**MENTOR SHIPPING AGENCY (PTY) LTD**

**Registration No. 1976/000330/07**

**STANDARD TRADING TERMS AND CONDITIONS**

1. **INTERPRETATION**
	1. In these Terms and Conditions, unless the context indicates otherwise, the following words have the following meanings:
		1. "Company" means Mentor Shipping Agency (Pty) Ltd, a limited liability private company incorporated in accordance with the company laws of the Republic of South Africa and registered with Registration Number 1976/000330/07, having its principal place of business at the 3rd Floor, Unit 300, Silver Oaks Centre, Silverton Road, Durban, KwaZulu-Natal, South Africa.
		2. "Customer" means any ship owner, shipbroker, charterer or any other person, firm, company, partnership or other legal entity and/or any agent of any of the aforegoing who appoints the Company to provide the Services and/or to whom the Company provides the Services.
		3. "Services" means any service provided to the Customer by the Company or by any Supplier appointed by the Company to do so.
		4. "Supplier" means any third party with whom the Company contracts as the Customer’s agent, to provide any or all of the Services.
		5. "these Terms and Conditions" means these Standard Trading Terms and Conditions, as amended or supplemented from time to time.

1.2 No agreement varying, adding to, deleting from or cancelling these Terms and Conditions and no waiver of any right under these Terms and Conditions will be effective unless in writing and signed by an authorized representative of the Company.

1.3 No relaxation by the Company of any of its rights in terms of these Terms and Conditions at any time will prejudice or be a waiver of its rights (unless it is a signed written waiver) and it will be entitled to exercise its rights thereafter as if such relaxation had not taken place.

1. **APPLICATION OF THESE Terms and CONDITIONS**

2.1 All of the Services provided by the Company are subject to these Terms and Conditions.

2.2 Unless the Company specifically agrees in writing otherwise, no other terms or conditions (which conflict with these Terms and Conditions) will apply to the Services including the Customer’s standard trading terms and conditions.

1. **AUTHORITY TO CONTRACT**

If the Customer requests the Services acting in its capacity as an agent for a third party, the Customer warrants that it is authorised to appoint the Company to provide the Services in accordance with these Terms and Conditions.

1. **AGENCY**

4.1 All of the Services that the Company provides will be in its capacity as the Customer’s agent.

* 1. The Customer acknowledges that when the Company, as agent for and on behalf of the Customer, concludes any contract with a Supplier, such agreement is concluded between the Customer and the Supplier.
	2. The Company is not liable to the Customer or anyone else for any act of, or omission by, any Supplier who performs any of the Services.
	3. The Company is not liable to any Supplier for any amounts which the Customer owes to the Supplier in relation to the Services which the Supplier has provided for the Customer.
1. **RISK**

The Services are provided by the Company at the Customer’s cost and risk.

1. **INSTRUCTIONS**
	1. The Customer must timeously provide the Company with all the information and documents which the Company requires to enable it to provide the Services. All information must be in writing, precise, clear and comprehensive.
	2. If any of the information which the Customer provides to the Company changes at any time, the Customer must immediately notify the Company thereof in writing and the Customer is responsible for all the consequences of that change.

* 1. If the Company is required to complete any bill of lading, through bill of lading, combined transport bill of lading, sea waybill or any other transport document on the Customer’s behalf, the Company does so at the Customer’s risk and is not in any way liable for any loss or damage which it may suffer as a result of any incorrect particulars recorded therein.
	2. If the Customer provides the Company with incorrect instructions, it will be responsible for all wasted costs incurred by the Company in carrying out those incorrect instructions and the full costs for the Services.
	3. The Company is not bound by any oral instructions, general instructions or instructions which it receives late, but the Company may act on those instructions if it chooses to do so.
	4. If the Customer does not provide the Company with the information which it needs to provide the Services, the Company may decide when and how to perform the Services or any part thereof.
	5. The Company may, at the Customer’s cost, depart from its instructions at any time if it decides, in its sole discretion, that it is necessary to do so and the Company will not be liable to the Customer or anyone else, for any claims arising from or in connection with that departure.
1. **CANCELLATIONS**
	1. If the Customer cancels or changes the Services which it has requested the Company to provide, it will be liable for all charges and expenses incurred by the Company up to and including the date on which the Company receives written notice from the Customer that it no longer requires the Services, or that the Services the Customer requires has changed, including any penalties or other costs which may be imposed by any Supplier or otherwise as a result of the cancellation of any Services.
	2. Notwithstanding the aforementioned, if the Customer does not notify the Company of the cancellation or change of the Services timeously, it will be liable to make payment to the Company of the full cost of the Services that would have been provided but for the cancellation or change.
	3. If a Supplier terminates or cancels any contract for the supply of the Services for any reason, the Company may also terminate or cancel the Services which it has undertaken to supply to the Customer and the Customer will not have any claim against the Company arising from, or in connection with, that cancellation.
2. **DISBURSEMENTS**
	1. The Customer is liable for all duties, taxes, charges, levies, deposits, fines, penalties and other disbursements levied by or payable to any Supplier or third party in relation to the Services.
	2. The Customer must, on request by the Company, pay to the Company in advance, the amount of any disbursements which the Company estimates that it will be required to pay to any Supplier or third party on the Customer’s behalf in relation to the Services as set-out in its proforma/estimated disbursement account.
	3. The Company is not obliged to pay any disbursements on the Customer’s behalf unless it has received sufficient funds from the Customer for the payment of such disbursements.

* 1. The Company may refuse to commence or may discontinue providing the Services to the Customer if the Customer fails to make payment of the estimated disbursements on request by the Company, and will not be liable for any loss or damage which the Customer may suffer as a result thereof.
	2. The Customer indemnifies the Company against any liability in respect of any disbursements which the Company incurs in relation to the Services provided to the Customer.
	3. If for any reason, the Company pays any disbursement on the Customer’s behalf in an incorrect amount, or such disbursement is levied in an incorrect amount, the Company will not be liable to the Customer for the amount of the overpayment.
	4. The Company is entitled to the benefit of any discounts, commissions and other allowances and is not required to disclose or account to the Customer for such amounts.
1. **PAYMENTS TO THE COMPANY**
	1. The Customer must pay all amounts due to the Company for the Services, plus Value Added Tax (if applicable):
		1. immediately on presentation of the Company's invoice or if the Company has agreed to provide the Services to the Customer on credit, on such terms for payment;
		2. in the currency specified by the Company;
		3. without deduction or set-off and payments will not be withheld or deferred on account of any claim or counterclaim which the Customer may allege against the Company;
		4. free of all bank charges;
		5. by electronic funds transfer into the bank account nominated by the Company on the invoice.
	2. Should any amount not be paid by the Customer on the due date then the full amount in respect of any amounts owing to the Company will become immediately due, owing and payable.
	3. Interest calculated daily and compounded monthly at the maximum rate permitted by law will be levied on all amounts which are not paid by the due date for payment.
	4. The Company may in its sole discretion appropriate any payments made by the Customer to any principal debt owed by the Customer to the Company, irrespective of when it arose, or to interest only, or to legal or other costs, or to any such combination of principal, interest and costs as it may in its sole discretion determine, irrespective of any purported allocation or appropriation being made by the Customer at the time of payment or at any other time.
	5. The Company may at any time summarily stop providing the Services to the Customer and/or withdraw the Customer’s credit facilities if it fails to make payment for the Services on the due date for payment thereof, without prior notice to the Customer.
	6. The Company may deduct from any amounts which the Company owes the Customer, any amounts which the Customer owes to the Company, whether or not they are liquidated.
	7. A certificate signed by any director or manager of the Company stating the indebtedness of the Customer to the Company or certifying that the Services were provided and/or monies disbursed, will be *prima facie* evidence of the Customer's indebtedness to the Company, the provision of the Services or the disbursement of such monies.
2. **INDEMNITY**

The Customer indemnifies and holds harmless the Company against all liability, damages, loss, costs, claims, fines, penalties and expenses incurred or suffered by the Company arising directly or indirectly from or in connection with the rendering of the Services.

1. **LIMITATION OF LIABILITY**

The Company and its directors, servants, representatives, personnel and/or employees will not be liable for any claim or loss of any nature including for direct, indirect, special or consequential damages in respect of the Services.

1. **WARRANTY**
	1. The Customer warrants that its annual turnover exceeds the monetary thresholds contained in the National Credit Act, no 34 of 2005 and the Consumer Protection Act, no 68 of 2008 and accepts that the provisions of these Acts do not apply to the Services.
	2. In the event that the Customer's turnover does not exceed the thresholds, the onus is on the Customer to bring this to the immediate attention of the Company.
2. **FORCE MAJEURE**

In the event that the Company cannot provide the Services or continue to provide the Services due to any circumstances beyond its control, the Company shall nevertheless be entitled to be reimbursed by the Customer for charges and expenses incurred, specifically the charges and expenses incurred by it in taking all such steps as may be necessary to protect the interests of the Customer.

1. **TIME BAR**

The Customer will not have any claim of any nature against the Company unless summons or an equivalent method of instituting an action or legal proceedings is served on the Company or instituted or the matter is referred to arbitration or an equivalent method of dispute resolution within 1 year after the date on which the incident giving rise to the cause of action occurred.

1. **LAW AND JURISDICTION**
	1. These Terms and Conditions will be subject to and construed in accordance with the law of the Republic of South Africa.
	2. The Customer consents to the non-exclusive jurisdiction of the High Court of South Africa, KwaZulu-Natal Local Division, Durban, exercising it admiralty jurisdiction.
2. **NOTICES AND ADDRESSES FOR SERVICE**
	1. The giving of all legal notices, pleadings or documents relating to these Terms and Conditions must be delivered by hand, sent by registered post or by electronic mail.
	2. The Customer chooses its street address and electronic mail address set-out in the Company’s completed Credit Application Form as its *domicilium citandi et executandi.* If the Customer has not completed such a form, the Customer chooses its head office as its *domicilium citandi et executandi*.
	3. The Company chooses its physical address as set-out in clause 1.1.1 above and the electronic mail address of darryl@mentorshipping.co.za as its *domicilium citandi et executandi*.

16.4 Notice is deemed to have been duly given on the date of delivery, if delivered by hand, 14 days after it has been sent by registered post or on the date of dispatch, if sent by electronic mail.

1. **LEGAL COSTS**

 If the Company institutes legal proceedings against the Customer to recover any amounts due by it to the Company or for breach of these Terms and Conditions or enforcement of any of the Customer’s obligations, the Customer will be liable for all legal charges incurred by the Company on an attorney and own client scale including collection charges and tracing agent's fees incurred by the Company in recovering all such amounts from the Customer.