

# TERMS & CONDITIONS

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Ship Agency Services Pty Ltd

**SHIP AGENCY SERVICES PTY LTD**

ACN 148 177 431

**BIBRA LAKE** | A 25 Wellard Street, Bibra Lake WA 6163 | P (08) 9494 1198 | F (08) 9316 1414 |

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# SHIP AGENCY SERVICES PTY LTD

## Terms and Conditions

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### 1. SPECIAL NOTICE

- 1.1 These Terms and Conditions apply to all Services undertaken and provided by Ship Agency Services Pty Ltd (**Agent**), whether gratuitously or not and the Agent accepts instructions to provide Services only on these Terms and Conditions.
- 1.2 The Customer acknowledges and agrees that it has received these Terms and Conditions, understands these Terms and Conditions and agrees to be bound by these Terms and Conditions.
- 1.3 These Terms and Conditions may include provisions which change, reduce or exclude entirely rights which the Customer might otherwise have.
- 1.4 These Terms and Conditions may be varied by the Agent from time to time without notice.

### 2. Definitions

- 2.1 **Additional Port Disbursement** shall mean any Charges which the Agent pays or is to pay out to a third party on behalf of the Customer in relation to any of its Services which Charges have not been accounted for in the Estimate Port Disbursement and which sums may arise from time to time in the Provision of Services.
- 2.2 **Additional Disbursement Account** shall mean the Tax Invoice, inclusive of GST, sent by the Agent to the Customer specifying the Additional Port Disbursement.
- 2.3 **Agency Appointment** shall mean the Customer's appointment of Ship Agency Services Pty Ltd ACN 148 177 431 as agents for and on behalf of the Customer.
- 2.4 **Agent** shall mean Ship Agency Services Pty Ltd ACN 148 177 431 of 25 Wellard Street, Bibra Lake in the State of Western Australia and its officers, employees, servants, agents, contractors and sub-contractors.
- 2.5 **Agreement** shall mean any contract or agreement whether verbal or in writing (including but not limited to email and facsimile) for the provision of the Services between the Agent and the Customer to which these Terms and Conditions shall apply.
- 2.6 **Assets** shall mean all assets, Goods, Documents and records of the Customer held by the Agent.
- 2.7 **Charges** shall mean the Agent's fee and any and all other charges and expenses (including any commissions if applicable) payable for the Services as set out in any Agreement between the Agent and the Customer or which may be payable by custom of the trade or by reference to a course of dealings between the Agent and the Customer.
- 2.8 **Commonwealth** means the Commonwealth of Australia.
- 2.9 **Customer** shall mean the person for whom the Agent is rendering a Service.
- 2.10 **Documentation** shall mean all information received directly or indirectly from the Customer, whether in paper or electronic form.

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- 2.11 **Estimate Port Disbursement** shall mean the Agent's estimate Charges for Services which shall be provided by the Agent to the Customer prior to arrival of the vessel into the Port.
- 2.12 **Estimate Disbursement Account** shall mean the Tax Invoice, inclusive of GST, sent by the Agent to the Customer specifying the Estimate Port Disbursement.
- 2.13 **Final Port Disbursement** shall mean the final Charges for the provision of Services which have been provided by the Agent pursuant to the Agreement which shall include a list of all Services provided to the Customer, amounts paid to the Agent by the Customer and any amounts outstanding and owed to the Agent or the balance of any amounts remaining and payable to the Customer and which shall be provided to the Customer subsequent to the provision of Services.
- 2.14 **Final Disbursement Account** shall mean the Tax Invoice, inclusive of GST, sent by the Agent to the Customer specifying the Final Port Disbursement.
- 2.15 **Goods** shall mean any goods, including the packages containing those goods and shipping or other transport containers, which are the subject of the Services provided by the Agent to the Customer.
- 2.16 **Government Authorities** shall mean, without limitation, all Government Departments with responsibility for the import and export of goods, the collection of revenue on the import and export of goods and the transport of those goods to include, without limitation, Australian Customs Service, Australian Quarantine Inspection Service and the Australian Taxation Office.
- 2.17 **GST** has the same meaning as under the GST Law and means the Goods and Services Tax imposed under the GST Law.
- 2.18 **GST Law** shall mean the *A New Tax System (Goods and Services Tax) Act 1999* (Cth.).
- 2.19 **Nominated Bank Account** shall mean the Agent's bank account, specified in writing to the Customer, into which the Customer must deposit all Charges and any other sums of money payable to the Agent.
- 2.20 **Port** shall mean the Port where the Agent is carrying out Services for the Customer.
- 2.21 **Port Authority** shall mean the statutory authority responsible for the traffic and regulations of the Port.
- 2.22 **Related Body Corporate** has the meaning given to that phrase in the Corporations Law.
- 2.23 **Services** shall mean the rights, benefits, privileges or facilities that are to be provided, granted or conferred under an Agreement for, or in relation to the performance by, the Agent for the Customer and which may include but shall not be limited to:
- (a) customs clearance or any documentary function in relation to import/export and the arrival/departure of a vessel;
  - (b) arrangements relating to Port arrivals and departures, movement, loading/unloading of a vessel;
  - (c) husbandry services; and
  - (d) handling, temporary storage, carriage and transportation of Goods.

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2.24 **State** means the State referred to in clause 24 of these Terms and Conditions.

2.25 **Supply** shall mean the same as in the GST Law.

2.26 **Taxable Supply** shall mean any Supply under these Terms and Conditions in respect of which the Agent is or may become liable to pay GST.

### 3. INTERPRETATION

3.1 In the interpretation of these Terms and Conditions:

- (a) the singular includes the plural and vice versa;
- (b) words importing one gender mean and include each other gender;
- (c) words importing Corporation mean and include natural persons and vice versa;
- (d) reference to any statute includes reference to that statute as amended;
- (e) references to clauses are references to clauses in these Terms and Conditions; and
- (f) headings have no effect on interpretation of these Terms and Conditions.

### 4. CONTRACTUAL CAPACITY

4.1 The Agent shall provide the Services as agents for and on behalf of the Customer in consideration for the Charges.

4.2 The Customer is hereby deemed to have made an Agency Appointment upon the Agent receiving the Customer's written or verbal request for Services and the Agent providing the Customer with written confirmation that the Agency Appointment has been received and accepted by the Agent.

4.3 Subject to and in accordance with these Terms and Conditions, the Agent agrees and the Customer hereby employs and authorises the Agent as agents for the Customer to contract as agents for the Customer with any contractor or sub-contractor for the performance of all or any part of the Services pursuant to or ancillary to these Terms and Conditions.

4.4 All officers, employees, servants, agents, contractors and sub-contractors of the Agent shall have the benefit of any and all limitations, indemnities, exceptions and conditions in these Terms and Conditions benefiting the Agent as if such provision was made expressly for such officers, employees, servants, agents, contractors and sub-contractors of the Agent.

### 5. APPLICATION OF THESE TERMS AND CONDITIONS

5.1 By entering into an Agreement with the Agent and by accepting Services from the Agent, the Customer hereby agrees to be bound by these Terms and Conditions to the exclusion of all other representations, statements, conditions, terms, warranties, whether express, implied, statutory or otherwise except any implied by law or statute which cannot by law be excluded.

5.2 These Terms and Conditions shall apply to any Agreement between the Agent and the Customer save in so far as a director of the Agent expressly agrees otherwise in writing. Without prejudice to the generality of the foregoing the Agent shall not be bound by any

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standard terms and conditions of the Customer or by any other terms proposed by a Customer which conflict with these Terms and Conditions unless a director of the Agent has expressly agreed to such terms in writing irrespective of when such standard terms and conditions or other terms are put forward.

- 5.3 These Terms and Conditions, together with the terms of any Agreement, comprise the entire agreement between the Agent and the Customer with respect to the Services. In the event of a conflict, the following descending order of precedence shall apply:
- (a) Any specific terms of the Agreement agreed between the Agent and the Customer;
  - (b) These Terms and Conditions.
- 5.4 While the Agent and the Customer hereto believe (in all the circumstances known to them at the date of entering the Agreement) that these Terms and Conditions are reasonable, as to all of their terms, if a Court shall determine that any one or more of the terms are unenforceable for any reason, such terms shall be deemed to be severed from the body of these Terms and Conditions such that the remaining terms shall stand and be enforceable between the Agent and the Customer hereto.
- 5.5 Nothing in these Terms and Conditions shall exclude or limit any liability or any right which either party may have in respect of fraud or in respect of pre-contractual statements given fraudulently or dishonestly or in circumstances where there has been willful concealment.
- 5.6 Unless written notification to the contrary is given by the Customer to the Agent at or prior to entering into these Terms and Conditions the Customer expressly warrants and represents that all or any Services to be supplied by the Agent and acquired by the Customer pursuant to an Agreement are so supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer.

## 6. AGENTS DUTIES

- 6.1 The Agent shall:
- (a) undertake the Services with all reasonable care, diligence, skill and judgment in the performance of the duties;
  - (b) provide the Services in compliance with any applicable laws, rules, and regulations; and
  - (c) undertake the Services in compliance with ethical maritime standards which shall include but which shall not be limited to:
    - (i) the Agent shall not offer, agree or give any person working for or engaged by another party any gift or other consideration which gift or other consideration may act as an inducement or a reward for any act or omissions to act in connection with the Agreement;
    - (ii) the Agent shall not enter into the Agreement with the Customer or any other party if it has knowledge that any money has or will be paid to any person working for or engaged by the other party unless written details of the arrangement have been disclosed to the other party prior to entering into the

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Agreement with the Customer and the other party has given written authorisation of such arrangement;

- (iii) the Agent shall not offer pay or promise to pay directly or indirectly anything of value to a Public Official or Government Authority in connection with the Agreement and the Agent shall notify the Customer in writing in the event that a request is received from Public Official or Government Authority requesting illicit payments; and
- (iv) the Agent shall not take any other action which shall result in a breach by either party of any applicable anti-corruption legislation.

## 7. LIABILITY OF THE AGENT

7.1 The Agent and the Customer hereby agree that the limits and exclusions of liability found in this clause are fair and reasonable having regard to the nature of the Services, the Charges paid for such Services by the Customer and all other circumstances known to the Customer and the Agent relating to the Services at the time of the making of the Agreement.

### 7.2 Liability for Negligence

The Agent shall only be liable for loss and/or damage arising out of and caused by negligent acts, errors or omissions of the Agent whether or not any claim be brought against the Agent in contract or tort (including but not limited to a claim for negligence) or otherwise.

### 7.3 Limitation of Liability

The Agent's liability for loss and/or damage through act, error or omission whether in contract, tort (including negligence) or otherwise howsoever, shall in any event be limited to and shall not in any circumstances exceed the amount of AU\$50,000.00.

### 7.4 Exclusion of liability

Notwithstanding and without prejudice to the aforesaid, the Agent shall not in any event be liable to the Customer for the following howsoever caused:

- (a) special, indirect or consequential loss (including but not limited to loss of profits);
- (b) loss of market, business, contracts, anticipated savings, good will revenue or wasted expenditure;
- (c) loss or damage arising out of failure or delay;
- (d) loss or damage arising out of error, act, omission, misstatement or misrepresentation by the Customer its officers, employees, servants, contractors and sub-contractors;
- (e) loss or damage arising out of inherent liability to wastage, faulty design, latent or inherent defect or vice or natural deterioration;
- (f) loss or damage arising out of insufficient or improper packing or Goods preparation by the Customer its officers, employees, servants, contractors and sub-contractors;

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- (g) loss or damage arising out of insufficient or improper marking, labeling or addressing;
- (h) not taking delivery;
- (i) loss of lien whether general or particular; or
- (j) seizure or forfeiture under legal process.

- 7.5 In the event that a Customer requests the Agent to use the services of a third party in relation to the Agreement (the "**Third Party Services**"), the Agent will contract with such third party as agent for the Customer. The Agent expressly disclaims (to the maximum extent permitted by law) all warranties and representations with respect to the Third Party Services express, implied, statutory or otherwise, including without limitation, any implied warranty of merchantability, fitness for a particular purpose, accuracy or reliability of results from use of the Third Party Services, that the Third Party Services will meet specific requirements, that the Third Party Services will be uninterrupted, completely secure or free of errors, including, without limitation, software errors. The Customer acknowledges and agrees that the Third Party Services are provided on an "as is" basis without any warranty of any kind and that the entire risk as to the quality and performance of the Third Party Services shall be borne by the Customer unless otherwise agreed in writing with the Customer.
- 7.6 Nothing in this clause shall be deemed to exclude or restrict either party's liability for death or personal injury resulting from negligence or for fraud.
- 7.7 In any event, the Agent shall be discharged from all liability whatsoever or howsoever arising out of or in connection with the provision of Services unless proceedings are commenced and served on the Agent within the relevant statutory limitation period applicable under the laws of the State and Commonwealth.
- 7.8 The provisions of this clause shall remain in force notwithstanding termination of the Agreement.
- 7.9 Nothing in these Terms and Conditions shall be interpreted as excluding, restricting or modifying or having the effect of attempting to exclude, restrict or modify the application of any State or Federal legislation applicable to the provision of Services that cannot be excluded, restricted or modified.

## 8. WRITTEN INSTRUCTIONS

- 8.1 Wherever it is necessary, for the purpose of these Terms or Conditions or any other purpose whatever, for instructions to be given to the Agent, such instructions will be valid only if given in writing, acknowledged by the Agent in writing and given in sufficient time in all the circumstances for the Agent reasonably to be able to adopt the instructions. Standing or general instructions, or instructions given late, even if received by the Agent without comment, shall not be binding upon the Agent. If the Agent adopts standing or general instructions, or instructions given late, for one of more transaction for the Customer or any other party, that does not in any way affect the validity of those instructions in relation to any future transaction. No attempt by the Agent to adopt late instructions will constitute an acceptance by the Agent.

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- 8.2 The Agent shall use all reasonable endeavours to comply with all reasonable specific instructions in writing which the Customer may give to the Agent.
- 8.3 The Agent hereby reserves the right to deviate, without notice, from any specific instructions given by the Customer to the Agent or from any stated means by which it will provide the Services if any event or situation arises rendering the provision of the Services in that manner not commercially viable, despite the reasonable endeavours of the Agent to the contrary. In such an event the additional cost of such alternate means of providing the Services shall fall within the Additional Port Disbursements Charges to be paid by the Customer in accordance with these Terms and Conditions provided that such events were, to the reasonable knowledge of the Agent, not foreseeable, predictable or anticipated as at the date of the Agreement.

### **9. THE SELECTION OF SERVICES OF THIRD PARTIES**

- 9.1 The Agent reserves complete freedom to decide the manner or procedure to be adopted for any or all of the various acts which will be necessary for the completion of the Services and if applicable, the handling, storage and transportation of the Goods the subject of the Service or any part of them and is entitled to engage and sub-contract to third parties to perform all or any of the functions required of the Agent upon such terms and conditions as the Agent in its absolute discretion may deem appropriate.
- 9.2 All claims in connection with the act of a third party shall be brought solely against such party and/or its agents; in connection with any such claim, the Agent shall reasonably cooperate with the Customer, which shall be liable for any changes or costs incurred by the Agent.

### **10. CUSTOMER WARRANTIES**

- 10.1 The Customer, in relation to the Services provided by the Agent, warrants to the Agent that:
- (a) it will provide all Documents, information and assistance required by the Agent to comply with the requirements of the Government Authorities in an accurate and timely fashion as required by those Government Authorities;
  - (b) it will retain all documents or records in the manner required by the Government Authorities;
  - (c) it has observed and complied with all local laws and regulations of any Government Authorities;
  - (d) it will notify the Agent of any issue or event that may affect the Agent's ability to perform the Services;
  - (e) it will provide the Agent with all the Documents and information required for the Agent to perform the Services in an accurate and timely fashion as required by the Agent;
  - (f) it will provide the Agent with any necessary sums of money for the payment of any disbursements or any additional costs incurred by the Agent in providing the Services immediately upon demand;



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- (g) it will comply with all Privacy Laws in relation to the Agreement, the Goods and the Services at all times and will notify the Agent of any issues or requirements under such laws in relation to this Agreement or Services of which the Customer should be aware;
- (h) it will comply with all Occupational Health and Safety Laws in relation to the Services at all times, and will notify the Agent of any issues or requirements under such laws in relation to the Services of which the Customer should be aware, or which may affect the Agent's ability to comply with the Occupational Health and Safety Laws;
- (i) it will comply with ethical maritime standards which shall include but which shall not be limited to:
  - (i) the Customer shall not offer, agree or give any person working for or engaged by another party any gift or other consideration which gift or other consideration may act as an inducement or a reward for any act or omissions to act in connection with the Agreement;
  - (ii) the Customer shall not enter into the Agreement with the Agent or any other party if it has knowledge that any money has or will be paid to any person working for or engaged by the other party or that unless written details of the arrangement have been disclosed to the other party prior to entering into the Agreement with the Agent and the other party has given written authorization of such arrangement;
  - (iii) the Customer shall not offer pay or promise to pay directly or indirectly anything of value to a Public Official or Government Authority in connection with the Agreement and the Customer shall notify the Customer in writing in the event that a request is received from Public Official or Government Authority requesting illicit payments; and
  - (iv) the Customer shall not take any other action which shall result in a breach by either party of any applicable anti-corruption legislation.

10.2 The Customer acknowledges that a breach or failure to observe all or any of the warranties in this clause could lead to penalties or damages to the Customer and also to the Agent and the Customer agrees to provide the indemnity to the Agent on account of such penalties or damages pursuant to clause 11.

## **11. CUSTOMER INDEMNITIES**

11.1 Without limiting the effect of these Terms and Conditions, the Customer agrees to indemnify and keep indemnified the Agent for:

- (a) any charges levied against the Customer by Government Authorities;
- (b) amounts of Customs Duty, GST and other payments made to Government Authorities by the Agent on behalf of the Customer;
- (c) any penalties payable by the Agent (pursuant to a Court order or pursuant to an Infringement Notice) due to the Customer;

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- (d) providing information that is incorrect or misleading;
- (e) omitting to provide material information required to the Government Authorities;
- (f) providing information in a manner which does not enable the Company to comply with the requirements of the Government Authorities for reporting in prescribed periods;
- (g) failing to provide information or Documentation requested by the Agent;
- (h) penalties associated with the failure by the Customer to maintain or provide its documents or records in the manner and at the time contemplated by the Government Authorities;
- (i) penalties associated with providing misleading or deceptive information regarding the status of Goods, whether pursuant to the *Competition and Consumer Act 2010* (Cth.) or other legislation;
- (j) liabilities or costs incurred by the Agent on behalf of the Customer associated with the transport of Goods including, without limitation, amounts paid to carriers of goods for the carriage of Goods or cleaning of containers (whether sub-contractors or otherwise and amounts incurred by the Agent in exercising its rights pursuant to these Terms and Conditions);
- (k) damages payable by the Agent arising from or contributed to by errors or misrepresentations by the Customer;
- (l) losses or damage incurred by the Agent due to a breach by Customs of any of the warranties in this clause; and
- (m) all expenses directly or indirectly incurred arising out of or in connection with the entry of an officer of any Government Authorities or other authorised person on the premises of the Agent for the purpose of exercising any powers pursuant to the requirements of any Government Authorities and/or inspecting, examining, making copies of, taking extracts of documents on the premises.

11.2 Without limiting the effect of these Terms and Conditions if the Agent, whether by statute or otherwise, is held by to jointly or severally liable for any of the Customer's liabilities or any other party seeks to hold the Agent jointly or severally liable for any of the Customer's liabilities, then the Customer shall indemnify the Agent and hold the Agent harmless for any claims made in respect thereof and shall not in any way assert a claim for a contribution from the Agent.

11.3 The Customer agrees to pay any amounts claimed pursuant to the indemnity in sub-clause 11.1 within seven (7) days of demand by the Agent.

11.4 The nature of the indemnity provided pursuant to sub-clause 11.1 shall include, without limitation, all penalties, liabilities and damages assessed against the Agent and its officers and employees, together with all legal costs incurred by the Agent (calculated on a solicitor/client basis). The indemnity shall continue in full force and effect whether or not the Goods have been pillaged, stolen, lost, damaged or destroyed and shall not be affected in any way if such pillaging, stealing, loss, damage or destruction has occurred or been brought about wholly or in part by the negligence or the alleged negligence or any default, omission, neglect or default or any breach of duty of obligation of the Agents, its officers employees.

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11.5 The Agent may execute all or any of its rights to recover any amounts owing pursuant to this clause.

## 12. DELIVERY OF GOODS TO THE AGENT ON BEHALF OF THE CUSTOMER

12.1 Where the Customer may from time to time direct certain Goods to be delivered to the Agent at 25 Wellard Street, Bibra Lake in the State of Western Australia the Agent shall accept delivery of the Goods in it's absolute discretion.

12.2 Upon receipt of the Goods pursuant to clause 12.1 above the Agent shall notify the Customer that the Goods have been received by the Agent.

12.3 The Agent shall not be responsible for any delay howsoever caused in relation to receipt and delivery of the Goods.

12.4 The Customer shall at all times be solely responsible for the Goods and for collection of the Goods from the Agent.

12.5 The Agent shall be entitled to store the Goods or any part thereof at the sole risk, cost and liability of the Customer,

12.6 The Agent shall be entitled to dispose of the Goods or any part thereof, by sale or in any manner as the Agent deems reasonable in the circumstances of any Goods which have been stored by the Agent for more than fourteen (14) days and reserves the right to accept any offer which may or may not amount to the market value of the Goods.

12.7 Any and all costs incurred by the Agent in relation to the Goods shall be paid to the Agent by the Customer upon written demand.

## 13. INSURANCES

13.1 The Agent's liability in respect of the Services to the Customer shall be covered by a liability insurance policy taken out by the Agent with such insurers and on such terms and in such amount as may be reasonably regarded as customary in the indemnity by a provider of such Services.

13.2 The Agent shall not provide or take out insurance in respect of the Goods which is the sole responsibility of the Customer.

## 14. TERMS OF PAYMENT

14.1 Unless otherwise agreed in writing between the Agent and the Customer, the Customer shall be obliged to pay all agreed sums due and payable for the Services at the place and time and in the manner specified in the Agreement and if none such is specified then:

(a) **Estimate Port Disbursement** – The Customer shall be required to pay the Agent the full amount specified in the Estimate Disbursement Account, into the Nominated Bank Account, immediately upon demand by the Agent. The Agent shall not provide the Services to the Customer unless any and all sums due are paid by the Customer to the Agent;

(b) **Final Port Disbursement** – The Customer shall be required to pay the Agent the full amount specified in the Final Disbursement Account, into the Nominated Bank

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Account, within seven (7) days of receipt of the Final Disbursement Account without any suspension, retention, set-off (statutory or otherwise), deduction, counterclaim or discount and notwithstanding the existence of any claim or dispute in respect of the Services

- (c) **Additional Port Disbursement** - The Customer shall be required to pay the Agent the full amount specified in the Additional Disbursement Account, into the Nominated Bank Account, immediately upon demand by the Agent.
- 14.2 The Customer shall always remain fully responsible for payment of any and all monies due and payable to the Agent, notwithstanding terms of the Agreement in which the Agent agrees to collect or make payment of charges, duty, costs or other monies whatsoever from or to a person other than the Customer.
- 14.3 In any dispute involving any monies owed to the Agent, the Agent shall be entitled to all costs of collection, including reasonable legal fees and interest at 10% per annum or the highest rate allowed by law, which ever is higher unless a lower amount is agreed to by the Agent, on the amount outstanding calculated from the due date until payment is made in full.
- 14.4 The Agent may take any legal proceedings to recover any amounts owing pursuant to these Terms and Conditions.
- 14.5 The Agent reserves the right to offset any amounts receivable from the Customer against any amounts payable to that Customer or any company affiliated with the Customer or any Related Body Corporate of the Customer. This right exists irrespective of the date the liability has been created or debt incurred with the Agent.
- 14.6 The Agent, its officers, employees, agents, contractors or sub-contractors shall have a special and general lien on any assets of the Customer and a right to sell the Assets whether by public or private sale or auction without notice, for freight, demurrage, detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the lien shall cover the costs and expenses of exercising the lien of such a sale including reasonable legal fees. The lien and rights granted by this sub-clause 14.6 shall survive delivery of the Assets and the Agent shall be entitled to retain the proceeds of sale of the Assets in respect of any outstanding amounts referred to in this clause.
- 14.7 The Agent sells or otherwise disposes of such Assets pursuant to sub-clause 14.6 as principal and not as agent and is not the trustee of the power of sale.
- 14.8 The lien created by sub-clause 14.6 does not limit or exclude any other liens which arise by operation of law or pursuant to any laws.

## 15. GST

- 15.1 This clause applies if the Agent is or may become liable to pay GST in relation to any Supply under these Terms and Conditions.
- 15.2 Unless otherwise stated, all Charges quoted are inclusive of the GST imposed under the GST Law.

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- 15.3 The Customer shall be responsible for the payment of any GST liability in respect of the Supply of Services at Port as provided by the Agent or by third parties or sub-contractors which shall be payable at the same time as the GST-exclusive consideration. Notwithstanding the aforesaid, the Agent hereby agrees to make payment of any such liability for and on behalf of the Customer.
- 15.4 The Agent hereby agrees to provide the Customer with a Tax Invoice to enable the Customer to claim Input Tax Credit.
- 15.5 If the Customer is entitled to a refund of any GST liability in respect of the Supply of Services at Port as provided by the Agent or by third parties or sub-contractors the Agent shall use all reasonable endeavours to lodge the necessary documentation at the Australian Tax Office ('ATO') on behalf of the Customer. Upon receipt of any sums of money due and payable to the Customer in accordance with this clause 15.5, the Agent shall use all reasonable endeavours to remit any sums of money to the Customer within fourteen (14) days of receipt of the money from the ATO. The Customer shall be responsible for any and all bank or other fees which may be payable from time to time on the remittance of funds to the Customer.
- 15.6 If the Customer defaults in the payment on the due date of any GST amount payable under this clause 15 then without prejudice to any other remedies of the Agent and upon demand by the Agent, the Customer shall pay to the Agent an amount equal to the amount of any damages or interest or additional GST that may become payable by the Agent due to the default of the Customer.

## **16. HOW NOTICE IS TO BE SERVED ON THE AGENT**

- 16.1 A written notice may be served:
- (a) personally on a Director of the Agent;
  - (b) by registered post to PO BOX 1303, Bibra Lake WA 6965 or such other address as the Agent may notify the Customer in writing;
  - (c) by facsimile to (08) 6316 1414 or such other fax number as the Agent may notify the Customer in writing; or
  - (d) by email to [directors@shipagency.com.au](mailto:directors@shipagency.com.au) or such other email address as the Agent may notify the Customer in writing.
- 16.2 A notice served in accordance with clause 16.1 above is deemed to be received by the Agent if:
- (a) personally, on the day the notice was handed to a Director of the Agent;
  - (b) by registered post, on the day of delivery to the Agent; or
  - (c) by facsimile of email, during business hours when transmitted or otherwise on the next working day after transmission.

## **17. HOW NOTICE IS TO BE SERVED BY THE AGENT**

- 17.1 The Agent may serve any notice in writing to the Customer or any other person:
- (a) personally;

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- (b) by post to the Customer or other person's last known address;
- (c) by email to the Customer or other person's last known email address; or
- (d) by facsimile to the Customer or other person's last known facsimile address.

17.2 A notice served in accordance with clause 17.1 above is deemed to be received by the Customer if:

- (a) personally, on the day the notice was handed to the Customer;
- (b) by post, on the second business day after posting; or
- (c) by email or by facsimile, during business hours when transmitted or otherwise on the next working day after transmission.

## 18. CONFIDENTIALITY

18.1 The Agent and the Customer agree to keep confidential and not to disclose, directly or indirectly, any information regarding the other party's business, including without limitation, information with respect to operations, procedures, methods, accounting, technical data or existing or potential customers, or any other information which the other party has designated as confidential, without the prior written consent of the other party to the third party except:

- (a) if the information was public knowledge at the of the disclosure;
- (b) if the information becomes public knowledge other than by breach of this clause hereto;
- (c) if the information subsequently comes into the lawful possession of the third party; or
- (d) if the disclosure is required pursuant to any laws or regulations which the disclosing party is subject to.

18.2 Notwithstanding clause 18.1 above the Agent and the Customer shall be entitled to disclose to confidential information to any officer, employee, servant, agent or contractor or sub-contractor of that party which require knowledge of the same information. The Agent may further disclose the confidential information to potential assignees or transferees.

## 19. TERMINATION

19.1 The Agent shall be entitled to terminate any Agreement with immediate effect and without liability by giving written notice to the Customer if:

- (a) the Customer commits any material breach of any term of the Agreement (or in case of a breach capable of being remedied if the Customer fails, within fourteen (14) days of the receipt of a request in writing from the Agent to do so, to remedy the breach); or
- (b) the Customer is declared bankrupt, becomes insolvent or is unable to pay debts as they fall due.

19.2 If the Agreement is terminated pursuant to clause 19.1 above the Customer shall be liable to the Agent for any damages suffered by the Agent as a result of the termination and pay the Agent all fees earned and recoverable costs incurred in respect of the Services

# SHIP AGENCY SERVICES PTY LTD

## Terms and Conditions

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performed up to the date of the termination together with any further reasonable costs and/or expenses incurred by the Agent as a result of the termination

- 19.3 The Customer shall be entitled to terminate any Agreement with immediate effect and without liability by giving written notice to the Customer if the Agent is declared bankrupt, becomes insolvent or is unable to pay debts as they fall due or breaches clause 6.1(c) of these Terms and Conditions.

## 20. FORCE MAJEURE

- 20.1 Neither the Agent or the Customer shall be liable to the other in damages or have the right to terminate an Agreement for any failure to perform or delay in performance of its obligations if and in so far as and for so long as such performance is delayed or prevented by the other's acts or omissions, or by circumstances beyond its reasonable control including but not limited to Government restrictions, Port Authorities and security restrictions in Ports, strikes, lock-outs or labour disputes of any kind (whether relating to its own employees or others), Acts of God, fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, insurrection, war or civil war, adverse weather conditions or prolonged power failure.

## 21. ASSIGNMENT

- 21.1 The Customer may not assign or transfer any or all of these Terms and Conditions without the prior written consent of the Agent which shall be expressly approved in writing by the Agent and signed by both the Customer and the Agent.

## 22. SEVERABILITY

- 22.1 In the event any paragraph(s) and/or portion(s) hereof is held by a Court to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect and shall in no way affect or prejudice the enforceability of any other term or condition herein.
- 22.2 All the rights, immunities and limitations of liability contained in these Terms and Conditions shall continue to have their full force and effect in all the circumstances notwithstanding any breach of any term or condition hereof or any collateral Agreement notwithstanding that the Services have been provided.

## 23. ALTERATIONS OR VARIATIONS

- 23.1 The Agent may, at any time and from time to time, modify, alter or vary these Terms and Conditions without notice to the Customer.
- 23.2 No officer, employee, agent, contractor or sub-contractor of the Agent has the authority to waive, modify or vary these Terms and Conditions unless a Director of the Agent approves such waiver or variation in writing.
- 23.3 The Agent's decision to waive any provision herein, either by conduct or otherwise, shall not be deemed to be a further or continuing waiver of such provision or to otherwise waive or invalidate any other provision herein.

## **24. LAW AND JURISDICTION**

- 24.1 These Terms and Conditions and any Agreements made between the Agent with the Customer shall be deemed to be made in the State or Territory of Australia in which the Agent is registered and shall be governed and construed according to the laws of that State or Territory and the Courts of that State or Territory shall have exclusive jurisdiction thereof.
- 24.2 If these Terms and Conditions are held to be subject to the laws of the Commonwealth of Australia or of any particular State or Territory of Australia or any other jurisdiction then these Terms and Conditions or any part thereof shall continue to apply subject to such laws only to the extent that these Terms and Conditions or any part hereof is inconsistent with or repugnant to those laws and no further.
- 24.3 Any dispute, controversy or claim arising out of, relating to or in connection with these Terms and Conditions and any Agreements made between the Agent and the Customer, including any question regarding its existence, validity or termination, shall be referred to the Australian Maritime and Transport Arbitration Commission (**AMTAC**) and resolved by arbitration in accordance with the AMTAC Arbitration Rules. The seat of the arbitration shall be Perth, Australia. The language of the arbitration shall be English.