

# **Gulf Agency Company Kuwait Ltd.**

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Terms & Conditions for the supply of agency services

2024



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#### **1. Definitions**

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

**“Affiliate”** means:

- A. in the case of the Company, any company owned or controlled by the Company, or any company managed by the Company pursuant to a management agreement irrespective of whether such company is owned or controlled by the Company.

**“Agency Services”** means the services which are provided by GAC to the Principal pursuant to these Standard Terms and Conditions (“Conditions”), whether or not for reward, and whether same be by way of charge, fee, commission, or remuneration of any other kind.

**“Carrier”** means any person who is the carrier under a bill of lading, waybill or air waybill issued in connection with the Services.

**“Company”** means the member of the GAC Group trading under these Conditions and this expression includes any Affiliate of the Company.

**“Principal”** means the company, firm, or person who has or whose representative has appointed GAC to act as Vessel agent and who is the owner, despondent owner, time charterer, voyage charterer, operator, and/or manager of the Vessel(s) represented by GAC and/or the carrier under the bill of lading in connection with which Agency Services are to be provided by GAC.

**“Sub-agent”** means that person or other business entity appointed and sub-contracted by GAC to perform Agency Services for GAC on behalf of a Principal and/or Vessel pursuant to these Conditions.

**“Supplier”** means the company, firm, or person who is contracted by GAC to supply services or goods to the Principal and/or the Vessel through GAC, acting as Agent.

**“GAC Group”** means Gulf Agency Company Kuwait Ltd and its Affiliates.

**“Goods”** means any product, merchandise, cargo or article of any kind whatsoever, including containers or other cargo carriage related equipment.



"**Vessel (s)**" means the marine vessel(s) or barge(s) for which GAC has been appointed to act as Agent in the Territory.

"**Servants**" means the Company's directors, officers, employees, shareholders, servants, agents, or subcontractors.

## 2. Application

- A. Subject to clause 2.2 below, all and any Services provided by the Company in the course of business whether gratuitous or not are undertaken subject to these Conditions.
  - B. 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 Company 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.
3. The Principal warrants that he is either the Owner or the authorised agent of the Owner and also that he has authority to accept these Conditions not only for himself but also as agent for and on behalf of the Owner.
  4. In authorising the Principal to enter into any contract with the Company and/or in accepting any document issued by the Company in connection with such contract, the Owner 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 Company 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 Company by the Customer which upon proper demand have not been paid.

## 5. General

- A. The Company as an Agent shall not be liable for any loss or damage unless such loss or damage is directly attributable to the negligence of the Agent arising from or connected to the services rendered by the Agent.
- B. The Company as an Agent will exercise reasonable skill and care in providing the ship with the 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 or not 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.

- C. A Principal shall under no circumstances require the Company as 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 the Company as 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 Agents obligations on behalf of the Principal, the Principal shall prior to the furnishing of such guarantee or security by the Agent, indemnify the Agent 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.

## 6. Liability and Indemnity

- A. The Principal indemnifies and holds the Company as an Agent harmless against any loss or damage the Agent may sustain by reason of:

Claims by Suppliers for the cost and expenses of goods or services provided to the Principal at the Agents special instance and request;

1. 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;
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.
3. The Principal shall, in the event the Company operating as its Agent; defend and indemnify the Company and its directors, officers, employees, shareholders, partners, agents, and affiliates, against all claims, liability, costs, and expenses including reasonable legal fees and legal expenses, in connection with any judicial or other proceeding, including any arbitration proceeding arising from any third party claim or proceeding brought against



the Company, except to the extent any of such claims arise out of or are related to the negligence of the Agent Company. A Letter of Indemnity duly authorized by the Principal shall be issued in the Company's favour protecting the Company against any such claim amounts and anticipated legal costs.

4. The Company shall not be liable for loss of any particular market or damages directly or indirectly attributable thereto.
  5. The Principal undertakes that no claim shall be made against any director, servant, or employee of the Company 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 Company, its directors, servants, and employees against all consequences thereof.
- B. The Company as an 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.
- C. The Company as 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.
- D. The Company as 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 Agents instance and request, such Supplier being deemed to be an independent contractor employed by the Principal.
- E. The Company as 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 to the Agent by a Principal.
- F. The Company as 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, labor strikes, slow down 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.

## 7. Services

- A. When and to the extent that the Company in accordance with these Conditions is acting as an agent on behalf of the Principal, it is acting in a customary manner. The Company shall be entitled, and the Principal hereby expressly authorizes the Company such entitlement, to enter into contracts on behalf of the Principal and the Owner:
  - a. 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.
- B. The Company 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 Company acts as agent and trustee for such sub-contractor in entering into a contract governed by these Conditions with the Principal and Owner.
- C. The Company shall have a general lien on all goods and documents relating to goods in its possession, custody or control for all sums due at any time from the Principal or Owner, and shall be entitled to retain such goods and documents against payment of freight and all other sums due to the Company for the transportation.

## 8. Fees / Contract

- A. A Job Number will be assigned by GAC and, in the absence of a specific signed Principal-Agent agreement, a basic agency fee, plus ancillaries, will be assessed for each initial port call at each port, or out-port location, at any one berth, place, or anchorage, except anchoring to await berth availability (provided no boarding procedure is required) within each port area.
- B. In instances where a port call is cancelled or diverted after work has commenced in preparing for that port call, GAC may be reimbursed pro rata for services rendered.
- C. Port calls assigned to GAC for port agency attendance to provide Agency Services for a voyage charterer or time charterer will be provided as required by the charterer. Owners/Husbandry items or other Vessel-related services will not be included in charterer's fees and will be invoiced separately along with an



appropriate fee.

- D. Additional compensation, consistent with any Supplemental Services rendered, will be charged for as extraordinary services, including but not limited to declaration of General Average, strandings, collisions, allisions, groundings, drydocking, major repairs, medical evacuation of crew, etc., including all expenses incurred on behalf of the Principal in connection with any such incident. In addition, a ten percent (10%) interest rate will be applied to any unfunded amount required to be advanced by Agent on Principal's behalf, provided notice has been given to the Principal to advance the necessary balance of funding to GAC for the port call and Principal has failed to provide such advance payment in a timely manner.
- E. GAC shall be entitled to deduct from sums held by GAC for the Principal's account any amounts due to GAC from the Principal.
- F. Principal shall pay all costs of collection, including reasonable attorneys' fees, and shall pay interest on all unpaid amounts outstanding sixty (60) days after accounts are rendered, at fifteen percent (15%), compounded annually.
- G. Unless otherwise agreed, or if the Vessel for which the Agency Services are provided does not enter port or anchorage, applicable Agency Fees will be based on arrival Pilot Station and Dropping Outbound Pilot.
- H. Where there is a signed Principal – Agent Agreement in place which is subject to these Conditions, unless otherwise noted or agreed, the Principal shall give three (3) months' written notice of the termination of the Contract. Failure to do so will allow GAC to claim fees equivalent to up to three (3) months of average fees based on the region within the Territory for which the Contract applies.
- I. The fee GAC charges for extra days apply irrespective of the causes giving rise to the extra days and notwithstanding that the charges did not arise from the conduct or fault of the principal. Depending on the circumstances giving rise to the delay, the principal may be able to seek reimbursement from its counterparty to the charter or from some other third party. It is not the responsibility of GAC to seek payment from the party at fault, particularly given that GAC may not have any contractual rights against such party.

## **9. Disbursement Accounts (Proforma / Final)**

Unless otherwise agreed or covered by a separate agreement between GAC and the Principle regarding financial responsibility of the Principal, funds requested to cover the estimated port expenses, as determined by GAC, will be transmitted by GAC to Principal in a written proforma disbursement account ("PDA") estimate of the anticipated port call related fees and expenses and such estimate shall be telegraphically/electronically remitted to GAC's specified bank/account prior to arrival of the Vessel and the rendering of any Agency Services. GAC will accept bank confirmation of remittance, as



concerns port disbursement funds only, but will advance no cash to the Vessel Master unless funds are in the bank prior to delivery.

GAC shall ensure that the PDA estimate provided to the Principal is as accurate as possible, but it is understood and agreed that such PDA estimate is for guidance purposes only and is not binding on GAC. The final disbursement account ("FDA") may vary from the PDA estimate for various reasons beyond GAC's control. The Principal is liable for and shall pay upon receipt the full amount stated in the FDA in excess of the PDA funds previously paid to GAC. Any excess funds remaining in the PDA after completion of the Agency Services shall be credited to Principal's account for future Vessel calls, or, upon request of Principal, be remitted to Principal's designated bank/account.

## 10. Payment

- 10.1. The Principal shall pay to the Company as agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off.
- 10.2. In respect of all amounts which are overdue the Principal or Owners shall be liable to pay to the Company interest calculated at 2% above the 1 year Emirates Inter Bank Offered Rate (EIBOR) on the due date of the relevant amount.
- 10.3. Despite any acceptance by the Company 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.

## 11. Funds

Unless a specific signed Principal-Agent agreement is in place articulating a customized port call funding procedure or other financial responsibility undertaking between GAC and a particular Principal, failure on behalf of the Principal to advance funding to GAC or comply with the required financial responsibility undertaking will be considered a material breach of contract on behalf of the Principal, whereby the Agent may provide immediate notice to terminate the Contract and execute any and/or all of the following remedial measures:

- a. GAC shall have a valid and enforceable maritime lien against the Vessel for all un-reimbursed expenses incurred in connection with performance of Agency Services for the port call of that Vessel, for another previous port call for the same Vessel, or another previous port call for the same Principal.





- b. GAC shall be authorized to deduct from monies held by GAC for the Principal's account any amount due from the Principal.
- c. GAC may avail itself of the maritime arrest procedures available under Applicable Law to arrest and detain the Vessel in port until such funds are received by GAC or appropriate security is posted.

## **12. Suppliers**

Unless otherwise stated in writing, GAC at all times shall act solely as agents for and on behalf of the Principal and shall have authority to enter contracts with Suppliers as agent for the Principal, either upon the express consent of the Principal, or as may reasonably be required to carry out the Agency Services requested by the Principal. It is expressly understood and agreed that upon appointment of GAC as agent, either in writing or otherwise pursuant to Section II.A of these Conditions, GAC shall be deemed to have the actual authority to enter into such contracts with Suppliers on behalf of Principal as are reasonable and necessary to carry out its duties hereunder.

## **13. Sub-agents**

GAC shall have authority to appoint Sub-agents in its sole and absolute discretion to perform Agency Services on behalf of the Principal, including such services as may be subject to these Conditions, remaining at all times responsible under these Conditions for the actions of the Subagent. Any Sub-agent appointed under this Section IX shall be deemed to have all authority granted to GAC in the performance of GAC's Agency Services hereunder.

## **14. Sanctions / Ethics / Bribery**

- a. GAC is legally bound to comply with European Union and United States of America (OFAC) sanctions programmes, as well as any similar applicable laws or regulations in other jurisdictions in relation to sanctions, ethics, and bribery. If the Principal requests the Company to perform any Services in breach of these sanctions' programmes, laws or regulations, GAC will immediately notify the Principal and confirm the extent to which GAC is prevented from performing the Services requested.
- b. GAC reinforces the application of these laws and regulations through its Code of Ethics, Anti-Bribery policy and Anti-Money Laundering policy, as well as training programmes. GAC has a zero-tolerance approach to breaches of any laws or regulations relating to ethics, bribery, or money laundering.
- c. If during the performance of any Agency Services requested by the Principal hereunder, GAC encounters a breach or believes that a violation of the relevant



ethics, bribery, or money laundering programmes, laws or regulations may occur, GAC will immediately notify the Principal and discontinue performance hereunder which relates in any way to such breach or violation.

- d. GAC shall have no liability to the Principal for any claims, losses, liabilities, or expenses related to the inability of the Agent to perform any Agency Services due to its compliance with any sanctions programme or breach of any ethics, bribery, or money laundering laws or regulations.

## 15. Proprietary Rights / Communications

- a. All information and communications (including the PDA and FDA) provided by GAC shall be considered as a trade secret and the sole and exclusive intellectual property of GAC. GAC retains sole and exclusive ownership and all right, title, and interest in and to all trade secrets and all other intellectual property, and the Principal agrees that such is privileged as between the Agent and the Principal. There are no licenses, transfers, and/or assignments of intellectual property granted under these Conditions, whether expressed or implied. Principal agrees that GAC's trade secrets and intellectual property may not be disclosed, shared, or used for any purpose, including but not limited to statistical analysis, other than for settlement of a particular voyage disbursement account, without the express written permission of GAC. Principal further agrees to give notice of the Conditions to all its service providers, agents, servants, and other contractors, and to guarantee that they will be bound hereby. Any violation of GAC's intellectual property rights by any such service provider, agent, servant or other contractor shall be deemed a violation hereunder by Principal, entitling GAC to terminate the Contract for cause pursuant to Section XIII hereof and to seek any and all legal remedies provided by law or under the Contract.
- b. All communications between GAC and the Principal will be treated as confidential by GAC and shall not be disclosed to third parties unless required by due process of a court. All communication between GAC and the Principal is intended only for use by the party to who it is addressed and may contain information that is privileged or confidential. Any dissemination, duplication, or distribution of any such message to third parties not intended to receive it is strictly prohibited.

## 16. Termination

- a. If the Contract between the parties for the provision of Agency Services is based upon a separate written Principal-Agent agreement, unless otherwise stated to the contrary in such agreement, the Contract may be terminated by either party for either party's convenience upon giving not less than three (3) months' advance written notice to the other party, therein setting forth the date of termination.
- b. GAC may terminate the Contract for cause with immediate effect upon written notice to Principal, if any one of the following occurs (each an "Event of Default"):



- i. The Principal fails to satisfy any payment obligation to GAC under the Contract, or fails to maintain the disbursement account in accordance with the Contract, and where such breach is not remedied within three (3) Business Days of written notice by GAC of such breach;
  - ii. A voluntary or involuntary bankruptcy petition, insolvency, receivership or similar filing is made by the Principal, the Vessel owners, operators, charterers, or managers, or their creditors or otherwise; or in the event of the maritime arrest, seizure or other legal action against the Vessel or the Owners under Applicable Law; or
  - iii. The Principal, or the Vessel owner, operator, charterer, or manager assigns, novates, transfers or otherwise disposes of or purports to assign, transfer, novate or otherwise dispose of any or all of its rights and/or its obligations under this Contract without advance written notice and the express written consent of GAC.
- c. Either party may terminate the Contract for cause by giving written notice to the other in the event that the other commits a material breach of any other terms and conditions of the Contract and fails to remedy such breach within ten (10) days after such written notice to do so.

## **17. Application of international conventions**

- 17.1. These Conditions are without prejudice to the terms of any mandatory international convention which is applicable by law to any dispute which may arise in relation to the carriage of the goods.
- 17.2. If the Company acts as a principal in making an agreement for the carriage of goods by air, the following notice is hereby given:
- If the carriage involves an ultimate destination to or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in the carriers' timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.
- 17.3. Receipt by the Principal or Owner of visibly damaged goods without complaint shall invalidate any claim against the Company. Any claim against the Company arising from loss of or damage to the goods not visible at the time of receipt by the Principal or Owner must be made within seven (7) days after the date of delivery of the goods in relation to any loss or damage which could have been ascertained from a visual inspection of the goods on delivery; within one month after the delivery of the goods where the loss or damage could not have been ascertained from a visual inspection of the goods on delivery; and in



relation any other claim, within fourteen (14) days of the date of the event giving rise to the claim; otherwise, any claim shall be deemed to be waived by the Principal and/or Owner and be barred absolutely.

## **18. Governing law and dispute resolution**

These Conditions and any act or contract to which they apply shall be governed by the substantive law of Kuwait.

The parties shall first attempt to resolve any dispute arising out of or in connection with an act or contract to which these Conditions apply by negotiation. If the parties are unable to resolve such dispute within thirty (30) days of commencing negotiations, subject always to conditions 32.3 and 32.4, such dispute may, upon the application of either party, be referred to and finally resolved by arbitration under the Rules of Arbitration of the KCCI Commercial Arbitration Centre. The seat of arbitration shall be Kuwait. The number of arbitrators shall be one. The language to be used in the arbitral proceedings shall be English.

Nothing in these Conditions or any act or contract to which they apply shall preclude the Company from the right to seek in any jurisdiction security or interim orders (by means of an appropriate remedy of relief including, without limitation, in rem arrests, injunctions, attachments, seizures, sales, detention, exercise of any lien or otherwise howsoever) in each case in accordance with any relevant local law or regulation in respect of claims arising in any jurisdiction.

Nothing in these Conditions or any act or contract to which they apply shall preclude the Company from seeking to enforce any outstanding or overdue debt or payable invoice owed to the Company in the courts of any competent jurisdiction in accordance with any relevant local law.

The Principals or Owners confirm they have read, understood and shall comply with Company's policies related to Health, Safety, Security & Environment (HSSE), Sanctions, Anti-Bribery and Corruption, General Data Protection Regulation at all times. Copies of the said policies will be provided upon requests by the Company.