

## Standard Terms and Conditions

### GENERAL TERMS AND CONDITIONS

#### 1 GENERAL

- 1.1 This document comprises the general Terms and Conditions for the provision of Services by Blue Oceans Maritime.
- 1.2 Unless otherwise agreed in writing, all offers or Services and all resulting contractual relationships between Blue Oceans Maritime, any affiliated companies of Blue Oceans Maritime or any of their agents to any Client applying for Blue Oceans Maritime services shall be governed by these Terms and Conditions.
- 1.3 These Terms and Conditions replaces and supersedes all previous versions.

#### 2 DEFINITIONS

- 2.1 "Client" or "Clients" – the Party for which Blue Oceans Maritime will carry out the Services;
- 2.2 "Contract" – the combined agreement of the Nomination Confirmation and these Terms and Conditions;
- 2.3 "Facility" – may refer to any location where the Services are to be rendered as per the Nomination Confirmation;
- 2.4 "Final Completion Report" – the final report issued by the Blue Oceans Maritime provided to the Client following the completion of the provision of Services.
- 2.5 "Goods" – any merchandise that may be the subject of the Services under the Nomination Confirmation;
- 2.6 "Interim Report" – means a working document that allows clients access to immediate information relating to the Services rendered. Blue Oceans Maritime accepts no liability for the accuracy of Interim Reports and these are intended merely to act as a guide;
- 2.7 "Nomination Confirmation" – those Services agreed and duly signed by both Parties;
- 2.8 "Party" or "Parties" – an individual or business that has entered into the Contract;
- 2.9 "Service" or "Services" – those services identified in the Nomination Confirmation and to be rendered by Blue Oceans Maritime in accordance with these Terms and Conditions;
- 2.10 "Terms and Conditions" – this document, agreed by the Client, detailing the conditions under which the Nomination Confirmation is provided.

#### 3 SERVICES

- 3.1 These Terms and Conditions cover the Services as detailed in the Nomination Confirmation.
- 3.2 The Client acknowledges that Blue Oceans Maritime, either by entering into the Contract, or by providing the Services, neither takes the place of the Client or any third-party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates, or undertakes to discharge any duty of the Client to any third-party or that of any third-party to the Client.
- 3.3 Blue Oceans Maritime may delegate the performance of all or part of the Services to an agent or a subcontractor and the Client authorizes Blue Oceans Maritime to disclose all information necessary for such performance to the agent or subcontractor.

#### 4 OBLIGATIONS OF THE CLIENT

- 4.1 The Client shall ensure that Blue Oceans Maritime is advised as to the locations where the Services are expected to be rendered. Any change in such locations must be advised to Blue Oceans Maritime by written notice not less than 3 (three) business days prior to the commencement of the Service, in which event Blue Oceans Maritime shall be entitled to modify its fees.
- 4.2 The Client shall provide Blue Oceans Maritime with all necessary access to the Goods, including access passes, at the locations in which the Services shall be performed. If required by Blue Oceans Maritime, the Client shall make available to Blue Oceans Maritime all registers, inventory records and any other documents which are used to record the Goods.
- 4.3 The Client shall procure a safe working environment for Blue Oceans Maritime and its representatives to perform the Services at the Facility and shall make known to Blue Oceans Maritime any hazards or dangers, actual or potential, of which the Client is aware and that are or may be associated with the provision of the Services, including but without limitation: (i) the presence or risk of radiation, (ii) toxic, noxious or explosive elements of materials and (iii) environmental pollution or poisons. Further, the Client shall ensure the Facility benefits from all public health, environmental licences and all public

liability insurances as may be required by applicable local laws and which may be desirable and considered market practice for a Facility of this nature.

**5 CERTIFICATE OF OWNERSHIP AND INTELLECTUAL PROPERTY OF REPORT**

Any document provided by Blue Oceans Maritime and the copyright contained therein shall be and remain the property of Blue Oceans Maritime and the Client shall not alter or misrepresent the contents of such documents in any way. The Client shall be entitled to make copies for its internal purposes only. Duplicates of certificates are available upon request for external communication purposes.

**6 COMMUNICATION**

Use of the corporate name of Blue Oceans Maritime or any other registered trademarks for advertising purposes is not permitted without prior written consent of Blue Oceans Maritime.

**7 CONFIDENTIALITY**

7.1 As used herein, "confidential information" shall mean any oral or written proprietary information that a Party may acquire from the other Party pursuant to the Contract or information as to the business of the other Party provided, however, that confidential information shall not include any information which:

- 7.1.1 Is or hereafter becomes generally known to the public;
- 7.1.2 Was available to the receiving Party on a non-confidential basis prior to the time of its disclosure by the disclosing Party;
- 7.1.3 Is disclosed to a Party by an independent third-party with a right to make such disclosure.

7.2 Unless required by law or by a judicial, governmental or other regulatory body, neither Party nor their agents or subcontractors shall use the confidential information other than in direct relation to the Contract nor disclose the other's confidential information to any person or entity without the prior written approval of the other Party except as expressly provided for herein.

**8 NOMINATION AND TERMINATION**

8.1 Blue Oceans Maritime is to be nominated under these Terms and Conditions in writing by email as the provider of Services identified in the Nomination Confirmation.

8.2 The Client, by acknowledging receipt of the Terms and Conditions agrees to the conditions under which the Services are to be provided.

8.3 These Terms and Conditions apply for all Nomination Confirmations.

8.4 Blue Oceans Maritime shall be entitled to suspend or terminate immediately, and without liability to the Client, the provision of the Services in the event of:

- 8.4.1 Failure by the Client to comply with any of its obligations herein and such failure is not remedied within 10 (ten) days that notice of such failure has been notified to Client;
- 8.4.2 Any suspension of payment, arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by the Client.

8.5 Any notice required or permitted to be given by one Party to the other under these Terms and Conditions shall be sent by registered mail or by special courier or by email to the other. Any such notice shall be deemed to have been received on the effective reception date, or at the latest on the 10th day (ten days after having been handed over to the post office or to the special courier service if sent by registered mail or by special courier), or immediately on the successful transmission to the correct email address.

8.6 The Parties acknowledge that Blue Oceans Maritime provides the Services to the Client as an independent contractor and that the Contract does not create any partnership, agency, employment or fiduciary relationship between Blue Oceans Maritime and the Client.

8.7 The Contract may be terminated by Blue Oceans Maritime at any time without liability to the Client by giving a minimum of thirty (30) days' prior written notice to the Client.

8.8 Without prejudice to any other rights or remedies which the Parties may have, either Party may terminate the Contract without liability to the other on giving the other not less than seven (7) days written notice to the other if:

- 8.8.1 The other Party fails to pay any amount due under the Contract on the due date for payment, and remains in default not less than fifteen (15) days after being notified in writing to make such payment;

- 8.8.2 The other Party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within fifteen (15) days of that Party being notified in writing of the breach;
- 8.8.3 The other Party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
- 8.8.4 The other Party becomes unable to pay its debts as and when they become due;
- 8.8.5 The other Party becomes insolvent or enters receivership (for financial or other reasons), or insolvency or bankruptcy proceedings are commenced by or against such Party;
- 8.8.6 The other Party assigns or transfers any right or interest in the Contract other than as authorized in these General Terms and Conditions;
- 8.8.7 The other Party suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business.
- 8.9 On termination of the Contract for any reason:
- 8.9.1 The Client shall immediately pay to Blue Oceans Maritime all of the outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Blue Oceans Maritime may submit an invoice, which shall be payable immediately on receipt.
- 8.9.2 The Client shall return all of Blue Oceans Maritime's Equipment. If the Client fails to do so, then Blue Oceans Maritime may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping.
- 8.9.3 The accrued rights and liabilities of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 9 FORCE MAJEURE**
- 9.1 If Blue Oceans Maritime is prevented from performing or completing any Service for which the Contract has been made by reason of Force Majeure, the Client will pay to Blue Oceans Maritime:
- 9.1.1 The amount of all expenditure actually made or incurred; or
- 9.1.2 A proportion of the agreed fees equal to the proportion (if any) of the Services actually carried out.
- 9.2 For the purposes of these Terms and Conditions, Force Majeure means, in relation to either Party, any unavoidable, unforeseeable, insurmountable circumstance beyond the reasonable control of that Party including without prejudice to the generality of the foregoing any act of God, act or regulation of any governmental or supra-national authority, war or national emergency, accident, epidemic, pandemic, fire, riot, strike, lock-out, or other form of industrial action.
- 9.3 In the event of Force Majeure, Blue Oceans Maritime shall be relieved of all responsibility whatsoever for the partial or total non-performance of the required Services.
- 10 GENERAL LIMITATIONS OF LIABILITY AND INDEMNITY**
- 10.1 Blue Oceans Maritime accepts no liability for the accuracy of interim "shift" reports.
- 10.2 Blue Oceans Maritime undertakes to exercise due care and skill in the performance of the Services and accepts responsibility only in cases of gross negligence or wilful misconduct. The burden of proof in respect of any claims against Blue Oceans Maritime shall rest with the Client.
- 10.3 Nothing in these Terms and Conditions shall have the effect of limiting any liability which cannot legally be limited including liability for death or personal injury caused by negligence.
- 10.4 Subject to clause 10.2, the total liability of Blue Oceans Maritime to the Client in respect of any claim for loss, damage, or expense of any nature and howsoever arising shall be limited, in respect of any one event or series of connected events, to an amount equal to the fees paid to Blue Oceans Maritime under the Nomination Confirmation (excluding any and all taxes thereon).
- 10.5 Subject to clause 10.2, Blue Oceans Maritime shall not be liable to the Client nor to any third-party:
- 10.5.1 For any loss, damage or expense arising from (i) a failure by the Client to comply with any of its obligations herein, (ii) any actions taken or not taken on the basis of the reports, and (iii) any incorrect reports arising from unclear, erroneous, incomplete, misleading or false information provided to Blue Oceans Maritime;
- 10.5.2 For loss of profits, loss of production, loss of business or costs incurred from business interruption, loss of revenue, loss of opportunity, loss of contracts, loss of expectation, loss of use, loss of goodwill or damage to reputation, loss of anticipated savings, cost or expenses incurred in relation

- to making product recall, cost or expenses incurred in mitigating loss, and loss, or damages arising from claims of any third-party, including without limitation product liability claims, that may be suffered by the Client;
- 10.5.3 For any action taken or not taken by Blue Oceans Maritime pursuant to the specific instructions of the Client in respect of the Services;
- 10.5.4 For any action taken or not taken by the Client in accordance with their obligations under these Terms and Conditions;
- 10.5.5 For any indirect or consequential loss or damage of any kind.
- 10.6 Except for cases of proven gross negligence or wilful misconduct by Blue Oceans Maritime, the Client further agrees to hold harmless and indemnify Blue Oceans Maritime and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third-party for loss, damage or expense of any nature including all legal expenses and related costs and howsoever arising: (i) relating to the performance, purported performance or non-performance, of the Services and (ii) out of or in connection with the Client's product, process or service the subject of the report, including without limitation, product liability claims.
- 10.7 Each Party shall take out adequate insurance to cover its liabilities under the Terms and Conditions and Contract. The Client shall ensure that all such policies contain a waiver of subrogation rights in favour of Blue Oceans Maritime.
- 11 OPERATIONAL LIMITATIONS OF LIABILITY**
- 11.1 The Facility will remain under the sole and exclusive responsibility and control of the Client or any third-party with which the Client may have a contractual relationship. Blue Oceans Maritime shall in no way be held responsible or liable for any problems or incidents arising out of the safekeeping of the Goods therein, nor shall Blue Oceans Maritime be responsible for the security, condition and maintenance of the Facility, for the preservation of the Goods and their packaging, for the existence or lack of the Goods, nor for any insurance for the Facility and the Goods.
- 11.2 Should Blue Oceans Maritime be denied access to the Facility or the Goods by any third-party, then the sole responsibility of Blue Oceans Maritime will be to immediately inform the Client of such event, and the Client shall, thereafter, at its sole discretion, take such actions as it may desire to procure access to the Facility in order that Blue Oceans Maritime may continue to provide the Services.
- 11.3 It is understood and accepted that Blue Oceans Maritime will not be in a position to make, will not be obligated to make, and, in any event, will not be deemed having made any determination regarding the ownership or the validity of the security granted over Goods stored in the Facility.
- 11.4 Each Final Completion Report that results from the performance of the Services shall reflect the findings of Blue Oceans Maritime at the time and place of activity only, and shall not serve to evidence the existence of a portion or the entirety of Goods immediately preceding, and following, each activity.
- 11.5 Each Final Completion Report will reflect the facts as recorded by Blue Oceans Maritime within the limits of the instructions received and Blue Oceans Maritime is under no obligation to refer to, or report upon, any facts or circumstances that are outside the scope of the specific instructions received from the Client in respect of the Services. Should any third-party information be supplied with respect to the Goods, Blue Oceans Maritime shall, where legally and contractually permissible, attach such third-party information to the Final Completion Report but the Client acknowledges and agrees that Blue Oceans Maritime shall not be liable for the reliability of such third-party information.
- 11.6 The Client acknowledges and agrees that the Final Completion Report constitutes neither documents of title nor warehouse receipts or any equivalent documents. Further, such daily reports are neither negotiable nor transferable and may not, under any circumstance be pledged or otherwise serve as collateral.
- 11.7 Where Blue Oceans Maritime is required to verify the weight of bagged product being produced, the sole responsibility of Blue Oceans Maritime will be to inform the plant manager and the Client that the bags are outside the allowed tolerance.
- 11.8 Should the Client request that Blue Oceans Maritime witness any third-party activity at the Facility, the Client agrees that the sole responsibility of Blue Oceans Maritime is to be present at the time of such third-party activity and to forward the results or confirm the occurrence of the activity. The Client agrees that Blue Oceans Maritime is not responsible for the condition or calibration of apparatus, instruments and measuring devices used, the analysis methods applied, the qualifications, actions or omissions of third-party personnel, or the results of the activity performed by the third-party.

11.9 Blue Oceans Maritime shall be released from any and all liability whatsoever for all claims for loss, damage, or expenses by application of these Terms and Conditions on the issuance of the Final Completion Report.

## **12 FEES AND CHARGES**

- 12.1 Unless otherwise stated, all fees quoted are exclusive of any and all taxes in the countries concerned.
- 12.2 Following agreement on the fees of Blue Oceans Maritime in the Nomination Confirmation and Terms and Conditions, Blue Oceans Maritime may issue a tax invoice for advance payment of up to a maximum of 80% of those fees for the Services to be rendered.
- 12.3 Following submission of the Final Completion Report / quote to the Client, Blue Oceans Maritime shall issue an invoice to the Client. Invoices for additional and further work will be issued on completion of the relevant task. Unless advanced payment has been agreed upon, all invoices are payable within thirty (30) days of the date of each invoice (the "due date") regardless of whether the Client's system or products qualify for certification. Interest will become due at a rate of 1.5% per month (or such other rate as may be established in the invoice) from the due date up to and including the date payment is received.
- 12.4 Blue Oceans Maritime shall issue an invoice to the Client for the Services provided. If a Service has an applicable tonnage fee for cargo tally and surveying Services, the fee shall be calculated using the following tonnage quantity:
- 12.4.1 Bulk or Bagged Tally-off Vessel: the Bill of Lading quantity;
- 12.4.2 Bagging Supervision: the Said To Be Weight of the bags supervised during bagging;
- 12.4.3 Bulk Tally into Warehouse: the warehouse weighbridge quantity tallied. If no weighbridge is used, either an average weight or the Bill of Lading quantity will be applied;
- 12.4.4 Bagged Tally into Warehouse: the said to be bag weight quantity tallied into warehouse.
- 12.5 Any use of any report or certificate or the information contained therein, by the Client, is conditional upon the timely payment of all fees and charges. Blue Oceans Maritime reserves the right to cease or suspend all work and cause the suspension or withdrawal of any certificate for a Client who fails duly to pay an invoice.
- 12.6 The Client shall not be entitled to retain, set off or defer payment of any sums due to Blue Oceans Maritime on account of any dispute and counterclaim which may be alleged against Blue Oceans Maritime.
- 12.7 Blue Oceans Maritime may elect to bring action for the collection of unpaid fees in any court having competent jurisdiction.
- 12.8 The Client shall pay all Blue Oceans Maritime fees incurred in the collection of moneys owing on a scale as determined by such court.

## **13 DISPUTES**

- 13.1 Unless specifically agreed otherwise, all disputes arising out or in connection with these Terms and Conditions or the Contract shall be governed by the laws of South Africa.
- 13.2 Any disputes concerning the validity, interpretation, enforcement, performance and termination of these Terms and Conditions or the Services provided by Blue Oceans Maritime shall be finally resolved by arbitration in accordance with the rules of Arbitration Foundation of South Africa (the "Rules").
- 13.3 The number of arbitrators will be one (1) and the seat of arbitration will be Johannesburg, South Africa. The arbitral proceedings shall be conducted in English.
- 13.4 An arbitral award is final and binding upon the Party concerned. Judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction over the Party or Parties concerned.
- 13.5 A dispute will be deemed to have arisen when either Party notifies the other Party in writing to that effect. However, nothing in this clause shall prevent a Party from seeking preliminary injunctive relief or interim relief in a court of competent jurisdiction pending any final arbitral award.
- 13.6 Pending final settlement or determination of a dispute, the Parties shall continue to perform their remaining obligations under the Contract.

## **14 NOTICES**

All notices given under these Terms and Conditions or the Contract shall be hand delivered, courier, sent by registered post or email and shall be delivered to the Parties at their selected addresses or to such other address as either Party may hereafter designate in writing by notice to the other Party. Notices shall be deemed served upon receipt.

**15 MISCELLANEOUS**

- 15.1 If any one or more provisions of these Terms and Conditions are found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired in any way.
- 15.2 Except as expressly provided for herein, the Client may not assign or transfer any of its rights stipulated in these Terms and Conditions without prior written consent from Blue Oceans Maritime.
- 15.3 These Terms and Conditions may be amended only by a written document signed by duly authorised representatives or employees of each of the Parties.
- 15.4 Any failure by Blue Oceans Maritime to require the Client to perform any of its obligations under these Terms and Conditions or the Contract shall not constitute a waiver of its right to require performance of that or any other obligation.