

BEN LINE AGENCIES
PORT AGENCY GENERAL TERMS

1. GENERAL

1.1 These general terms of port agency (the "Terms") govern the appointment of the Agent by the registered owner, disponent owner, manager, managing Agent, master or other person in charge of the vessel, including any charterer appointing the Agent on behalf of the vessel owner under the terms of a charter party (the "Principal"); and the "Agent" means that affiliate of Ben Line Agencies Limited that is operating at the port at which the Principal's vessel is berthed.

1.2 The Agent and Principal shall agree the commercial terms of the Agent's appointment and record this in writing, including confirmation by electronic mail, facsimile or other forms of communication (the "Commercial Terms"). The Commercial Terms and these Terms will together form the port agency agreement between the Agent and the Principal (the "Agreement"). If there is any conflict between the Commercial Terms and the provisions contained herein, the Commercial Terms shall prevail.

1.3 These Terms supersede any earlier terms of business the Agent may have provided previously.

2. APPOINTMENT

From the date of agreement of the Commercial Terms referred to in Clause 1.2 above (the "Appointment Date"), the Principal formally appoints Agent as its port Agent to act on its behalf in relation to the vessel in accordance with the terms and conditions of the Agreement.

3. AGENT'S RIGHTS AND OBLIGATIONS

3.1 Unless agreed otherwise by the parties, the Agent shall:

- (a) provide those services a port Agent would ordinarily provide in the course of usual local industry practice (the "Services");
- (b) exercise reasonable care and diligence in performing the Services in accordance with the terms and conditions of the Agreement;
- (c) have authority to place orders with suppliers and contractors on the Principal's behalf, however in no circumstances shall the Agent become liable in respect of the negligent performance of such suppliers and contractors nor in any respect for any payment due to such suppliers and contractors;
- (d) have authority to appoint sub-Agents to perform services on the Principal's behalf. However, the Agent will not be responsible for the negligent acts or defaults of sub-Agents unless the Agent has failed to exercise due care in the appointment and

supervision of such sub-Agents. Notwithstanding the foregoing, the Agent shall be responsible for the acts of his subsidiary companies appointed within the context of this sub-clause 3.1(d); and

- (e) Observe the shipping laws and regulations of the country in which the Services are being carrying out.
- (f) Have the right to not perform if the Principal fails to either pay the Agent or pre-fund the Agent as requested of if the Principals instructions are unreasonable or unlawful.

4. SUB AGENTS

4.1 The Agent shall be entitled without prior consultation, to appoint sub Agents to perform any part of the services and such sub Agents may enter contracts with service providers on behalf of the Principal as if they were the Agent. The Agent shall remain responsible for the actions of its sub Agents in relation to the services unless the sub agent is specifically appointed by the principal.

4.2 In ports or terminals where the choice of port/terminal Agent is restricted by that port or terminal or other applicable governing body, the Agent accepts no responsibility for the actions of said port/terminal Agents nor can Agent accept responsibility for their commission, fees or expenses. In such circumstances the Port/terminal Agent will be appointed by the Agent on behalf of and for the account of the principal. The port/terminal Agent will not be the sub Agent to the Agent.

5. PRINCIPAL'S DUTIES

5.1 The Principal shall at all times act dutifully and in good faith in accordance with the terms and conditions of the Agreement which shall include, but not be limited to, the following:

- (a) Pay the pre-funding (as described in condition 5) prior the commencement of the services and in any case provide the Agent on its request with all necessary funds to cover any fees and Disbursements.
- (b) promptly providing all documentation that the Agent may require in order to fulfil its Services;
- (c) giving full, timely and accurate information regarding the vessel's schedules, ports of call and line policy insofar as it affects the Agent's Services; and
- (d) providing any other support or assistance that the Agent may require in order to fulfil the performance of its Services under the Agreement.

6. **REMUNERATION**

6.1 The Principal undertakes to pay the Agent as consideration for the services provided by the Agent, the commissions and fees agreed between the parties and a sum equivalent to all disbursements.

6.2 Unless expressly agreed otherwise between the parties in writing, the Principal must pay to the Agent one hundred percent (100%) of the value of pro-forma disbursement account prior to the Agent commencing the services (with any sum paid in advance by the principal known as the "Pre-Funding". The parties may agree that the pre-funding should be lower than one hundred percent (100%) of the pro-forma disbursement account value. In any case the pre-funding must be paid into a bank account specified by the Agent in cleared funds. It is understood that the pro-forma disbursement account is an estimate of the costs. The final disbursement account may differ.

6.3 Should the Principal fail to pay the pre-funding to the Agent at the agreed level in cleared funds, the Agent shall be entitled to refuse to provide some or all of the services. Nevertheless, if the Agent does provide some or all of the services despite the principal failure to pay the agreed pre-funding, the principal will remain liable to pay the Agent all fees, commissions and disbursements in relation to the services. Such performance is not to be taken as a waiver of any rights of the Agent.

6.4 Following the completion of the services, the Agent shall submit to the Principal a Final Disbursement Account taking into account any pre-funding which has been received from the Principal in cleared funds. The Principal shall pay any such balance stated in the final disbursement account. Any commissions, fees, Disbursements and/or other sums owed by the company which become due following the issue of the Final Disbursement account shall also be payable by the Principal. If the sums due by the Principal to the Agent are lower than the level of pre-funding obtained in clear funds by the Agent, the Agent shall reimburse such excess to the Principal or may apply it to another vessel on which the Agent is appointed on behalf of the Principal.

6.5 All invoices issued by the Agent shall be payable by the company upon receipt unless otherwise agreed by the parties. Each pro-forma disbursement, revised disbursement account and final disbursement account shall be deemed to be invoices and therefore payable as described in this condition 6.5

6.6 The Agent shall be entitled to claim and recover interest of 8% per annum above the base lending rate of HCBC (before as well as after judgement) on any overdue payment. Such interest shall accrue on a daily basis from the due date until payment in full is received by the Agent. The Agent shall be entitled to claim and recover all costs and expenses, on a full indemnity basis, incurred in the collection of payments due

6.7 In the event that:

- a) Any fees, commission, disbursements, or expenses due from the Principal to the Agent under any port call appointment remain outstanding following the expiry of the period for settlement of such invoices; and
- b) The Agent or any affiliate of the Agent is in possession of funds belonging to the company in any jurisdiction regardless of whether such funds were paid to the Agent or the relevant affiliate of the Agent in connection with the relevant port call appointment.

Then the Agent and such affiliate of the Agent may, at any time set off such funds against the due and unpaid fees, commissions, or disbursements outstanding under the port call appointment.

6.8 In the event that:

- a) The Agent or any affiliate of the Agent is in possession of funds paid by the company to the Agent or any affiliate of the Agent under or in connection with a port call appointment; and
- b) Any sums, fees payments, commissions, disbursements or expenses due from the principal to the Agent or any affiliate of the Agent under any other contractual arrangement are outstanding.

Then the Agent/and or such affiliate of the Agent

may at any time set off such funds against the due sums, fees, payments, commission, disbursements or expenses outstanding under the other contractual arrangement. Where the use of the funds for such set off results in insufficient cleared funds being available to the Agent to for actual or anticipated disbursements, the Agent shall be entitled to either;

- i) refuse to provide some or all of the services until such shortfall is made good by the Principal (by additional pre-funding or otherwise)
- ii) serve notice of the immediate termination of the Agreement; or
- iii) take any necessary measures to detain the vessel and or her sister vessels in port or other vessels under registered and or beneficial and or chartered ownership of the Principal.
- iv) take any necessary measures to detain the vessel against unpaid sums, fees, commissions, disbursements or expenses relating to previous vessel appointments with the Principal and its affiliates.

7. **LIABILITY AND INDEMNITIES**

7.1 The Principal agrees that the Agent's total aggregate liability to the Principal, whether for breach of contract, tort (including negligence and misrepresentation but not fraudulent misrepresentation), breach of statutory duty or otherwise arising out of or in connection with the Agreement and whether related to any act, error, omission, statement or delay in acting committed by

the Agent, its directors or employees shall be 10 times the agreed agency fee, or \$50,000 whichever is the higher per incident. Under no circumstances shall the Agent be liable for any indirect or consequential losses or loss of profit suffered by the Principal arising out of or in connection with the Agreement.

7.2 The Principal shall protect, defend, indemnify and hold the Agent harmless from and against any and all claims, liabilities, charges, losses, damages and expenses of every kind and nature in respect of:

- (a) personal injury or death of any member of the Principal Group or of any third party;
- (b) loss or damage to any property of the Principal Group or of any third party,

arising in connection with the Agent's performance of its Services under the Agreement; and "Principal Group" means the Principal, the crew, owners, operators, charterers, all of Principal's affiliates, contractors and their contractors and subcontractors of any tier and the respective Agents, officers, directors and employees of all the above. This indemnity shall not extend to matters arising by reason of the negligence or wilful misconduct of any member of Agent Group.

7.3 The Agent shall protect, defend, indemnify and hold the Principal harmless from and against any and all claims, liabilities, charges, losses, damages and expenses of every kind and nature in respect of:

- (a) personal injury or death of any member of the Agent Group or of any third party;
- (b) loss or damage to any property of the Agent Group or of any third party,

arising in connection with the Agent's performance of its Services under the Agreement; and "Agent Group" means the Agent, its affiliates, contractors, officers, directors and employees. This indemnity shall not extend to matters arising by reason of the negligence or wilful misconduct of any member of Principal Group.

7.4 The Principal hereby agrees that no claim or allegation of any kind shall be made against any of the Agent's directors, officers or employees (hereinafter collectively called the "beneficiaries") for any loss, damage or delay of whatsoever kind arising directly or indirectly from any negligent act, error or omission of the beneficiaries in the performance of the Services the subject of the Agreement. The beneficiaries shall have the benefit of this clause and in entering into the Agreement the Agent, to the extent of this provision, does so not only on its own behalf, but also as Agent or trustee for the beneficiaries, who shall to the extent of this clause only be or be deemed to be parties to the Agreement.

7.5 The Agent shall perform its Services with reasonable dispatch but shall not be liable for any loss or damage arising from any delay which the Agent could not reasonably prevent.

7.6 The Agent shall be discharged from all liability whatsoever to the Principal unless a claim is

submitted within one year of the occurrence of the originating event upon which the claim is made.

7.7 The Principal shall at all times indemnify the Agent against all claims, charges, losses, damages and expenses which the Agent may incur in connection with the fulfilment of his 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 this Agreement, notwithstanding any termination thereof, provided always, that this indemnity shall not extend to matters arising by reason of the wilful misconduct or negligence of the Agent.

Where the Agent provides bonds, guarantees and any other forms of security to Customs or other statutory authorities then the Principal shall indemnify and reimburse the Agent immediately as such claims are made, provided they do not arise by reason of the wilful misconduct or the negligence of the Agent.

8. PROVISION OF INFORMATION

8.1 The Principal agrees to provide the Agent with all information that is reasonably required for the Agent to perform its Services and to ensure that such information is, and remains, true and accurate in all material respects and is not misleading. Unless agreed otherwise, the Agent will not check the accuracy or completeness of such information.

8.2 The Principal is responsible for ensuring that it has all necessary rights to supply the Agent with the information it provides and that the Agent's use of that information will not infringe the rights of any third party or result in a breach of any law, rule or regulation. The Principal shall indemnify and hold harmless the Agent (and any of its affiliates) from and against all loss or damage arising from claims, actions, proceedings or demands due to such infringement of third party rights or breach of law, rule or regulation.

8.3 The Agent's primary duty in respect of the exchange of ISPS Code compliance information between the vessel and the shore authorities is limited to correctly notifying the Principal of the information required, the date by which it is required and the address to which it must be sent. If the Agent is additionally required to pass the information on, its liability is extended to include ensuring the information provided by the vessel is correctly lodged with the relevant shore authority within the required time limit, provided the information is provided by the Principal to the Agent within a reasonable time prior to such time limit. Any failure by the Agent to undertake these duties with the utmost skill and care can render it liable for any delay resulting therefrom. Under no circumstances, however, will the Agent be liable for the accuracy of the information provided by the Principal, or if it fails to make the information available to the Agent within the required time limit or for any other error or failure that may occur which is beyond the Agent's reasonable control.

8.4 All communications between the Agent and the Principal will be treated by the parties as confidential and will be disclosed to third parties only with the written consent of the other party or if required by law.

9. **FORCE MAJEURE**

Except for obligations to pay any amount due, neither the Agent nor the Principal shall be liable in any way for failure to perform its respective obligations under the Agreement if the failure is due to causes outside the reasonable control of the party which has failed to perform.

10. **TERM**

10.1 The Agreement shall commence on the Appointment Date and shall, unless terminated at an earlier date pursuant to the Agreement, terminate automatically without notice on the date the vessel leaves the port.

10.2 Either party has the right at any time after the Appointment Date to terminate the Agreement provided it shall give thirty (30) calendar day's written notice to the other party.

10.3 Upon termination of the Agreement for whatever reason, the Principal will pay to the Agent all outstanding fees and disbursements due and payable as at the date of termination and also incurred but not yet payable. All accrued rights and liabilities under the Agreement shall survive and remain in full force and effect notwithstanding termination.

11. **ENTIRE AGREEMENT**

The Agreement represents the entire understanding between the parties and supersedes any and all previous discussions correspondence understandings and communications (whether written or oral) between the parties with respect to the subject matter hereof.

12. **VARIATION**

The Agreement may be varied only by a document signed by both of the parties.

13. **WAIVER**

13.1 A waiver of any term, provision or condition of, or consent granted under, the Agreement shall be effective only if given in writing and signed by the waiving or consenting party and then only in the instance and for the purpose for which it is given.

13.2 No failure or delay on the part of any party in exercising any right, power or privilege under this agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13.3 No breach of any provision of the Agreement shall be waived or discharged except with the express written consent of the parties.

13.4 The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

14. **COSTS**

Each of the parties shall bear its own legal, accountancy and other costs, charges and expenses connected with the negotiation, preparation and implementation of the Agreement and any other agreement incidental to or referred to in the Agreement.

15. **ASSIGNMENT**

Subject to Clause 3 no party may, without the prior written consent of the other, assign any of its obligations under the Agreement, nor any benefit arising under or out of the Agreement.

16. **SEVERABILITY**

If any provision in the Agreement is or becomes invalid, illegal or unenforceable then it shall, to the extent required, be severed and shall be ineffective and the validity of the remaining provisions shall not be affected in any way.

17. **NO PARTNERSHIP**

Nothing in the Agreement and no action taken by the parties pursuant to the Agreement shall constitute, or be deemed to constitute, the parties a partnership, association, joint venture or other co-operative entity.

18. **DISPUTE RESOLUTION AND GOVERNING LAW**

18.1 The Agreement shall be governed by and construed in accordance with the laws of Singapore.

18.2 Any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in London, UK in accordance with the Arbitration Rules of the UK for the time being in force, which rules are deemed to be incorporated by reference in this clause. The Tribunal shall consist of three arbitrator(s) and the language of the arbitration shall be English.