

## PORT AGENCY TERMS AND CONDITIONS

The Port Agency Terms and Conditions regulate the contractual relations arising when a national or foreign Vessel's Principal engages agency services from the Agent. Unless the contrary is expressly agreed upon between the parties it is presumed that the Principal accepts the Port Agency Terms and Conditions as an integral part of the Port Agency Agreement and such Port Agency Terms and Conditions shall be deemed to be incorporated in the appointment of the Agent by the Principal.

### Article 1. DEFINITIONS

**Port Agency Agreement (The Agreement)** shall mean the agreement between the Agent and the Principal under which the last entrusts and the Agent is entitled to provide the Principal with the Agency services as stipulated by these Terms and Conditions.

**Agency services** shall mean such services as may from time to time be required in respect of the vessel and shall include, without limitation, the following services:

- to arrange for berthing of vessels, loading and discharging of the cargo, in accordance with the local custom and conditions,
- to provide for the entry and clearance of the Vessel,
- to co-ordinate the activities of the Terminal Operators, Stevedores, Tallymen and all other Suppliers, in the interest of obtaining the best possible operation and dispatch of the Principal's vessel,
- to arrange for bunkering, repairs, husbandry, crew changes, passengers, ship's stores, spare parts, technical and nautical assistance and medical assistance,
- to carry out the Principal's requirements concerning claims handling, P&I matters, General Average,
- to attend to all necessary documentation and to attend to consular requirements and/or insurance, and the appointment of Surveyors,
- to arrange for and attend to the clearance of the Vessel and to arrange for all other services appertaining to the Vessel's movements through the port,
- to report to the Principal the vessel's position and to prepare a statement of facts of the call and/or a port log,
- to keep the Principal regularly and timely informed on Port and working conditions likely to affect the dispatch of the Principal's vessels,
- to arrange necessary payments of the port dues and other charges for Vessel's call from the funds provided by the Principal,
- to check all vouchers received for services rendered and to prepare a proper disbursement account in respect of each voyage,
- to advise the Principal of all amendments to port tariffs and other charges as they become known,
- to issue bills of lading and other similar documents to shippers in the form prescribed by the Principal and under his instructions,
- to arrange for stevedoring and other cargo handling operations if necessary and always subject to the Principal's instructions,
- to arrange for the delivery of cargo in accordance with the bills of lading issued by, or on behalf, of the Principal,
- to perform all such other activities and duties in connection with the foregoing functions as may be necessary.

**Agent** means the Principal's representative who on the basis of the Port Agency Agreement for a fee obliges to provide him with Agency services and which has accepted an appointment to act on behalf of an owner under these Terms and Conditions and the respective Order for each Vessel's call.

**Order** shall mean any order, whether verbal or in writing, received by the Agent from the Principal, its agents, representatives, servants or employees, for the provision of Agency Services, duly accepted by the Agent and governed by these Terms and Conditions, being the confirmation that the Port Agency Agreement recorded in these Terms and Conditions is duly concluded between the Principal and the Agent.

**Principal** when used with reference to any vessel means the registered owner, manager, charterer, managing agent, master or other person in charge of the vessel, for and on behalf of whom the Agent acts and who places an Order for the provision of Agency Services, irrespective of whether the Order is placed by the person for whom Agency Services are to be rendered, or by such person's employees, servants or agents.

**Parties** means the Agent and the Principal, and **Party** means either of them as the case may be under the context.

**Supplier** shall mean any person with whom the Agent transacts any business for purposes of rendering the Agency Services to the Principal, and shall include, but not be limited to: ship chandlers, vendors of all types of goods, repairers, suppliers of goods and services of whatsoever nature in respect of the Vessel, other ships' agents or brokers, importers and exporters, and port and other authorities in Gibraltar.

**Terms and Conditions** shall mean conditions recorded herein.

**Vessel** means a vessel which is belonged to the Principal on the right of ownership or chartered by the Principal under the corresponding Time Charter or operated/managed by the Principal and for which the Agency Services are provided by the Agent under the Principal's request pursuant to the Port Agency Agreement and/or the Order correspondingly placed for each Vessel's call.

## **Article 2. APPLICABILITY**

The Principal hereby agrees that these Terms and Conditions shall apply to any Order for the Agency Services placed either verbally or in writing and/or any Port Agency Agreement, even though no reference to these Terms and Conditions has been made. The limitations of liability as defined within the provisions of these Terms and Conditions shall also be applicable to compensation claims arising from any unlawful act. These Terms and Conditions shall apply to any kind of services the Agent shall perform.

## **Article 3. APPOINTMENT AND PORT AGENCY AGREEMENT**

1. The Principal hereby appoints the Agent to act as its agent in Gibraltar for purposes of performing the Agency Services in the port of Gibraltar, and the Agent hereby accepts such appointment, on the Terms and Conditions stated herein.
2. The Order and these Terms and Conditions constitute a binding agreement between the Principal and the Agent (the Port Agency Agreement), and this Agreement shall terminate on the fulfilment of the Agency Services, unless otherwise provided for in terms hereof.
3. The Principal accepts and agrees to be bound by these Terms and Conditions on placing an Order with the Agent for the Agency Services.

## **Article 4. THE SCOPE OF THE AGENT'S AUTHORITIES**

1. The Agent shall carry out his activity with professional care and see to a qualitative, economical and careful satisfaction of the Principal's interests. In the scope of these activities the Agent is obliged:
  - a. to carry out honestly his activity relative to the Principal's interests and common maritime agency practice;
  - b. to operate within his authorities;
  - c. not to hand over his functions to another third person or entity, if only he was entitled to do that function by the Principal.
2. Unless otherwise stated in writing, the Agent acts at all times as agent for and on behalf of the Principal and has authority to place orders with suppliers as agent for the Principal. The Agent shall not be personally liable to pay any debts due to suppliers from the Principal.

3. The Agent shall take every care to ensure that the proforma disbursement account is as accurate as possible. The proforma disbursement account is, however, only an estimate and the actual disbursement account may – and often does for various reasons beyond the Agent’s control – vary from the proforma disbursement account.
4. The Agent is obliged not to have commercial interests contradictory to the Principal’s interests. The Agent shall at once inform the Principal about the conflict of interests, and the Principal is entitled to dissolve the Agreement, demand a loss payee and cancellation of transaction contradictory to the Principal’s interests.
5. At the request of the Principal the Agent is obliged to show relevant to the Principal’s business documents, invoices, etc.
6. The Agent is obliged to keep in secret confidential data about the Principal’s activity (even after termination of the Agreement) unless the information disclosure is subject to the law requirements.
7. The Agent shall provide such Agency Services as are required by the Principal in terms of the Order and the Agent may provide such additional Agency Services as the Agent in its sole and absolute discretion deems necessary, expedient and in the interests of the Principal.
8. All Agency Services provided by the Agent as contemplated by this Article, and the terms and conditions upon which such Agency Services are provided, shall, at all times, be deemed to have been specifically authorised and approved by the Principal.
9. The Principal’s instructions to the Agent shall be precise, unambiguous and comprehensive in all respects.
10. Instructions given by the Principal to the Agent shall be recognised by the Agent as valid only if given timely and in writing. Oral, standing and general instructions and instructions which are not given timely, even if such instructions are received by the Agent without comment, shall not, in any way, be binding upon the Agent, provided that the Agent may act on such instructions as the Agent, in its sole and absolute discretion, deems fit.
11. Notwithstanding anything to the contrary contained in these Terms and Conditions, if at any time the Agent considers it to be in the Principal’s interests, or in the public interest, to depart from any of the Principal’s instructions (or any part thereof), the Agent shall be entitled, insofar as such departure is reasonable, to depart therefrom and shall not incur any liability in consequence of doing so.

#### **Article 5. AGENT’S RIGHTS**

Agent shall be entitled:

1. to be remunerated with an agreed fee in respect of the customary and expected services provided to the vessel,
2. to reimbursement of reasonable out of pocket expenses,
3. to an additional fee in the event of unexpected occurrences creating additional work or delay to the vessel,
4. to retain and be paid all customary brokerages, commission, allowances and other remuneration
5. to deduct from the sums held by it for the owner’s account any amount due from the Principal
6. with the consent of the Principal to have authority to appoint sub-agents to perform services on behalf of the Principal, including such services as may be subject to these conditions, remaining at all times responsible for the actions of the sub-agent,
7. to recover interest on any sums outstanding at the rate of 9% applicable during the period when the sums are outstanding, if the Principal fails to make payment in full of any sums due to the Agent on demand or within any period agreed in writing,
8. to recover the costs of debt collection in the event that we are forced to send reminders of outstanding or overdue debts or engage third parties to enforce the collection of outstanding sums
9. to be reimbursed in respect of all time and costs reasonably incurred, where the Agent has spent time and incurred costs in anticipation of the vessel’s call which is subsequently cancelled, or for which the Agent is not appointed,
10. to engage the services of a Supplier to perform the Agency Services (or any part thereof) and any such Supplier shall be deemed to be an independent contractor appointed by the Principal, and not a servant of the Agent.
11. to withhold performance of the Agency Services for as long as the Principal is in default of the provisions of these Terms and Conditions.

## **Article 6. PRINCIPAL'S DUTIES**

1. The Principal shall be obliged to:
  - a. provide the Agents immediately upon request with all necessary funds to cover advance disbursements,
  - b. reimburse the Agent any expenses incurred by him on their behalf or with their consent,
  - c. be responsible for consequences of any actions of the Agent within his authority,
  - d. provide with all documentation, necessary to fulfil the Agent's task together with any stationery specifically required by the Principal,
  - e. provide timely full information regarding the Vessel's schedules, ports of call insofar as it affects the port agency activities.
2. The Principal shall at all times indemnify the Agent against all claims, charges, losses, damages and expenses which the Agent may incur in connection with the fulfilment of his duties under this Agreement. Such indemnity shall extend to all acts, matters and things done, suffered or incurred by the Agent during the duration of the Port Agency Agreement, notwithstanding any termination thereof, provided always, that this indemnity shall not extend to matters arising by reason of the wilful misconduct or negligence of the Agent.
3. If mutually agreed the Principal shall take over the conduct of any dispute which may arise between the Agent and any third party as a result of the performance of the Agent's duties.
4. Where the Principal limits the authority of the Agent, any agreement of the Agent concluded him with a third person who acted honestly is valid and obligatory for the Principal, unless the third party was not acknowledged of such restrictions.
5. The Principal undertakes with the Agent that no claim or allegation of any kind shall be made against any of the Agent's directors, officers or employees (hereinafter collectively called "the beneficiaries") for any loss, damage or delay of whatsoever kind arising directly or indirectly from any negligent act, error or omission of the beneficiaries in the performance of the services the subject of these conditions. The beneficiaries shall have the benefit of this undertaking and in entering into this contract the Agent, to the extent of this provision, does so not only on his own behalf, but also as agent or trustee for the beneficiaries, who shall to the extent of this clause only be or be deemed to be parties to this contract.

## **Article 7. REMUNERATION AND PAYMENT PROCEDURE**

1. The Principal shall pay to the Agent the fees agreed in writing between the Agent and the Principal for the Agency Services rendered by the Agent.
2. The Principal shall be liable for, and shall pay to the Agent, all costs and expenses incurred by the Agent, including the fees referred to in par.1 of this Article, in providing the Agency Services at the request or on the instruction of the Principal itself, the master of the Vessel, the office of the Principal or its agents, nominees, representatives or servants, howsoever communicated to the Agent and notwithstanding the fact that any such persons may have exceeded their authority in requesting or instructing the provision of the Agency Services.
3. The Principal shall reimburse the Agent for all costs and expenses incurred by the Agent in respect of the receipt of currency from the Principal, or the remittance of currency to, or on behalf of, the Principal.
4. The Principal shall pay by telegraphic transfer to the Agent's bank account such sum as the Agent may request as an advance on port disbursements which the Agent estimates will be incurred on the Principal's behalf. If the Principal should fail to comply with the Agent's request, the Agent may:
  - a. at any time give immediate notice of the termination of the Port Agency Agreement and/or
  - b. take any necessary measures to detain the vessel in port until such funds are received by the Agent.
5. The Agent is entitled to reimbursement for out-of-pocket expenses, including but not limited to communications expenses, cellular phones, photocopying, forms, auto hire, transportation, staff and boarding clerk overtime, government charges and other expenses not usually assumed by an agent.
6. One hundred percent (100%) of funds to cover requirements for cash advanced to Master must be in the Agent's hands prior to Vessel's arrival.
7. Eighty (80%) of funds to cover the estimated disbursements as determined by the agent (excluding cash advanced to Master) must be in the Agent's hands prior to Vessel's arrival.
8. The Agent shall not be obliged to make any disbursement whatsoever on behalf of the Principal until such time as:
  - a. the Agent has been paid all amounts then due by the Principal to the Agent in respect of the provision of the Agency Services by the Agent; and

- b. the Agent has received sufficient funds for purposes of paying the particular disbursement, and shall not be in default of its obligations by failing to make such payment.
9. In the event of the Agent providing Agency Services at the request of both the Principal and the charterer of a Vessel, the Principal and charterer shall incur joint and several liability in respect of the remuneration of the Agent as contemplated by this Article on the basis set out in par.1 herein. Similarly, if any charter party applicable to the Vessel provides that the agent appointed by the charterer of the Vessel is the Vessel's agent, the charterer and the Principal of the Vessel shall be jointly and severally liable to the Agent for the payment of the Agent's fees, and
10. any costs and expenses incurred by the Agent on their behalf, as if each of them were the Principal under these Terms and Conditions, and the Agent shall be entitled to claim from either the charterer or the Principal or both, as the Agent, in its sole and absolute discretion, deems fit.

#### **Article 8. LIMITATION OF THE AGENT'S LIABILITY**

1. The liability of the Agent to the Principal in respect of any negligent act, error or omission committed by the Agent, his directors or employees shall not exceed the amount agency fees payable by the Principal to the Agent in respect of the Vessel, which fees shall be deemed earned in any event.
2. The primary duty of the Agent in respect of the exchange of ISPS Code compliance information between the Vessel and the shore authorities is limited to correctly notifying the Principal of the information required, the date by which it is required and the address to which it must be sent. If the Agent is additionally required to pass the information on, his liability is extended to include ensuring the information provided by the vessel is correctly lodged with the relevant shore authority within the required time limit. Any failure by the Agent to undertake these duties with the utmost skill and care can render the agent liable for the loss incurred. Under no circumstances, however, the Agent is held liable for the accuracy of the information provided by the Principal, or if the Principal fails to make the information available to the Agent within the required time limit or for any other error or failure that may occur, which is beyond the Agent's reasonable control. These remain at all times the responsibility of the Principal.
3. The Agent shall perform the services he undertakes to provide with due dispatch but shall not be liable for any loss or damage arising from any delay which it could not reasonably prevent.
4. The Agent shall be discharged from all liability whatsoever to the Principal and unless suit is brought within one year of the act or default of which complaint is made.
5. The Agent in carrying out his duties under the Port Agency Agreement and these Terms and Conditions shall not be responsible to the Principal for loss or damage caused by any banker, broker or other person, instructed by the Agent in good faith unless the same happens by or through the wilful neglect or default of the Agent. The burden of proving the wilful neglect of the Agent shall be on the Principal.
6. The Principal acknowledges that the Agent is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, warranty or inducement which may have been made at any time by any employee, representative or any person acting, or purporting to act, for and on behalf of the Agent, whether negligently or otherwise, unless such statement, representation, guarantee, promise, undertaking, warranty or inducement is supplied or made in writing by an employee of the Agent, duly authorised by written resolution of the board of directors of the Agent, in response to a written enquiry specifying accurately and in complete detail what information is required.

#### **Article 9. FORCE MAJEURE CIRCUMSTANCES**

1. To be regarded as force majeure are all circumstances which the Agent could not reasonably avoid and the consequences of which the Agent could not reasonably prevent.
2. In the event of force majeure, the Agency agreement shall remain in force; the Agent's obligations shall, however, be suspended for the duration of the event of force majeure.
3. All additional costs caused by force majeure, such as port charges and other accounts, shall be borne by the Principal and shall be paid to the Agent at the Agent's initial request.
4. If any Party to these Terms and Conditions is prevented or restricted, directly or indirectly, from carrying out all or any of its obligations under these Terms and Conditions by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of that Party, the Party so affected shall be relieved of its

obligations under these Terms and Conditions during the period that such event and its consequences continue, but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or any loss or damages, whether general, special or consequential, which the other Party may suffer due to or resulting from such delay or failure, provided always that written notice shall forthwith be given of any such inability to perform by the affected Party.

5. Any Party invoking force majeure in accordance with this Article shall upon termination of an event giving rise thereto, forthwith give written notice of such cessation to the other Party. If such force majeure continues for a period of more than 90 (ninety) days, then either Party shall be entitled forthwith to cancel these Terms and Conditions in respect of any obligations still to be performed hereunder, and neither Party shall have any claim against the other.

#### **Article 10. GOVERNING LAW AND DISPUTES RESOLUTION**

1. These Terms and Conditions and the Port Agency Agreement related hereto and/or other documents shall be regulated by Gibraltar Law.
2. All disputes which may arise between the Agent and the other party shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If
3. the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement. Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
4. 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.
5. In case the place of dispute resolving is not agreed, it shall be considered under the general rules, the legislation of Gibraltar is applicable.

#### **Article 11. VALIDITY, DURATION AND TERMINATION OF THE PORT AGENCY AGREEMENT**

1. The Port Agency Agreement recorded in these Terms and Conditions shall commence on the date of acceptance of the Order by the Agent and shall, unless terminated earlier in accordance with the provisions of the Article 9, endure indefinitely.
2. The Port Agency Agreement concluded in writing by the Parties, duly signed by the Agent and the Principal shall enter in force from the date of its signing by the Parties and shall terminate upon completion of performance of Agency Services by the Agent and all the payments done by the Principal as provided by the Port Agency Agreement itself and these Terms and Conditions.
3. The duly signed Port Agency Agreement concluded for a definite term is terminated on its expiry unless other is specified in the Port Agency Agreement. If the Port Agency Agreement was concluded for an indefinite term, each of the parties is entitled to cancel the Agreement if there are any substantial reasons confirming its non-compliance. The Party is obliged to inform the other about cancelling of the Agreement by three months at latest since substantial reasons became known to the Party.

#### **Article 12. FINAL PROVISIONS**

1. No legal or arbitration proceedings shall be taken against the third parties by the Agent unless he states his readiness to take the same at the Principal's request and expense.

2. These Terms and Conditions form an integral part of the Port Agency Agreement concluded between the Principal and the Agent, unless otherwise agreed upon between them.
3. The agreements and undertakings of Parties contained in these Terms and Conditions shall each be construed as an agreement and undertaking independent of any other provision of these Terms and Conditions. The Parties hereby expressly agree that it is not the intention of either Party to violate any public policy, statutory or other applicable law, and that if any sentence, paragraph, clause or combination of the same is in violation of the law of Gibraltar, such sentence, paragraph, clause or combination of the same alone shall be void in the jurisdiction where it is unlawful, and the remainder of such clause and these Terms and Conditions shall remain binding upon the Parties hereto.
4. The Parties to these Terms and Conditions undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give or conducive to giving effect to the terms, conditions and import of these Terms and Conditions.
5. The Parties shall at all time during the continuance of these Terms and Conditions observe the principles of good faith towards one another in the performance of their obligations in terms of these Terms and Conditions. This implies, without limiting the generality of the foregoing, that they:
  - a. will at all times during the term of these Terms and Conditions act reasonably, honestly and in good faith,
  - b. will perform their obligations arising from these Terms and Conditions diligently and with reasonable care; and
  - c. will make full disclosure to each other of any matter that may affect the execution of these Terms and Conditions.
6. No variation or alteration of these Terms and Conditions shall be binding on the Agent unless embodied in a written document signed by a duly authorised director of the Agent. Any purported variation or alteration of these Terms and Conditions otherwise than as set out herein shall be of no force or effect, whether such purported variation or alteration is written or oral, or takes place before or after the receipt of these Terms and Conditions by the Principal.
7. The Principal shall not be entitled to assign any of its rights and obligations under these Terms and Conditions without the express prior written consent of the Agent, which consent the Agent may, in its sole and absolute discretion, withhold or withdraw.
8. All costs (which shall include legal costs on the attorney and own client scale), incurred by an aggrieved Party which enjoys success, or substantial success, in enforcing its rights (whether action has been instituted or not) arising out of a breach of these Terms and Conditions by the other Party hereto shall be borne by that other Party.