

## VaMa Maritime Ventures Limited, Hong Kong

### **General Terms and Conditions for Provision of Shipbroking Services**

#### **General Application:**

aa) These General Terms and Conditions ("Terms") shall be effective from 10<sup>th</sup> May 2020 and from that date replace and supersede any previous versions of VaMa Maritime Ventures Limited, Hong Kong, Terms and Conditions. These shall be applicable to and have inclusive application to any and all exclusive agreements signed previously with individual parties/clients unless otherwise agreed to.

bb) These Terms represent the sole terms upon which the Company provides Services to the Client and will exclusively govern the Agreement entered into between the Company and the Client as a result of the Client's acceptance of Services provided to it by the Company whether such Services are provided at the Client's request or in response to the Company's offer of Services to the Client.

cc) The Client confirms that it accepts these Terms on this basis by receiving the Services and, if a Representative, warrants and represents to the Company that it has the Principal's authority to accept these terms on the part of the Principal on the same basis.

dd) These Conditions shall automatically apply to all dealings between the Client and the Broker and will be effective whenever the Client requests the Broker to provide Services or the Client responds to the Broker in relation to the provision of Services in writing or verbal or by phone or using various other digital media platforms.

ee) The words "Company", "Client", "Principal", "Representative" "Services" and Agreement" etc. used in this agreement are defined in Clause 1 below.

ff) Attention is drawn specifically to the exclusion and limitation of the Broker's / Company's liability both in respect of the Services provided and generally as are set out in Clauses below.

#### **1. Definitions and Interpretation of these Terms.**

1.1 In these Terms the following definitions apply:

"Agreement" - means the contract pursuant to which the Company agrees to provide Services to the Client in accordance with these Terms, whether such contract is verbal or by phone or in writing (including but not limited to through use of other digital media platforms like Wechat/WhatsApp/SMS/Email/Fax etc) including any contract between the Company and the Client which is contained in or evidenced by the terms of a separate contract between the Client and a third party.

"Broker" - the company "VaMa Maritime Ventures Limited, Hong Kong" which shall have been requested to provide Services by the Client or to which the Client shall have responded in relation to the provision of Services.

"Broker Group" – the company "VaMa Maritime Ventures Limited, Hong Kong" and its associated and subsidiary companies, if any.

"Broking Services" - the services rendered by or on behalf of the Broker as a shipbroker for the conclusion of contracts (including for the sale, purchase, construction or charter) in respect of a Vessel.

"Company" - means the company which is a member of the Group which has been requested by the Client to provide Services or to which the Client has responded in relation to the provision of Services and shall unless the context requires otherwise include its officers, employees and agents; for the avoidance of doubt, "VaMa Maritime Ventures Limited, Hong Kong" acts solely as a company and does not trade.

"Client" - the party requesting the Services from the Broker or responding to the Broker in relation to the provision of the Services and shall unless the context requires otherwise include its officers, employees and agents. Where such party is acting as a Representative, references to the Client shall include the Principal.

"Parties" - means together, the Company and the Client (each, a "Party").

"Principal" - A party to a Fixture including the owner, seller, buyer, builder or charterer of a ship and any party guaranteeing the obligations of such a party. Principal may include You.

"Representative" - A person or company, including but not limited to a ship manager, chartering department, shipbroker or other agent, who is not a Principal but is involved in negotiations and conclusion of the contract as an agent on behalf of a Principal.

"Affiliate" - means a company or other legal entity which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another entity; "control" (including the terms "controls", "controlled by" and "under common control with") means the possession, directly or indirectly, of more than 50% of the equity securities or equity interests in such entity or the power to direct or cause the direction of the management and policies of such entity (whether through ownership of securities, partnership interest or other ownership interests, by contract, or otherwise).

"You" - The party requesting the Broker's services or responding to the Broker in relation to the provision of the Services. Where such party is acting as a Representative reference to You will additionally include the Principal.

"Vessel" - means any type of Ship or floating object or structure or equipment used or intended to be used for any purpose on, in or over water (whether ocean or sea going, inland waterway or coastal) including but not limited to Rigs, Jack ups, Submersibles, Support Vessels, yachts and Barges (self-propelled or otherwise), Floating docks, FPSU, FSRU or similar.

"Fixture or Contract" - A contract or contracts including but not limited to for the sale & purchase (including second-hand, new-building, recycling and demolition), construction, towage or charter (including voyage, time, bareboat and contracts of affreightment) of a Ship together with negotiations to enter such contracts.

“Negotiations” - Exchanges, whether verbal or in writing, including via an electronic platform, conducted by or with the Company in relation to concluding a Fixture.

“Post Fixture Services” - Assistance with communications, operational matters and claims arising from the performance of a Fixture.

“Services” - The Services referred to in clauses of these terms and conditions together, means the Broking Services, Post Fixture Services and Ancillary Services and also the arranging of Third Party Services.

"Ancillary/Other Services" - means the ancillary services set out in Clauses below. Any services other than Broking Services and Post Fixture Services which are agreed in writing to be provided by or on behalf of the Broker (including inter alia the provision of market research and studies, specific analyses and market recommendations, offer analyses, Vessel valuations, Vessel registrations, studies of fleet structures and feasibility studies).

"Terms" mean the terms and conditions set out in this document. References to Clauses are references to clauses in these Terms.

- 1.2 The above definitions apply whether the defined words appear in singular or plural form.
- 1.3 Any reference to any English statute in these Conditions shall be construed as referring to the provision as amended, re-enacted or extended from time to time and shall be deemed to include a reference to any equivalent provision of the law of any country in which the Client has its principal place of business or a branch through which it has requested performance of the Services by the Broker.
- 1.4 Headings are for convenience and ease of reference only and shall not affect the interpretation of the Contract.
- 1.5 Words importing any particular gender shall include all genders.
- 1.6 References to persons includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 References to the word "include" or "including" are to be construed without limitation.
- 1.8 References to any document referred to herein shall be references to such document as amended, varied, supplemented, modified or novated from time to time.
- 1.9 References to a party includes its successors and permitted assigns.

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## **2. Services covered by these terms and clauses.**

- 2.1 The Broker may, at its sole discretion, provide the Services to the Client by or together with another member of the Broker Group. In such circumstances, the Client agrees that such other member of the Broker Group shall have the benefit and protection of these Conditions to the same extent as the Broker. Where the Client is a Representative, the Principal for which the Representative is acting shall have the same rights and be bound by the same obligations of these Conditions to

- the same extent as the Representative.
- 2.2 The Broker will act as a shipbroker in relation to Fixtures. The role of the Broker is to introduce Principals and to facilitate the conclusion of Fixtures between Principals, and in particular, where so agreed, to act as an agent for and on behalf and in the interest of the Client for the purpose of permitting the conclusion of Fixtures between the Client and another Principal in accordance with the Client's instructions. The Broker will assist the Principals and/or their Representatives as a channel for Negotiations.
  - 2.3 Where the Broker agrees to provide Broking Services as an agent for and on behalf and in the interest of a Client, the Broker shall not be obliged to act in a manner contrary to or inconsistent or incompatible with its professional obligations or code of conduct as a maritime shipbroker, and the Client expressly consents to the Broker not complying with its instructions to the extent that this is reasonably necessary for the purpose of permitting the Broker to comply fully and completely with its professional obligations or code of conduct as a maritime shipbroker.
  - 2.4 Unless specifically agreed in writing the Broker will act solely as an intermediary in relation to Fixtures and will not enter into any Fixtures, arising from the Services, as a Principal, nor as an agent for an undisclosed Client. The Broker is not responsible for the performance or non-performance of Fixtures or Principals.
  - 2.5 Unless otherwise agreed the Services are provided on Fixture by Fixture basis.
  - 2.6 The Broker will, where so agreed, provide such Post Fixture Services as may be agreed in writing between the Broker and the Client.
  - 2.7 The Broker may also agree to perform Other Services. Such Other Services may be subject to specific provisions (such as the wording of a valuation certificate) in addition to these Conditions. In the event of, and only to the extent of, a conflict between these Conditions and the specific provisions, the latter will prevail. Otherwise these terms and conditions, including those as to limitation of liability, will apply.
  - 2.8 The Company/Broker provides Services to the Client when engaged to do so by the Client whether in response to a request from the Client to the Company for Services or to the offer by the Company to the Client of Services. The Company's provision of Services is subject exclusively to these Terms which the Client acknowledges and accepts by its receipt of any Services of the Company.
  - 2.9 It is the Client's sole responsibility to decide (a) whether to enter a Contract with the proposed counterparty and if so on what terms; (b) to assess and ensure for itself the validity, binding nature or enforceability of a Contract or any relevant security; (c) to seek or obtain security in connection to the Contract which it may consider to be necessary and (d) the status or standing, creditworthiness, ability to perform and good faith of the proposed counterparty. The Company takes no responsibility for these matters.
  - 2.10 The Company shall provide other services supplementary or ancillary to Broking or Post-Contract Services as may be specifically agreed between the Parties including but not limited to market research and the preparation and making of reports, studies, specific analyses and Market Reports.

- 2.11 Unless expressly agreed to the contrary between the Parties in writing at the time of the Client's engagement of the Company to provide these other or ancillary Services, the Company does not provide these Services to the Client on an exclusive or sole client basis.
- 2.12 In the event that a Client requests the Company to use the services of a third party in any way in relation to the Company's provision of Services ("Third Party Services"), the Company will contract with such third party solely as agent for the Client

### **3. The Obligations and Responsibilities of the Company/Broker.**

- 3.1 The Broker will perform the Services with the reasonable skill, care and diligence expected of a professional shipbroker, in the same manner as if the Broker was acting for its own account, exercising diligence to seek to comply with any applicable laws, rules and regulations including those in relation to money laundering, bribery and corruption.
- 3.2 In dealing with others the Broker will stay within the authority given by the Client and exercise diligence to avoid misrepresentation.
- 3.3 During Negotiations the Broker shall pass on offers, counteroffers and other such communications accurately and with reasonable promptness. This obligation applies to passing communications both to and from the Client.
- 3.4 It is understood that the Broker may be dealing with Representatives or other intermediaries rather than directly with a Principal. In such cases the Broker is dealing with such Representatives or other intermediaries in good faith as to the authority they possess but the Broker does not give a warranty as to that authority.
- 3.5 If the Broker is acting directly for a Principal then the Broker may warrant that it has the authority of that Principal and, where so acting for the Client, the Client hereby expressly authorises the Broker to warrant that it has the authority of the Client as Principal.
- 3.6 The Broker will, where requested, provide information in respect of a Principal, including information regarding corporate structures or financial standing, but it is understood and agreed that where it does so, it provides such information in good faith but without guarantee. It is the obligation of the Principal to decide whether to enter into a Fixture with the proposed counterparty and on what terms and, where necessary, to verify by independent means the information so provided by the Broker.
- 3.7 Unless otherwise agreed in writing the Services are not provided on an exclusive basis and it is understood that the Broker may provide services to other parties, including in relation to the same or other Fixtures/Services. In the event the Broker is dealing directly with two or more Principals in relation to the same Fixture the Broker's duties will be to pass on offers, counteroffers and other such communications accurately and with reasonable promptness as authorised by each Principal in turn.
- 3.8 The Client warrants and represents to the Company that it does not and will not rely upon any such information as warranted, guaranteed or represented by the Company as being accurate or otherwise endorsed by the Company as to its content.

- 3.9 The Client warrants and represents to the Company that it accepts that, notwithstanding the Services provided by the Company, it is at all times its sole obligation and responsibility to satisfy itself of any counterparty risk and decide whether to enter into a Contract with the proposed counterparty and on what terms.
- 3.10 Where the Company at the Client's request contracts with a third party for Third Party Services, it will do so solely as agent for the Client and the following provisions will apply in place of any other provision in these Terms.
- 3.11 The Client acknowledges and agrees (a) that the Third Party Services are provided without any obligation of any kind upon the Company in relation to them or to any aspect whatsoever of the performance or non-performance by the third party of such Third Party Services or the negligence or any other fault on the part of the third party and (b) that the entire risk as to the provision, quality, timeliness, performance and non-performance of the Third Party Services will be borne solely by the Client.
- 3.12 *Market Reports*
- 3.12.1 Any Market Reports published by the Company or the Group, which may be provided to the Client either in connection with the Services or otherwise are provided for general information and convenience only and without any statement, representation or warranty as to their accuracy. Nothing in the fact of their being provided or in their content constitutes an offer, solicitation, advice or a recommendation of any kind, including without limitation, with respect to the Contract or for any other purposes whatsoever.
- 3.12.2 The Client acknowledges, agrees and represents to the Company that it will not rely on the Market Reports in making any decision, financial or otherwise, and that any use by the Client of the Market Reports for any purpose shall be at Client's sole risk.

#### **4. Confidentiality.**

Where one of the Client or the Broker (the "**Receiving Party**") is given information stated by the other party (the "**Other Party**") to be on a confidential basis or it is expressly agreed that a Fixture is confidential (in either case "**Confidential Information**") the Receiving Party will hold that Confidential Information in confidence and will not disclose it to any other person without prior permission from the Other Party. This obligation will 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 or (iii) which the Receiving Party is obliged to disclose pursuant to an order of a court or other such authority. In all cases such obligation of confidentiality shall be deemed to end one (1) year after the end of performance of the Fixture/Services in question or in the absence of a concluded Fixture one (1) year from the end of the Negotiations. This clause 4 shall survive termination of the Contract.

## 5. **Obligations to the Company/broker.**

- 5.1. The Client will:
  - 5.1.1. Comply with these Terms in so far as they are applicable to it;
  - 5.1.2. Observe good faith at all times in its dealings with the Company; and
  - 5.1.3. Comply with any applicable law or laws governing the Services or their subject-matter.
- 5.2 If the Client is a Principal, it warrants that it has full legal power to enter into the Fixture brought about by the Services. If the Client is acting as a Representative, the Client warrants that it has the Principal's authority (i) to accept these Conditions on the Principal's behalf and (ii) to make all offers, counteroffers and representations made during Negotiations and (iii) to agree a Fixture on the Principal's behalf.
- 5.3 Where Broking Services are provided, the Client is deemed to have engaged the Broker in relation to any Fixture that arises in connection with those Broking Services whether or not it is concluded via the Broker.
- 5.4 The Client will provide the Broker with all information and instructions necessary for the performance of the Services. Where actions need to be taken by a certain time (such as reply times during Negotiations) the Client will ensure that all necessary responses, information and instructions are provided by it to the Broker, within working hours in the location in which the Broker is located, in good and sufficient time to permit the Broker to forward such responses, information and instructions, and/or to take such action as may be required, prior to the relevant time limit in the time zone in which the response, information, instruction or action (as relevant) is required to be received or undertaken.
- 5.5 If the Broker has asked the Client to use specific e-mail addresses for messages then the Client undertakes to use those e-mail addresses. In the event that the Client does not receive a prompt acknowledgement of receipt of time sensitive messages from the Broker, the Client undertakes to contact the Broker to confirm that such messages have been received by the Broker. The Broker will have no responsibility for a failure to take action in relation to information or instructions contained in a message unless it is sent to the correct address and has been acknowledged as received by the Broker.
- 5.6 The Client will take care to avoid misrepresentations occurring in Negotiations. The Client will carefully review all messages sent to, or copied to, the Client and promptly advise the Broker of any errors or misrepresentations. The Broker is not responsible for the consequences of a failure by the Client to review messages.
- 5.7 The Client warrants that neither the Services requested nor the Fixture are unlawful and are not of a nature as could render the provision of the Services by the Broker or the conclusion or performance of the Fixture in breach of any relevant law, including (i) sanctions imposed by the United Nations, European Union, The United States of America or any national government having authority over it, the Broker Group, a Representative or a Principal (ii) laws relating to money laundering, bribery and corruption. In the event that, at any time after the request for Services to be provided by the Broker has been made by the Client or the Fixture has been concluded, the Client becomes aware that the Services or the Fixture may be

unlawful or that the provision of the Services by the Broker or the performance of the Fixture may be in breach of any such relevant law, the Client undertakes to inform the Broker thereof promptly. In such event, or in the event that the Broker in its absolute discretion believes that the Services or the provision of the Services (or the Fixture or the performance of the Fixture) may infringe any such law, the Broker may by written notice terminate the provision of the Services immediately. In the event of such termination the Broker shall have no liability arising from such termination whatsoever and howsoever arising.

- 5.8 In the event that there is any change to any information or instructions provided to the Company and/or at any time after the request for Services has been made by the Client or a Contract has been concluded or the Client becomes aware that the provision of the Services or the performance of the Contract is or has become or may be in breach of any such relevant law, the Client will notify the Company of that change immediately. The Client undertakes and represents that the Company shall be entitled to accept, rely upon and act in accordance with any instructions and information received from the Client (whether verbal, written, or otherwise) in relation to any of the Services without enquiry as to the identity or authority of the person(s) giving or purporting to give such instructions and information.

## **6. Broker's Remuneration.**

### *Fees Payable for the Company's Broking and Post-Contract Services*

- 6.1 In relation to Fixtures, the Broker's remuneration will (unless otherwise agreed) be in the form of a fee calculated on the basis of an agreed percentage of the freight, hire, purchase price or other payments or remuneration due under the relevant Contract as the case may be. The level of the fee payable and the party responsible for payment will be specifically agreed verbally or in writing between the Parties or contained in and evidenced by the commission clause or other agreement in the Contract concluded between the broker and its Client (or its Principal) and/or a third party or combination of specific agreement and commission clause or agreement in the Contract or if these are not available then 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.
- 6.2 If the fee payable to the Broker is recorded in a clause in the contract or document evidencing the Fixture then the fee will be payable in accordance with that clause. The Broker will be deemed to have acted in reliance on the insertion of such clause and assented to the terms of the clause governing its right to fees.
- 6.3 If the Client is the party agreed to be responsible for paying the fee, it undertakes to the Broker that it shall make the payment or payments. If the Client is not the party responsible for making payment of the fee, the Client expressly agrees to procure the payment of such fee by any relevant Principal and further to provide all necessary assistance and co-operation to the Broker in respect of its attempts to obtain the payment of such fee by the relevant Principal.
- 6.4 Nothing in these terms will prevent, limit or restrict the Broker from enforcing a clause in respect of its fees or other clause conferring a benefit on it as a third

party in accordance with the terms of the Fixture.

- 6.5 In the absence of any specific provisions to the contrary contained in the Fixture, any fee payable on voyage charters is due and payable as a percentage of sums due for deadfreight, detention monies, deviation costs and demurrage (whether or not so provided for in the charter commission clause) as well as on freight. Freight shall include all items that comprise the freight rate. On time charters, any fee will be due and payable on the hire payable under the charter throughout its duration, or damages for non-payment of hire, if any, including any period of continuation or extension of the charter (whether or not so provided for in the charter commission clause). 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 mobilisation, demobilisation and commissioning costs (whether or not so provided for in the commission clause or other agreement in the Contract). Fees due and payable (whether or not provided for in the commission clause or other agreement in the Contract) as a percentage of sums which are, as relevant, received or payable by the Client are payable as and when such sums are, as relevant, received or paid, exclusive of any right of set-off, and the Client will not withhold payment pending resolution of unconnected matters. Fees are exclusive of all taxes & duties, which will, where required, be payable in addition.
- 6.6 Post Fixture Services and Other Services will be subject to the agreement of a specific fee between the Client and the Broker. The Broker will invoice the Client at the completion of the Services or at such other times and in such stages as may have been agreed. The Client will pay any fee so agreed within 30 days of the date of the invoice.
- 6.7 If the amount of any fee and/or the manner of its payment is not specifically agreed a reasonable fee will be payable in accordance with market practice. 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. In case of use of Third party services, the Client will be liable to pay such fee as has been agreed with the Third Party.
- 6.8 Where payment of the Broker's remuneration is not made on the due date, the Broker, at its sole discretion, reserves the right to charge interest on the overdue amount at the annual rate of [three per cent (3%)] per annum above the current HIBOR base rate (in HKD convertible to USD) accruing on a daily basis due date until the date of actual payment of the overdue amount, compounding quarterly.
- 6.9 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. 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.

- 6.10 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 6.11 below.
- 6.11 Unless otherwise agreed in writing, 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. 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.
- 6.12 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

**7. Exclusion and Limitation of Liability** – This clause limits the Company's/broker's liability to the Client. 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).

- 7.1 The Broker and the Client agree that the limits and exclusions of liability found in this clause 7 are fair and reasonable having regard of the nature of the Services, the fees paid for the Services by the Client and all other circumstances known to the Client and the Broker relating to the Services at the time these Conditions are agreed.
- 7.2 Nothing in these terms and conditions limits the liability of the Broker for (i) fraud or fraudulent misrepresentation (ii) death or personal injury caused by the gross negligence of the Broker.
- 7.3 The Broker will, subject to the provisions of this clause 7, be liable to the Client for damage directly caused by the failure to perform the Services with the reasonable skill and care expected of a professional shipbroker provided always that the Broker will **not** be liable for:
- 7.3.1 loss of profits, loss of or interruption to business, loss of reputation and/or goodwill, loss of data, loss of use or indirect or consequential losses.
  - 7.3.2 damage caused by any event or cause that the Broker was unable to avoid and/or the consequences of which could not have been prevented by the exercise by the Broker of reasonable diligence.
  - 7.3.3 damage which was not solely caused by the act or omission of the Broker or which would have occurred in any event.
- 7.4 The total liability of the Broker arising from or in connection with the Services shall in no circumstances exceed the lower of the following aggregate figures (i) the

amount of fees in fact paid to the Broker by the Client in respect of the particular Services (or, as relevant, the particular Fixture) in connection with which the claim arises or (ii) the sum of USD 50,000 (Fifty Thousand United States dollars).

- 7.5 The exclusions and/or limitations set out in this clause shall apply whether the claim against the Broker is brought in contract, tort (including for negligence) breach of statutory duty or for any other cause whatsoever. 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 7.4.
- 7.6 Any claim against the Broker must be made in writing and notified to the Broker within 14 days of the date on which the Client became aware or ought to have become aware of the circumstances giving rise to the claim and any claim not so notified shall be deemed waived and absolutely barred. The Broker shall in any event be discharged of all liability arising out of the Services, and any claim in respect thereof shall be extinguished, unless suit is brought and served upon the Broker in accordance with relevant clause below within one (1) year of the end of performance of the Services or, if later, within one (1) year of the end of performance of the Fixture (or in the absence of a concluded Fixture within one (1) year from the end of the Negotiations).

## **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;
  - 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:

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 No party shall be liable to another party under this Contract 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 hindered by the other's acts or omissions or for an event reasonably beyond the control of that party including wars whether or not declared, threat or preparation for war, armed conflict, imposition of sanctions, embargo,

terrorist attacks, civil war, civil disturbances, riots, public disorder, acts of God including fire, flood, earthquake, windstorm or other natural disaster, epidemic or pandemic, any labour dispute including strike, lockout or industrial action (whether relating to its own employees or others), abnormally adverse weather conditions, natural disasters, destruction of machines, equipment or factories ("**Force Majeure**").

- 10.2 Notwithstanding clause 10.1, an event of Force Majeure shall not, under any circumstances, excuse a payment obligation.
- 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 Contract immediately by giving written notice to the other party.
- 10.4 **Notices - Any notice or other communication given to a party under or in connection with this Contract shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at such address 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 parties) and shall be deemed to have been served :**
- if sent by courier or by recorded delivery letter, upon the date of presentation of the notice at the recipient's address
  - if sent by ordinary post, 48 hours after posting, and
  - in the case of a facsimile or electronic transmission, on the following day or in the case of electronic mail on the same day, if receipt is acknowledged.

## **11. Miscellaneous.**

- 11.1 All intellectual property rights or Data Protection terms and conditions in or arising out of the Contract belong to the Broker; reference is made in a separately documented text on the website.
- 11.2 The Broker has a general lien on all documents in its possession or control for all sums due from the Client to the Broker whether arising out of the Fixture or the Services or otherwise. 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. 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.
- 11.3 If a court finds that any provision of these terms and conditions is invalid, illegal or unenforceable, that provision shall, to the minimum extent required, be deemed deleted and the validity, legality and enforceability of the remainder of that and all other provisions of these terms and conditions shall not be affected.
- 11.4 By accepting the Services, the Client agrees to be bound by these Conditions to the exclusion of all other representations, statements, conditions, terms and warranties, whether express or implied, statutory or otherwise except any implied by law or statute which cannot be excluded by law. 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.

**12. Jurisdiction and Law.**

This Contract and any dispute or claim arising out of or in connection with it including its subject matter or formation (including any non-contractual obligations dispute or claims) shall be governed by and construed in accordance with the English law.

All disputes arising out of or in connection with this Contract shall, after an attempt to resolve such disputes amicably shall have been made in good faith, be finally settled by arbitration to be held in Hong Kong SAR in accordance with the terms of the relevant Arbitration Act.

Any arbitration shall be conducted in accordance with the London Maritime Arbitrators' Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. In cases where the value of the claim does not exceed the sum of USD 100,000 (or such other sum as the Parties may otherwise agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time the arbitration is commenced.

The arbitral tribunal shall, unless the parties agree to the nomination of a sole arbitrator and/or to the arbitration being conducted in accordance with the LMAA Small Claims Procedure], be constituted of three arbitrators, one to be appointed by each of the Client and the Broker and the third by the two so appointed. In the event that the Client is a Representative, it is agreed that the Representative and any Principal on behalf of which it is acting shall, together, constitute the Client for the purposes of the appointment procedure.

\*\*\*\*\*THE END\*\*\*\*\*