

John Fish Agencies (PTY) LTD

STANDARD TRADING CONDITIONS

(1st June 2004)

1 Definitions

For the purpose of these conditions –

“Agent” shall mean a member of the Association of Ships Agents & Brokers of Southern Africa who has accepted an appointment to act in Southern Africa as the Agent of a Principal.

- **“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.

“Principal” shall mean a shipowner, 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.

“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.

“Vessel” shall mean a ship, owned, operated, managed or chartered by a Principal.

2. Scope of Agent’s Authority

- 2.1 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 authorised and approved by the Principal.
- 2.2. 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.

3. Remuneration of Agent

- 3.1 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 3.2. 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.
- 3.2 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 Associations scale of recommended charges shall be deemed to be reasonable and customary charges.

- 3.3 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.
- 3.4 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.
- 3.5 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.
- 3.6 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 3.2.
- 3.7 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.

4. Guarantees by Agent

- 4.1 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. 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 6 and in addition pay to the Agent the applicable commission calculated on the maximum amount of any loss the Agent may sustain were any such guarantee or security to be acted upon.

5. Liability of Agent to Principal

- 5.1. 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.

- 5.2. 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
- 5.3. 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.
- 5.4. 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 R20000,00.
- 5.5. 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.
- 5.6. 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.
- 5.7. 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.
- 5.8. 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.

6. Indemnities by Principal

- 6.1. The Principal indemnifies and holds the Agent harmless against any loss or damage the Agent may sustain by reason of –
 - 6.1.1. claims by Suppliers for the cost and expenses of goods or services provided to the Principal at the Agent's special instance and request;
 - 6.1.2. payment of any taxation which may be levied on passenger earnings or freight earned on cargo loaded in the absence of reciprocal Intergovernmental taxation agreements;
 - 6.1.3. any claims arising out of guarantee furnished by the Agent pursuant to the provisions of Clause 4.

6.2. 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.

7. Agent's Lien

7.1. All goods or currency received by an Agent from or on behalf of a Principal shall be held by an 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 –

- 7.1.1. 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
- 7.1.2. 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.

8. Termination of Agency

8.1. 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 –

- 8.1.1. if either party commits a breach of any of the terms of these conditions or of the appointment by a Principal of an Agent;
- 8.1.2. if for any material reason an Agent is precluded from performing the Agency Services;
- 8.1.3. 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.

8.2. 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.

9. Domicilium

9.1. 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 the Principal hereby chooses the Vessel as his domicilium citandi et executandi.

10. Arbitration

10.1. 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 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.

11. Applicable Law

- 11.1. 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.

12. Headings

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