

## STANDARD TRADING TERMS & CONDITIONS

All transactions entered into by Mariner Shipping, hereinafter referred to as "the Company" in connection with or arising out of the Company's business shall be subject to the following terms and conditions unless otherwise agreed or stated by the Company in writing. These Conditions contain provisions relating to the Company's exclusion and limitation of liability. All parties involved may wish to insure against these risks.

### 1. Definitions

In these conditions the following expressions have the following meanings respectively:

- a. "The Company" shall mean Mariner Shipping.
- b. "Services" shall mean the services which are provided by the Company to the Customer and to the Principal, whether or not for remuneration and whether such be by way of charge, fee, commission or remuneration of any other kind.
- c. "Supplier" shall mean the person or persons or body or bodies corporate which contracts to supply services or goods to the Principal or to the Customer through the Company.
- d. "Customer" shall mean the person or persons or body or bodies corporate (or any agent thereof) which ships, receives, owns or forwards goods or holds the bill of lading in respect of which the Company, whether as agent or as principal, has agreed to provide or procure services.
- e. "Principal" shall mean the person or persons or body or bodies corporate which has or whose representatives have instructed the Company and who is the owner or charterer or manager of the vessel represented by the Company and/or the carrier under the bill of lading in connection with which services are provided by the Company.
- f. "Goods" shall mean any wares, merchandise and articles of every kind whatsoever including any container, chassis, trailer or similar equipment used for the purpose of carrying cargo.
- g. "SDR" shall mean a Special Drawing Right as defined by the International Monetary

Fund.

- h. Words importing the singular number shall include the plural and vice versa, words importing the masculine shall include the feminine and neuter and vice versa and words importing persons shall incorporate bodies corporate, unincorporated associations and partnerships.
- i. The headings in these conditions are for convenience only and shall not affect their interpretation.

## 2. Transactions with the Principal

The following terms and conditions shall apply to all transactions involving the Principal:

- a. The Principal shall indemnify the Company in respect of all liabilities incurred by the Company when acting as a port agent or liner agent or booking agent on the Principal's behalf.
- b. The Principal shall pay forthwith by telegraphic transfer to the Company's bank account such sums as the Company may request as an advance on port disbursements which the Company estimates will be incurred whilst the Principal's vessel is in the Company's agency. If the Principal should fail to comply with the Company's request, the Company may at any time give notice of the termination of its agency.
- c. The Company shall be entitled to deduct from sums held by the Company for the Principal's account any amounts due to the Company from the Principal.
- d. The Principal shall indemnify the Company against all third party claims, charges, losses, damages, taxes, duties and expenses that the Company may incur. This indemnity shall not extend to matters arising by reason of the negligence or wilful misconduct of the Company.
- e. The Company, with the consent of the Principal, shall have authority to appoint sub-agents to perform services on behalf of the Principal, including such services as may be subject to these conditions, remaining at all times responsible for the actions of the sub-agent.
- f. Where the Company acts as liner agent and / or booking agent for the Principal, the Principal shall give six months' written notice of termination of the agency. For the purposes of this clause "written notice" shall also include notice by facsimile transmission or by electronic means.

3. Transactions with the Supplier The following terms and conditions shall apply to transactions with the Supplier :

- a. Unless otherwise stated in writing, when the Company is acting as a port agent or liner agent or booking agent it acts at all times as agent for and on behalf of the Principal and has authority to enter into contracts with the Supplier as agent for Principal. The Company shall not be personally liable to pay any debt or expense to the Supplier from the Principal.
- b. Where the Company is acting as a forwarding agent, unless it is acting as agent for the Principal in accordance with clause 2 hereof or otherwise agreed in writing, it acts at all times as agent for and on behalf of the Customer and has authority to enter into contracts with the Supplier as agent for the Customer.

4. Transactions with the Customer The following terms and conditions shall apply to transactions with the Customer:

- a. When acting as port agent or liner agent or booking agent, the Company acts at all times as agent for and on behalf of the Principal and has authority to enter into contracts with the Customer as agent for the Principal. The Company shall not be personally responsible for the Principal's liabilities.
- b. The Company may provide the Services to the Customer as its agent or as a principal. The Customer warrants that it is either the owner of the goods or the agent of the owner and that it accepts these terms for itself and as agent for and on behalf of the owner.
- c. Where the Company arranges services for the Customer's goods which are or will be carried in accordance with a contract with the Principal contained in or evidenced by a bill of lading, charter party or other contract of freight, all services including forwarding services are arranged by the Company as agent for and on behalf of the Principal. The provision of such services shall be subject to the terms and conditions of the Principal's bill of lading and tariff rules (if any), which may be inspected on request, or other contract between the Principal and the Customer.

- d. Where the Company arranges services for the Customer's goods as a forwarder (whether as principal or agent) the provision of such services are subject to these conditions.
- e. The Company may from time to time issue a house bill of lading covering the transportation of the Customer's goods. In the event of any conflict between these conditions and the house bill of lading, the latter shall prevail.
- f. The Company shall have full liberty to sub-contract the whole or any part of its contracted services to third parties as may be necessary to fulfil the customer's instructions and subject to the trading conditions of the sub- contractors.

#### 5. Limitation of Liability

The Company shall be completely relieved of any liability, and the Customer shall hold the Company entirely harmless, for loss or damage if such loss or damage resulted from:

- a. the act or omission of the Customer or his representative or any other party from whom the Company took charge of the goods;
- b. inherent vice of the goods, including improper packing, labelling or addressing (except to the extent that the Company undertook to be responsible there for);
- c. handling, loading, stowage or unloading of the goods by the Customer or any person acting on his behalf other than the Company;
- d. seizure, forfeiture or detention under legal process;
- e. riot, civil commotion, strike, lock out, general or partial stoppage or restraint of labour from whatever cause;
- f. any consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, terrorism, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to any property or goods by or under the order of any Government or public or local authority.

g.any cause or event which the Company was unable to avoid and the consequences whereof the Company was unable to prevent by the exercise of due diligence.

6. Insurance The Company SHALL NOT effect insurance for the subject matter of the Services save upon express instructions given in writing by the Customer in relation to which there shall be a specific agreement as to charge. All insurance affected by the Company is subject to the conditions of the insurer. If the Company agrees to affect insurance, it acts as agent of the Customer in doing so.

7. Warranty of Agency Where the Company agrees to provide or arrange services for the Customer's goods, the Customer shall be deemed to have authorised the Company to conclude all and any contracts necessary to provide those services. The Customer shall reimburse on demand the Company with all taxes, charges or fines whatsoever incurred by the Company as a result of providing or arranging the services, or undertaking any liability in connection with the services, particularly in respect of any bond issued to Customs or any other statutory authority by the Company.

8. Customer's Duty to Provide Full Information The Customer shall declare to the Company full details of goods which are of a dangerous or damaging nature. Should the Customer fail to provide such details at the time of contract the Customer shall be responsible for all costs and damages arising as a result thereof and the Company shall have the right exercisable on behalf of itself or its Principal to rescind the contract.

## 9. Duties of the Company

9.1 The Company shall exercise reasonable care and diligence in providing services.

9.2 Unless otherwise agreed in writing, the liability of the Company shall in all circumstances be limited to the lesser of sums calculated in the following manner :-

9.2a where goods are lost or damaged :

(i) the value of goods so lost and damaged; or

(ii) a sum calculated at the rate of 2 SDRs per kilo of the gross weight of any goods lost or damaged;

9.2b in all other circumstances the amount of the direct loss or SDRs 50,000.

10. **Special Goods** The Company will not provide Services in connection with bullion, coins, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, pets or plants. However if the Company should in the course of providing the Services, handle or deal with such goods (otherwise than under special arrangements previously made in writing) the Company shall be under no liability whatsoever for or in connection with such goods however arising.

## 11. Liability for Losses

11.1 The Company shall perform the Services with due despatch but shall not be liable for any loss or damage arising from any delay which it could not reasonably prevent. Without prejudice to the foregoing, in the event that the Company is deemed to be liable for delay its liability shall not exceed the amount of the Company's charges in respect of the transaction.

11.2 Except in those cases of loss or damage referred to in Articles 10 and 11.1 above and Clause 11.3 below, no liability whatsoever for consequential loss, be it direct or indirect, shall attach to the Company. Such loss shall include (but not be limited to) loss of profit, loss of market or the consequences of delay or deviation, however caused.

11.3 The Company shall not be liable for loss of or damage to goods unless it is advised thereof in writing within three (3) days after the completion of provision of the Services and the claim is made in writing within 30 days, provided always that these limits shall not apply if the Customer or Principal can establish that it was not reasonably possible for him to make a claim in writing within the time limit and notice was given within a reasonable time. Notwithstanding the above provisions, the Company shall in any event be discharged from all liability whatsoever and howsoever arising in connection with the Services unless suit is brought within nine months of the delivery of the goods or of the date they should have been delivered or of the date of the event giving rise to any other loss.

## 12. Timely Payment

12.1 If the Customer or the Principal, as the case may be, fails to make payment in full of any sums due to the Company on demand or within any period agreed in writing, the Company shall be entitled to recover interest on any sums outstanding

With effect from the date of first demand at the interest rate of 2 % above the average of the Central Bank of Malta Ordinary Interest Rate applicable during the period when the sums are outstanding.

13. Lien 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 Customer or Principal and shall be entitled to sell or dispose of such goods or documents as agent for and at the expense of the Customer or Principal and apply the proceeds towards the monies due and the expenses of the retention, insurance, sale and disposal of the goods. Reasonable notice of 28 days of the intention to sell will be given by the Company to the Customer or Principal unless the goods are liable to perish or deteriorate in which case the Company shall have the right to sell or dispose of the goods immediately. The Company shall, upon accounting to the Customer or Principal for any balance remaining, be discharged from all liability whatsoever in respect of the goods.
14. General Average Where liability for General Average arises in connection with the Goods, the Customer shall promptly provide security to the Company or any other party designated by the Company in a form acceptable to the Company.
15. Subcontractors It is hereby expressly agreed that no servant or agent of the Company (which for the purpose of this clause includes every independent contractor from time to time employed by the Company) shall in any circumstances whatsoever be under any liability whatsoever under these Conditions for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment. Without prejudice to the generality of the foregoing provisions, every exemption from liability, limitation, condition and liberty herein contained and every right, defence and immunity of whatsoever nature applicable to the Company or to

which the Company is entitled, shall also be available and shall extend to protect every such servant and agent of the Company acting as aforesaid.

16. Brokerage Fees, Commissions, Allowances and Other Remuneration The Company shall be entitled to retain and be paid all customary brokerages, commission, allowances and other remuneration.
17. Limited Liability The Customer, the Supplier and the Principal each undertake with the Company that no claim or allegation of any kind shall be made against any of the Company's directors officers employees servants or agents (therein collectively called "the Beneficiaries") for any loss damage or delay of whatsoever kind arising or resulting directly or indirectly from any negligent act error or omission of the Beneficiaries in the performance of the services the subject of these conditions. The Beneficiaries shall have the benefit of this undertaking and in entering into this contract the Company, to the extent of this provision, does so not only on its own behalf but also as agent or trustee for the Beneficiaries, who shall to the extent of this clause only be or be deemed to be parties to this contract.
18. Jurisdiction These conditions shall be subject to the Laws of the Republic of Malta and its Dependencies.
19. Forum

Any dispute arising in connection with the Company's business shall be determined by arbitration in Malta in terms of the Malta Arbitration Act 1996 by a sole arbitrator appointed for that purpose by the parties. Failing agreement as to the identity of the sole arbitrator, each party shall nominate its own arbitrator, and the two so chosen, if they cannot agree, shall nominate an umpire, whose decision shall be final. and binding on both parties.

#### 20. Amendment

The Company reserves the right to amend these Standard Terms and Conditions of Trading at any time without notifying the Customer.

Such amendments will not, of course, apply retrospectively, and will not effect any



business transaction which the Company has contracted with the Customer prior to such amendment.

21. Conflict If there is any conflict between the terms set out herein and any other terms and conditions agreed between the parties these Conditions shall prevail unless the Company specifically agrees otherwise in writing.