



Hull Blyth South Africa Standard Terms of Business

1. Definitions

In these terms of business and its Schedules the following terms will have the following meanings:

"Agent" shall mean Hull Blyth South Africa (incorporating Mainport Africa Shipping and Kestrel Maritime)

"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 Principals instructions and in conjunction with policies of the port authorities and terminals.

"Business" shall mean the business of the Principal;

"Principal" shall mean any person, firm or corporation who approaches the Company with a view to placing an order with the Agent for the supply of Agency Services.

"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 the Country in the Territory;

"Territory" shall mean the countries in which the Agency Services are provided.

"Vessel" shall mean all vessels directly or indirectly owned, chartered, managed or otherwise operated by or on behalf of the Principal.

All and any business undertaken by the Agent is transacted subject to these terms, all of which shall be incorporated in any agreement between the Agent and the Principal. In the event of any conflict between these terms and any other terms and conditions, these terms shall prevail unless expressly otherwise agreed in writing by a Director or other authorised officer of the Agent. No variation in these terms shall be valid if made without the written consent of a Director or other authorised officer of the Agent.

2. Appointment of the Agent

2.1. The Principal hereby appoints the Agent to undertake the Agency Services as its agent for all its Vessels in the Territory.

2.2. The Principal undertakes not to appoint any other party in the Territory for the Services defined in these Terms of Business.

2.3. The established custom and practice of the Agency Services and/or of the port shall apply and form part of these Terms of Business.

2.4. All aspects of the Principal's business are to be treated confidentially.

2.5. The Agent hereby undertakes and agrees with the Principal that it will in performing the Agency Services under these terms of business at all times during the provision of the Agency Services use its reasonable endeavours to protect and promote the Business.

3. Duration

These terms of business shall continue in full force and effect as provided herein for an indefinite period, but shall be revocable by either party giving to the other ninety (90) days written notice. However the provisions of these terms of business shall remain in force for all (if any) Agency Services in progress on the date of termination.

4. Duties of the Principal

4.1. Throughout the duration of these terms of business the Principal warrants and represents that it shall:

4.1.1. Strictly observe all applicable laws, conventions and regulations of, or otherwise applicable in the Territory relating to the Business and the provision of the Agency Services by the Agent;

4.1.2. Provide the agent all information, documentation, permits, clearances and authorisations necessary for the Agent to carry out the Agency Services in full compliance with all applicable laws and regulations;

4.1.3. Provide timely and comprehensive documentation and instructions necessary for the Agent to fulfil and perform the Agency Services;

4.1.4. Provide timely information regarding the Vessels schedules, ports of call and line policy insofar as it affects the provision or performance of the Agency Services; and

4.1.5. Provide the Agent immediately upon request with all funds to cover advance disbursements where required.

4.2. The Principal represents and warrants that it is fully authorised and has all necessary rights to deal with and engage the Agent to perform duties in relation to any Vessel and cargo in relation to which the Agent is required to perform duties under these terms of business.

5. Scope of Agent's Authority

5.1. The 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 these terms of business upon which they are provided shall be deemed to have been specifically authorised and approved by the Principal.

5.2. 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 any such Supplier shall be deemed to be an independent contractor 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 contact entered into with any such Supplier on behalf of the Principal.

6. Remuneration of Agent

6.1. The Principal agrees to pay the Agent and the Agent accepts, as consideration for the Agency Services rendered, all costs and expenses incurred by an Agent, including the charges referred to in clause 6.2. in providing Agency Services at the request of or on the instructions of the Principal himself, the Master of the Vessel, the office of the Principal or his nominees, representatives or agents, and 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

6.2. The Principal shall pay to the Agent for the Agency Services rendered by the Agent the charges agreed between the parties. 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.

6.3. The Agent shall not be obliged to make any disbursement whatsoever on behalf of the 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 the 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 the Principal shall be immediately due and repayable by the Principal to the Agent.

6.4. Information furnished to the Principal by the Agent as to the costs and expenses of providing Agency Services in the Territory 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.

6.5. 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 6.2.

6.6. In the case of any charter party providing that the Agent nominated by the charterer shall be the Vessel's agent, the charterer and the 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.

7. Guarantees by Agent

7.1. The Principal shall under no circumstances require the 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 for in Clause 9 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.

8. Liability of Agent to Principal and Time Bar

8.1. Except where caused solely by the gross negligence of the Agent, the Agent shall not be liable for and the Principals shall defend, indemnify and hold harmless the Agent from any and all loss, expense, liability, claim or cause of action of whatsoever nature howsoever arising and by whomsoever asserted arising out of or in any way connected with personal injury or death to seamen, ship's officers, longshoremen, stevedores personnel, ship's repairmen, surveyors, suppliers, or terminal employees on or about the terminal area.

8.2. The Agent shall under no circumstances be liable for loss, damage, delay, misdelivery or non-delivery of or to any Vessel cargo or goods, containers chassis or equipment carried or to be carried on the Principals Vessel or otherwise in connection with any inbound or outbound cargo or other arrangement entered into or procured by the Agent, its agents, servants, or nominees howsoever such loss damage, delay, misdelivery or non-delivery occurs including the negligence of the Agent, its agents, servants or nominees.

8.3. Notwithstanding anything to the contrary contained herein the Agent shall not be liable for any loss of profit, loss of sales, loss of business, loss of goodwill or reputation, third party claims or 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.

8.4. 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.

8.5. 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, per event, shall not exceed ten times the value of the agency fee for that particular appointment or US\$5,000, whichever is the greater.

8.6. The 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 the Principal at the Agent's instance and request, such Supplier being deemed to be an independent contractor employed by the Principal.

8.7. 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 to the Agent by the Principal.

8.8. The 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, civil war, commotion or unrest, riots, labour strikes, slowdown strikes, lock outs, boycotts, sabotage, overburdening of any port, any whatsoever 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.

8.9. An agent shall under no circumstances be liable for damage or to loss of goods delivered to him for forwarding or clearing or safekeeping.

8.10. The Agent will exercise reasonable skill and care in providing the Principal (or any other party to which the Principal directs the Agent, including the owner or charterer or operator of the Vessel) 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 Principal (or any other party to which the Principal directs the Agent, including the owner or charterer or operator of the Vessel), or for untimely provision of any information, or there are technical problems, or human error beyond the Agent's control. Furthermore, the ship is liable for any liabilities in any way resulting from the information provided to the Agent in order to effect the filing, whether or not the Agent was or is claimed to have been negligent or at fault in carrying out such filing or in notifying the results thereof.

9. Indemnities by Principal

9.1. The Principal indemnifies and holds the Agent harmless against all claims, losses, damages and expenses the Agent may sustain by reason of:

- 9.1.1. Claims by Suppliers for the cost and expenses of goods or services provided to the Principal at the Agent's special instance and request;
- 9.1.2. Payment of any taxation which may be levied in the absence of reciprocal Intergovernmental taxation agreements;
- 9.1.3. Any claims arising out of guarantee furnished by the Agent pursuant to the provisions of Clause 7;
- 9.1.4. The negligent acts, omissions commissions or defaults of the Principal;
- 9.1.5. Any breach of the duties of the Principal as set out in Clause 4 of these terms of business;

9.2. 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 fulfillment 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.

10. Agent's Lien

10.1. All goods or currency received by the Agent from or on behalf of a 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 and 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 contract of agency between the Principal and Agent be terminated without the Agent having been paid all amounts owing to him by the Principal:

10.1.1. 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 by and about the sale; and

10.1.2. 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.

11. Termination of Agency

11.1 Without prejudice to any other remedies the Principal or the 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 facsimile to the other to terminate the contract of agency between the Principal and the Agent forthwith in any of the following events:

11.1.1. if either party is in material or continuing breach of its obligations under these terms of business and fails to remedy the breach (if capable of remedy) for a period of thirty (30) days following receipt of written notice from the other party specifying the breach;

11.1.2. If for any material reason (including without limitation a force majeure event) the Agent is precluded from performing the Agency Services;

11.1.3. If either the Principal or the Agent enter into liquidation whether compulsory or voluntary (otherwise than for the purpose of amalgamation or reconstruction) or compound with their creditors or take or suffer any similar action in consequence of debt.

11.2. Without prejudice to any other remedies the Agent may have the Agent has the right to terminate these terms of business where an invoice rendered by the Agent remains wholly or partly unpaid by the Principal for more than 7 days after the same has become due provided that the Agent has first demanded payment in writing and the invoice has remained unpaid for 7 days from the date of such demand.

11.3 It is noted that the rights and remedies of the Agent contained in clause 6, 8, 9 and 10 will remain in force and survive the termination agreement.

12. Sub-contracting

The Agent may subcontract any part of the Agency Services provided that such subcontractor has been reasonably selected and its overall performance is monitored from time to time.

13. Arbitration

13.1. All disputes of whatsoever nature which shall at any time arise between the Agent and a Principal or an Agent and a Supplier concerning any matter or thing arising out of, or in connection with the Agency services or governed by these conditions or their construction or effect or as to the rights, duties or their liabilities of an Agent, a 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.

14. Applicable Law

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

15. Entire Agreement

These terms of business records the entire agreement between the parties relating to the matters dealt with in these terms of business and supersedes all previous arrangements, whether written oral or both, between the parties relating to such matters. Any and all representations, warranties, promises or assurances made or given by a party, any of that party's personnel, or any other person, whether or not in writing, which are not set out in these terms of business are expressly excluded to the fullest extent allowable by law.

16. Headings

The above headings are for the ease of reference only and have no bearing on the interpretation or meaning of the Clauses themselves.

17. Domicilium

17.1 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 and/or of a domicilium citandi et executandi within the Republic of South Africa the Principal hereby chooses the Vessel as his domicilium citandi et executandi.