

# TERMS AND CONDITIONS APPLICABLE TO THE SUPPLY OF ADVICE AND SERVICES BY MARITIME SERVICES (INTERNATIONAL) LIMITED

## 1. Definitions

### *The Company:*

The company, firm or person with whom *The Agreement* is made.

### *The Agreement:*

*The Agreement* between Maritime Services (International) Limited and *The Company* constituted by the attached fax/letter/order acknowledgement and incorporating inter alia these terms and conditions.

## 2. Assignment

Neither party shall transfer or assign its rights or obligations under *The Agreement* without the prior written consent of the other party, provided that:

*The Company* may transfer any or all of its rights under *The Agreement* to any of its affiliate companies, in which case *The Company* shall procure the acceptance by the assignee of the terms, conditions, exceptions and exemptions of *The Agreement*.

## 3. Delegation

If Maritime Services (International) Limited considers it more efficient or convenient, Maritime Services (International) Limited may in its discretion procure advice, assistance and services, which it renders under *The Agreement*, from other persons and may in its discretion delegate performance of one or more of its obligations under *The Agreement*.

## 4. Payment

- (a) If any payments to be made under *The Agreement* shall be subject now or in the future to taxes, levies or charges of whatever kind in the country in which *The Company* is incorporated and/or operating and which *The Company* or Maritime Services (International) Limited is required to pay or which *The Company* is required to withhold, *The Company* shall pay such sums as shall yield to Maritime Services (International) Limited after payment or withholding of such taxes, levies or charges the full amounts payable to Maritime Services (International) Limited under *The Agreement* as if such taxes, levies or other charges were not paid or withheld.

In this clause 4(a) *The Company* shall include any assignee of any of its rights hereunder.

- (b) Payments shall be made as agreed from the date of the invoice.
- (c) Any payments overdue by *The Company* shall bear compound interest from the due date until payment at a rate of half of one per cent per week.
- (d) Except when there are self evident errors in the invoice payment shall be made by *The Company* notwithstanding any dispute relating to the billings. Any adjustments consequent upon settlement of such disputes shall be made as agreed following the settlement.
- (e) Where any payment becomes overdue by more than sixty days, Maritime Services (International) Limited shall without prejudice to any of its other rights, be entitled to terminate this Agreement whereupon payment will become due for the value of work done up to the date of termination.

## 5. Liability and Indemnity

- (a) Maritime Services (International) Limited shall perform *The Agreement* with all proper skills in accordance with first-class industry standards.
- (b) If any work or services under *The Agreement* are negligently performed or omitted then so far as may be reasonably practicable Maritime Services (International) Limited at its own expense will cause such work and services to be correctly performed.
- (c) In this clause 5 Delegate(s) means (i) employees and agents of Maritime Services (International) Limited (ii) any person to whom performance of work or services under *The Agreement* is delegated or sub-contracted by Maritime Services (International) Limited and (iii) any such Person's employees and agents.
- (d) *The Company* shall not sue any Delegate for any loss or damage of any nature whatsoever suffered by the Company and connected with performance of *The Agreement*. *The Company's* sole remedy shall be against Maritime Services (International) Limited under this Clause 5.
- (e) The total liability of Maritime Services (International) Limited to *The Company* for breach of *The Agreement* and the total third party liability of Maritime Services (International) Limited and Delegates shall not for any reason whatsoever (including negligence) in aggregate over the duration of *The Agreement* exceed an amount equal to ten times the total fees paid and payable by the Company to Maritime Services (International) Limited.
- (f) If Maritime Services (International) Limited or any Delegate does incur third party liability of any nature whatsoever arising out of or connected with performance of *The Agreement* then (subject to clause 5(g) below) *The Company* shall indemnify Maritime Services (International) Limited, or such Delegate against such third party liability and costs and expenses relating thereto, and this indemnity shall apply even if the third party claim was based on negligence. Further to the extent that Maritime Services (International) Limited may have indemnified any Delegate against such third party liability, costs or expenses (which Maritime Services (International) Limited at its sole discretion shall be entitled to do) then *The Company* shall thereupon be liable to indemnify Maritime Services (International) Limited accordingly.

- (g) Where the reason for third party liability mentioned in clause 5(f) was the negligence of Maritime Services (International) Limited, or of any Delegate then *The Company's* indemnity under clause 5(f) shall apply above the limit of liability mentioned in clause 5(e) and Maritime Services (International) Limited shall be liable up to such limit.
- (h) In entering into the agreement contained in clause 5 Maritime Services (International) Limited contracts both on its own behalf and as agent on behalf of Delegates and also as trustee for their benefit.
- (i) Neither party shall be liable to the other for indirect or consequential damages resulting from or arising out of *The Agreement* including but not limited to loss of use of property, loss of profits, loss of product or business interruption.

## 6. Confidentiality

- (a) *The Company* undertakes to keep confidential any confidential information disclosed to it by Maritime Services (International) Limited and not to disclose the same either complete or in part to any third party (including subsidiary companies, holding companies or associate companies) without Maritime Services (International) Limited's prior written approval, such undertaking to continue notwithstanding the expiry or termination of *The Agreement* for so long as the information in question has not:

- (i) Become part of the public knowledge or literature without default on the part of *The Company* or
- (ii) Been disclosed to *The Company* by the third party (other than one disclosing on behalf of Maritime Services (International) Limited) whose possession of such information is lawful and who is under no secrecy obligation with respect to the same.

or for a period of 10 years from the date that *The Agreement* terminates, whichever is the sooner.

- (b) Maritime Services (International) Limited shall undertake to keep confidential any confidential information disclosed to it by *The Company* and Maritime Services (International) Limited shall be liable to the same constraints as imposed by clause 6(a) on *The Company*.

## 7. Force Majeure

Neither party to *The Agreement* shall be in breach of any obligation hereunder (other than the obligations of *The Company* to make payment of any monies due to Maritime Services (International) Limited) insofar as performance thereof has been delayed, hindered, interfered with or prevented by any circumstances beyond its reasonable control.

## 8. Safety

It is the policy of Maritime Services (International) Limited to conduct its activities in such a way as to take foremost account of the health and safety of its employees and of other persons and to give proper regard to the conservation of the environment. In implementing this policy Maritime Services (International) Limited not only complies with the requirements of the relevant legislation but promotes in an appropriate manner, measures for the protection of Health, Safety and Environment for all who may be affected directly or indirectly by its activities.

If, in the execution of its services, Maritime Services (International) Limited believes that the health and safety of its employees is placed at unacceptable risk due to circumstances outside its control, Maritime Services (International) Limited reserves the right to withdraw its services until the circumstances giving rise to this withdrawal are removed.

## 9. Himalaya

It is hereby expressly agreed that no employee or agent of Maritime Services (International) Limited (including every sub-contractor from time to time employed by Maritime Services (International) Limited) shall in any circumstances whatsoever be under any liability whatsoever to the Clients 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 and, without prejudice to the generality of the foregoing provisions in this clause, every exemption from liability, defence or immunity of whatsoever nature applicable to Maritime Services (International) Limited or to which Maritime Services (International) Limited is entitled hereunder shall also be available and shall extend to protect every such employee or agent of Maritime Services (International) Limited acting as aforesaid and for the purpose of all the foregoing provisions of this clause Maritime Services (International) Limited is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including sub-contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to this agreement.

## 10. Applicable Law

The proper law of these terms and conditions is English Law and English Law shall be used to interpret these terms and conditions and for resolving all claims or disputes arising out of or connected with these terms and conditions (whether based on contract, tort, or any other legal doctrine). Any such claim or dispute not settled by negotiation shall be settled by arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force, one arbitrator being appointed by each party. If two arbitrators properly appointed shall not agree they shall appoint an umpire whose decision shall be final. The language of the Arbitration shall be English.