

Standard Trading Terms & Conditions of High Seas Maritime Agency Ltd.

All transactions entered into between High Seas Maritime Agency Ltd. (hereinafter "**High Seas**") in connection with or arising out of the High Seas' business as a port agent or liner 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 (the "**Conditions**") unless otherwise agreed by the High Seas in writing.

The 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 High Seas of any instructions or conclusion of any transaction, whether effected expressly or by conduct, shall not override these Conditions save to the extent High Seas has given its express prior approval in writing.

1. Definitions

- a) "Cargo Booking Services" means those services provided or arranged by High Seas 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.
- b) "Forwarding Services" means those services usually provided or arranged by a freight forwarder including the carriage of goods to the port of loading and from the port of discharge, the storage, packing or consolidation of goods and the stuffing and stripping of containers.
- c) "Goods" means any wares, merchandise or articles of every kind whatsoever, including any container, chassis, trailer or similar equipment used for the purpose of carrying cargo.
- d) "Merchant" means the company, firm or person who ships, receives, owns or forwards goods in respect of which High Seas, whether as agent or principal, has agreed to provide or procure services.
- e) "Principal" means the company, firm or person who has or whose representatives have instructed High Seas and is the owner or charterer or manager of the vessel represented by High Seas and/or the carrier under the bill of lading in connection with which services are provided by High Seas.
- f) "Supplier" means the company, firm, person or organisation who contracts through High Seas to supply services or goods to the Principal or Merchant.

- g) "Services" means the services which are provided by High Seas to the Merchant and/or Principal, whether or not for reward, whether same be by way of charge, fee, commission or remuneration of any kind.

2. Transactions with the Supplier

The following terms shall apply to transactions with the Supplier:

- a) Unless the prior written approval of High Seas is given, when High Seas is acting as a port agent or liner agent or Merchant's agent, it acts at all times as agent for and on behalf of the Principal or Merchant, and has authority to enter into contracts with the Supplier. High Seas shall not be personally liable to pay any debt due to the Supplier from the Principal or Merchant.
- b) The Supplier shall be deemed to be an independent contractor employed by the Principal or Merchant, and not a servant of High Seas.

3. Transactions with the Merchant

The following terms shall apply to transactions with the Merchant:

- a) When acting as port agent or liner agent or cargo booking agent, High Seas 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. High Seas shall not be personally liable to pay any debt due from the Principal or any of the Principal's liabilities.
- b) Where the High Seas 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, charterparty or other contract of affreightment, all Services including cargo booking services and forwarding services, are arranged by High Seas 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 other contract between the Principal and the Merchant.
- c) Unless High Seas as previously so agreed in writing, it will not provide Services for Goods of a dangerous or damaging nature. The Merchant shall declare to High Seas 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 High Seas shall have the right exercisable on behalf of itself or its Principal to rescind the contract.
- d) The Merchant warrants that it is either the owner of the Goods or the authorized agent of the owner and that it accepts these Conditions for itself and as agent for or on behalf of the owner.

- e) High Seas shall not arrange insurance for the subject matter Services save upon express instructions given in writing by the Merchant in relation to which there shall be a specific agreement as to charge. All insurance arrangements By High Seas are subject to the conditions of the insurer. If High Seas agrees to arrange insurance, it acts as agent of the Merchant in doing so.
- f) Where High Seas agrees to provide or arrange Services for the Merchant's Goods, the Merchant shall be deemed to have authorized High Seas to conclude all and any contracts necessary to provide those Services.
- g) The Merchant hereby undertakes to indemnify and hold High Seas harmless against any duty, sales taxes, penalties, amounts raised in forfeiture, or any other fines, levies or charges, raised by the Canadian Border Services Agency in respect of the Merchant's Goods stored in bonded warehouses or equivalent facilities. High Seas shall not be liable for any loss or damage, however so caused, to Goods stored in bonded warehouses or equivalent facilities either at the Merchant's request or in the course of facilitating the removal of uncleared Goods out of the port area.
- h) Without limitation to sub-clause 3 d) above, the Merchant hereby undertakes to indemnify and hold High Seas harmless against all claims, losses or damages, fines, levies, duties or charges suffered or incurred, including but not limited to, attorney's fees, court costs and disbursements arising out of or in connection with High Seas' performance of the Services, notwithstanding any termination of the relationship between the Merchant and High Seas. This indemnity shall not extend to matters arising by reason of the negligence or willful misconduct of High Seas.

4. Transactions with the Principal

The following terms shall apply to transactions with the Principal:

- a) High Seas shall be the Principal's agent and shall exercise due care and diligence in performing services for and on behalf of the Principal.
- b) The Principal shall pay forthwith by electronic transfer to High Seas' bank account such sum as High Seas may request as an advance on port and other disbursements, which High Seas estimates will be incurred whilst the Principal's vessel is in the High Seas' agency. If the Principal should fail to comply with High Seas' request, High Seas may at any time give notice of the termination of its agency.
- c) High Seas shall be entitled to deduct from sums held by High Seas for the Principal's account any amounts due to High Seas from the Principal, including agency fees and commissions.
- d) The Principal shall pay to High Seas for the agency services rendered by High Seas 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 High Seas 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 Shipping Federation of Canada scale of recommended agency fees shall be deemed to be reasonable and customary charges.

- e) High Seas shall have the authority to appoint sub-agents to perform Services on behalf of the Principal, including such Services as may be subject to these Conditions, remaining at all times responsible for the actions of the sub-agent.
- f) High Seas 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 negligence or wilful misconduct of the High Seas.
- g) The Principal hereby undertakes to indemnify and hold High Seas harmless against all claims, losses or damages suffered or incurred, including but not limited to, attorney's fees, court costs and disbursements arising out of or in connection with High Seas' performance of the Services, notwithstanding any termination of the agency relationship between the Principal and High Seas. This indemnity shall not extend to matters arising by reason of the negligence or willful misconduct of High Seas.
- h) In the event that High Seas is required by the Principal to file data with the port facility or any governmental authority in compliance with the ISPS Code or otherwise, High Seas will exercise reasonable skill and care to file the data correctly and within the prescribed filing deadlines. However, High Seas cannot accept any responsibility or liability for the correctness or accuracy of the information provided by the Principal, or if the Principal fails to provide the data in a timely manner or there are technical problems or human error beyond High Seas' control. Any loss or liabilities resulting from the filing of such data, whether or not High Seas was or is claimed to have been negligent or at fault in any way, rest with the Principal.

5. Liability and Limitations

- a) High Seas shall perform its duties with a reasonable degree of care, diligence, skill and judgment.
- b) High Seas shall not be liable in any case whatsoever, for consequential or indirect losses, including but not limited to loss of profit, loss of market, loss of revenue, loss of business, loss of production or the consequences of delay or deviation, however caused.
- c) High Seas shall be relieved of liability for any loss or damage if and to the extent that such loss or damage is caused by:
 - I. Compliance with a direction, request or order from any competent state, governmental or port authority;

- II. Strike, lock-out, stoppage or restraint of labour, storm, flood, fire, explosion, civil disturbance, governmental action, breakdown or unavailability of premises or equipment; or
 - III. Any other cause or event which the High Seas is unable to avoid and the consequences whereof the High Seas is unable to prevent by the exercise of reasonable diligence, whether or not foreseeable.
- d) Unless otherwise agreed to in writing, the liability of High Seas shall in all circumstances be limited to the lesser of:
- I. the amount of the direct loss or damage; or
 - II. the agency fees, but not disbursements, earned by High Seas on the transaction for the particular vessel up to a maximum of \$4500 in Canadian currency.
- e) High Seas will does not insure the Goods and will not be liable for any loss or damage in connection with the Goods whatsoever and howsoever arising.
- f) High Seas shall not be liable for loss or damage unless it is advised thereof in writing within three (3) days after completion of provision of the Services and the claim is made in writing within 42 days, provided always of these limit shall not apply if the Merchant or Principal can establish it was not reasonably possible for it to make a claim in writing within the time limit and notice was given within reasonable time. Notwithstanding the above provisions, High Seas shall in any event be discharged from all liability whatsoever and howsoever arising in connection with the Services unless suit is brought within one (1) year of delivery of the Goods or of the date they should have been delivered, or the date of the event giving rise to any other loss, damage or delay.
- g) For greater certainty, but without limitation to the foregoing, the defences, exclusions and limitation of liability set out above apply regardless of whether the loss, damage or delay was caused or contributed to by the negligence or willful misconduct of High Seas.

6. Lien

- a) The High Seas shall have a general lien on all Goods and documents relating to Goods in its possession, custody or control 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 and apply the proceeds towards the monies due and the expenses or the retention, insurance, sale and disposal of the Goods. High Seas shall, upon accounting to the Principal or the Merchant for any balance remaining, be discharged from all liability whatsoever in respect of the Goods.

7. Charges and Invoicing

- a) All overdue amounts shall bear interest, compounded monthly, at the rate of 2% per month (26.84% per annum) from the date each amount became due. Any waiver by High Seas of accrued interest on a particular invoice or final disbursement account shall not be construed as a waiver of its right to impose such interest on other invoices or disbursement accounts.
- b) The Principal agrees to pay the attorney's fees, court costs, disbursements and other costs incurred by High Seas in collecting any overdue amount, including the costs associated with the enforcement of High Seas' lien.

8. General

- a) 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.
- b) 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.
- c) The High Seas shall be entitled to retain and be paid all brokerages, commission, allowances and other remuneration, usually retained by or paid to freight forwarders.
- d) The High Seas 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.
- e) The High Seas shall be discharged from all liability whatsoever to the Principal the Supplier or the Merchant unless suit is brought within one year of delivery of the goods or the date when they should have been delivered or of the act or default complained of, whichever is the earlier.
- f) 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 High Seas specifically agrees otherwise in writing.
- g) A Principal or Merchant shall pay to High Seas for the services rendered by High Seas 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 National Ports Authority or any other competent Authority, as well as all those charges normally or habitually charged by the High Seas 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 High Seas a reasonable charge for such service.
- h) It is hereby expressly agreed that no servant or agent of High Seas (which for the purposes of this clause includes every independent contractor from time to time employed by High Seas) shall in any circumstances whatsoever be under any

liability whatsoever under these Conditions for any loss, damage or delay of whatsoever kind arising or resulting, directly or indirectly from any act, neglect or default on his part while acting the course of or in connection with his employment.

- i) Without prejudice to the generality of the foregoing provisions, every exemption from liability, limitation, condition and liberty herein contained and every right, defense and immunity of whatsoever nature applicable to High Seas or to which High Seas is entitled, shall also be available and shall extend to protect every such servant an agent of High Seas acting as aforesaid.

9. **Law and Jurisdiction**

- a) The interpretation of the Conditions or any other terms agreed between the parties as well as any dispute between the parties arising out of or in connection with any Services or transactions contemplated herein shall be subject to Canadian Maritime Law and the laws of the province of Québec, as applicable.
- b) All legal actions or proceedings against High Seas relating to any dispute arising out of, or in connection with the Services or a transaction shall be subject to the exclusive jurisdiction of the Federal Court of Canada.
- c) Any legal actions or proceedings against the Merchant, Principal or Supplier relating to a dispute arising out of or in connection with a transaction with a Supplier or the Services rendered by High Seas can be instituted, at the sole discretion of High Seas, either before the Federal Court of Canada or before the courts where the Merchant, Principal or Supplier has its principle place of business, or in any country where the ship to which Services have been rendered or its sister ships may be found..