



## Standard Trading Conditions

*Updated September 2012*

All transactions entered into between DAL Agency Pty Ltd (hereinafter "the Company") in connection with or arising out of the Company's business as a port agent or liner agent or booking agent in respect of services to any Merchant, Principal or any transactions with any of its Suppliers shall be subject to the following standard trading terms and conditions ("these conditions") unless otherwise agreed or stated by the Company in writing. These conditions shall prevail over any standard terms and conditions which may be incorporated as part of the Merchant's, Principal's or Supplier's standard terms and conditions and the acceptance by the Company of any instructions or conclusion of any transaction, whether effected expressly or by conduct, shall not override these conditions save to the extent expressly agreed to in writing by both the Company and the Merchant, Principal or Supplier. These conditions will be read together with any express terms agreed to in writing between the Company and the Merchant, Principal or Supplier and only to the extent of a conflict between the express terms and the terms hereof shall the former prevail.

1. In these conditions the following words and expressions shall have the following meanings and cognate expressions shall have corresponding meanings, except where the context otherwise requires:

1. "Supplier" means the company, firm or person, organization or other person or company, who contracts through the Company to supply services or goods to the Principal or Merchant;

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**Company Registration Number**

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1. "Merchant" means the company, firm or person who ships, receives, owns or forwards goods in respect of which the Company, as agent, has agreed to provide or procure services;
2. "Principal" means the company firm or person who has or whose representatives have instructed the Company and is the owner or charterer or manager of the vessel represented by the Company and/or the carrier under the bill of lading in connection with which services are provided by the Company;
3. "Cargo Booking Services" means those services provided or arranged by the Company in respect with the booking of cargo on vessels including providing information on vessels and schedules, the solicitation of cargo, the canvassing for cargoes, freight quotations and negotiations as to any cargo transport agreements with Merchants and any other related activities;
4. "Booking Agent", "Liner Agent" and "Port Agent" means as the context requires any person who provides 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 the 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 issue by or on behalf of the Principal;

attend to all matters appertaining to the crew of the 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.

5. Clause headings in these conditions are inserted purely for convenience and shall not be relevant in interpreting the contents of the clauses to which they relate;
6. Reference to the singular shall be deemed to include the plural and vice versa and reference to one gender shall be deemed to include the other genders.

## **2. Transactions with the Supplier**

The following conditions unless otherwise agreed or stated by the Company in writing shall apply to transactions with the Supplier:

1. Unless otherwise stated in writing, when the Company is acting as a port agent or liner agent or booking agent it acts at all times as agent for and on behalf of the Principal and has authority to enter into contracts with the Supplier as agent for the Principal. The Company shall not be liable to pay any debt due to the Supplier from the Principal.
2. Where the Company is acting as a cargo booking agent, unless it is acting as agent for the Principal in accordance with clause 4 hereof or otherwise agrees in writing, it acts at all times as agent for and on behalf of the Merchant and has authority to enter into contracts with the Supplier as agent for the Merchant. The Company shall not be liable for any debt due from the Merchant.

## **3. Transactions with the Merchant**

The following terms and conditions unless otherwise agreed or stated by the Company in writing shall apply to transactions with the Merchant:

1. When acting as port agent or liner agent or cargo booking agent, the Company acts at all times as agent for and on behalf of the Principal and has authority to enter into contracts with the Merchant as agent for the Principal. The Company shall not be liable for any debt due from the Principal.
2. Unless otherwise agreed in writing, where the Company is instructed by the Merchant to arrange cargo booking services, the Company shall act as agent and have authority for the Merchant in procuring the requested services from Supplier.

3. Where the Company arranges services for the Merchant's goods which are or will be carried in accordance with a contract with the Principal contained in or evidenced by a bill of lading, charter party or other contract of affreightment, all services including cargo booking services and forwarding services, are arranged by the Company as agent for and on behalf of the Principal. The provision of such services shall be subject to the terms and conditions of the Principal's bill of lading and tariff rules (if any), which may be inspected on request, or any other contract between the Principal and the Merchant.
  
4. Where so requested in writing by the Merchant or his representative, the Company shall enter and/or clear goods through Customs and/or arrange insurance for the goods as agent for the Merchant. The Company shall have authority to appoint agents to perform such services on behalf of the Merchant, and the agents so appointed shall act as the Merchant's agents and not the Company's agents.
  
5. Upon receipt of specific written instructions by the Merchant, the Company will arrange for the inland carriage and/or transport of goods (to port and/or to door). Any such carriage and/or transport, including storage and handling of the goods shall be arranged by the Company as agent for and on behalf of the Merchant and shall be subject to the conditions stipulated by the Supplier contracted to carry the goods. The Company shall be under no liability whatsoever and howsoever arising in respect of such carriage, provided that should it be found that the Company in any way retains any obligations or responsibilities with regard to the performance of the obligations by the Supplier, then the provisions of clause 5 shall apply.

6. Where the Company agrees to provide or arrange services for the Merchant's goods, the Merchant shall be deemed to have authorized the Company to conclude all and any contracts necessary to provide those services. The Merchant shall reimburse on demand the Company with all taxes, charges or fines whatsoever incurred by the Company as a result of providing or arranging the services, or undertaking any liability in connection with the services, particularly in respect of any bond issued to the South African Revenue Services and/or the Department of Customs and Excise, the Transnet National Ports Authority or any other competent Authority by the Company.
  
7. The Merchant shall declare to the Company full details of goods, which are of a dangerous or damaging nature, including those goods, which are more particularly described in the International Maritime Organization ("IMO") Code. Should the Merchant fail to provide such details at the time of contract, the Merchant shall be responsible for all costs and damages arising as a result thereof and the Company shall have the right exercisable on behalf of itself or its Principal to rescind the contract.
  
8. The Company shall not be liable for loss or damage to goods, unless it is advised thereof in writing within three days after the termination of transit and the claim is made in writing within 7 days thereafter, alternatively advice is given within 28 days of the commencement of transit and the claim is made in writing within 42 days, provided always that these limits shall not apply if the Merchant can establish that it was not reasonably possible for him to make a claim in writing within the time limit and notice was given within a reasonable time.

9. The Merchant hereby indemnifies the Company against any Duty, Value Added Tax, Penalties, amounts raised in forfeiture, or any other fines, levies or charges, raised by the South African Revenue Services, any competent authority or whomsoever in respect of the Merchant's goods stored in Customs licensed depots. The Company shall not be liable for any loss or damage, however so caused, to goods stored in Customs licensed depots either at the Merchant's request or in the course of facilitating the removal of uncleared goods out of the port area.

#### **4. Transactions with the Principal**

The following terms and conditions unless otherwise agreed or stated by the Company in writing shall apply to transactions with the Principal except DAL Deutsche Afrika-Linien GmbH & Co. KG to which the terms and conditions of the Agreement with the Company dated 1 September 2007 shall apply:

1. The Company shall be the Principal's agent and shall exercise due care and diligence in performing services for and on behalf of the Principal.
2. The Principal shall pay forthwith by electronic transfer to the Company's bank account such sum as the Company may request as an advance on port and other disbursements, which the Company estimates will be incurred whilst the Principal's vessel is in the Company's agency. If the Principal should fail to comply with the Company's request, the Company may at any time give notice of the termination of its agency.
3. The Company shall be entitled to deduct from sums held by the Company for the Principal's account any amounts due to the Company from the Principal.
4. The Principal shall pay to the Company for the agency services rendered by the Company 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 Company a reasonable charge for the services in respect of which no charge has been agreed and for the purposes hereof and in the absence of any agreement to the contrary the charges set out in South African Association of Ship Operators and Agents ("SAASOA") scale of recommended charges shall be deemed to be reasonable and customary charges.

5. The Company shall not be liable to indemnify the Principal in respect of any contractual fine, penalty or forfeiture incurred by the Principal, unless caused by the gross negligence or willful misconduct of the Company.
6. Subject to any written instructions to the contrary the Company shall have authority to appoint agents to perform services on behalf of the Principal, including such services as may be the subject of these conditions, and the agents so appointed shall act as the principal's agents and not the Company's agents.
7. Save where otherwise specifically provided herein the provisions to be found in the FONASBA Standard Liner and General Agency Agreement (as applicable from time to time) shall apply as between the Company and the Principal. In the event of a conflict between the provisions of the FONASBA Standard Liner and General Agency Agreement and these conditions, these conditions shall prevail.



## 5. Liability and Limitations

1. The Merchant, the Supplier and the Principal each undertake with the Company that no claim or allegation of any kind shall be made against any of the Company's directors, officers or employees (herein collectively called "the Beneficiaries") for any loss damage or delay of whatsoever kind arising or resulting 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 Company, 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 deemed to be parties to this contract.
2. The Company shall perform the services it 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.
3. The Company shall only be liable for damage or loss arising or resulting from any default by it in providing services where such damage or loss has been caused by the willful default or gross negligence of the Company or its servants.
4. Notwithstanding anything to the contrary contained in these conditions the liability of the Company to a Principal, Supplier or Merchant shall be limited to payment of R20,000-00 in respect of any one claim of a vessel per port.
5. The Company shall under no circumstances be liable for damage to or loss of goods delivered to it for forwarding or clearing or for safe keeping.

6. The Company shall not be liable for any default, act or omission, howsoever arising whether willful, negligent, grossly negligent or otherwise on the part of any Supplier providing goods or services to a Principal or Merchant at the Company's instance and request, such Supplier being deemed to be an independent contractor employed by the Principal.
7. The Company shall not be responsible for any money paid or remitted by it on behalf of a Principal, Supplier or Merchant to any person pursuant to any request or instruction given the Company by a Principal, Supplier or Merchant.
8. The Supplier, Merchant and Principal hereby indemnifies the Company against all claims, losses or damages suffered or incurred, including but not limited to, legal costs arising out of or in connection with Company's performance of its duties under the transaction.
9. The Company shall not be liable for any loss or damage of whatsoever nature sustained by a Principal, Supplier or Merchant 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 Company being precluded from providing agency services due to any such circumstances beyond his control or to any other circumstances constituting *force majeure* the Company shall nevertheless be entitled to be reimbursed by the Principal or Merchant 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 Company at the applicable tariff rates.

## 6. General

1. If the Merchant or the Principal, as the case may be, fails to make payment in full of any sums due to the Company on demand or within any period agreed in writing, the Company shall be entitled to recover interest on any sums outstanding at the rate of 2% above the prime interest rate of the Company's bankers from time to time.
2. The Company shall have a general lien on all goods and documents relating to goods in its possession, custody or control and currency received by the Company from or on behalf of a Principal or Merchant for all sums due at any time from the Principal or the Merchant and/or their representatives and shall be entitled to sell or dispose of such goods or documents as agent for and at the expense of the Principal or the Merchant or entitled to set-off and to deduct from the amount of the currency held and apply the proceeds towards the monies due and the expenses or the retention insurance and sale of the goods. The Company shall, upon accounting to the Principal or the Merchant for any balance remaining, be discharged from all liability whatsoever in respect of the goods.
3. The Company shall be entitled to retain and be paid all brokerages, commission, allowances and other remuneration, usually retained by or paid to freight forwarders.
4. All disputes of whatsoever nature which shall at any time arise between the Company and a Principal or the Company and a Supplier or the Company and a Merchant concerning any matter or thing governed by these conditions or their construction or effect or as to the rights, duties or their liabilities of the Company, a Principal, a Supplier or Merchant, under these conditions shall at the election of the Company be referred to

arbitration. Should the Company 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.

5. In the event of the Company electing not to refer any claim by a Principal, Supplier or Merchant which the Company disputes, to arbitration for determination and the Principal, Supplier or Merchant 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.
6. If there is any conflict between the terms set out herein and any other terms and conditions agreed between the parties these conditions shall prevail unless the Company specifically agrees otherwise in writing.
7. The Principal and/or Merchant undertake to comply with the provisions of the International Convention for Safe Container (CSC) 1972 relating to the safety of containers. Any damage caused (including bodily harm) by the non-compliance with the said Convention shall render the Company harmless of any responsibility despite any involvement of the Company.
8. With regard to containers the Customs Convention of Container 1972 shall apply under these conditions.

9. A Principal or Merchant shall pay to the Company for the services rendered by the Company all amounts as may have been agreed between them by virtue of any agreement concluded, the amounts arising out of the charges as per the official tariffs approved from time to time by the Authority as defined in the National Ports Act, 2005 or any other competent authority, as well as all those charges normally or habitually charged by the Company for services including, but not limited to notification fees, bill of lading fees, service fees and administration fees. In the event of a particular service not being provided for in the scale of charges the Principal or Merchant shall pay the Company a reasonable charge for such service.