The failure of a Party to exercise or enforce any right under this Services 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.
- 19.4** If any part of this Services Agreement is or becomes invalid, illegal or unenforceable, then such part shall be construed to be deleted from this Agreement, but such deletion will not affect the enforceability of the remainder of the Agreement save that 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 closely as possible gives effect to their intentions as expressed herein. Failure to agree on such a provision within six months of commencement of such negotiations shall result in automatic termination of this Services Agreement.
- 19.5** Save as expressly provided in Condition 14, 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 this Services Agreement. Notwithstanding that any term of this Services Agreement may be or become enforceable by a person who is not a party to it, the terms of this Services Agreement or any of them may be varied, amended or modified or this Services Agreement may be suspended, cancelled or terminated by agreement in writing between the Parties or this Services Agreement may be rescinded (in each case), without the consent of any such Third Party.
- 19.6** The Customer agrees that during the duration of the Services Agreement and for a period of six (6) months thereafter it shall not, without the prior written consent of the Company, either on its own account or otherwise, solicit or entice away (or, in each case, attempt so to do), either directly or indirectly, any employee of the Company. This Condition shall not prohibit the Customer from employing the Company's personnel who apply unsolicited to general recruitment advertisements.
- 19.7** Nothing in this Services Agreement is intended to transfer any intellectual property rights (including but not limited to patents, designs, trade marks and trade names (whether registered or unregistered), copyright and related rights, database rights and knowhow) in any proprietary information or data from the Company to the Customer. Any developments, amendments, modifications, enhancements or other changes to the Company's intellectual property rights (including but not limited to those intellectual property rights set out above in this Condition 19.7) will vest in the Company and will not vest in the Customer. To the extent that any such developments, amendments, modifications, enhancements or other changes do vest in the Customer, the Customer hereby assigns (and shall procure that all applicable Customer personnel assign) to the Company any and all right, title or interest that the Customer or Customer personnel may now or hereafter possess in or to such developments, amendments, modifications, enhancements or other changes. The Customer hereby waives (and shall procure that all applicable Customer personnel waive) in favour of the Company, all moral rights subsisting in or associated with such developments, amendments, modifications, enhancements or other changes.
- 19.8** The Customer shall comply at all times with the Data Protection Act 1998 (or analogous legislation in other jurisdictions) and shall ensure that it has all appropriate rights and consents to pass personal data to the Company for the Company to process in accordance with the terms of the Services Agreement.
- 19.9** The rights and obligations of the Parties under this Services Agreement which are intended to continue beyond the termination or expiry of this Services Agreement shall survive the termination or expiry of this Services Agreement.

## **20 LAW AND JURISDICTION**

- 20.1** This Services Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including but not limited to non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 20.2** Any dispute arising out of or in connection with this Services Agreement (including but not limited to non-contractual disputes or claims) shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof.
- 20.3** 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.

- 20.4** 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 except in the case of manifest error. If both Parties appoint an arbitrator, then the two arbitrators shall appoint the third arbitrator who will act as chairman and the award of such three arbitrators shall be binding on both Parties except in the case of manifest error.
- 20.5** Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
- 20.6** 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.
- 20.7** Nothing in this Services Agreement shall preclude the Company from the right to seek in any jurisdiction security or interim orders (by means of an appropriate remedy of relief including, but not limited to, *in rem* arrests, injunctions, attachments, seizures, sales, detention, exercise of any lien or otherwise howsoever) in each case in accordance with any mandatory law or regulation in respect of claims arising in any jurisdiction.

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