

ASABOSA Standard Trading Conditions

Updated: 12 October 2000

The Association of Ships' Agents & Brokers of Southern Africa STANDARD TRADING CONDITIONS (revised 14 August 2000)

These conditions shall apply to all transactions between a Principal and an Agent and between an Agent and a Supplier and shall be deemed to be incorporated in the appointment of an Agent by a Principal and in every transaction concluded between an Agent and a Supplier.

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Definitions

For the purpose of these conditions :

"Agent"

shall mean a member of the Association of Ships, Agents & Brokers of Southern Africa who has accepted an appointment to act in the Republic of South Africa as the Agent of a Principal.

"Agency Services"

shall mean such services as may from time to time be required by a Principal in respect of a Vessel owned, operated, managed or chartered by a Principal and, in particular but without limiting the generality of such services, to _____;

- * Arrange berths for a Vessel;
- * Provide for the entry and clearance of a Vessel;
- * Provide for the payment of port charges and any dues payable in respect of a Vessel;
- * Arrange for the supply of fuel, water, provisions and deck and engine room stores;
- * Arrange for any repairs required to be done to a Vessel;
- * Take charge of and arrange solicitation of and booking of cargo and mail for a Vessel;
- * Issue bills of lading and other similar documents to shippers in the form prescribed by the Principal;
- * Arrange for stevedoring and other cargo handling operations;
- * Arrange for the delivery of cargo in accordance with the bills of lading issued by or on behalf of a Principal;
- * Take charge of and arrange solicitation of passengers for a Vessel;
- * Arrange the embarkation and disembarkation of passengers and their baggage;
- * Issue passenger tickets;
- * Attend to all matters appertaining to the crew of a Vessel, including in particular, engaging, the signing on, signing off and repatriation of crew;
- * Perform such other activities and duties in connection with the foregoing functions as may be requisite thereto.

"Principal"

shall mean a shipowner, an operator, a manager, a managing agent or a charterer of a Vessel who has appointed an Agent to provide Agency Services in the Republic of South Africa.

"Supplier"

shall mean any person with whom an Agent transacts any business on behalf of a Principal and shall include ships chandlers, vendors of all types of goods, repairers, suppliers of services of whatever nature, other ships agents or brokers, importers and exporters, and port and other authorities in the Republic of South Africa.

"Vessel"

shall mean a ship, owned, operated, managed or chartered by a Principal.

Scope of Agent's Authority

2.1

An Agent shall provide such Agency Services as are required by a Principal and in the absence of any specific instructions from a Principal an Agent shall provide such Agency Services as the Agent in his discretion deems necessary and expedient in the interests of the Principal. The Agency Services provided at the Agent's discretion as aforesaid and the terms and conditions upon which they are provided shall be deemed to have been specifically authorised and approved by the Principal.

2.2

An Agent shall be entitled to engage the services of a Supplier to perform all or any of the Agency Services and any such Supplier shall be deemed to be an independent contractor employed by the Principal and not a servant of the Agent.

Remuneration of Agent

3.1

A Principal shall be liable for and shall pay to the Agent all costs and expenses incurred by an Agent, including the charges referred to in 3.2, in providing Agency Services at the request or on the instructions of the Principal himself, the master of the Vessel, the office of the Principal or his nominees, representatives or agents, howsoever communicated to the Agent and notwithstanding the fact that any such persons may have exceeded their authority in requesting or instructing the provision of the particular Agency Services.

3.2

A Principal shall pay to an Agent for the Agency Services rendered by the Agent the charges agreed or, in the event of there being no agreement as to charge or in the event of a particular service not being provided for in the scale of agreed charges, the Principal shall pay the Agent a reasonable charge for the services in respect of which no charge has been agreed. It shall be open to the parties to agree the charges in the Association of Ships' Agents & Brokers of Southern Africa's scale of recommended agency charges payable at ports in the Republic of South Africa.

3.3

A Principal shall reimburse an Agent for all costs and expenses incurred by the Agent arising out of the receipt of currency from a Principal or the remittance of currency to or on behalf of the Principal.

3.4

An Agent shall not be obliged to make any disbursement whatsoever on behalf of a Principal until such time as the Agent shall have been paid all amounts due by the Principal to the Agent for Agency Services provided by the Agent and have received sufficient funds for the purpose of making the particular disbursement. An Agent may either before, during or after providing the relevant Agency Services require a Principal to furnish security for the payment of such amounts as are or will become due to the Agent by the Principal for providing the Agency Services and for the due reimbursement of disbursements made or to be made by the Agent.

3.5

Information furnished a Principal by an Agent as to the costs and expenses of providing Agency Services in the Republic of South Africa or any matter

relating thereto, whether in the form of an estimate, offer, quotation or tender, shall be deemed to be information furnished for the guidance of the Principal only and shall not be binding on the Agent unless the contrary has been expressly stated in such estimate, offer, quotation or tender.

3.6

In the event of an Agent providing Agency Services at the request of both an owner and the charterers of a Vessel, the owner and charterer shall respectively be obliged to remunerate the Agent on the basis set out in clause

3.2.

3.7

In the case of any charterparty providing that the Agent appointed by the charterer shall be the Vessel's agent, the charterer and owner of the Vessel shall be jointly and severally liable to the Agent for the payment of the Agent's charges and any costs and expenses incurred by the Agent on their behalf, as if each of them were a Principal under these conditions.

Guarantees by Agent

4.1

A Principal shall under no circumstances require an Agent to furnish a guarantee or to provide security for the performance of any obligations by the Principal or the Agent on behalf of the Principal. In the event of an Agent, by reason of legislation or the requirement of a competent authority, being obliged to guarantee the obligations of a Principal or secure the fulfilment of the Agent's obligations on behalf of the Principal, the Principal shall prior to the furnishing of such guarantee or security by the Agent indemnify the Agent as is provided for in Clause 6 and in addition pay to the Agent the applicable commission calculated on the maximum amount of any loss the Agent may sustain were any such guarantee or security to be acted upon.

Liability of Agent to Principal and Suppliers

5.1

An Agent shall only be liable for damage or loss arising or resulting from any default by him in providing the Agency Services where such damage or loss has been caused by the wilful default or gross negligence of the Agent or his servants.

5.2

In the event of the Agent electing not to refer any claim by a Principal, which the Agent disputes, to arbitration for determination and the Principal fails to prosecute the claim as envisaged in Section 15 (1) of Act 68 of 1969 within one year from the date on which the damage or loss occurred, such claim shall be deemed to have been extinguished by effluxion of time.

5.3

Notwithstanding anything to the contrary in these conditions contained the liability of an Agent to a Principal shall be limited to payment of R20,000-00 in respect of any one call of a Vessel per port.

5.4

An Agent shall under no circumstances be liable for damage to or loss of goods delivered to him for forwarding or clearing or for safe keeping.

5.5

An Agent shall not be liable for the default or negligent act howsoever arising whether wilful or otherwise on the part of any Supplier providing goods or services to a Principal at the Agent's instance and request, such Supplier being deemed to be an independent contractor employed by the Principal.

5.6

An Agent shall not be responsible for any money paid or remitted by him on behalf of a Principal to any person pursuant to any request or instruction given the Agent by a Principal.

5.7

An Agent shall not be liable for any loss or damage of whatsoever nature sustained by a Principal directly or indirectly attributable to war, danger of war, riots, labour strikes, slowdown strikes, lock outs, boycotts, sabotage, overburdening of any port and the like, which may affect or interrupt the regular and normal conduct of trade. In the event of the Agent being precluded from providing Agency Services due to any such circumstances beyond his control or to any other circumstances constituting force majeure the Agent shall nevertheless be entitled to be reimbursed by the Principal for costs and expenses incurred by him in taking all such steps as may be necessary to protect the interests of the Principal, in particular shed hire and/or storage charges paid by the Agent at the applicable tariff rates.

Indemnities by Principal

6.1

The Principal indemnifies and holds the Agent harmless against any loss or damage the Agent may sustain by reason of –

6.1.1

claims by Suppliers for the cost and expenses of goods or services provided the Principal at the Agent’s special instance and request;

6.1.2

payment of any taxation which may be levied on passenger earnings or freight earned on cargo loaded in the absence of reciprocal Intergovernmental taxation agreements;

6.1.3

any claims arising out of guarantee furnished by the Agent pursuant to the provisions of Clause 4.

6.2

The Principal undertakes to place the Agent in sufficient funds or to furnish the Agent with security to the satisfaction of the Agent to ensure the due fulfilment by the Principal of his obligations under the aforesaid indemnity, either prior to the commencement of, during or after the performance of the aforesaid Agency Services, as may be required by the Agent.

Agent’s Lien

7.1

All goods or currency received by an Agent from or on behalf of a Principal shall be held by an Agent, subject to a general lien and right of retention, for money due to the Agent by the Principal for any reason whatsoever and should the general lien be not satisfied within a reasonable time from the day when the goods or currency are first received or should the contract of agency between the Principal and Agent be terminated without the Agent having been paid all amounts owing to him by the Principal –

7.1.1.

the goods may be sold by auction or otherwise and the proceeds of the sale applied to the satisfaction of the lien and expenses incurred by and about the sale; and

7.1.2

the Agent shall be entitled to set off and to deduct from the amount of the currency held by him as aforesaid any amount owing to him by the Principal.

Termination of Agency

8.1

Without prejudice to any other remedies a Principal or an Agent may have against each other, either party shall have the right at any time by giving notice in writing or by means of a telex message or telegram to the other to terminate the contract of agency between the Principal and the Agent forthwith in any of the following events –

8.1.1

if either party commits a breach of any of the terms of these conditions or of the appointment by a Principal of an Agent;

8.1.2

if for any material reason an Agent is precluded from performing the Agency Services;

8.1.3

should a Principal or an Agent enter into liquidation whether compulsory or voluntary (otherwise than for the purpose of amalgamation or reconstruction) or compound with his creditors or take or suffer any similar action in consequence of debt.

Domicilium

9.1

The Principal shall when appointing an Agent as his Agent give written notice to the Agent of the Principal's domicilium citandi et executandi in the Republic of South Africa. In the absence of such notice the Principal hereby chooses the Vessel as his domicilium citandi et executandi.

Arbitration

10.1

All disputes of whatsoever nature which shall at any time arise between the Agent and a Principal or an Agent and a Supplier concerning any matter or thing governed by these conditions or their construction or effect or as to the rights, duties or their liabilities of an Agent, a Principal, a Supplier under these conditions shall at the election of the Agent be referred to arbitration. Should the Agent decide that the dispute be referred to arbitration such dispute shall be referred to a single arbitrator to be agreed upon by the parties to the dispute or, failing such agreement, to be nominated by the president for the time being of The Maritime Law Association of the Republic of South Africa in accordance with and subject to the provisions of the Arbitration Act, 1965, or any statutory modification or re-enactment thereof for the time being in force.

Applicable Law

11.1

Any question regarding the efficacy or interpretation of these conditions or any part thereof shall be determined in the Republic of South Africa at the port or in the City in which or nearest to the place where the circumstances giving rise to the dispute occurred, in accordance with the laws in force in the Republic of South Africa.

Headings

12.1

The above headings are for the ease of reference only and have no bearing on the interpretation or meaning of the clauses themselves.