



Standard Trading Terms & Conditions for
Ships Agency Services



Logistics Support Services
(Pty) Ltd

I. DEFINITIONS

1.1 For the purposes of these Standard Trading Terms and Conditions, unless inconsistent with the context, the following words shall have the following meaning:

1.1.1 "Agreement" means the Order by the Principal read with these Standard Trading Terms and Conditions;

1.1.2 "Agent" means Logistics Support Services (Pty) Ltd, [Registration No: 2009/0864 a private company duly registered and incorporated in accordance with the laws applicable in the Republic of Namibia, having its place of business at No. 17, 2nd Street East, Walvis Bay, Republic of Namibia.

1.1.3 "Agency Services" means such ships agency services as may from time to time be required by the Principal to be rendered by the agent in respect of the Vessel and shall include, without limitation the following services:

1.1.3.1 arranging berths for the Vessel;

1.1.3.2 providing for the entry and clearance of the Vessel;

1.1.3.3 providing for the payment of port charges and any dues payable in respect of the Vessel;

1.1.3.4 arranging for the supply of fuel, water, provisions and deck and engine room stores;

1.1.3.5 arranging for any repairs required to be done to the Vessel;

1.1.3.6 taking charge of and arranging solicitation and booking of cargo for the Vessel;

1.1.3.7 issuing bills of lading and other similar documents to shippers in the form prescribed by the Principal;

1.1.3.8 arranging for stevedoring and other cargo handling operations;

1.1.3.9 arranging for the delivery of cargo in accordance with the bills of lading issued by, or on behalf, of the Principal;

1.1.3.10 taking charge of and arranging solicitation of passengers for the Vessel;

1.1.3.11 arranging the embarkation and disembarkation of passengers and their baggage;

1.1.3.12 issuing passenger tickets;

1.1.3.13 attending to all matters pertaining to the

deployment of the crew on the Vessel, including, engaging, signing on, signing off and repatriating crew; and

1.1.3.14 performing all such other activities and duties in connection with the foregoing functions as may be necessary;

1.1.3.15 attending to the Vessels cargo load and/or discharge operations in accordance with Principal's instructions and in conjunction with policies of the port authorities and terminals.

1.1.4 "Business day" means any day of the week excluding Saturdays, Sundays and/or public holidays in the Republic of Namibia;

1.1.5 "Goods" means, inter alia, any machinery, equipment, apparatus, or other goods and/or related accessories required for agent's performance of the Agency Services;

1.1.6 "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, which order has been accepted by the Agent and which order is governed by these Standard Trading Terms and Conditions;

1.1.7 "Parties" means the Principal and the Agent and "Party" means either of them as the context indicates;

1.1.8 "Principal" means the person 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;

1.1.9 "Prime Rate" means the prime rate of interest quoted publicly by Standard Bank of Namibia Limited from time to time, which rate may be proved by a certificate signed by any officer of that bank, whose appointment and authority it shall not be necessary to prove, and which certificate shall constitute prima facie proof of the contents thereof;

1.1.10 "Supplier" 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 the Republic of Namibia;

1.1.11 "Terms and Conditions" shall mean the Standard Trading Terms and Conditions recorded herein;

1.1.12 "Vessel" shall mean any motor vessel or ship owned, operated, managed or chartered by the Principal and will include any floating object or barge;

- 1.2 Where applicable, the provisions of clause 1 shall impose substantive obligations on the Parties as provided in the provision concerned.
- 1.3 In these Standard Trading Terms and Conditions words and expressions importing the masculine gender shall include the feminine and neuter genders and visa versa; the singular shall include the plural and visa versa, and natural persons shall include artificial persons and visa versa.
- 1.4 The clause headings in these Standard Trading Terms and Conditions have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.5 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.6 No provision of these Standard Trading Terms and Conditions shall be construed against or interpreted to the disadvantage of any Party hereto by reason of such Party having, or being deemed to have, structured or drafted such provisions.
- 1.7 The eiusdem generis rule shall not apply and whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.
- 1.8 When these Standard Trading Terms and Conditions prescribe any number of days, such days must be reckoned exclusively of the first and inclusively of the last day. If the last day falls on a day that is not a business day, it will be deemed to fall on the next business day.
- 1.9 These Standard Trading Terms and Conditions shall be governed by and construed and interpreted in accordance with the laws of the Republic of Namibia.

2. APPOINTMENT

- 2.1 The Principal hereby appoints the Agent to act as its agent in the Republic of Namibia for purposes of performing the Agency Services, and the Agent hereby accepts such appointment, on the Standard Trading Terms and Conditions.
- 2.2 The Order and these Standard Trading Terms and Conditions constitute a binding agreement between the Principal and the Agent, and this Agreement shall terminate on the fulfillment of the Agency Services,

unless otherwise provided for in terms hereof.

- 2.3 The Principal accepts and agrees to be bound by these Standard Trading Terms and Conditions on placing an Order with the Agent for the Agency Services.

3. SCOPE OF AGENT'S AUTHORITY

- 3.1 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 Agent in its sole and absolute discretion deems necessary, expedient and in the interests of the Principal.
- 3.2 All Agency Services provided by the Agent as contemplated by clause 3, and the Standard Trading Terms and Conditions upon which such Agency Services are provided, shall, at all times, be deemed to have been specifically authorized and approved by the Principal.
- 3.3 The Principal's instructions to the Agent shall be precise, unambiguous and comprehensive in all respects. Instructions given by the Principal to the Agent shall be recognized by the Agent as valid only if given timeously and in writing. Oral, standing and general instructions and instructions which are not given timeously, even if such instructions are received by the Agent without comment, shall not, in any way, be binding upon Agent, provided that Agent may act on such instructions as the Agent,
- 3.4 Notwithstanding anything to the contrary contained in these Standard Trading 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.
- 3.5 The Agent shall be entitled 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.

4. DURATION

The agreement recorded in these Standard Trading 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 this agreement, endure indefinitely.

5. REMUNERATION OF THE AGENT

5.1 Fees

5.1.1 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. In the event of there being no written agreement as to fees, or in the event of a particular Agency Service not being provided for in the scale of agreed fees, the Principal shall pay to the Agent the fees contained in the Association of Ship's Agent and Brokers of Southern Africa [ASOBOSA] scale of recommended fees payable at ports within the Republic of Namibia, as amended from time to time.

5.1.2 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 clause 5, 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.

5.1.3 The Principal shall reimburse the Agent for all costs and expenses incurred by Agent in respect of the receipt of currency from the Principal, or the remittance of currency to, or on behalf of, the Principal.

5.1.4 The Agent shall be entitled to withhold performance of the Agency Services for as long as the Principal is in default of the provisions of these Standard Trading Terms and Conditions.

5.1.5 Information furnished to a Principal by an Agent as to the costs and expenses of providing Agency Services in the Republic of Namibia or any matter relating thereto, whether in the form of an estimate, offer, quotation or tender, shall be deemed to be information furnished for the guidance of the principal only and shall not be binding on the Agent unless the contrary has been expressly stated in such estimate, offer, quotation or tender.

5.2 Disbursements

5.2.1 The Agent shall not be obliged to make any reasonable disbursement whatsoever on behalf of the Principal until such time as:

5.2.1.1 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 Agent; and

5.2.1.2 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.

5.3 Joint and Several Liability

In the event of Agent providing Agency Services at the request of both the owner and the charterer of a Vessel, the owner and charterer shall incur joint and several liability in respect of the remuneration of the Agent. Similarly, if any charterparty applicable to the Vessel provides that the agent appointed by the charterer of the Vessel is the Vessel's agent, the charterer and the owner of the Vessel shall be jointly and severally liable to Agent for the payment of the Agent's fees and any costs and expenses incurred by the Agent on their behalf, as if each of them were a Principal under these Standard Trading Terms and Conditions, and the Agent shall be entitled to claim from either the charterer or the owner or both, as the Agent, in its sole and absolute discretion, deems fit.

5.4 Security by Principal

The Agent may, at any time, require the Principal to furnish security for the payment of such amounts as are, or will become, due to the Agent by the Principal in connection with the performance of the Agency Services, and for the due reimbursement of disbursements made, or to be made, by the Agent on behalf of the Principal.

5.5 Guarantees by Agent

A Principal shall under no circumstances require an Agent to furnish a guarantee or to provide security for the performance of any obligations by the Principal or the Agent on behalf of the Principal. In the event of an Agent, by reason of legislation or the requirement of a competent authority, being obliged to guarantee the obligations of a Principal or secure the fulfillment of the Agent's obligations on behalf of the Principal, the Principal shall prior to the furnishing of such guarantee or security by the Agent indemnify the Agent as is provided herein and in addition pay to the Agent the applicable commission calculated on the maximum amount of any loss the Agent may sustain were any such guarantee or security to be acted upon.

5.6 Credit facilities

The Agent reserves the right, at any time, to summarily cancel any credit facilities granted to the Principal pursuant to the performance of the Agency Services. In the event of Agent exercising its rights in terms of this clause 5, all amounts then due and owing to the Agent by the Principal shall immediately become due and payable on demand.

6. PAYMENT BY PRINCIPAL

- 6.1 Unless otherwise specifically agreed between the Principal and the Agent in writing, the Principal shall pay to the Agent in cash and immediately upon presentation of account, all sums due to the Agent.
- 6.2 All payments made by the Principal to the Agent in terms of these Standard Trading Terms and Conditions shall be made free of set-off, bank exchange, commission or any other deduction, and the Principal shall not have the right to defer, adjust or withhold any payment due to the Agent in terms of or arising out of these Standard Trading Terms and Conditions, or to obtain deferment of judgment for such amounts or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature or howsoever arising.
- 6.3 All and any monies received by the Agent from the Principal shall be appropriated by the Agent, in its sole and absolute discretion, to any indebtedness owing by the Principal to the Agent, notwithstanding that the Principal may, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.

7. QUOTATIONS

- 7.1 The Agent shall be entitled, at any time and on 48 (forty-eight) hours' written notice to the Principal, to cancel or resile from the Agreement in circumstances where it becomes impracticable or uneconomical for the Agent, in its sole and absolute discretion, to perform in terms of the Agreement at the quoted rate, and the Principal shall have no claim whatsoever against the Agent for any loss that the Principal may incur as a result of the Agent cancelling or resiling from the Agreement.
- 7.2 Without in any way limiting the provisions of clause 7, all quotations for Orders are subject to revision on 48 (forty-eight) hours' written notice, having regard to changes in currency exchange rates and increases in amounts payable by, or on behalf of, or at the instance of the Agent to third Parties including, without limitation: freight, surcharges, insurance premiums, equipment rental and labour charges, where such changes and increases take place after quotation. Any revision of a quotation for an Order shall be commensurate with the change in the currency exchange rate or the increase in the amounts payable (as the case may be). Any such change and/or increase shall, failing agreement between the Parties, be determined by the auditors for the time being of the Agent, or any other suitably qualified auditors nominated by the Agent, who, in such determination, shall act as experts and not as arbitrators, and whose decision shall be final and binding on the Parties.

8. LIABILITY OF AGENT

- 8.1 The Agent shall not be liable for any loss or damage unless such loss or damage is directly attributed to the willful default or gross negligence of the Agent arising from or connected to the services rendered by the Agent in terms hereof;
- 8.2 The Agent shall not be liable for any consequential loss and/or indirect loss arising from any act or omission by the Agent, its agents, servant or nominees, whether negligent, intentional or otherwise and shall only be liable in respect of any direct damage or loss incurred by the Principal and/or a Supplier as a result of a default by the Agent in providing the Agency Services where:
- 8.2.1 such damage or loss has been caused by the willful default or gross negligence of the Agent; and
- 8.2.2 such claim arises at a time when the Goods in question are in the custody of the Agent and under its control.
- 8.3 In the event that the Agent elects not to refer any claim by the Principal, which claim the Agent disputes, to arbitration for determination and, in the further event of the Principal failing to prosecute the claim as envisaged in Section 15(1) of the Prescription Act 68 of 1969 within one year from the date on which the damage or loss occurred, such claim shall be deemed to have been extinguished by effluxion of time.
- 8.4 Notwithstanding anything to the contrary contained in these Standard Trading Terms and Conditions, the liability of the Agent to the Principal shall, at all times, be limited to payment of N\$10 000.00 (ten thousand Namibian Dollar) in respect of any one voyage undertaken by the Vessel.
- 8.5 The Agent shall under no circumstances be liable for damage to or loss of goods delivered to it by the Principal for the purpose of forwarding, clearing or safe keeping.
- 8.6 Agent shall not be responsible for any money paid or remitted by it on behalf of the Principal to any person pursuant to any request or instruction given to Agent by the Principal, its servants, employees, agents or representatives.
- 8.7 All delivery dates specified in the Orders placed by the Principal ("the Delivery Date/s") are estimates only and the Agent shall not be responsible for any costs, expenses, losses or damages suffered by the Principal, either directly or indirectly arising where the Goods or services are not delivered by the Delivery Date. The Principal must accept or pay for Goods and services despite any delay in delivery or dispatch thereof.

- 8.8 The Agent shall be discharged from all liability whatsoever and howsoever arising in respect of or connected with any service rendered to the Principal or which the Agent has undertaken to provide unless summons or other process initiating legal proceedings is issued and served on the Agent within 9 (nine) months of the date upon which the incident giving rise to any such liability occurred or upon which the Agency services were or should have been rendered whichever is the earlier and immediate notice is given to the Agent in writing of such legal proceedings having been brought.
- 8.9 The Agent shall not be liable for the default or negligent act howsoever arising whether willful or otherwise on the part of any Supplier providing goods or services to a Principal at the Agent's instance and request, such Supplier being deemed to be an independent contractor employed by the Principal.
- 8.10 The Agent shall not be responsible for any money paid or remitted by him on behalf of a Principal to any person pursuant to any request or instruction given by the Agent by a Principal.
- 8.11 The Agent shall not be liable for any loss or damage of whatsoever nature sustained by a Principal directly or indirectly attributed to war, danger of war, riots, labour strikes, slowdown strikes, lockouts, boycotts, sabotage, overburdening of any port, any circumstances beyond the control of the Agent and the like, which may affect or interrupt the regular and normal conduct of trade. In the event of the Agent being precluded from providing Agency service due to any such circumstances beyond its control or to any other circumstances constituting force majeure the Agent shall nevertheless be entitled to be reimbursed by the Principal for costs and expenses incurred by him in taking all such steps as may be necessary to protect the interests of the Principal, in particular shed hire and/or storage charges paid by the Agent at the applicable tariff rates.

9. INSURANCE

- 9.1 Should the Principal require insurance against damage or loss where the Agent's liability for such damage and/or loss is excluded by these Standard Trading Terms and Conditions, the Agent shall procure such insurance for the Principal, on the Principal's behalf and at the Principal's expense, provided that the Principal's request for such insurance is made in writing and an insurance cover note is issued and taken up by the Principal prior to the delivery of the Agency Services.
- 9.2 Notwithstanding the Agent's compliance with any request made under clause 9, the Agent shall under no circumstances be liable for any errors or omissions on its part in arranging such insurance on behalf of the Principal.

10. WARRANTIES & REPRESENTATION BY AGENT

The Agent makes no warranties and representations to the Principal save as may be specifically provided herein, or as notified in writing by the Agent to the Principal, from time to time. 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 authorized 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.

11. INDEMNITIES BY PRINCIPAL

- 11.1 Without prejudice to any rights the Agent may have under these Standard Trading Terms and Conditions or otherwise in law, the Principal hereby indemnifies and holds the Agent, its servants, agents, representatives and nominees harmless against all liabilities, damages, costs and expenses of whatsoever nature incurred or suffered by the Agent arising, directly or indirectly, from or in connection with the provision of the Agency Services and, in particular, but without limitation, in respect of any liability whatsoever which may be incurred by reason of:
- 11.1.1 claims by a Supplier in respect of any Goods provided to the Principal at the Agent's instance and request in accordance with clause 3;
 - 11.1.2 payment of any taxation which may be levied on passenger earnings or freight earned on cargo loaded in the absence of reciprocal intergovernmental taxation agreements;
 - 11.1.3 payment of any costs and expenses incurred by the Agent in the performance of the Agency Services;
 - 11.1.4 any claims arising out of a guarantee furnished by the Agent pursuant to the provisions contained herein; and/or
 - 11.1.5 any claims arising out of a breach of warranties by the Principal.
- 11.2 The Principal hereby undertakes, at any time prior to, during or after the provision of the Agency Services and on receipt of a written request from the Agent, to place the Agent in sufficient funds, or to furnish the Agent with security to the satisfaction of the Agent, in order to ensure the due fulfillment by the Principal of its obligations under the indemnity contained in clause 11.

12. WARRANTIES BY PRINCIPAL

12.1 The Principal warrants that:

12.1.1 it is either the owner, or the authorized agent of the owner, of any Goods in respect of which the Principal instructs the Agent, and that each such person is bound by these Standard Trading Terms and Conditions and accepts that the Agent shall have the right to enforce against any such persons, jointly and severally, any liability of the Principal under these Standard Trading Terms and Conditions, or to recover from any such persons any sums to be paid by the Principal to the Agent which, upon proper demand, have not been paid;

12.1.2 all information and instructions supplied, and to be supplied, by it to the Agent are and shall, at all times, be accurate, true and comprehensive and, in particular, without derogating from the generality of the foregoing, the Principal shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to the Agent for customs, consular and other purposes, and the Principal warrants further that it will not withhold any necessary or pertinent information from the Agent, and indemnifies the Agent against all claims, losses, penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach by the Principal of the warranties contained in this clause 12; and

12.1.3 all Goods will be properly, adequately and appropriately prepared, packed, stowed, labelled and marked, having regard, inter alia, to the implementation by or on behalf of the Agent of the agreement between the Agent and the Principal in respect of the Goods concerned, and the characteristics of the Goods concerned shall be capable of withstanding the normal hazards inherent in the implementation of such agreement and shall comply with all legislative requirements.

12.1.4 The Principal agrees that each of the warranties referred to in this clause 12 shall be deemed to be a representation of fact inducing the Agent to enter into these Standard Trading Terms and Conditions unless the contrary is proved, and that each of the warranties referred to in this clause 12 shall be assumed to be a material warranty unless the contrary is proved.

12.1.5 All matters referred to in this clause 12, save where the context clearly indicates the contrary, are and shall be warranted as such for the duration of these Standard Trading Terms and Conditions.

13. AGENT'S LIEN

13.1 All Goods and documentation pertaining thereto, including, without limitation, bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries or currency received by the Agent from, or on behalf of, the Principal, shall be held by the Agent subject to a general lien and right of retention in lieu of any monies due to the Agent by the Principal for any reason whatsoever. If the general lien is not satisfied within 14 (fourteen) days of written notice of the exercise of such lien having been given to the Principal by the Agent, or should the Agreement be terminated without the Agent having been paid all amounts owing to it by the Principal:

13.1.1 the Goods may be sold by auction or otherwise and the proceeds of the sale applied to the satisfaction of the lien and expenses incurred in respect of the sale; and

13.1.2 the Agent shall be entitled to set off and to deduct from the proceeds of such sale any amount owing to it by the Principal and/or the currency held by it as aforesaid any amount owing to it by the Principal.

14. FORCE MAJEURE

14.1 If any Party to these Standard Trading Terms and Conditions is prevented or restricted, directly or indirectly, from carrying out all or any of its obligations under these Standard Trading 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 Standard Trading 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.

14.2 Any Party invoking force majeure in accordance with this clause 14 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 Standard Trading Terms and Conditions in respect of any obligations still to be performed hereunder, and neither Party shall have any claim against the other.

15. BREACH AND TERMINATION OF AGENCY

15.1 If either Party to these Standard Trading Terms and Conditions:

15.1.1 breaches any of the provisions of this Agreement and, where such breach is capable of remedy, the defaulting Party fails to remedy the breach for a period of 10 (ten) days after receipt of notice from the aggrieved Party calling upon the defaulting Party to remedy its breach;

15.1.2 commits any other breach of the terms of this Agreement which is incapable of being remedied;

15.1.3 takes steps or has steps taken against it for its winding-up, sequestration or liquidation (whether voluntary or otherwise), or commits any act of insolvency in terms of the Insolvency Act 24 of 1936;

15.1.4 being a company or close corporation, ceases to be controlled by the person(s) that control(s) it at the date of commencement of these Standard Trading Terms and Conditions as contemplated in clause 4; and/or

15.1.5 fails to contest or discharge any final judgment taken against it in any court of competent jurisdiction for a period of 10 (ten) days or longer; and/or

15.1.6 ceases to carry on business for any reason whatsoever;

15.2 then such defaulting Party shall be deemed to be in breach of its obligations in terms of these Standard Trading Terms and Conditions.

15.3 If either Party is in breach of these Standard Trading Terms and Conditions, or is deemed to be in breach of these Standard Trading Terms and Conditions in terms of clause 15, and provided the aggrieved Party has given the defaulting Party written notice of at least 14 days to remedy such breach and the defaulting Party fails to timeously remedy such breach after receiving such written notice, the aggrieved Party shall be entitled, but not obliged, in addition to any other rights which it may have or remedies which may be available to it in terms of these Standard Trading Terms and Conditions or otherwise in law, to –

15.3.1 cancel these Standard Trading Terms and Conditions forthwith, with or without claiming damages;

15.3.2 obtain an order against the defaulting Party for specific performance, with or without claiming damages; and/or

15.3.3 claim such damages as it may have suffered in lieu of specific performance, together with all amounts owing under, or in terms of these Standard Trading Terms and Conditions, whether or not such amounts have become due for payment.

16. TERMINATION FOR CONVENIENCE

Either Party shall, in its sole and absolute discretion, be entitled, at any time, to terminate this Agreement on 60 (sixty) days' written notice to the other Party.

17. DOMICILIUM

17.1 The Principal shall give written notice to the Agent of the Principal's domicilium citandi et executandi, which shall not be a poste restante, in the Republic of Namibia, and at which domicilium citandi et executandi all processes and notices arising out of or in connection with these Standard Trading Terms and Conditions or a breach or termination thereof may be validly served upon and delivered to the Principal. In the absence of such written notice from the Principal, the Principal hereby chooses its domicilium citandi et executandi as the address specified by it in the Order, if any.

17.2 The Principal may, by notice in writing to the Agent, change its domicilium citandi et executandi.

17.3 Notwithstanding anything to the contrary contained in this 17, a written notice or communication actually received by the Principal from the Agent shall be adequate written notice or communication to the Principal.

18. ARBITRATION

18.1 Subject to clause 18, in the event of any dispute of whatsoever nature arising between the Parties in relation to any matter provided for in, or arising out of these Standard Trading Terms and Conditions, then that dispute shall, at the election of the Agent, which election shall be communicated to the Principal in writing, be referred to arbitration to be held at Walvis Bay, Republic of Namibia. Should the Agent elect that the dispute be referred to arbitration, such dispute shall be referred to a single arbitrator to be agreed upon by the Parties to the dispute or, failing such agreement, to be nominated by the president for the time being of the Maritime Law Association of the Republic of Namibia, and such arbitration shall be conducted in accordance with and subject to the provisions of the Arbitration Act No. 42 of 1965, or any statutory modification or re-enactment thereof for the time being in force or such rules as the Parties may agree to, in writing.

18.2 The provisions of clause 18 shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

19. MISCELLANEOUS

19.1 ISPS (International Ship and Port Facility Security Code)

19.1.1 The Agent will exercise reasonable skill and care to file the data required for purposes of ISPS correctly and within the prescribed filing deadlines. The Agent shall not be responsible or liable for the correctness or accuracy of the information provided by the Vessel or any failure by the Vessel to provide the data in a timely manner nor for any technical problems or human error beyond the Agent's control. The Agent will provide the filing process as a data exchange service only. The Agent shall bear no liability of whatsoever nature irrespective of any alleged negligence or fault on the part of the Agent, arising from the filing of data or omission to file data timeously or at all and liability thereof shall rest exclusively with the Vessel. The Principal hereby indemnifies and holds the Agent harmless in respect thereof.

19.2 Payment of interest

19.2.1 Save to the extent otherwise provided, all amounts due by one Party to the other (including damages) in terms of or arising out of these Standard Trading Terms and Conditions shall, unless paid on due date, bear interest from the due date to date of payment. Such interest shall be:

19.2.1 calculated at the Prime Rate plus 5% (five per centum); and

19.2.2 capitalized monthly in arrears on the balance due.

19.3 Implementation and Good Faith

19.3.1 The Parties to these Standard Trading 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 Standard Trading Terms and Conditions.

19.3.2 The Parties shall at all times during the continuance of these Standard Trading Terms and Conditions observe the principles of good faith towards one another in the performance of their obligations in terms of these Standard Trading Terms and Conditions. This implies, without limiting the generality of the foregoing, that they:

19.3.2.1 will at all times during the term of these Standard Trading Terms and Conditions act reasonably, honestly and in good faith;

19.3.2.2 will perform their obligations arising from these Standard Trading Terms and Conditions diligently and with reasonable care; and

19.3.2.3 will make full disclosure to each other of any matter that may affect the execution of these Standard Trading Terms and Conditions.

19.4 Severability

The agreements and undertakings of Parties contained in these Standard Trading Terms and Conditions shall each be construed as an agreement and undertaking independent of any other provision of these Standard Trading 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 the Republic of South Africa, 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 Standard Trading Terms and Conditions shall remain binding upon the Parties hereto.

19.5 Variation

No variation or alteration of these Standard Trading Terms and Conditions shall be binding on the Agent unless embodied in a written document signed by a duly authorized director of the Agent. Any purported variation or alteration of these Standard Trading 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 Standard Trading Terms and Conditions by the Principal.

19.6 Relaxation

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other in respect of the performance of any obligation hereunder, or the enforcement of any right arising from these Standard Trading Terms and Conditions, and no single or partial exercise of any right by any Party shall under any circumstances be construed to be an implied consent by such Party, or operate as a waiver or a novation of, or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

19.7 Time of the essence

Time is of the essence for the performance by the Principal of all obligations owed to Agent in terms of this Agreement.

19.8 Non-assignment

The Principal shall not be entitled to assign any of its rights and obligations under these Standard Trading Terms and Conditions without the express prior written consent of Agent, which consent Agent may, in its sole and absolute discretion, withhold or withdraw.

19.9 Costs

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 Standard Trading Terms and Conditions by the other Party hereto shall be borne by that other party.

Applicable Law

Any question regarding the effect or interpretation of these Standard Trading Terms and Conditions or any part thereof shall be determined in the Republic of Namibia at the port or in the city in which or nearest to the place where the circumstances giving rise to the dispute occurred, in accordance with the laws in force in the Republic of Namibia.

Email Disclaimer

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