

Standard Terms and Trading Conditions (Shipping Agency)

GULF AGENCY COMPANY (AUSTRALIA) PTY LTD
ABN 61 123 217 649
(the **Company**)

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GULF AGENCY COMPANY (AUSTRALIA) PTY LTD
ABN 61 123 217 649 (the Company)

These contractual conditions apply to all services provided by Gulf Agency Company (Australia) Pty Ltd ABN 61 123 217 649 (the **Company**).

These Trading Conditions include provisions that entirely change, reduce or exclude rights that you (the **Customer**) might otherwise have.

1. DEFINITIONS

1.1 In this Agreement, the following words shall have the following meanings:

"Agency Services" means the booking, arranging and co-ordination of all the activities relating to the arrival, port stay and departure of vessels when calling at ports in Australia for commercial and/or husbandry matters as more specifically described in the Appointment Confirmation.

" Agent" means Gulf Agency Company (Australia) Pty Ltd, a company incorporated and registered in Australia, with ABN 61 123 217 649, whose registered office is at Suite 5-6, 9f, 65 York Street, Sydney, NSW 2000.

"Agents" includes the Agent and any Sub-Agents from time to time.

"Agreement" means the contract constituted by the following documents: (i) Appointment Confirmation; (ii) these Standard Terms and Conditions and (iii) any rules, requirements, specification and/or schedules annexed or attached to the Appointment Confirmation.

"AMTAC" means the Australian Maritime and Transport Arbitration Commission.

"Appointment Confirmation" means the booking note, email or other document containing the confirmation of the appointment of the Agent by the Principal.

"Appointment Period" means the appointment period as specified in the Appointment Confirmation, or where no such period is specified, the period which starts when the Agent starts providing the Services and ends when the Services are completed.

"Business Days" means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney.

"Booking Confirmation" has the meaning given to it in Clause_3.2_

"Cyber Event" means any actual or suspected action by a third party which affects the computers, computer system, computer software and/or information and communication technology system of one or more person(s) through or by the use of code, computer virus, process or any other means whatsoever, without the consent of the affected person(s).

"Disbursements" means the costs and expenses payable to the Agents for the provision of the Agency Services.

"Event" has the meaning given to it in Clause 11.2(a)

"FDA" has the meaning given to it in Clause 4.2.

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Liabilities" means all costs (including the costs of investigating and defending any claims), expenses, claims, losses, liabilities, orders, awards, fines, proceedings, and judgments of whatsoever nature.

"Parties" means the Agent and the Principal.

"PDA" has the meaning given to it in Clause 4.3

"Pre-funding" has the meaning given to it in Clause 5.2.

"Principal" means the person at whose request the Agent provides the Services as specified in the Appointment Confirmation.

"Remuneration" has the meaning given to it in Clause 6.1

"Region" means the port(s), place(s) or geographical area specified in the Appointment

Confirmation. "Services" means the services to be provided by the Agent, which consist of:

- (a) managing and coordinating the provision of Agency Services, checking and validating the Disbursements; and
- (b) where specified in the Appointment Confirmation, selecting and appointing Sub-Agents for the provision of Agency Services in the Region.

"Sub-Agents" means any port agent engaged on behalf of the Principal by the Agent to fulfil any of the Agency Services in Australia.

- 1.2 References to an enactment, order, regulation or other similar instrument shall be deemed to include reference to any amendment by any subsequent enactment, order, regulation or similar instrument.
- 1.3 Clause and Schedule headings are for convenience of reference only and are not to be taken into account in construction.
- 1.4 In this Agreement, unless the context requires otherwise:
 - (a) words in the singular shall be deemed to include the plural and vice versa.
 - (b) words importing any particular gender shall include all other genders;
 - (c) Australian dollars, dollars, \$, A\$ or AUD is a reference to the lawful currency of Australia.
 - (d) references to persons shall include bodies of persons whether corporate or incorporate;
 - (e) any agreement, representation, warranty or indemnity by two or more persons (including where two or more persons are included in the same defined term) binds them jointly and each of them severally;
 - (f) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the

next Business Day;

(g) If an act under this document to be done by a party on or by a given day is done after 5.30 pm on that day, it is taken to be done on the next day.

(h) words importing the whole shall be treated as including a reference to any part of the whole; and

(i) the words include(s) or including shall be deemed to have the words "without limitation" following them.

2. EXCLUSIVE APPOINTMENT

2.1 The Principal hereby appoints the Agent as its exclusive agent during the Appointment Period for the provision of the Services in the Region.

2.2 During the Appointment Period, the Principal undertakes not to appoint any other party to manage and co-ordinate the provision of Agency Services in the Region.

3. APPOINTMENT OF SUB-AGENTS

Where as part of the Services the Agent is required to select and appoint Sub-Agents the following provisions will apply:

3.1 The Principal appoints the Agent to make all necessary arrangements for the provision of Agency Services by the Agent's staff or Sub-Agents on the Principal's behalf and as an agent only. For the avoidance of doubt, nothing in this Agreement, whether express or implied, shall be construed as the Agent acting as a principal.

3.2 While providing the Services, the Agent is expressly authorized to make, confirm and accept as many bookings for the Agency Services with the Sub-Agents on behalf of the Principal as may be necessary or desirable to fulfil the Agency Services ("Booking Confirmations"). The Principal acknowledges and agrees that making Booking Confirmations may include the Agent accepting the trading conditions of the Sub-Agents, negotiating and signing or otherwise concluding contracts for the provision of Agency Services with the Sub-Agents in the name of and on behalf of the Principal.

3.3 Where a Booking Confirmation is subject to the trading conditions of the Sub-Agent, the Principal acknowledges and agrees that such trading conditions may include exceptions, limitations, exclusions of liabilities and force majeure provisions excluding liability on the part of the Sub-Agent and indemnities from the Principal for the benefit of the Sub-Agent. Subject to Clause 3.4, the Agent is not required to negotiate or secure particular terms when making the Booking Confirmation where to do so would result in a change in the Sub-Agent's usual terms and conditions for the services to be performed by it.

3.4 The Agent will take reasonable steps to ensure that any engagement of Sub-Agents on behalf of the Principal will be on standard market terms.

3.5 The Agent is entitled, and the Principal hereby expressly authorises the Agent, to accept, confirm and/or sign such Booking Confirmations for and on behalf of the Principal. When making such Booking Confirmations the Agent shall do so as agent only. The Agent will, on request by the Principal, provide evidence of any Booking Confirmations made by the Agent acting as agent for the Principal, which may include print-outs from the Agent's web-based port call management system.

- 3.6 During the Appointment Period, the Principal must not directly appoint any Sub-Agents in the Region without the prior written consent of the Agent (which will not be unreasonably withheld), unless any charterparty by which the Principal is bound contains a charterer's agent nomination clause, in which case the Agent shall act as the Principal's protecting agent in respect of any agent nominated by the charterer and the provisions of this Agreement shall apply to the Agent acting as protecting agent in respect of such charterer's nominated agent as if the nominated agent was a Sub-Agent.

4. SERVICE REQUIREMENTS

- 4.1 The Agent will exercise reasonable skill and care at all times in performing the Services, including, where relevant, in selecting the Sub-Agents for the Agency Services, but assumes no other duties (fiduciary or otherwise) to the Principal unless specifically set out in this Agreement.

- 4.2 The Principal acknowledges and agrees that the Sub-Agents shall be under the control and supervision of the Agent who shall manage and co-ordinate the provision of the Agency Services performed by the Sub-Agents.

The Agent shall provide the Principal with a pro-forma disbursement account estimating the Disbursements and the Remuneration before any of the Agency Services are provided ("PDA"). Once all the Agency Services have been provided, the Agent shall check all invoices relating to the Disbursements and provide a final disbursement account confirming the Disbursements actually paid to the Sub-Agents and Remuneration actually payable ("FDA"). Any correspondence or other communications in relation to any financial matters shall be direct between the Principal and the Agent.

- 4.3 The Agent shall, as agent of the Principal, pay the Disbursements and the proportion of the Remuneration payable to the Sub-Agents for the Agency Services, provided that the Principal has first advanced the necessary funds in respect of such Disbursements and proportion of the Remuneration in accordance with Clause 5

5. FUNDING OF DISBURSEMENTS AND ACCOUNTS

- 5.1 The Principal shall advance the funds necessary for the payment of the Disbursements and the Remuneration through a working fund advanced by the Principal. The Agency Services will not be provided unless and until the funds relating to such Agency Services have been advanced in accordance with this Clause 5

- 5.2 Unless expressly agreed otherwise between the Parties in writing, the Principal must advance an amount equal to one hundred percent (100%) of the value of the PDA ("Pre-funding") before any of the Agency Services relating to such PDA are provided by the Agents. The Principal must pay the Pre-funding by electronic funds transfer of immediately available funds to the bank account nominated by the Agent.

- 5.3 The Agent shall ensure that the Pre-funding is accounted for separately and only used to pay for the Disbursements and Remuneration payable in respect of the PDA for which the Pre-funding was advanced. The Principal acknowledges and agrees that the Agent will use the Pre-funding to advance some or all of the Disbursements and proportion of the Remuneration payable to the Sub-Agent before any of the Agency Services are provided by the Sub-Agent. The Agent shall provide the Principal with a full statement of account on request.

5.4 Following the provision of the Agency Services the Agent shall provide the Principal with an FDA and the Principal shall (save where Clause 5.5 applies) pay to the Agent an amount equal to:

- (i) the total specified in the FDA; less
- (ii) the amount of any Pre-funding advanced under Clause 5.2

within fourteen (14) days of the provision of the FDA by the Agent to the Principal.

5.5 Where the total specified in the FDA is less than the amount of any Pre-funding advanced by the Principal under Clause 5.2 ("Excess Funding"), the Agent may retain the Excess Funding to cover any future Disbursements and Remuneration until it is requested by the Principal to return the Excess Funding. Any Excess Funding to be returned to the Principal will be paid by electronic funds transfer of immediately available funds to the bank account specified by the Principal within ten (10) Business Days of the Principal making such request.

5.6 Any item contained within the FDA which is disputed by the Principal on reasonable bona fide grounds must be notified to the Agent within three (3) Business Days of the Agent submitting the FDA, following which the Parties will attempt to resolve the disputed item as soon as practical thereafter.

5.7 The Principal is liable for all bank fees and expenses.

5.8 The Agent shall be entitled to retain and be paid all brokerages, rebates, discounts, allowances and other remunerations customarily retained by, or paid to, ships agents. The Agent will disclose any such remunerations itemised in this Clause 5.8 to the Principal where required by law.

6. REMUNERATION

6.1 As consideration for the Agent providing the Services to the Principal, the Agent's remuneration will comprise a fee as specified in the Appointment Confirmation, which will be included in the PDA ("Remuneration").

6.2 The Principal acknowledges and agrees that the Remuneration is inclusive of (i) the fee payable to the Sub-Agents for the provision of the Agency Services and (ii) the fee payable to the Agent for the provision of the Services. The fact that the Remuneration is inclusive of both the fee payable to the Sub-Agents and the fee payable to the Agent shall not constitute evidence that the Agent is acting as a principal in respect of any of the Agency Services. The Principal agrees that the Agent is under no obligation to disclose separately to the Principal the amount of its fee.

7. PAYMENT

7.1 The Principal shall make all payments under this Agreement without withholding or deduction unless required by law. If any such withholding or deduction is required by law, the Principal shall, when making the payment to which the withholding or deduction relates, pay to the Agent such additional amount as will ensure that the Agent receives the same total amount that it would have received if no such withholding or deduction had been required.

- 7.2 Without prejudice to any other rights or remedies of the Agent (under this Agreement or otherwise), in the event that the Principal fails to pay any of the sums due under this Agreement on their due dates for payment the Agent shall be entitled to:
- (a) charge interest on the overdue amount at the rate of eight percent (8%) per annum above the Reserve Bank of Australia's base rate from time to time. Such interest shall accrue on a daily basis from the date due until actual payment of the overdue amount and shall be payable together with the overdue amount; and/or
 - (b) terminate this Agreement immediately by giving written notice to the Principal.
8. GST
- 8.1 Words or expressions used in this Clause that are defined in the GST Act have the same meaning given to them in that Act.
- 8.2 Unless otherwise stated, any amount specified in this Agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.
- 8.3 If a party makes a taxable supply under this Agreement (Supplier), then the recipient of the taxable supply (Recipient) must also pay, in addition to the consideration for that supply, an amount equivalent to the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.
- 8.4 Notwithstanding the foregoing, the Recipient is not obliged under this Agreement to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.
- 8.5 If an adjustment event arises in relation to a taxable supply made by a Supplier under this Agreement, the amount paid or payable by the Recipient pursuant to Clause 7.1 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.
- 8.6 If a third party makes a taxable supply and this Agreement requires a party to this Agreement (the payer) to pay for, reimburse or contribute to (pay) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.
9. INSURANCE
- The Agent will maintain and pay at its own expense professional indemnity insurance for the duration of the Appointment Period.
10. PRINCIPAL'S DUTIES
- 10.1 The Principal shall promptly indemnify the Agent against all Liabilities howsoever assumed, incurred or suffered by the Agent, its officers, employees, agents or sub-contractors as a result of or in connection with the fulfilment of its duties under this Agreement. Such indemnity shall extend to all acts, matters and things done, suffered or incurred by the Agent during the duration of the Appointment Period, notwithstanding any termination thereof, provided always that this indemnity shall not extend to matters arising by reason of the wilful

misconduct, fraud or negligence of the Agent.

- 10.2 Where the Agent provides any bond, guarantee or any other form of security to customs or other statutory authorities, the Principal shall promptly indemnify the Agent against all Liabilities howsoever assumed, incurred or suffered by the Agent, its officers, employees, agents or subcontractors as a result of or in connection with the provision of such bond, guarantee or any other form of security, provided always that this indemnity shall not extend to matters arising by reason of the wilful misconduct, fraud or negligence of the Agent.
- 10.3 The Principal must, upon request by the Agent, take over the conduct of any dispute that may arise between the Agent and any third party as a result of the performance of the Agent's duties under this Agreement and for which the Principal may become liable under Clause_10.1_or_10.2_
- 10.4 The Agent will use reasonable endeavours to mitigate Liabilities which the Principal may become liable for in accordance with this Clause 10.

11. EXCLUSION AND LIMITATION OF THE AGENT'S LIABILITY

11.1 Unless otherwise expressly stated in this Agreement, the Agent shall have no liability to the Principal for:

- (a) any act or omission of the Sub-Agents;
- (b) the performance by the Sub-Agents of, or any failure by the Sub-Agents to perform, any of their obligations under the relevant Booking Confirmation,

and the Principal hereby agrees that upon the occurrence of any one or more of the causes or events listed in Clauses 11.1(a) and 11.1(b) it shall only have recourse against the Sub-Agents and not against the Agent.

11.2 Subject only to Clause 11.3 the following provisions shall apply in relation to any liability asserted against the Agent, (whether arising in tort (including negligence), breach of contract, breach of statutory duty or otherwise) under or in connection with this Agreement, performance or any failure or delay in performance of any of the Agent's obligation under this Agreement (Event):

- (a) the Agent shall have no liability for any loss of profit, loss of sales, loss of business, loss of goodwill or reputation, third party claims (in each case whether direct or indirect) or for any indirect or consequential loss; and
- (b) the liability of the Agent in respect of any Event shall be limited to a multiple of ten times the agency fee paid by the Principal.

11.3 Nothing in this Agreement shall exclude or restrict the Agent's liability for death or personal injury caused by its negligence; fraud or fraudulent misrepresentation; or any other act or omission for which liability may not be excluded or limited under law.

12. FORCE MAJEURE

Neither Party shall be liable to the other for any delay or non-performance of its obligations under the Agreement to the extent that such, loss or damage, delay or non-performance is due to any acts of God, flood, severe weather condition, epidemic, pandemic, compliance with any law, order, rule or regulation of any governmental or other national or supra-

national authority, acts of any governmental or super-national authority, war or national emergency, riots, civil commotion, acts of terrorism, computer viruses, Cyber Event, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that Party's workforce), port congestion, port disruption or any event, circumstance or cause whatsoever beyond its reasonable control.

HIMALAYA CLAUSE

13. It is hereby expressly agreed that no employee, agent or subcontractor of the Agent shall in any circumstances whatsoever be under any liability whatsoever to the Principal for any loss, damage, delay of whatsoever kind, arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course or in connection with his employment and every right exemption from liability, defence and immunity of whatsoever nature applicable to the Agent or to which the Agent is entitled hereunder, shall also be available and shall extend to protect every such employee, agent or subcontractor of the Agent acting as aforesaid and for the purpose of all the foregoing provisions the Agent 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 its servants or agents from time to time and all such persons shall to this extent be or be deemed to be parties to this Agreement.

14. ASSIGNMENT

Neither the Principal nor the Agent shall assign, novate, transfer or otherwise dispose of its rights and obligations under this Agreement without the prior written consent of the other.

15. WAIVER

The waiver by either Party of a breach or default of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

16. ANNOUNCEMENTS

The Parties to this Agreement agree that (save as necessitated by applicable statutory or regulatory requirements) neither of them will make any announcement to the public or any section thereof in connection with the existence of or operation of this Agreement without first obtaining the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) as to the text and method of such an announcement.

17. CONFIDENTIALITY

- 17.1 Each Party agrees to treat as secret and confidential and not at any time nor for any reason to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any information supplied by or obtained from the other Party, including but not limited to this Agreement, the arrangements between the Parties set out herein and information relating to the Services, Remuneration or Disbursements, customers, marketing, or promotions, business affairs, operating methods, administration systems or finances or any such information relating to a supplier, customer or client of the other Party save to the extent that such information is:-

(a) already in its possession other than as a result of a breach of an obligation of confidence;

(b) is or subsequently becomes in the public domain other than as a result of a breach

of an obligation of confidence;

- (c) required by law;
 - (d) disclosed to the professional advisers, auditors or bankers of each Party;
 - (e) disclosed after the other Party has given written approval; or
 - (f) used for the performance of each Party's obligations under this Agreement.
- 17.2 Each Party undertakes to take all such steps as shall from time to time be reasonable to ensure compliance with the provisions of this Clause by its employees, agents and any sub-contractors.
- 17.3 The restrictions in this Clause 16 shall continue to apply after the termination of this Agreement for a period of five (5) years.

18. VALIDITY

If any court or administrative body of competent jurisdiction shall find any provision of this Agreement to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt in good faith to substitute for any invalid or unenforceable provision, a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objective of the invalid or unenforceable provision.

19. ENTIRE AGREEMENT

19.1 This Agreement:

- (a) comprises the entire agreement between the Parties with respect to the provision of the Services and any representations or statements whether made orally or written elsewhere are hereby excluded provided always that this Clause 18 shall not exclude or limit any liability or any right which any Party may have in respect of pre-contractual statements made or given fraudulently; and
- (b) supersedes all previous agreements and arrangements between the Parties with respect to the provision of the Services.

20. RELIANCE

The Principal acknowledges that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking or understanding not fully reflected in the written terms of this Agreement and all conditions, warranties of other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

21. AMENDMENTS TO BE IN WRITING

Any modification, variation, amendment or addition to this Agreement must be in writing and signed by a duly authorized representative of each of the Parties.

22. COUNTERPARTS

This Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. This document or any counterpart may be executed by one or more Parties using wet ink or electronically using DocuSign or another electronic signature software agreed between the parties. The parties acknowledge that an electronic counterpart or version of this document will be a true and original version for the purposes of this transaction and that no other version will be provided unless otherwise agreed between the Parties in writing. The Parties agree to be bound by an electronic counterpart or version of this document which has been signed and exchanged in accordance with this Clause 22.

23. NO PARTNERSHIP

Save to the extent otherwise provided in this Agreement, neither Party shall act as the agent of the other and neither Party shall have the authority, or represent that it has the authority, to bind the other Party. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties.

24. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the law of the state in New South Wales, Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that state and all courts of appeal from those courts.

25. DISPUTE RESOLUTION

25.1 Subject to Clause 25.2, any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the AMTAC Arbitration Rules. The seat of the arbitration will be Sydney, Australia. The language of the arbitration will be English.

25.2 In cases where neither a claim nor any counterclaim exceeds to the sum of AUD 100,000.00, the parties agree that arbitration shall be conducted in accordance with the AMTAC Rocket Docket procedure current at the time when the arbitration proceedings are commenced.

26. NOTICES

Any notice to be given under this Agreement shall be in writing in English and served by hand or registered mail or, in the event expeditious notice is required, by fax to the registered office of the other Party. Notice shall be deemed served (i) if sent by hand, on the date and at the time of signature of the courier's delivery receipt, (ii) if sent by registered mail, 9:00 am on the fifth (5th) day after posting, or (iii) if sent by fax when the sender receives one or more transmission reports showing the whole of the notice to have been transmitted to the correct fax number.