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# **STANDARD TERMS AND CONDITIONS**

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CONTENT OF VERSION - II



**MAY 5, 2014**

SHARAF SHIPPING AGENCY LLC  
P.O. BOX 576, SHARAF BUILDING, AL MINA ROAD, BUR DUBAI, DUBAI, UAE

## **STANDARD TERMS AND CONDITIONS OF SHARAF SHIPPING AGENCY LLC. DUBAI**

Sharaf Shipping Agency LLC (hereinafter "SSA" or "the Company"), the profile of which is published in its web site [www.sharafshipping.com](http://www.sharafshipping.com), is governed by the following standard terms and conditions (altogether referred as STC) for all transactions entered into by the Company unless otherwise agreed or stated by the Company in writing for specific transactions.

The STC covers terms and provisions for limitation of liabilities, exclusion of liabilities, time constraints and limitation. The parties' interaction and contracting with SSA including the Merchant and Principal are required to indemnify SSA. Insuring against these aspects and risks is up to the parties, merchants, principals as the case may be.

The STC shall be subject to the compulsory legislation, if in place and if applicable, including any international convention or transport law or other regulation or directives, where such Services provided by the Company falls under such compulsory legislation. Nothing in the STC will qualify as a waiver by the Company of any of its rights or an enhancement or escalation of any of its responsibilities or liabilities under such legislation. If any part of these Conditions is found contrary to such legislation, such part shall, in connection with such Services, be overridden to that extent only.

**Definitions:** In these STC the following expressions shall have the following meanings respectively:

'Goods' means any wares, merchandise, cargoes and articles of every kind whatsoever allowed in normal definition.

'Merchant' means the company firm or person (or any agent thereof) who ships, receives, owns or forwards Goods or holds the bill of lading in respect of which SSA, whether as agent or principal, has agreed to provide or procure services.

'Principal' means the company firm or person who has or whose representatives have instructed SSA and who is the owner or charterer or operator or manager of the vessel represented by SSA and / or the carrier under the bill of lading in connection with which Services are provided by SSA.

'SDR' means a Special Drawing Right as defined by the International Monetary Fund.

'Services' means the services which are provided by the Company to the Merchant and Principal, whether or not for reward, whether same be by way of charge, fee, commission or remuneration of any other kind.

'Supplier' means the company firm or person who contracts to supply Services or Goods to the Principal or Merchant through the SSA.

### **A. Transactions with the Principal**

For any and all of the transactions with the Principal, the following terms and conditions shall apply:

1. The Principal shall indemnify SSA in respect of all liabilities incurred by SSA while acting as a port agent or liner agent or booking agent on behalf of the Principal. This

indemnity shall include, but not be limited to, all third party claims, charges, losses, damages, taxes, duties and expenses that SSA may incur during the performance of the Services, notwithstanding any termination of the contract between the Principal and SSA.

2. The Principal shall pay to SSA's bank account such sums by telegraphic transfer as SSA may request as an advance on port disbursements which SSA estimates will be incurred whilst the Principal's vessel is in SSA's agency. If the Principal should fail to comply with SSA's request, SSA can exercise its right to terminate the agency with such Principal, at any time giving notice of the termination.
3. SSA shall have authority to appoint sub-agents to perform Services on behalf of the Principal, with the consent of the Principal, including such Services as may be subject to these Conditions, but SSA shall be responsible for those actions of the sub-agent while acting under SSA.
4. SSA shall be entitled to deduct any amounts due to SSA from the Principal, from sums held by SSA for the Principal's account.
5. In case SSA is required by the Principal to file data with a port facility in compliance with the ISPS Code, SSA will exercise reasonable skill and care to file the data correctly and within the prescribed filing deadlines.
6. While acting as required by the Principal to file data, SSA cannot accept any responsibility or liability for the accuracy of the information provided by the Principal or if the Principal fails to provide the data in a timely manner or if there are technical problems or human error beyond SSA's control. SSA's filing process will be only as a data exchange service. Any losses or liabilities resulting from such filing rest with the Principal irrespective of , SSA was or is claimed to have been negligent or at fault in any way.
7. Where SSA acts as liner agent and / or booking agent for the Principal, the Principal shall give six months' written notice of termination of the agency or as agreed by exclusive Agency Agreement.

## **B. Transactions with the Supplier**

The following terms and conditions shall apply to transactions with the Supplier:

1. Unless otherwise agreed in writing, when SSA 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 Principal. SSA shall not be personally liable to pay any debt or expense to the Supplier from the Principal.
2. Where SSA is acting as a forwarding agent, unless it is acting as agent for the Principal in accordance with this STC or otherwise agreed 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. SSA shall not be personally liable to pay any debt due from the Merchant.

3. Any third party payment made to the vendor/ supplier on behalf of the Principal will attract 15% finance and administration charges, of the invoice value.
4. Any services or job taken up by Sharaf Shipping Agency on behalf of the Principal /Merchant where in-house or third party vendors are involved, the claim for reimbursement of charges for the services or job will be placed with SSA Invoice / Debit notes, which have to be honoured.

### **C. Transactions with the Merchant**

For any and all of the transactions with the Merchant, the following terms and conditions shall apply:

1. Providing Services to the merchant may either be as an agent or as a principal. The Merchant warrants that it is either the owner of the Goods or the authorised agent of the owner and that it accepts these STC for itself and as agent for and on behalf of the owner.
2. When acting as port agent or liner agent or booking agent, SSA 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. But this will not make SSA personally responsible or liable for Principal's liabilities.
3. Where SSA 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 contracts, all Services including forwarding Services are arranged by SSA 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 in place.
4. Where SSA arranges Services for the Merchant's Goods/Principal as a forwarder/ Executor (either as a principal or as an agent) such Services are provided at a fee subject to these STC. Cost / Fee is agreed as per specific Operation's approval at the time when proposal is fixed.
5. SSA may from time to time issue a house bill of lading covering the transportation of the Merchant's Goods. In the event of any conflict between STC and the house bill of lading, the latter shall prevail.
6. When SSA contracts as a principal for any Services, SSA shall have full freedom and right to sub-contract the whole or any part of its contracted Services to third parties as may be necessary and subject to the trading conditions of the sub-contractors.
7. The Merchant shall hold SSA harmless and SSA shall be relieved of any liability, for loss or damage if such loss or damage resulted from:
  - i. the act or omission of the Merchant or his representative or any other party from whom SSA took charge of the Goods;
  - ii. handling, loading, stowage or unloading of the Goods by the Merchant or any person acting on his behalf other than SSA

- iii. Inherent vice of the Goods, including improper packing, labelling or addressing (except to the extent that SSA undertook to be responsible therefor);
  - iv. any cause or event which SSA was unable to avoid and the consequences whereof SSA was unable to prevent by the exercise of due diligence.
  - v. seizure, forfeiture or detention under legal process or any riot, civil commotion, strike, lock out, general or partial stoppage or restraint of labour from whatever cause;
  - vi. any consequence of war, invasion, acts of foreign enemies, hostilities (whether declared or not), civil war, acts of terrorism or sabotage, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to any property or Goods by or under the order of any Government or public or local authority.
8. Unless otherwise than by a written instruction by Merchant and on agreed charge, SSA shall not arrange insurance for the subject matter of the Services. This arrangement shall be an act of SSA as an agent of the Merchant. If arranged by SSA, then the insurance will subject to the conditions of the insurer.
  9. Where SSA agrees to provide or arrange Services for the Merchant's Goods, the Merchant shall be deemed to have authorised SSA to conclude all and any contracts necessary to provide those Services. The Merchant shall reimburse on demand SSA with all taxes, charges or fines whatsoever incurred by SSA 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 customs or any other statutory authority by SSA.
  10. Unless SSA has previously so agreed in writing, SSA will not provide Services for Goods of a dangerous or damaging nature. If such Goods are accepted pursuant to a special arrangement, and, then later, in the opinion of SSA, if it is found that constitute a risk to health or to other goods or property, SSA shall, where reasonably practicable, contact the Merchant in order to require him to remove or otherwise deal with the Goods, but reserves the right, in any event, to do so at the expense of the Merchant. 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 SSA shall have the right exercisable on behalf of itself or its Principal to rescind the contract.

### **Limitation on Liability**

Sharaf Shipping Agency LLC., will be exclusively covered under the Principal's Insurance Policy which protects the Agent as its Servant.

1. SSA shall exercise reasonable care and diligence in providing Services.
2. SSA shall perform the Services with due despatch. SSA shall not be liable for any loss or damage arising from any delay or **act of negligence** which could not be reasonably prevented by SSA.
3. Services offered by SSA will not include any Services in connection with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, pets or plants but if SSA should, in the course of providing the Services, handle or deal with such

Goods, unless otherwise special written arrangements are made previously, SSA shall be under no liability whatsoever for or in connection with such Goods however arising.

4. Without prejudice to the foregoing, in the event that SSA is deemed to be liable for delay, the whole of SSA's liability shall not exceed the amount of SSA's charges in respect of the relevant transaction, limited to **three times of** Agency Fees only.

5. Except as provided herein specifically, no liability whatsoever for consequential loss, be it direct or indirect, shall be on SSA. Such loss shall include (but not be limited to) loss of profit, loss of market or the consequences of delay or deviation, however caused.

6. SSA shall not be liable for any loss of or damage to Goods unless it is advised thereof in writing within three days after the completion of provision of the Services. Any claim on SSA shall be made in writing within 7 days, otherwise will be barred by time limitation, provided that these limits shall be lifted if the claimant can establish that they are precluded by reasonable cause and was not possible to make a claim in writing within the time limit.

7. Notwithstanding the above, SSA shall in any event be discharged from all liability whatsoever and howsoever arising in connection with the Services unless a claim or suit is brought within one months of the delivery of the Goods or of the date they should have been delivered or of the date of the event giving rise to any other loss.

8. The exclusions and/or limitations set out in any of the Clauses of STC shall apply whether a claim against SSA is brought in contract, tort, including for negligence, breach of statutory duty or for any other cause whatsoever.

#### **D. General**

1. All intellectual property rights in or arising out of the Services belong to SSA.
2. The customer shall promptly provide security to SSA or any other party designated by SSA in a form acceptable to SSA, where liability for General Average arises in connection with the Goods.
3. SSA shall be entitled to retain and be paid all customary brokerages, commission, allowances and other remuneration which for the avoidance of doubt, include any rebates paid by any Suppliers.
4. SSA 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 Merchant or Principal and shall be entitled to sell or dispose of such Goods or documents as agent for and at the expense of the Merchant or Principal and apply the proceeds towards the monies due and the expenses of the retention, insurance, sale and disposal of the Goods.
5. SSA shall give 28 days' notice of its intention to sell, to the Merchant or Principal unless the Goods are liable to perish or deteriorate in which case SSA shall have the right to sell or dispose of the Goods immediately without notice. SSA shall, upon accounting to the Merchant or Principal for any balance remaining, be discharged from all liability whatsoever in respect of the Goods.
6. If the Merchant or the Principal, as the case may be, fails to make payment in full of any sums due to SSA on demand or within any period agreed in writing, SSA shall be

entitled to recover interest on any sums outstanding with effect from the date of first demand at the rate of 2 % - 5% Per Month above the average of the London Inter-Bank Ordinary Rate (LIBOR) applicable during the period when the sums are outstanding.

7. It is hereby expressly agreed that no servant or agent of SSA, including but without limitation, every independent contractor from time to time employed by SSA, shall in any circumstances be under any liability whatsoever under these STC 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 in the course of or in connection with his employment. Without prejudice to the generality of the these provisions, each and every exemption from liability, limitation, condition and liberty herein contained and every right, defence and immunity applicable to SSA or to which SSA has a right, shall also be available and be extended to protect every such servant and agent acting as aforesaid.
8. The Merchant, the Supplier and the Principal each undertake with SSA that no claim or allegation of any kind shall be made against any of SSA's directors officers employees servants or agents (collectively refereed as "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. When SSA enters into contract, SSA is doing so in its own behalf and 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 such contract
9. Nothing in these terms and conditions limits the liability of SSA for:
  - a) fraud or fraudulent misrepresentation and
  - b) death or personal injury caused by the negligence of SSA.
  - c) SSA will, subject to the provisions of these terms and conditions, be liable to the Principal for damage directly caused by the failure to perform the Services with the reasonable skill and care provided always and notwithstanding Clause C 6 above, SSA will not be liable for:
    - d) loss of profits, business interruption, loss of reputation, indirect or consequential losses; or
    - e) damage caused by any event or cause that SSA was unable to avoid and/or the consequences of which could not have been prevented by the exercise of reasonable diligence; or
    - f) damage which was not solely caused by the act or omission of SSA or which would have occurred in any event.
10. If a court finds that any provision of this STC is invalid, illegal or unenforceable, that provision shall, to the minimum extent required, be deemed deleted and the validity, legality and enforceability of the remainder of that and all other provisions of these terms and conditions shall not be affected
11. Any claim against SSA must be made in writing and notified to SSA within 7 days of the date on which the Principal or the Merchant (as the case may be) became aware or ought to have become aware of the circumstances giving rise to the claim and any claim not so notified shall be deemed waived and time barred. SSA shall in any event be discharged of all liability arising out of the Services unless suit is brought and written notice of it given to SSA within two months of the end of performance of the Services giving rise to such claim.

#### **D. Disputes and Governing Law**

These Conditions and any act or contract to which they apply shall be subject to the United Arab Emirates (UAE) Laws. Any dispute arising in connection with the SSA's business shall be determined by arbitration in Dubai pursuant to the DIFC (Dubai International Financial Centre) terms and conditions for the time being in force by the arbitrator (s) appointed for that purpose by the parties.

If there is any conflict between the terms and conditions set out herein and any other terms and conditions agreed between the parties this STC shall prevail unless SSA specifically agrees otherwise in writing.

