





















payments or remuneration due under the relevant Contract as the case may be and as set out further below.

**5.2. The Fees shall be: -**

5.2.1. As specifically agreed verbally and electronically by e-mail in writing between the Parties; or

5.2.2. As contained in and evidenced by the commission clause or other agreement in the Contract concluded between the Client (or its Principal) and a third party; or

5.2.3. A combination of specific agreement and commission clause or agreement in the Contract as referred to in Clauses 5.2.1 and 5.2.2; or

5.2.4. If Clauses 5.2.1, 5.2.2 or 5.2.3 are not applicable, a reasonable fee based on the Parties' previous course of dealing (if any), or in the absence of any relevant course of dealing in accordance with market practice.

5.3. All Fees are exclusive of all tax and duties, which will, where required or applicable, be payable by the Client in addition to the Fees.

5.4. Unless otherwise expressly agreed between the Parties in writing:

5.4.1. Fees payable on voyage charters are due and payable as a percentage of sums due in respect of freight, which shall include all items that comprise the freight rate, and also of sums due as or in respect of deadfreight, detention monies, deviation costs and demurrage (whether or not so provided for in the charter commission clause).

5.4.2. Fees payable on time charters are due and payable on the hire payable under the charter, damages for non-payment of hire, if any, ballast bonus, if any, and any continuation or extension of the charter (whether or not so provided for in the charter commission clause).

5.4.3. Fees payable on ship sale and purchase transactions are due and payable on the gross purchase price or construction cost as the case may be including any extras and any mobilization, demobilization and commissioning costs (whether or not so provided for in the commission clause or other agreement in the Contract).

5.5. The Client shall pay Fees, calculated as set out above, to the Company in respect of the following (whether or not provided for in the commission clause or other agreement in the Contract):

5.5.1. Any subsequent renewal or extension of any Contract;

5.5.2. Any optional further contract arising out of or in connection with any such Contract; and

5.5.3. Any Contract where the Client or a party to the Contract for whom the Client was Representative nominates a person to perform the same in the Client's or in such party's stead.



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5.6 Where Services are provided to the Client, the Client will be deemed to have engaged the Company in relation to any subsequent Contract that arises in connection with those Services whether or not the Contract has been concluded through the Company and Fees shall be payable in full and in the same manner as if the Contract had been concluded through the Company.

5.7 If a Contract is cancelled, terminated or modified in such manner as would deprive the Company of its Fees, the Client shall be liable to make such payment in respect of Fees as will ensure that the Company is placed in no worse position than if such cancellation, termination or modification had not taken place.

5.8 Unless otherwise expressly agreed in writing by a director of the Company, the Client shall in all circumstances be responsible to the Company for the full and timely payment of the Fees.

5.9 If and to the extent that the Client is responsible for the payment of the Fees, payment shall be made by the Client in accordance with Clause 6 below.

5.10 If the Client's responsibility for the payment of the Charges is to be discharged (whether wholly or partly) by a third party under a commission clause or other agreement in the Contract (or otherwise), the Client will take all necessary steps to ensure the prompt payment of the Fees and in the event of any default or delay in payment by the third party the Client will be liable itself to pay the Fees in full to the Company on demand by the Company.

#### **Fees Payable for the Company's Ancillary Services**

5.11 If Ancillary Services are provided by the Company, the Client will be liable to pay such fee as has been specifically agreed, or in the absence of agreement, a reasonable fee based on the Parties' previous course of dealing (if any), or in the absence of any relevant course of dealing, in accordance with market practice.

#### ***Fees payable for the use of Third-Party Services***

5.12 The Client will be liable to pay such fee as has been agreed with the Third Party.

### **6. Payment of Fees**

6.1 Unless otherwise stated in the invoice, the Client shall pay each invoice submitted by the Company within thirty (30) days of each invoice date ("Due Date") without set-off (statutory or otherwise), deduction, counterclaim, abatement or discount and notwithstanding the existence of any claim or dispute including but not limited to any disputes in respect of off-hire, demurrage and breach of contract claims between the Client and any other party or under the Contract or otherwise.

6.2 Where payment of the Fees is not made on the Due Date and without prejudice to the Company's rights, the Company will be entitled to charge interest on the overdue amount at the annual rate of 3% per annum above the base rate from time to time of PNC Bank calculated on actual/360 day basis, compounded monthly and accrued from the Due Date until the date of payment whether before



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or after judgment (a part of a month being treated as a full month for the purpose of calculating such interest).

6.3 Time for payment shall be of the essence. Any failure to make payment in strict accordance with the terms of this Clause will entitle the Company to treat the Client as in breach of a condition of the Agreement and to terminate the Agreement and claim damages for loss of benefit of the Agreement.

6.4 Unless otherwise stated in the invoice, the Client shall pay any invoice submitted by the Third Party in accordance with the Third-Party payment terms directly to the Third Party.

## **7. Exclusion and Limitation of Liability on the part of the Company**

7.1 Notwithstanding anything contained elsewhere in these Terms, the Client accepts and agrees to the following provisions excluding and limiting the liability of the Company (and of any other company within the Group).

7.2 Neither the Company (nor any other company within the Group) shall be liable for:

7.2.1 Loss of profits, loss of anticipated savings, loss of use, loss of or interruption to business, loss of market reputation, loss of goodwill or loss of or errors in or in relation to documents and/or data;

7.2.2 Loss caused by any event or cause that the Company was unable to avoid and/or the consequences of which could not have been prevented by the exercise of reasonable diligence;

7.2.3 Loss which was not solely caused by the act or omission of the Company; and

7.2.4 Indirect or consequential loss.

7.3 The total liability of the Company and of the Group and any and all companies within it arising out of or in way in connection with the Services shall in no circumstances exceed the lower of the following aggregate figures:

7.3.1 The amount of Fees payable to the Company by the Client in respect of the Services in connection with which the claim arises or

7.3.2 The sum of USD 1,000,000.

7.4 The Client will save, indemnify, defend and hold harmless the Company and the Group and any and all companies within it from and against claims, loss, damage, costs (including legal costs), expenses and liabilities, (including without limitation liability to third parties) of any kind whatsoever and by whomsoever made in excess of the maximum liability provided for under Clause 7.3.

7.5 The exclusions from and limitation of liability set out and above together with the indemnity and hold harmless obligation set out above shall apply irrespective of cause and notwithstanding the breach of contract, negligence, breach of duty or other failure of any kind of the Company (or of any other company within the Group) or of the Company's (or other such company's) employees, agents or



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sub-contractors and shall apply whether the claim or liability is one in tort (including negligence), for breach of contract or under or in respect of any other cause of action in law or in equity.

7.6 The Client undertakes, warrants and represents to the Company that it has specifically considered the limits and exclusions of liability and the indemnity set out in this Clause (and in Clause 8 below) and that it considers them to be fair and reasonable and a commercial allocation of risk in relation to the consequences of having regard to the nature of the Services, the Fees paid for such Services by the Client and all other circumstances relating to the Services known to the Client and the Company at the time of entering into the Agreement.

7.7 However, nothing in this Clause will limit or exclude the liability of the Company (or of any other company within the Group) for fraud or fraudulent misrepresentation or for death or personal injury caused by the negligence of the Company or such other company.

#### **8. Obligation of the Client to Indemnify the Company against Claims, Liabilities etc.**

8.1 Notwithstanding anything contained elsewhere in these Terms, the Client accepts and agrees to the following provisions obliging it to bear responsibility for and to indemnify the Company (and any other company within the Group) in respect of the matters set out below.

8.2 The Client shall save, indemnify, defend and hold harmless the Company and its Group from and against all claims, loss, damage, costs (including legal costs), expenses and liabilities, (including without limitation liability to third parties) of any kind whatsoever arising out of or in connection with:

8.2.1 the Company or any company within the Group acting in consequence of the Client's instructions;

8.2.2 any breach by the Client of any obligation contained or undertaking or representation in these Terms or the negligence of the Client;

8.2.3 any duties, taxes, fines, penalties or charges levied by any authority in relation to the Services;

8.2.4 any Third-Party Services such as Pre-Purchase Inspections by Surveyors and other Vendors;

8.2.5 any liability assumed or incurred by the Company or any company within the Group to any other party as a result of carrying out the Client's instructions.

8.3 If the Client becomes aware of any claims or circumstance which might involve litigation or arbitration concerning the subject matter of the Contract, the Client shall immediately inform the Company.

#### **9. Termination of the Agreement**

9.1 Without prejudice to its other rights of termination in law and to claim damages, the Company shall be entitled to terminate the Agreement with immediate effect and without any liability whatsoever on its part by giving written notice to the Client where:



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- 9.1.1 The Client commits any material breach of any term of the Agreement.
- 9.1.2 The Client commits any breach whatsoever of the Contract which is capable of being remedied and where the Client fails to remedy the breach within five working (5) days of the receipt of a request in writing from the Company to do so;
- 9.1.3 The Client fails in any respect to make payment strictly in accordance with the provisions of Clause 6;
- 9.1.4 The Client has a change of Control;
- 9.1.5 The Client summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to a voluntary arrangement, is unable to pay its debts when they become due, has a receiver, manager or administrative receiver or a provisional liquidator or administrator appointed over any of its assets, or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator or has passed a resolution for winding up, or is subject to any notice or application in respect of an administrator or is subject to or undergoes any analogous act, process or proceedings under any applicable law; or
- 9.1.6 The Company in its absolute discretion believes that the provision of the Services or the performance of the Contract, as the case may be, may breach any applicable law.
- 9.2 Without prejudice to any other rights including rights as to damages, if the Agreement is terminated or cancelled whether under the provisions of this Clause or otherwise howsoever by the Company or by the Client:
  - 9.2.1 The Client will pay the Company all Fees earned and recoverable costs incurred in respect of the Services performed up to the date of the termination or cancellation (as applicable) of the Services.
  - 9.2.2 The Client will in addition pay any reasonable costs and/or expenses incurred by the Company as a result of the termination or cancellation (as applicable).
  - 9.2.3 Thereafter the Client will remain liable to pay to the Company any Fees which become due and payable after the date of termination of the Services in respect of any Contracts which were concluded on or before the date of termination and/or which arise after the date of termination of the Services following performance of the Services prior to the date of termination of the Services.

## **10. Force Majeure**

- 10.1 Neither Party shall be liable for any failure to perform or delay in performance of its obligations hereunder 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 strikes, lockouts, labor disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil



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commotion, war or civil war whether declared or not, terrorism, adverse weather or prolonged power failure or similar event (each, an "Event of Force Majeure").

10.2 Notwithstanding the above, an Event of Force Majeure shall not, under any circumstances, excuse any payment obligation of the Client.

10.3 In the event that the circumstances constituting Force Majeure continue for an uninterrupted period of ninety (90) days, either party may terminate the Agreement immediately by giving written notice to the other party.

## **11. Confidentiality**

11.1 Where the Company provides information (the "Disclosing Party") to the Client (the "Receiving Party") stated to be of a confidential basis ("Confidential Information") the Receiving Party shall hold that Confidential Information in confidence and shall not disclose it to any other party without prior permission from the Disclosing Party. This obligation shall not however extend to information which (i) was already or becomes known to the Receiving Party through other sources not subject to such an obligation of confidentiality (ii) is or becomes known to the market generally other than as a result of a breach of this obligation and (iii) the Receiving Party is obliged to disclose pursuant to an order of a court or other such authority.

11.2 The Receiving Party may disclose Confidential Information to those of its officers, employees, Affiliates and professional advisers (i) who reasonably need to receive the Confidential Information to enable the Receiving Party to perform the Services and (ii) who have been informed by the Receiving Party of the confidential nature of the Confidential Information.

11.3 The Receiving Party may disclose Confidential Information to those of its officers, employees and Affiliates who reasonably need to receive the Confidential Information to market the Company's and its Affiliates' services to the Disclosing Party or its Affiliates.

11.4 The Client consents to the Company including the Client's name, trademark and/or logo on the Company's website and other promotional materials for marketing purposes.

11.5 In all cases the obligation of confidentiality shall be deemed to end one (1) year after the end of performance of the Contract in question or in the absence of a concluded Contract one year from the end of the Negotiations.

11.6 The Parties shall enter into a non-disclosure agreement ("**NDA**") regarding the disclosure of Confidential Information, the terms and conditions of the **NDA** shall apply regarding such disclosure to the exclusion of this Clause.

11.7 In case of high-value assets (above US \$10m mark) the Parties shall enter into a non-circumvention agreement ("**NCA**") regarding the disclosure of Confidential Information, the terms and conditions of the **NCA** shall apply regarding such disclosure the exclusion of this Clause in due course.



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## **12. Data Protection**

12.1 In this clause 12:

12.1.1 "*Agreed Purpose*" means providing, receiving or requesting Services under this Agreement;

12.1.2 "*Data Breach*" means any unauthorized or unlawful access, disclosure, alteration and/or destruction or any misappropriation in any case by a third party of or in relation to Supplied Personal Data;

12.1.3 "*Data Protection Legislation*" as it relates to this Agreement means (i) the General Data Protection Regulation (EU/2016/679) ("GDPR") and any relevant subordinate legislation in the UK unless and until the GDPR is no longer directly applicable in the UK, and then (ii) any successor legislation to the Data Protection Act 1998 in force from time to time. "Controller", "Data Subject" and "Personal Data" have the meanings ascribed in the Data Protection Legislation;

12.1.4 "*Permitted Recipients*" means the Parties to this Agreement, their employees, subcontractors and any third parties engaged in connection with the Services; and

12.1.5 "*Supplied Personal Data*" in relation to a Data Subject means his or her email address, phone number and any other Person Data shared in the performance of the Agreement.

12.2 Each party acknowledges that it may disclose Supplied Personal Data that it has collected to the other party and accordingly each party shall comply with its obligations as a Controller under the Data Protection Legislation. The parties also acknowledge that it is not their intention to be considered joint Controllers in relation to any Personal Data. Each party shall also: -

12.2.1 as provider, ensure (by means of appropriate notices, consents or otherwise) that the Supplied Personal Data it provides is lawfully transferred to and for use by the other party;

12.2.2 as receiver of Supplied Personal Data, process it only for the Agreed Purpose and not disclose or allow access to it to anyone other than the Permitted Recipients;

12.2.3 ensure that all Permitted Recipients are subject to appropriate written obligations (including as to confidentiality) concerning the Supplied Personal Data;

12.2.4 comply with the rights of Data Subjects whose Personal Data is processed under this Agreement;

12.2.5 ensure that it has in place appropriate technical and organizational measures to protect the security, confidentiality and integrity of the Supplied Personal Data and notify the other party without undue delay on becoming aware of a Data Breach; and

12.2.6 not transfer any Personal Data received from the other outside the EEA except in conformity with the Data Protection Legislation.



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12.3 Each Party will provide reasonable assistance to the other in complying with the Data Protection Legislation and accordingly will:

12.3.1 consult with the other on any notices to Data Subjects concerning Supplied Personal Data;

12.3.2 promptly inform the other on receipt of a Data Subject access or other request;

12.3.3 not disclose or release any Supplied Personal Data in response to a Data Subject access request without first consulting the other party wherever possible;

12.3.4 assist the other party at that other's cost and request in relation to security, breach notifications and consultations with supervisory authorities or regulators; and

12.3.5 maintain records and information reasonably necessary to show compliance with this clause 12.

12.4. The Company may record telephone conversations at any time without prior notice to the Client for record-keeping purposes so as to resolve complaints and disputes or to improve its service or training standards.

12.3.6 The Company is obliged on behalf of Ship Owners and/or Sellers to conduct with due diligence vetting/critical risk analysis of all Client's and reserves the rights upon discretion to not carry out Client's queries in relation to Supplied Personal Data (indicated in 12.1.5 above).

### **13. Intellectual Property Rights**

13.1 All Intellectual Property Rights in or arising out of the Services belong to the Company and/or other companies within the Group and/or its third-party licensors.

13.2 For the purpose of these Terms, Intellectual Property Rights means:

13.2.1 any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, internet domain names, moral rights, rights in databases, data, source codes, reports, drawings, specifications, know how, business methods, trade secrets, circuit topography rights, whether registered or unregistered, rights in the nature of unfair competition, confidentiality and the right to sue for passing off;

13.2.2 applications for registration, and the right to apply for registration or renewal, for any of these rights; and

13.2.3 all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world, whether now known or subsequently created.

### **14. Notices**

14.1 Any notice to be given hereunder or otherwise in relation to the Services shall be in writing and shall be deemed to have been duly given if sent or delivered to the Party concerned at such address





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as the Party may from time to time notify in writing or to the correct facsimile number or electronic mail address (as notified by the receiving Party) and shall be deemed to have been served, if sent by first class post, 48 hours after posting and in the case of a facsimile transmission on the following day or in case of electronic mail on the same date.

#### **15. Time Bar in Respect of Claims by the Client**

15.1 Any claim against the Company or any Group company or their employees, servants and agents must be made in writing and notified to the Company within fourteen (14) days of the date on which the Client became aware or ought reasonably to have become aware of the circumstances giving rise to the claim and any claim not so notified shall be deemed waived and absolutely time barred and the Company discharged from all liability in respect of it.

15.2 The Company and any Group company and their employees, servants and agents shall in any event be discharged of all liability for any claim arising out of or in connection with the provision of the Services unless arbitration proceedings are commenced against the Company in accordance with Clause 17.2 within one (1) year of the end of performance of the Contract or in the absence of a concluded Contract one year from the end of the Negotiations. If arbitration proceedings are not commenced in respect of a claim before the expiry of this period, such claim shall be waived and absolutely time barred.

#### **16. Miscellaneous**

16.1 If any term of the Agreement including but not limited to any Clause of these Terms is held by any competent authority to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of the other clauses in this Agreement and Terms shall not be affected.

16.2 The Company shall provide the Services to the Client as an independent contractor and not as the Client's employee. Nothing in these Conditions shall constitute, or be deemed to constitute, a partnership or joint venture between the Parties for any purpose.

16.3 The rights and remedies of the Company under the Agreement shall not be diminished, waived, or extinguished by the granting of any indulgence, forbearance or extension of time by the Company in asserting any such rights or remedies.

16.4 A person, company or other legal entity that is not a party to the Agreement shall neither have nor acquire, whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, any rights in relation to the Agreement.

16.5 The parties hereto may rescind or vary the Agreement, whether in whole or in part, without the consent of any third party.

16.6 The Client agrees to be bound by these Terms to the exclusion of all warranties, conditions and other terms, whether express or implied, statutory or otherwise. The Company and its Group shall



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be entitled to the benefit of such implied terms as might ordinarily be held to apply to the Agreement for the protection of the Company.

16.7 The Company has a general lien on all documents in its possession or control for all sums due from the Client to the Company whether arising out of the Contract, this Agreement or otherwise.

16.8 Nothing in these Terms shall prevent the Company from enforcing a clause conferring a benefit on them as a third party in the terms of a contract between the Client and a third party.

## **17. Governing Law and Dispute Resolution**

17.1 The Agreement between the Company and the Client and any dispute arising out of or in connection with the Agreement or these Terms or the Services or Third-Party Services shall be governed by and construed in accordance with the law of England.

17.2 Subject to Clauses 17.3 and 17.4 below, any dispute arising out of or in connection with the Agreement or these Terms or the Services or Third-Party Services will be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

17.2.1 The arbitration shall be conducted in accordance with the London Maritime Arbitrators' (LMAA) Terms current at the time when the arbitration is commenced.

17.2.2 The reference shall be to three arbitrators who shall be or shall have been English barristers and who are members of the LMAA, one to be appointed by each Party and the third by the two so appointed. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment to the other Party requiring the other party to appoint its arbitrator within fourteen (14) days of that notice and stating that it shall appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified.

17.2.3 If the other Party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the Party referring the dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be as binding as if he had been appointed by agreement.

17.2.4 In cases where neither the claim nor any counterclaim exceeds the sum of US \$150,000 (or such other sum as the parties may agree), any dispute arising out of or in connection with the Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 and the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.



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17.3 Notwithstanding Clause 17.2, for the exclusive benefit of the Company, the Client agrees that the Company shall have the exclusive right, in its option, to submit any dispute or disputes arising out of or in connection with the Agreement or these Terms or the Services or Third-Party Services to the courts of England, who shall then have exclusive jurisdiction to settle any such dispute or disputes.

17.4 The Client shall at all times be bound to refer all disputes arising out of or in connection with the Agreement or these Terms or the Services or Third-Party Services to arbitration in accordance with Clause 17.2 and will not be permitted to bring proceedings in any other court or tribunal other than by way of counterclaim before the courts of England in respect of proceedings brought by the Company in accordance with Clause 17.3