



GAC Shipping (S.A.) (Pty) Ltd.
Standard Trading Conditions (STC)

1. Definitions

In these Conditions, the following definitions and rules of interpretation apply:

1.1 **Affiliate** shall mean:

- (a) in the case of the Agent, any Agent owned or controlled by the Agent or any Agent managed by the Agent pursuant to a management agreement irrespective of whether such Agent is owned or controlled by the Agent; and
- (b) in the case of the Principal, any Agent owned or controlled by the Principal or its ultimate parent.

1.2 **Agency Services** shall mean such services as may from time to time be provided by the Agent in the course of its business including services rendered in its capacity as a Liner Agent, Port Agent, Charterers Agent, Cargo Agent or otherwise including any landside services as may be rendered on behalf of a Principal and further including services required by a Principal in respect of a Vessel owned, operated, managed or chartered by a Principal and, in particular but without limiting the generality of such services, to -

- Arrange berths for a Vessel;
- Provide for the entry and clearance of a Vessel;
- Provide for the payment of port charges and any dues payable in respect of a Vessel;
- Arrange for the supply of fuel, water, provisions and deck and engine room stores;
- Arrange for any repairs required to be done to a Vessel;
- Take charge of and arrange solicitation of and booking of cargo and mail for a Vessel;
- Issue bills of lading and other similar documents to shippers in the form prescribed by the Principal;
- Arrange for stevedoring and other cargo handling operations;
- Arrange for the delivery of cargo in accordance with the bills of lading issued by or on behalf of a Principal;
- Take charge of and arrange solicitation of passengers for a Vessel;
- Arrange the embarkation and disembarkation of passengers and their baggage;
- Issue passenger tickets;
- Attend to all matters appertaining to the crew of a Vessel, including, in particular - engaging, the signing on, signing off and repatriation of crew;

- Perform such other activities and duties in connection with the foregoing functions as may be requisite thereto;
 - Attend 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.
- 1.3 **Agent** shall mean GAC Shipping (SA)(Pty) Ltd having accepted an appointment to act in Southern Africa as the Agent of a Principal.
- 1.4 **Carrier** shall mean any person who is the carrier under a bill of lading, waybill or air waybill issued in connection with the services.
- 1.5 **Charges** shall mean the charges calculated in accordance with the goods or services provided.
- 1.6 **Commencement Date** shall mean the date from which services are provided and billable.
- 1.7 **Date of Termination** shall mean the date of expiry or termination of any fully executed Agreement in accordance with the clauses specifically detailed in that agreement.
- 1.8 **Force Majeure** includes (without limitation) official or unofficial industrial action, industrial sabotage, industrial dispute (in each case, whether or not relating to that party's workforce), fire, shortage of, inability or delay in obtaining fuel, supplies, labour, materials or services, act of Government or statutory authority, act of God, road access cut off, bridge collapse, congestion, sea tide act of war, terrorism, shortage of fuel, software defects or failures, epidemics, pandemics, abnormal weather conditions and other events beyond a Party's reasonable control.
- 1.9 **Freight Services** includes the services listed in clause 5.
- 1.10 **Goods** shall mean the goods bought, manufactured and/or sold by the Principal together with any pallets, cages and packaging materials and goods of a reasonably similar nature.
- 1.11 **Owner** shall mean the Owner of the goods (including any packaging, containers and equipment) to which any business concluded under these Conditions relates and the consignee or any other Person who is or may become interested in or in possession or entitled to possession of them.
- 1.12 **Person** shall mean any natural person or body corporate.
- 1.13 **Principal** shall mean a ship owner, an operator, a manager, exporter, importer, cargo owner, a managing Agent or a charterer of a Vessel or any other person who has appointed an Agent to provide Agency Services in Southern Africa.
- 1.14 **Servants** shall mean the Agent's directors, officers, employees, shareholders, servants, Agents or subcontractors.
- 1.15 **Supplier** shall mean any person with whom an Agent transacts any business on behalf of a Principal and shall include ships chandlers, vendors of all types of goods, repairers,

road, rail, air or sea transporters, suppliers of services of whatever nature, other ships Agents or brokers, importers and exporters, stevedores and port and other authorities in Southern Africa.

- 1.16 **Term** shall have the meaning assigned in an Agreement related to the calendar period over which services will commence and end. Where no term is stipulated then the term is considered open ended and non-defined.
- 1.17 **Territory** shall mean the geographical location in which the services will be performed, specified as a Country or Territory based on its internationally recognized status.
- 1.18 **Transport Services** shall mean any transport services to be provided by the Agent including air, ocean, road and rail transport. "Distribution Services" may also be used as a substitute term and holds the same meaning as Transport Services.
- 1.19 **Vessel** shall mean a ship, owned, operated, managed or chartered by a Principal.
- 1.20 **Warehouse** shall mean the premises, including but not limited to the warehouse, the yard and other land used for the Warehousing Services from which the Agent provides the Services.
- 1.21 **Warehouse Services** shall mean the warehouse services to be provided by the Agent including but not limited to receiving and handling of goods, put away of goods, storage of goods, picking, loading and dispatching of goods from the warehouse loading area.
- 1.22 **Headings** The below headings are for the ease of reference only and have no bearing on the interpretation or meaning of the clauses themselves.
- 1.23 **In these conditions, unless context indicates otherwise:**
- words in the singular shall be deemed to include the plural and *vice versa*
 - words importing any particular gender shall include all other genders
 - references to persons shall include bodies of persons whether corporate or incorporate
 - words importing the whole shall be treated as including a reference to any part of the whole and
 - the words include (s) or including shall be deemed to have the words "without limitation" following.

2. Application

- 2.1 Subject to clause 2.2 below, all and any Services provided by the Agent in the course of business whether gratuitous or not are undertaken subject to these Conditions.
- 2.2 If any legislation is compulsorily applicable to any business undertaken, these Conditions, shall as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Agent of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation to any extent and such part shall as regards such business be overridden to that extent and no further.

- 2.3 The Principal warrants that it is either the Owner or the authorised Agent of the Owner and also that it has authority to accept these Conditions not only for itself but also as Agent for and on behalf of the Owner.
- 2.4 In authorising the Principal to enter into any contract with the Agent and/or in accepting any document issued by the Agent in connection with such contract, the Principal irrevocably accepts these Conditions for themselves and their Agents and for any parties on whose behalf they or their Agents may act, and in particular but without prejudice to the generality of this Clause, they accept that the Agent shall have the right to enforce against them jointly and severally any liability of the Principal under these Conditions or to recover from them any sums to be paid to the Agent by the Principal which upon proper demand have not been paid.

3. Scope of Agent's Authority

- 3.1 An Agent shall provide such Agency Services as are required by a Principal and in the absence of any specific instructions from a Principal an Agent shall provide such Agency Services as the Agent in his discretion deems necessary and expedient in the interests of the Principal. The Agency Services provided at the Agent's discretion as aforesaid and the terms and conditions upon which they are provided shall be deemed to have been specifically authorized and approved by the Principal.
- 3.2 An Agent shall be entitled to engage the services of a Supplier to perform all or any of the Services as may be required by the Agent on behalf of its Principal and employed by the Principal and not a servant of the Agent and the Agent shall not incur any liability or obligation arising from or connected to any contract entered into with any such Supplier on behalf of the Principal.

4. Co-operation

- 4.1 The Parties shall cooperate in good faith to ensure the smooth and efficient performance of the Services.
- 4.2 The Agent shall provide the Principal with such information concerning the performance of the Services as Principal reasonably requires from time to time.
- 4.3 The Principal will notify the Agent in writing of all changes in its business which could have an impact on the Services.

5. Services

- 5.1 When and to the extent that the Agent in accordance with these Conditions is acting on behalf of the Principal, it is acting in a customary manner. The Agent shall be entitled, and the Principal hereby expressly authorizes the Agent such entitlement, to enter into contracts on behalf of the Principal and the Owner:
- (a) for the carriage of goods by any route or means or Person;
 - (b) for the storage, packing, transshipment, loading, unloading or handling of the goods by any Person at any place and for any length of time;
 - (c) for the carriage or storage of goods in or on transport units as defined in clause 19.2 and with other goods of whatever nature; and

- (d) to do such acts as may in the opinion of the Agent be reasonably necessary in the performance of its obligations in the interests of the Principal and the Owner.
 - (e) To provide necessary agency services to the Principal or their vessel (whether the vessel is owned or chartered by the Principal). This may include, but is not limited to, arranging services and supplies for the vessel, arranging port usage, arranging stevedore services, arranging the issuance of bills of lading or other documents.
- 5.2 Subject to clauses 7 and 8 below, the Agent shall be entitled to procure any or all of its services as an Agent of the Principal or to provide these services as a principal.
- 5.3 When and to the extent that the Agent has contracted as Principal for the performance of any of its services, it undertakes to perform and/or in its own name to procure the performance of those services, and subject always to the totality of these Conditions and in particular to clauses 16 and 18 hereof accepts liability for loss of or damage to goods taken into its custody occurring between the time when it takes the goods into its custody and the time when the Agent is entitled to call upon the Principal or Owner to take delivery of the goods.
- 5.4 The Agent reserves to itself a reasonable liberty as to the means, route and procedure to be followed in the handling, storage and transportation of goods. In any case where no particular route is agreed between the Agent and the Principal, the Principal agrees that the agreed route is that which the Agent reserves to itself a reasonable liberty to follow.
- 5.5 The Agent is permitted to perform any of its obligations herein by itself or by a sub-contractor. For the purpose of allowing any such sub-contractor to take the benefit of these Conditions, the Agent acts as Agent and trustee for such sub-contractor in entering into a contract governed by these Conditions with the Principal and Owner.
- 5.6 The offer and acceptance of an inclusive price for the accomplishment of any service or services shall not itself determine whether any such service is or services are to be arranged by the Agent acting as Agent or to be provided by the Agent acting as a contracting principal.
- 5.7 When acting as an Agent the Agent does not make or purport to make any contract with the Principal for the carriage, storage, packing or handling of any goods nor for any other physical service in relation to them and acts solely on behalf of the Principal in securing services by establishing contracts with third parties so that direct contractual relationships are established between the Principal and such third parties.
- 5.8 The Agent shall on demand by the Principal provide evidence of any contract entered into by the Agent as an Agent of the Principal. Insofar as the Agent may be in default of this obligation, it shall be deemed to have contracted with the Principal as a principal for the performance of the Principal's instructions.

6. Storage & Disposal

- 6.1 If delivery of the goods or any part thereof is not taken by the Principal or Owner at the time and place when and where the Agent is entitled to call upon such Person to take delivery thereof, the Agent shall be entitled to store the goods or any part thereof at the sole risk of the Principal, whereupon the liability of the Agent in respect of the

goods or that part thereof stored as aforesaid shall wholly cease and the cost of such storage if paid for or payable by the Agent or any Agent or sub-contractor of the Agent shall forthwith upon demand be paid by the Principal to the Agent.

- 6.2 The Agent shall be entitled to exercise its lien to dispose of perishable goods or non-delivered goods as defined by clause 19.

7. Insurance

- 7.1 The Principal or Owner confirm that they have valid insurance cover in place for the cargoes/items assigned to the Agent to cover their insurable risks and to mitigate their losses as appropriate as and when applicable.
- 7.2 No insurance will be effected except upon express instructions given in writing by the Principal and all insurances so effected by the Agent are subject to the usual exceptions and conditions of the policies of the insurance Agent or underwriters taking the risk. Unless otherwise agreed in writing the Agent shall not be under any obligation to affect a separate insurance on each consignment but may declare it on any open or general policy held by the Agent.
- 7.3 Insofar as the Agent agrees with the Principal to arrange insurance, the Agent acts solely as Agent for the Principal using its best endeavours to arrange such insurance and does so subject to the limits of liability contained in Clause 16 hereof.
- 7.4 We do not handle any cargo directly. GAC Laser is our preferred service provider and we will appoint them in most cases. We also do not have our own warehousing and this will also be contracted out to GAC Laser.

8. Special Instructions

- 8.1 Except under special arrangements previously made in writing or under the form of a printed document signed by the Agent, any instructions relating to the delivery or release of goods in specified circumstances only, such as (but without prejudice to the generality of this Clause) against payment or against surrender of a particular document, are accepted by the Agent only as Agents for the Principal where third parties are engaged to effect compliance with the instructions.
- 8.2 The Agent shall not be under any liability in respect of such arrangements as are referred to under clause 8.1 hereof except where such arrangements are made in writing and make specific provision for the Agent's liability.
- 8.3 In any event, the Agent's liability in respect of the performance or arranging the performance of such instructions shall not exceed that provided for in these Conditions in respect of loss of or damage to goods.

9. The Goods

The Principal:

- 9.1 warrants that all Goods will be safe for storage and handling provided the same are dealt with by the Agent in accordance with all reasonable instructions in that regard given by Principal and that no Goods comprise, contain or are packaged in any dangerous, noxious or illegal substance;

- 9.2 shall ensure that all Goods to be stored, handled and/or delivered by the Agent are appropriately packed, labelled and marked and otherwise as may be agreed between Principal and the Agent (such agreement not to be unreasonably withheld or delayed); and
- 9.3 shall promptly provide the Agent with such information, including information concerning the nature of the Goods (including amongst other things whether the Goods are dangerous or require temperature control), the appropriate manner and method of storage, handling and transportation of the Goods and relevant health and safety information relating to the same, execute all documents and do all acts and things reasonably required in order to enable the Agent to:
- (a) arrange and safely perform the Services; and
 - (b) comply with all laws, regulations and conditions applicable to the Goods within all actual and potential countries of despatch, receipt and transit.
- 9.4 warrants that the Goods are suitable for carriage by either road, sea and/or air, as applicable, and that it is either the owner of the Goods or acting as Agent of such owner and is authorised to contract with the Agent on the terms of this Agreement in respect of the Goods.

10. Goods Requiring Special Arrangement

- 10.1 Except under special arrangements previously made in writing the Agent will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants. Should any Principal nevertheless deliver any such goods to the Agent or cause the Agent to handle or deal with any such goods otherwise than under special arrangements previously made in writing the Agent shall be under no liability whatsoever for or in connection with such goods howsoever arising.
- 10.2 The Agent may at any time waive its rights and exemptions from liability under clause 10.1 above in respect of any one or more of the categories of goods mentioned herein or any part of any category. If such waiver is not in writing, the burden of proving such waiver shall be on the Principal.
- 10.3 Except following instructions previously received in writing and accepted by the Agent, the Agent will not accept or deal with goods of a dangerous or damaging nature nor with goods likely to harbour or encourage vermin or other pests, nor goods liable to taint or affect other goods. If such goods are accepted pursuant to a special arrangement and then in the opinion of the Agent they constitute a risk to other goods, property, life or health, the Agent shall where reasonably practicable contact the Principal, but reserve the right at the expense of the Principal to remove or otherwise deal with the goods.
- 10.4 Where there is a choice of rates according to the extent or degree of liability assumed by carriers, warehousemen or others, the Agent will make no declaration of value where optional except under special arrangements previously made in writing.

11. Remuneration of Agent

- 11.1 A Principal shall be liable for and shall pay to the Agent all costs and expenses incurred

by an Agent, including the charges referred to in clause 11.2 below, in providing Agency Services at the request or on the instructions of the Principal himself, the Master of the Vessel, the office of the Principal or his nominees, representatives or Agents, 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 particular Agency Services.

- 11.2 A Principal shall pay to an Agent for the Agency Services rendered by the Agent the charges agreed or, in the event of there being no agreement as to charge or in the event of a particular service not being provided for in the scale of agreed charges, the Principal shall pay the Agent a reasonable charge for the services in respect of which no charge has been agreed and for the purposes hereof and in the absence of any agreement to the contrary the charges set out in the Agent's scale of charges shall be deemed to be reasonable and customary charges.
- 11.3 A Principal shall reimburse an Agent for all the costs and expenses incurred by the Agent arising out of the receipt of currency from a Principal or the remittance of currency to or on behalf of the Principal.
- 11.4 An Agent shall not be obliged to make any disbursement whatsoever on behalf of a Principal until such time as the Agent shall have been paid all amounts due by the Principal to the Agent for Agency Services provided by the Agent and have received sufficient funds for the purpose of making the particular disbursement. An Agent may either before, during or after providing the relevant Agency Services require a Principal to furnish security for the payment of such amounts as are or will become due to the Agent by the Principal for providing the Agency Services and for the due reimbursement of disbursements made or to be made by the Agent. Notwithstanding anything to the contrary herein contained, all disbursements made by the Agent on behalf of a Principal shall be immediately due and repayable by the Principal to the Agent.
- 11.5 Information furnished to a Principal by an Agent as to the costs and expenses of providing Agency Services in the Republic of South Africa 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.
- 11.6 In the event of an Agent providing Agency Services at the request of both an owner and the charterer of a Vessel, the owner and charterer shall respectively be obliged to remunerate the Agent on the basis set out in clause 11.2.
- 11.7 In the case of any charter party providing that the Agent nominated by the charterer shall be the Vessel's Agent, the charterer and owner of the Vessel shall be jointly and severally liable to the Agent for the payment of the Agent's charges and any costs and expenses incurred by the Agent on their behalf, as if each of them were a Principal under these conditions.

12. Payment Terms

- 12.1 The Charges must be agreed in writing by the parties prior to undertaking any services. Unless otherwise stated all the Charges are exclusive of VAT and all other applicable taxes and duties.
- 12.2 The Agent's invoices raised for services rendered are due for payment within 30 calendar days of the relevant invoice date. All payments due from Principal (including without limitation the Charges) shall be made free and clear from any deduction in respect of bank charges or otherwise and from any set-off, abatement or counterclaim of any kind.
- 12.3 Without prejudice to any other rights or remedies of the Agent in the event that the Principal fails to pay any of the Charges and/or any other sums due on their due dates for payment the Agent shall be entitled to:
- (a) on fourteen days' written notice, suspend performance of all or any Services already ordered by the Principal, until all sums owing have been paid in full: and/or
 - (b) charge interest on all sums due at 2% from the due date until payment (whether before or after judgement), such interest to accrue on a monthly basis; and/or
 - (c) terminate services immediately by giving written notice to the Principal provided that the Agent first gives the Principal 30 days written notice requiring payment of the sum due and the Principal has failed to make payment during such period.
- 12.4 The Parties agree that all tax obligations that arose in connection with this Agreement shall become the responsibility of each Party in accordance with the applicable tax laws and regulations in the Republic of South Africa.
- 12.5 If any Party does not conduct its tax obligations resulting in the other Party becoming liable and being penalized pursuant to any applicable laws and regulations, then the Parties hereby state and agree that such penalty shall be assumed and become the responsibility of such defaulting party in relation to the tax obligations.
- 12.6 Despite any acceptance by the Agent of instructions to collect freight, duties, charges or other expenses from the Owner or any other Person the Principal shall remain responsible for such freight, duties, charges or expenses on receipt of evidence of proper demand and in the absence of evidence of payment (for whatever reason) by the Owner or such other Person when due.

13. Guarantees by Agent

- 13.1 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.
- 13.2 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 fulfilment 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 for in Clause 14 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.

14. Indemnities by Principal

14.1 The Principal shall indemnify and keep indemnified the Agent against -

- (a) all liability arising out of the Agent's acts or omissions in accordance with the Principal's or Owners' instructions, including but not limited to any cause, consequences, payments, loss, damage, costs and expenses whatsoever (including without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the goods); or any cost, damages, fines, penalties etc sustained by Agent arising out of the non- contractual obligations by the Principal and Owners including, uncollected and abandoned cargoes, third party claims, wrongful cargo declaration, forgery and other fraudulent acts, non-payment of freight and other associated charges, non-compliance of applicable local laws and regulations etc. by the Principals and/or Owners; or
- (b) all liability, loss or charges arising from any breach by the Principal of any warranty contained in these Conditions; or from the negligence of the Principal; or
- (c) any liability, loss or charges that are meant to be borne by and accounted to the Principal or Owner, as applicable; including that which are operationally required of the Agent as part of their routine services to incur or those resulting/arising from any form of ocean freight, air freight, transport fees, customs duty, equipment hire charges, port / airport charges and/or any other third-party charges; or
- (d) in respect of Agency Services, all liabilities, losses, claims, damages suffered or incurred of whatsoever nature and howsoever caused unless such losses, claims or damage was caused by the negligent error or omission or the wilful default of the Agent; or
- (e) claims by Suppliers for the cost and expenses of goods or services provided to the Principal at the Agent's special instance and request; or
- (f) 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;
- (g) any claims arising out of guarantee furnished by the Agent pursuant to the provisions of Clause 13; or
- (h) All claims, costs and demands whatsoever and by whomsoever made in excess of the liability of the Agent under the terms of these Conditions regardless of whether such claims, costs and demands arise from or in connection with the negligence or breach of duty of the Agent its servants, sub- contractors or Agents; and
- (i) Any claims of a General Average nature which may be made on the Agent.

- 14.2 The Principal undertakes to place the Agent in sufficient funds or to furnish the Agent with security to the satisfaction of the Agent to ensure the due fulfilment by the Principal of his obligations under the aforesaid indemnity, either prior to the commencement of, during or after the performance of the aforesaid Agency Services, as may be required by the Agent.
- 14.3 Without derogation from clause 14.1 above, any liability assumed or incurred by the Agent when by reason of carrying out the Principal's instructions, the Agent has reasonably become liable or may become liable to any other party.
- 14.4 The Principal undertakes that no claim shall be made against any director, servant, or employee of the Agent which imposes or attempts to impose upon them any liability in connection with any services which are the subject of these Conditions and if any such claim should nevertheless be made, to indemnify the Agent, its directors, servants, and employees against all consequences thereof.
- 14.5 Advice and information in whatever form it may be given is provided by the Agent for the Principal only and the Principal shall indemnify the Agent against any liability, claims, loss, damage, costs or expenses arising out of any other persons relying upon such advice or information. Except under special arrangements previously made in writing, advice and information which is not related to specific instructions accepted by the Agent is provided gratuitously and without liability.

15. Obligations of Agent

- 15.1 The Agent shall:
- (a) provide the Services with reasonable care, diligence, skill and judgment and shall have due regard to the interests of the Principal in exercising any discretion permitted in undertaking the services;
 - (b) provide suitably qualified, trained and equipped Personnel to perform the Services;
 - (c) comply with all statutory requirements applicable to the employment of all Personnel;
 - (d) maintain such operating licences as are required by law; and
 - (e) comply with all relevant legislation, statutes, regulations and other enactments including the relevant transport regulations having the force of law from time to time in relation to the provision of the Services (the "Regulatory Requirements").
- 15.2 The Agent shall keep stock records showing relevant transactions and proceedings relating to the Goods, Transport and Other Services to be provided. Such records shall be kept for a period of 12 months from the date of provision of Services and shall be made available to the Principal upon request.
- 15.3 The Agent shall upon the Principal's request on reasonable prior written notice from the Principal allow the Principal and its duly authorized representatives to have access during Working Hours to the Warehouse and the stock records for the sole purpose of

inspecting the Warehouse, the Goods and such records and Principal shall be entitled to take copies thereof or extracts therefrom.

- 15.4 The Agent shall inform the Principal within 2 Working Days of any complaint received by the Agent or coming to the attention of the Agent relating to the quality of Goods and the Agent shall give the Principal all reasonable assistance, if requested, in locating and recovering any Goods alleged to be defective and if necessary in preventing their further use with any and all costs and expenses in relation to such actions being taken by the Agent to the Goods shall be fully borne by the Principal.
- 15.5 The Agent shall carry out at least one [1] detailed stock audit of any Goods in the Warehouse during the term of an agreement. Any additional stock audit which the Principal may require the Agent to carry out will incur additional charges to be agreed between the Parties.

16. Liability

- 16.1 An Agent shall not be liable for any loss or damage unless such loss or damage is directly attributable to the wilful default or gross negligence of the Agent arising from or connected to the services rendered by the Agent in terms hereof.
- 16.2 Notwithstanding anything to the contrary contained herein the Agent shall not be liable for any indirect and/or consequential loss arising from any act or omission by the Agent, its Agents, servants or nominees, whether negligent, intentional or otherwise.
- 16.3 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 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.
- 16.4 In the event that notwithstanding the terms and conditions herein contained the Agent is liable to the Principal for any loss or damage, such liability shall not exceed and shall be limited to a maximum of ZAR20000,00.
- 16.5 An Agent shall under no circumstances be liable for damage or to loss of goods delivered to him for forwarding or clearing or for safekeeping.
- 16.6 An Agent shall not be liable for the default or negligent act howsoever arising whether wilful 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.
- 16.7 An 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 the Agent by a Principal.
- 16.8 An Agent shall not be liable for any loss or damage of whatsoever nature sustained by a Principal directly or indirectly attributable to war, danger of war, riots, labour strikes,

slowdown strikes, lock outs, boycotts, sabotage, overburdening of any port, any circumstance 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 Services due to any such circumstances beyond his 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.

- 16.9 The Agent will exercise reasonable skill and care in providing the ship with the South African International Ship and Port Facility Security (ISPS) pre-arrival and pre-entry information requirements and any clearance given in respect thereof. However, it must be noted that the Agent cannot accept any responsibility or liability for the correctness and accuracy of the information provided by the " ship " (which term includes the owner/charterer/operator), or if the ship fails to provide the data in a timely manner, or there are technical problems, or human error beyond the Agent's control. Furthermore, any liabilities, whether the Agent was, or is claimed to have been negligent, or at fault in any way resulting from the filing, the providing of information, in order for the ship to make such filing or notification of the results thereof, rest with the ship.

17. Claims Handling

- 17.1 The Agent shall notify the Principal in the event of any accident or damage arising out of or in connection with the Services and will give to the Principal and/or its insurers any information and assistance that the Principal and/or its insurers may require in respect of any accident, damage or claim.
- 17.2 The Principal will assist the Agent in pursuing claims against third parties (the "Third Parties") whose acts or omissions have given rise to claims by Principal against the Agent. Without prejudice to the generality of the foregoing, the Principal:
- (a) will, on demand, assign to the Agent any claims it may have against Third Parties;
 - (b) consents to the Agent using its name in the context of any legal proceedings initiated to claim against Third Parties;
 - (c) will furnish the Agent with all information available relating to claims against Third Parties and the Agent shall have the right to appoint adjusters, assessors and/or surveyors and to control all negotiations, adjustments and settlements in connection with such claims; and
 - (d) undertakes not to claim against Third Parties on its own account.
- 17.3 The Principal's claims must be lodged in writing to the Agent within 7 calendar days of the occurrence of the damage or discovery of a loss of goods. Any claim lodged after 7 calendar days is not valid and shall not constitute a liability on behalf of the Agent and the Principal be deemed to receive any and all consequences in relation to the goods.

18. Force Majeure

- 18.1 Subject to the remaining provisions of this Clause 18, neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure.
- 18.2 If either party is delayed or prevented from performing its obligations under these STC's by a Force Majeure, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under these STC's; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 18.3 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure and to facilitate the continued performance of services under these STC's.
- 18.4 During any period during which any Party is prevented by a Force Majeure from performing all or any of its obligations under these STC's ("Period of Force Majeure") these STC's shall be deemed to be suspended in respect of the affected obligations until such time as is reasonably practicable after the expiry of such Period of Force Majeure at which time both Parties shall resume their obligations under these STC's.
- 18.5 If:
- (a) The Agent is prevented by Force Majeure from providing the Services either at all or to a substantial extent; and
 - (b) the Period of Force Majeure exceeds 2 months;
 - (c) then at any time on or after the expiry of that period either Party may terminate this Agreement immediately by serving 14 Days written notice on the other.
- 18.6 During any Period of Force Majeure the Principal shall continue to pay the Minimum Charge. If the Agent incurs any additional costs in complying with its obligation under Clause 18, the Principal shall pay the same to the Agent.
- 18.7 All losses arising from the Force Majeure shall become the risk and the responsibility of each Party and the Parties agree and warrant to each other that each Party shall not to sue each other in relation to such risk and responsibility.

19. Agents Lien

- 19.1 All goods 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, for money due to the Agent by the Principal for any reason whatsoever.
- 19.2 Should the general lien be not satisfied within a reasonable time from the day when the goods or currency are first received or should the Agent reasonably form the view that Principal is or is likely to become unable to pay its debts or should the contract of agency between the Principal and Agent be terminated without the Agent having been paid all amounts owing to him by the Principal –
- (a) The Agent shall be entitled to continue to charge Principal for any Charges accruing during the exercise of its lien. The Agent reserves the right to move any Goods which it holds under lien to alternative storage provided it shall use reasonable endeavours to keep the Goods safe; or
 - (b) Where the Agent elects to exercise its right of lien, it shall have the right to dispose of the Goods to satisfy the debt provided that the Agent first gives the Principal 7 days' written notice in respect of non-perishable Goods and 24 hours written notice in the case of perishable Goods that 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 by and about the sale; and
 - (c) the Agent shall be entitled to set off and to deduct from the proceeds of such sale and/or the currency held by him as aforesaid any amount owing to him by the Principal.

20. Change Process

- 20.1 The Principal may, at any time, approach the Agent with a request to change (including a cessation of) any Service, to add new services to the Services, or to amend this Agreement or any document attached to it or referred to in this Agreement ("**Principal Change Notice**").
- 20.2 Within thirty days of receipt of a Principal Change Notice, the Agent shall provide the Principal with details of the impact that the proposed change will have upon:
- (a) the Services;
 - (b) any information systems or operations of the Principal which communicate with, or are otherwise affected by, the Services;
 - (c) the Charges; and
 - (d) any other terms of Service.
- 20.3 The Agent may, at any time, approach the Principal with a proposal to change the facilities, equipment or locations used by the Agent to provide the Services including but not limited to proposals to make large capital improvements or investments in equipment or tools (such as automation) that could potentially increase the Charges for Services ("**Agent Change Notice**").

- 20.4 Nothing contained in these STC's will however oblige either Party to agree to a Principal Change Notice or an Agent Change Notice that materially alters the services to the detriment of that Party.
- 20.5 If the Parties agree to a Principal Change Notice or an Agent Change Notice, then the changes shall be amended and agreed in writing

21. Termination of Agency / Services

- 21.1 Without prejudice to any other remedies a Principal or an Agent may have against each other, either party shall have the right at any time by giving notice in writing or by means of a telex message or facsimile to the other to terminate the contract of agency between the Principal and the Agent forthwith in any of the following events –
- (a) if either party commits a material breach of any of the terms of these conditions or of the appointment by a Principal of an Agent;
 - (b) if for any material reason an Agent is precluded from performing the Agency Services;
 - (c) should a Principal or an Agent enter into liquidation whether compulsory or voluntary (otherwise than for the purpose of amalgamation or reconstruction) or compound with his creditors or take or suffer any similar action in consequence of debt;
 - (d) where there is a change in control of the other party or of its ultimate holding Agent, which in the reasonable opinion of the party giving notice, detrimentally affects its business interests;
 - (e) Either Party may terminate a contract pursuant to which agency services are rendered to a Principal on not less than 14 days written notice of termination to the other.
- 21.2 If either Party commits any breach which is capable of remedy and fails to remedy such breach within thirty (30) days of the date of service of a written notice specifying breach (or such longer period as the notice may specify); for the purposes of an Agreement a breach shall be deemed to be capable of remedy if it can be remedied in all respects other than time of performance.

22. Consequences of Termination

- 22.1 As at the Date of Termination the Principal and the Agent shall jointly carry out a full inspection and physical stock check of all the Goods at the Warehouse and provided the Agent has been paid in full for all the Services the Principal shall arrange that such Goods are removed from the Warehouse as soon as reasonably practicable thereafter but in any event no later than the Date of Termination.
- 22.2 If this Agreement is terminated pursuant to the Principal electing to appoint a new party as Agent, the current Agent will take reasonable steps to enable a smooth handover to the party selected by the Principal to assume responsibility for the future provision of the Services; provided the Principal shall indemnify any additional costs.

23. Domicilium

The Principal shall when appointing an Agent as his Agent give written notice to the Agent of the Principal's domicilium citandi et executandi in the Republic of South Africa. In the absence of such notice the Principal hereby chooses the Vessel as his domicilium citandi et executandi.

24. Notices

Any notice given by either Party to the other in connection with any matter relating to services under these STC's shall be given in writing and shall be sent by prepaid registered post return receipt requested or delivered by hand against signature for receipt to the recipient's address as set out in these STC's or by any other method as agreed to in writing by the parties. A notice shall be effective from the date of its receipt.

25. Intellectual Property

In the absence of prior written agreement to the contrary all Intellectual Property created by the Agent or any employee or sub-contractor of the Agent in the course of performing the Services shall vest in the Agent.

26. Non-Solicitation

Each Party hereby undertakes with the other Party that (save with the prior written consent of the other Party) it will not either during the Term or within 12 months after the Date of Termination of this Agreement either on its own account or for any other person, firm or Agent, solicit, interfere with or endeavour to entice away any manager or other senior employee of the other Party or any such manager or senior employee of any Agent associated with the other Party with whom such Party has dealt in relation to this Agreement or any ancillary arrangements to this Agreement.

27. Assignment

- 27.1 Save as provided in Clauses 27.2(a), 27.3 and 27.4, neither Party shall assign, transfer or sub-contract any of its rights and obligations under this Agreement in whole or in part or the benefit thereof or its rights thereunder without the other Party's prior written consent (such consent not to be unreasonably withheld or delayed).
- 27.2 Either Party may assign without the prior written consent of the other Party all or any of its rights and obligations in whole or in part to a Group Agent provided that:
- (a) such Group Agent's assets and undertaking are substantial in the context of the services provided and these STC's; and
 - (b) such Group Agent is capable and continues to be capable of meeting the liabilities of the assigning Party under these STC's.
- 27.3 If at any time after assignment under Clause 27.2 the Group Agent fails to fulfil the requirements under that Clause and/or the Group Agent ceases to be a Group Agent the obligations of the Subsidiary shall immediately revert to the Party who assigned such obligations under these STC's.

28. Sub-Contracting

- 28.1 The Agent may sub-contract all or any of its obligations under these STC's to any of the Agent approved sub-contractors, provided always that Agent shall not thereby be

relieved of any of its obligations hereby and the Agent shall be deemed to act as Agent for its sub-contractors and any reference to "Agent " shall be deemed to include any sub-contractor with the intention that such sub-contractor shall have the benefit of the terms of these STC's and collectively and together with the Agent shall be under no greater liability to the Principal or any other party than the Agent hereunder.

- 28.2 Notwithstanding Clause 28.1 the carriage of any Goods by rail, sea, inland waterway or air is arranged by the Agent as Agent of the Principal and shall be subject to the conditions of the rail, shipping, inland waterways or air carrier contracted to carry the Goods. The Agent shall be under no liability whatsoever to whomsoever and howsoever arising in respect of such carriage; provided that where the Goods are carried partly by road and partly by such other means of transport any loss, damage or delay shall be deemed to have occurred while the Goods were being carried by road unless the contrary is proved by the Agent.

29. Waiver

The waiver by either Party of a breach or default of any of the provisions of these STC's by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

30. Confidentiality

- 30.1 Each Party agrees to treat as secret and confidential and not at any time nor for any reason to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any information supplied by or obtained from the other Party, including but not limited to services under these STC's, the arrangements between the Parties set out herein and information relating to the Goods, Services, Charges, Principals, marketing, or promotions, business affairs, operating methods, administration systems or finances or any such information relating to a supplier, Principal or client of the other Party save to the extent that such information is:-

- (a) already in its possession other than as a result of a breach of this Clause;
- (b) is or subsequently becomes in the public domain other than as a result of a breach of this Clause;
- (c) required by law;
- (d) disclosed to the professional advisers, auditors and bankers of each Party;
- (e) disclosed after the other Party has given written approval; or
- (f) used for the performance of the obligations under these STC's.

- 30.2 Each Party undertakes to take all such steps as shall from time to time be reasonable to ensure compliance with the provisions of this Clause by its employees, Agents, and any sub-contractors.

- 30.3 The restrictions in this Clause shall continue to apply after the termination of services under these STC's for a period of 1 year.

31. Validity

If any court or administrative body of competent jurisdiction shall find any provision of these STC's to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of these STC's and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt in good faith to substitute for any invalid or unenforceable provision, a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objective of the invalid or unenforceable provision

32. Reliance

The Principal acknowledges that it does not accept these STC's in reliance on any representation, warranty or other undertaking or understanding not fully reflected in the written terms of these STC's and all conditions, warranties of other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

33. Arbitration

All disputes of whatsoever nature which shall at any time arise between the Agent and a Principal or the Agent and a Supplier concerning any matter or thing governed by these conditions or their construction or effect or as to the rights, duties or their liabilities of the Agent, the Principal, or a Supplier under these conditions shall at the election of the Agent be referred to arbitration. Should the Agent decide 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 South Africa in accordance with and subject to the provisions of the Arbitration Act, 1965, or any statutory modification or re-enactment thereof for the time being in force.

34. Applicable Law

Any question regarding the efficacy or interpretation of these conditions or any part thereof shall be determined in South Africa 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 South Africa.