

# TERMS AND CONDITIONS FOR THE PROVISION OF STEVEDORING SERVICES

## 1. DEFINITIONS

- *Agreement* means these Terms and Conditions which shall apply to the provision of Services by Collett & Sons Limited.
- *Client* means the person, company, firm or organisation that Collett contracts with for the provision of the Services.
- *Client Equipment* means any equipment supplied by the Client for use in the provision of the Services.
- *Collett* means Collett & Sons Limited incorporated under the Companies Acts (Registered Number 01237215), having their registered office at Victoria Terminal, Albert Road, Halifax, HX2 0DF. Tel: 08456 255 233 Fax: 08456 255 244.
- *Confidential Information* means confidential data relating to the business of either party which is or has been disclosed to the other party or of which the other party becomes aware as a consequence of, or through its relationship to the disclosing party and which has value to the disclosing party and is not generally known to its competitors. Confidential information includes information without regard to form including, but not limited to, technical or non-technical data, formulae, patterns, compilations, programs, software, devices, methods, techniques, drawings, processes, product or service plans or lists of actual or potential customers or suppliers which are not commonly known by or available to the public.
- *Dangerous Goods* means goods that could damage people, property or the environment, including without limitation goods that are or may become dangerous, poisonous, corrosive, volatile, explosive, flammable or radioactive.
- *Dispute* means a Dispute arising out of or relating to this Agreement including without limitation a Dispute about the breach, termination, validity or subject matter of this Agreement, or a claim relating to the performance or non-performance of this Agreement.
- *Force Majeure Event* means anything outside the reasonable control of Collett or the Client, including without limitation, fire, flood, drought, storm, lightning, act of God or other natural disaster, peril of sea or air, explosion, sabotage, accident, embargo, epidemic, pandemic, labour dispute or shortage, industrial action or lockout, riot, civil commotion, act of war, act of terrorism, and war.
- *Goods* means the Goods (and any packaging, securing or dunnaging material for those Goods) for which Collett has agreed to provide Services.
- *Services* means the Stevedoring Services provided by Collett under this Agreement and any specification agreed by Collett and the Client which describes the Services to be supplied under this Agreement. Unless otherwise agreed Stevedoring Services include the receipt, handling, storage and delivery of the Goods in accordance with the Client's instructions and includes the handling of cargo from place of stow on board arriving vessel to transport or on to dock, or from place of rest in shed or on transport or on dock into place of stow on board vessel unless otherwise specified.

## 2. SUPPLY OF SERVICES

Collett will supply the Services to the Client:-

- a) in accordance with this Agreement and
- b) in compliance with all applicable laws, and regulations.

### **3. CLIENT OBLIGATIONS**

The Client must, at a reasonable time before the provision of the Services, provide Collett with an accurate description of the Goods including their, packaging, weight, content, measure, quality, condition, marks and numbers and notify Collett if :-

- a) any of the Goods are Dangerous Goods or require special handling and/or
- b) it intends to make available Client Equipment for the handling of the goods.

The Client warrants that:-

- a) the description of the Goods is accurate in all material respects.
- b) all Goods are safely and securely packed and in a proper and fit condition for Collett to provide the Services.
- c) all Client Equipment is fit for the purpose for which it is supplied.
- d) the Goods do not infringe any law and are not prohibited by any law.
- e) it has complied with all applicable standards, laws and regulations in connection with the Goods to ensure they can be lawfully handled, transported and stored by Collett.
- f) it has complied with, and any Client Equipment complies with, all applicable standards, laws and regulations to ensure it can be lawfully used by Collett.
- g) if it does not own the Goods, it is authorised to enter into this Agreement by every person who does own or who has a proprietary interest in the Goods.

### **4. INDEMNITY**

The Client shall promptly indemnify Collett against any and all liabilities howsoever assumed, incurred or suffered by Collett, its employees, servants or agents, as a result of or in connection with any of the following:-

- a) Any breach by the Client of the obligations, representations and/or warranties given in Clause 3 (above).
- b) Collett acting in accordance with the Client's instructions.
- c) Any fraud or negligence of any employee, agent or subcontractor of the Client or any employee of any subcontractor of the Client in relation to this Agreement.

### **5. PAYMENT OF CHARGES**

Collett's payment terms are available on application and will be agreed with the Client prior to the conclusion of the Agreement to provide Services under this Agreement.

### **6. GENERAL LIEN**

Collett may keep the Goods and all documents relating to the Goods and any other Goods owned by the Client and all documents relating to those Goods in their possession or control until all charges payable for the Services provided under this Agreement between Collett and the Client have been paid in accordance with Clause 5 (above), or, on provision of 28 days written notice to the Client, sell them to pay for those charges and Collett's selling costs.

### **7. CONFIDENTIALITY**

Each party may use Confidential Information relating to the other party solely for the purposes of this Agreement, but may disclose such information only to persons who have a need to know or have been specifically approved by the other party to receive such information, unless the Confidential Information becomes public knowledge or in circumstances where there was no breach of confidence.

## **8. LIABILITY**

Goods that are the property of, or otherwise are handled to the order of the Client are not insured by Collett against any peril and are handled by Collett entirely at the Client's own risk other than as appears below.

- a) Collett shall perform its duties with reasonable skill and care.
- b) Collett shall be liable for loss or misdelivery of, or damage to Goods if, and only if, it is proven by the Client (otherwise than by evidence only of such loss or misdelivery, or damage to Goods) to have been caused by the act or omission of Collett or their directly employed servants or agents.
- c) Collett's liability is limited to direct damage and losses only and shall not be liable for delay, consequential and indirect damages or losses, loss of market, loss of goodwill or reputation or third party claims.

## **9. LIMITATION OF LIABILITY**

If Collett is liable to pay compensation for damage to or loss of the Goods, whether in Contract, Tort, Bailment or otherwise, the value of the Goods shall be calculated according to the market value of the Goods or the current value of Goods of the same kind and condition at the time when the loss or damage occurred.

Compensation for damage to or loss of Goods shall not exceed the value of any loss or damage, or a sum at the rate of 2 Special Drawing Rights (SDR) as defined by the International Monetary Fund per kilogram, of the part of the Goods lost or partially lost or damaged whichever is the lower.

**Maximum liability for damage to or loss of goods or vessels per event:** In any event, the liability of Collett is limited so that no compensation shall be paid for loss or damage exceeding 50,000 SDR in respect of any one accident or series of accidents arising out of one occurrence including liability for costs and expenses for Goods, or in the case of damage to vessels 500,000 SDR each occurrence. If such loss or damage, arising out of one event, has been incurred by more than one party and the total monetary loss exceeds 50,000 SDR or 500,000 SDR respectively the monetary liability of Collett shall be distributed in proportion to the amounts to which each party's damage or loss has been assessed according to the above.

## **10. FORCE MAJEURE**

If a party (Collett or the Client) is wholly or partly precluded from complying with its obligations under this Agreement by a Force Majeure Event affecting that party then that party's obligations to perform in accordance with this Agreement will be suspended for the duration of the delay caused by that Force Majeure Event.

The party suffering the Force Majeure Event must give notice to the other party of the extent to which it is unable to perform its obligations as soon as is reasonably possible.

If a Force Majeure Event lasts longer than 10 days either party may terminate this Agreement by giving written notice to the other party.

If the Client terminates this Agreement in accordance with the above the Client will pay Collett that part of the fee that Collett reasonably considers compensates it for the Services supplied and arranged up to the point of termination.

## **11. DISPUTE RESOLUTION**

Neither party may start arbitration or court proceedings in respect of a Dispute unless it has first complied with this clause.

- a) A party claiming that a Dispute has arisen must notify the other party in writing.
- b) Within 7 days after notice has been given each party must nominate in writing to the other an employee authorised to settle the Dispute on its behalf.
- c) During the 20 days after a notice has been given (or longer if both parties have agreed a longer period) each party's nominee must use their reasonable endeavours to resolve the Dispute.
- d) If not resolved within the time limit above the Dispute must be referred to arbitration.

## **12. ARBITRATION**

Any unresolved Dispute or difference arising out of or in connection with this Agreement shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within 14 days, after either party has given to the other a written notice request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators.

## **13. TERMINATION**

This Agreement terminates on the date that the Client has paid the relevant fee or Collett has finished supplying the Services whichever is the later. The provisions of Clause 7 (Confidentiality Clause) shall survive the termination of this Agreement.

## **14. ENTIRE AGREEMENT**

This Agreement excludes all conditions, warranties and terms implied by custom, general law or statute, except ones that by law cannot be excluded. Therefore what is expressed in this Agreement in relation to this Agreement supersedes any prior understanding or agreement between the parties.

## **15. NOTICE**

Any Notice given to a party under or in connection with this Agreement shall be in writing and shall be:-

- Delivered by hand or by pre-paid first class post or other next day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- Sent by fax to its main fax number.

Any Notice shall be deemed to have been received:

- If delivered by hand, on signature of a delivery receipt, or at the time the Notice is left at the proper address.
- If sent by pre-paid first class post or other next day delivery service, at 9.00am on the second business day after posting, or at the time recorded by the delivery service.
- If sent by fax, at 9.00am on the next business day after transmission.

This clause does not apply to the service of any proceedings or other documents in any legal action, or where applicable, any arbitration or other method of Dispute resolution.

## **16. RELATIONSHIP**

Nothing in this Agreement creates the Relationship of employer and employee, principal and agent, or partnership between any of the parties.

## **17. ASSIGNMENT**

The Client may not assign this Agreement or any right under it to any person without the written agreement of Collett.

## **18. SEVERANCE**

Any part or all of any clause of this Agreement that is unenforceable or illegal will be severed from this Agreement and will not affect the enforceability of the remaining provisions of this Agreement.

## **19. WAIVER**

A party's failure to insist on the other party performing any obligation under this Agreement is not a Waiver of that party's right to:-

- a) insist the other party perform, or to claim damages for breach of that obligation.
- b) insist the other party perform any other obligation.

unless the Waiving party makes or confirms the Waiver in writing.

## **20. VARIATIONS TO THIS AGREEMENT**

If the parties wish to vary this Agreement they must do so in writing executed by both parties.

## **21. HIMALAYA CLAUSE**

It is agreed that the Client, to the extent of the services provided under this Agreement, shall incorporate in the Bill of Lading and other transport documents evidencing contracts of carriage in respect of the Goods a clause to the effect that Collett its employees, servants, agents and subcontractors and their respective employees, servants, agents and subcontractors shall be entitled to all benefits, rights, defences, immunities and limitation of liability provisions to the extent that such provisions and clauses benefit the client.

## **22. NOT A COMMON CARRIER**

Collett is not a Common Carrier and accepts no liability as such. Collett reserves the right to agree or refuse to contract with any party at its absolute discretion.

## **23. INSURANCE**

Collett shall not arrange or provide Insurance for the Client under this Agreement. The Client must obtain its own Insurance in respect of the Goods and/or Services.

## **24. GOVERNING LAW**

This Agreement and any Dispute or claim arising out of it or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.