



## **STANDARD PORT AGENCY TERMS AND CONDITIONS**

### **Definitions**

"Agent" means Monson Agencies Australia Pty Ltd, which has accepted an appointment to act on behalf of an owner under these conditions.

"Owner", when used with reference to any vessel means the registered owner, manager, managing agent, master or other person in charge of the vessel (including but not limited to the Charterers of the vessel)

1. The Agent shall be the agent of the Owner (whether or not nominated by the charterer in accordance with charter party provisions) and shall exercise due care and diligence in performing services for and on behalf of the Owner

2. Unless otherwise stated in writing, the Agents acts at all times as agent for and on behalf of the Owner and has authority to place orders with suppliers as agent for the Owner. The Agent shall not be personally liable to pay any debts due to suppliers from the Owner.

3. In return for its activities, the Agent shall be remunerated with an agreed fee in respect of the customary and expected services provided to the vessel. The Agent is also entitled to reimbursement of reasonable out of pocket expenses. By mutual agreement the Agent shall also be entitled to an additional fee in the event of unexpected occurrences creating additional work or delay to the vessel.

4. The Owner shall pay by telegraphic transfer to the Agent's bank account such sum as the Agent may request as an advance on port disbursements, which the Agent estimates will be incurred on the Owner's behalf. If the Owner should fail to comply with the Agent's request, the Agent may:- a. at any time give immediate notice of the termination of the agency and/or  
b. take any necessary measures to detain the vessel in port until such funds are received by the Agent.

5. The Agent shall be entitled to deduct from the sums held by it for the owner's account any amount due from the Owner.

6. The Agent shall take every care to ensure that the proforma disbursement account is as accurate as possible. The proforma disbursement account is, however, only an estimate and the actual disbursement account may – and often does for various reasons beyond the Agent's control – vary from the proforma disbursement account. The Owner is required, and is liable to pay upon demand, the full amount described and shown in the actual disbursement account.

7. (A) Where the Competition and Consumer Act 2010 implied warranties do not apply and in the event that the Owner proves that the loss, damage, delay or expense was caused by the negligence, gross negligence or willful default of the Agent then, save for where loss, damage, delay or expense has resulted from the Agent's personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result, the Agent's liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a sum calculated on the basis of two and a half times the agency fees payable by the Owner to the Agent in respect of the vessel, which fees shall be deemed earned in any even.

(B) Notwithstanding anything set out in these Conditions, these Conditions are subject to the Competition and Consumer Act 2010 if and to the extent that this Act implies a warranty into these Conditions and prevent the exclusion, restriction or modification of any such warranty. The liability of

the Agent, if any, for breach of any warranty so implied (other than where the services are of a kind ordinarily acquired for personal, domestic or household consumption) shall be limited at the option of the Agent to the supply of the services again or the payment of having the services supplied again."

8. The Owner shall indemnify the Agent against all third party claims, charges, losses, damages and expenses that the Agent may incur. This indemnity shall not extend to matters arising by reason of the negligence or wilful misconduct of the Agent.

9. The Agent, with the consent of the Owner, shall have authority to appoint sub-agents to perform services on behalf of the Owner, including such services as may be subject to these conditions, remaining at all times responsible for the actions of the sub-agent.

10. If the Owner fails to make payment in full of any sums due to the Agent on demand or within any period agreed in writing, the Agent shall be entitled to recover interest on any sums outstanding at the rate of 2% above the "Reserve Bank of Australia Cash Rate" applicable during the period when the sums are outstanding.

11. The Owner undertakes with the Agent 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 these conditions. The beneficiaries shall have the benefit of this undertaking and in entering into this contract 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 this contract.

12. The primary duty of the Agent in respect of the exchange of ISPS Code ("the Code") compliance information between the vessel and the shore authorities is limited to correctly notifying the Owner of the information required to be provided under the Code, the date by which it is required and the address to which it must be sent. If the Agent is additionally requested to pass this information to the shore authorities, his 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 under the Code. Any failure by the Agent to undertake these duties with the utmost skill and care can render the agent liable for the loss incurred. Under no circumstances, however, is the Agent held liable for the accuracy of the information provided by the Owner, or if the Owner 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. These remain at all times the responsibility of the Owner.

13. The Agent shall perform the services he undertakes to provide with due dispatch but shall not be liable for any loss or damage arising from any delay which it could not reasonably prevent.

14. Where the Agent has spent time and incurred costs in anticipation of the vessel's call which is subsequently cancelled, or for which the Agent is not appointed, then the Agent shall be reimbursed in respect of all time and costs reasonably incurred.

15. The Agent shall be discharged from all liability whatsoever to the Owner and unless suit is brought within one year of the act or default of which complaint is made.

16. This Agreement is governed by the Laws of Western Australia and each party submits to the jurisdiction of the courts exercising jurisdiction in that state.

17. These conditions shall prevail unless otherwise agreed between the parties.

18. To the extent that these conditions conflict with the national law of the country in which the Agent is domiciled, then the national law shall prevail.

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