

# Sullivan Maritime Limited

## Standard Terms and Conditions of Trading for Agency Services and Forwarding Activities

These terms and conditions are applicable to and govern all transaction entered into by the Company as from 19<sup>th</sup> June 2015

Any transaction entered into by Sullivan Maritime Limited (C 20340), hereinafter referred to as ‘**the Company**’ in connection with or arising out of the Company’s commercial activities and business shall be subject to the following terms and conditions unless otherwise agreed to or stated by the Company in writing. These terms and conditions also regulate the Company’s exclusion and/or limitation of liability. All Customers and/or all Clients should ensure they have all the necessary insurance coverage against any risks. The Company at its discretion and at an additional charge, may choose to offer insurance coverage to the Customer and/or the Client.

Before entering into any transaction with the Company, Customers are advised to visit the Company’s website (<http://sullivanmaritime.com/terms-and-conditions/>) to ensure that they are fully aware of the latest updated version.

### 1. Definitions and Interpretations

1.1. In these terms and conditions, the following terms shall have the following respective meanings:

“**Cargo**” shall mean any article or articles of merchandise imported or brought into Malta by the Customer or the Principal and regardless of whether such article or articles arrived by air, land and/or sea, individually, unitized or in bulk.

“**Company**” shall mean Sullivan Maritime Limited (C 20340).

“**Customer**” shall mean any person or persons or body or bodies corporate or commercial partnership/s (or any agent or representative thereof) which ships, receives, owns or forwards goods or holds the bill of lading in respect of which the Company, whether as agent or as principal, has agreed to provide or procure Services.

“**Customs Department**” shall include the Director General of Customs, the Comptroller of Customs and any other person having an express or implied authority to act for and on behalf of the aforementioned persons.

“**Goods**” shall mean any wares, merchandise, items and articles of every kind whatsoever including any container, chassis, trailer or similar equipment used for the purpose of carrying cargo.

“**Indirect Representative**” shall have the same meaning attributed to it in the Regulation.

“**Late Payment Directive**” shall mean Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 recasting the legislation on combating late payment in commercial transactions.

“**Principal**” shall mean the person or persons or body or bodies corporate or commercial partnership/s which has or whose representatives have instructed the Company and who 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.

“**SDR**” shall mean a Special Drawing Right as defined by the International Monetary Fund.

“**Services**” shall mean all the services which are provided by the Company (or its sub-agents) to the Customer and to the Principal, whether or not for remuneration, irrespective of whether such remuneration is made by way of charge, fee, commission or any other kind of payment.

“**Supplier**” shall mean the person or persons or body or bodies corporate which contracts to supply services or goods ordered through the Company, for and on behalf of the Principal and/or the Customer.

“**Regulation**” shall mean EEC Council Regulation 2913/92 establishing the Community Customs Code together with any amendments and/or replacements.

“**Written notice**” or “**Written request**” shall include *inter alia* any notice or request by telegram, telex, facsimile, e-mail, handwriting, processed or typewritten text or any recording by electronic means.

1.2 For the purposes of these terms and conditions the following applies, save where the contrary is expressly specified:

- (a) The definition of any word or term used shall extend to all grammatical variations thereof and to cognate expressions of the word or expression defined.
- (b) Words importing the masculine gender only shall include the feminine gender and the neuter (as appropriate) and vice versa.
- (c) Words importing the singular only shall also include the plural and vice versa, where the context requires.
- (d) Words importing persons or parties shall include firms, corporations and any organisation having legal capacity.
- (e) The headings and sub-headings in these terms and conditions are for convenience only and merely indicative. They shall not affect the construction or interpretation of any provision thereunder.
- (f) A reference to legislation shall include all the relevant legislation as maybe from time to time amended, re-enacted or substituted in or by any Act, and any rules, regulations, by-laws, directives or codes of practice issued under any such Act.
- (g) In the event of a conflict between the terms and condition under a bill of lading governing the Customer’s relationship with the Principal and these terms and conditions, the former shall prevail.
- (h) In the event of a conflict between the provisions of an agreement between the Company and a Principal and these terms and conditions, the former shall prevail.

## **2. Transactions with Principal/s**

2.1. The following terms and conditions shall apply to all transactions involving the Principal/s:

- (a) The Principal/s shall always indemnify the Company in respect of all liabilities incurred by the Company when acting as a port agent or liner agent or booking agent on the Principal's behalf.
- (b) Unless otherwise agreed between the Principal and the Company, the Principal shall pay forthwith by bank transfer to the Company's bank account such sums as the Company may request as an advance on port 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 and take any action it may deem necessary against the Principal, including but not limited to the arrest of the Principal's vessel.

- (c) 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.
- (d) The Principal shall indemnify the Company against all third party claims, charges, losses, damages, taxes, duties and expenses that the Company may incur **when acting** as a port agent and/or liner agent and/or booking agent on the Principal's behalf. This indemnity shall not extend to matters arising by reason of the negligence or wilful misconduct of the Company.
- (e) The Company, with the consent of the Principal, shall have authority to appoint sub-agents to perform Services on behalf of the Principal or to appoint representatives to carry out such Services on behalf of the said Principal, including such services as may be subject to these terms and conditions. The Company shall however remain responsible at all times for the actions of the sub-agent or representative.

### **3. Transactions with Supplier/s**

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

- (a) Unless otherwise stated in writing, when the Company is acting as a port agent and/or liner agent and/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. The Company shall not be personally liable to pay any debt or expense to the Supplier from the Principal.
- (b) Where the Company is acting as a forwarding agent, unless it is acting as agent for the Principal in accordance with clause 3.1 (a) above or unless otherwise agreed in writing, it acts at all times as agent for and on behalf of the Customer and has authority to enter into contracts with the Supplier as agent for the Customer.

### **4. Transactions with Customer/s**

4.1. The following terms and conditions shall apply to transactions with the Customer/s:

- (a) When acting as port agent and/or liner agent and/or 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 Customer as agent for the Principal. The Company shall never be personally responsible for the Principal's liabilities.
- (b) The Customer warrants that it is either the owner of the relevant Goods or the agent of the owner of the relevant Goods. Furthermore, the Customer also warrants that it fully and unconditionally accepts the Company's terms and conditions for itself and as agent for and on behalf of the owner of the Goods. The Customer acknowledges and understands that the carriage of Goods is solely the Principal's responsibility and not that of the Company.

- (c) Where the Company arranges Services for the Customer's Goods which are or will be carried in accordance with a contract of affreightment with the Principal contained in or evidenced by a bill of lading, charterparty or other contract of affreightment, all Services including 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 on the Company's website, or any other contract between the Principal and the Customer.
- (d) It shall be solely the Customer's responsibility to request a copy of the bill of lading from the Company.
- (e) The Company is not responsible to inform the Customer of any updates, amendments or changes in these terms and conditions or in the standard terms and conditions of the Principal's bill of lading. It shall be the Customer's responsibility to enquire about any such updates, amendments or changes.
- (f) The Company does not warrant and shall not be responsible for any incorrect information given or disclosed on its website in relation to the applicable standard terms and conditions of the Principal's bill of lading. The Customer should always send enquire with the Company as to the applicable terms and conditions under the Principal's bill of lading.
- (g) Where the Company arranges services for the Customer's goods as a forwarder (whether as principal or agent) the provision of such services are subject to these terms and conditions.
- (h) The Company shall have full liberty to sub-contract the whole or any part of its contracted Services to third parties as may be necessary to fulfil the Customer's instructions and subject to the trading conditions of the sub-contractors.
- (i) Where the Company agrees to provide or arrange Services for the Customer's Goods, the Customer shall be deemed to have authorised the Company as its mandatory and/or agent to conclude all and any contracts necessary to provide those Services, including but not limited to contractual arrangements with any Supplier and/or Principal and/or any other third party. The Customer shall reimburse on demand the Company with all taxes, charges, penalties 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, including but not limited to any bond issued to Customs or any other statutory authority by the Company.

## **5. Duty to Provide Full Information**

- 5.1. The Customer shall declare to the Company full and correct details of Goods, particularly **where the goods are of a dangerous or damaging nature, or restricted by the Country of Origin or destination**. Should the Customer fail to provide such details at the time of contract, the Customer 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.

## **6. Indirect Representative**

6.1. The following terms and conditions shall apply whenever the Company is acting as the Indirect Representative of the Client or the Principal with the Customs Department:

- (a) For the purposes of this clause, the term “**Client**” shall include both the Customer and Principal, as the case may be.
- (b) The Company shall provide the Client with indirect representation facilities with the Customs Department in Malta in accordance with the Regulation and Chapter 37 of the Laws of Malta, or any other relevant law, which may from time to time be made applicable in Malta.
- (c) The Company shall clear the Cargo as requested by the Client and, shall where applicable deliver it to the location as instructed by the Client. Provided that the Client hereby agrees to provide the Company with all the necessary documentation in order for the Company to be able to take delivery of the Cargo, before such clearance is affected.
- (d) Failure to provide the appropriate documentation or information, as requested by the Company and/or the Customs Department, shall result in the Company not taking delivery of the Cargo. In this event, the Company shall not be liable for any ensuing damages to the Cargo, additional expenses/penalties, of whatsoever nature, or for loss of business suffered by the Client.
- (e) The Client shall solely be responsible for all documentation and information presented to local and foreign authorities and for the contents of the Cargo. The Company shall in no way be responsible for any false/wrong declarations/statements, even if such declarations/statements were made by the Company acting on information provided by the Client.
- (f) In the event that the Company incurs any penalties and/or fines issued by any local authorities/departments, including, but not limited to, the Customs Department, which penalties arose as a result of the non-abidance with or violation of the provisions of any laws and regulations currently in force, or of these terms and conditions or of any other agreement with the Company, by the Client, the Client shall immediately reimburse the Company for any penalties paid and expenses incurred. In addition the Client shall do its utmost to ensure that the Company is in no way negatively affected by the actions and/or omissions of the Client.
- (g) The Company is authorized to, on behalf of the Client, negotiate and enter into any agreements with any local authorities/departments, including, but not limited to, the Customs Department, in the event that any penalties and/or fines are incurred in relation to the Cargo. The Client undertakes to make the funds for the payment of such penalty/fine available to the Representative, by means of cash or by bank transfer or by bank draft issued by a reputable bank in Malta, before the signing of such agreements.

## **7. Limitation of Liability And Indemnity**

7.1. The Company shall be completely relieved of any liability, and the Customer and/or the Principal and/or the Supplier shall hold the Company entirely harmless, for loss or damage suffered by them, or by any third party, if such loss or damage resulted from:

- (a) the act or omission of the Customer and/or the Principal and/or the Supplier or his/their representative or any other party from whom the Company took charge of the goods;
- (b) inherent vice of the goods, including improper packing, labelling or addressing (except to the extent that the Company undertook to be responsible there for);
- (c) handling, loading, stowage or unloading of the goods by the Customer and/or the Principal and/or the Supplier or any person acting on his/their behalf other than the Company;
- (d) the delivery of improper documentation and/or incorrect instructions and/or information provided to the Company;
- (e) seizure, forfeiture or detention by any Government or public or local authority or in compliance with an order of a Maltese court or tribunal;
- (f) riot, civil commotion, strike, lock out, general or partial stoppage or restraint of labour from whatever cause;
- (g) any act of God or fortuitous event;
- (h) any consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, terrorism, 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;
- (i) any cause or event which the Company was unable to avoid and the consequences whereof the Company was unable to prevent by the exercise of due diligence. The Customer, Principal or Supplier shall keep the Company fully indemnified against any of the above claims.

## **8. Insurance**

8.1. The Company shall not be obliged to obtain any insurance coverage for the subject matter of its Services offered.

8.2. Nonetheless, the Company may offer to provide insurance coverage, at its own discretion, at an additional charge. The Customer shall give a written request to the Company for a quote for insurance. The Company shall only obtain the quoted insurance coverage once the Customer has accepted in writing the quotation offered. Any charge or cost for insurance is additional to the charge or cost of the Services provided by the Company. All insurance affected by the Company is subject to the conditions of the insurer. If the Company agrees to affect insurance, it acts as agent of the Customer in doing so.

## **9. Company's Duties and Obligations**

9.1 The Company shall exercise reasonable care and diligence in providing Services.

9.2. Unless otherwise agreed in writing, the liability of the Company shall in all circumstances be limited to the lesser of sums calculated in the following manner:-

- (a) where goods are lost or damaged:
  - i. the value of goods so lost and damaged; or
  - ii. a sum calculated at the rate of 2 SDRs per kilo of the gross weight of any goods lost or damaged;
- (b) in all other circumstances the amount of the direct loss or 50,000 SDRs .....

9.3. For the purposes of this Clause, the value of the goods and the gross weight of any goods shall be taken to mean the invoiced value and weights of the goods.

## **10. Special Goods**

10.1 The Company has the right to refuse to provide Services in connection with bullion, coins, precious stones, jewellery, valuables, antiques, pictures, human remains, pets or plants (hereinafter collectively referred to as 'Special Goods') If the Company should in the course of providing any Services, handle or deal with such Special Goods (otherwise than under special arrangements previously made in writing) the Company shall be under no liability whatsoever for or in connection with such Special Goods however arising.

10.2 Moreover, the Company has every right to refuse to provide any Service in connection with livestock animals, including but not limited to horses and cattle. Any Services offered which involves the handling or dealing with such livestock animals shall be subject to the execution of an indemnity by the Customer or Client in favour of the Company, drawn up in a form acceptable to the Company. If the Company should in the course of providing any Services, handle or deal with such livestock (otherwise than under special arrangements previously made in writing) the Company shall be under no liability whatsoever for or in connection with such livestock however arising.

## **11. Liability for Losses**

11.1. The Company shall perform the Services with due despatch but shall not be liable for any loss or damage arising from any delay not caused by any fault of the Company and which it could not prevent. Without prejudice to the foregoing, in the event that the Company is deemed to be liable for delay, its liability shall not exceed the amount of the Company's charges in respect of the transaction.

11.2. The Company shall not be liable in whatsoever manner for any consequential losses or damages, either direct or indirect. Such consequential losses or damages include but are not limited to any loss of profit, loss of market or the consequences of delay or deviation, however caused.

11.3 The Company shall not be liable for loss of or damage to goods unless it is advised thereof in writing within three consecutive (3) days after the completion of provision of the Services and the claim is made in writing within forty two (42) days, provided always that these limits shall not apply if the Customer or Principal 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. Notwithstanding the above provisions, the Company shall in any event be discharged from all liability whatsoever and howsoever arising in connection with the Services unless suit is brought within twelve (12) 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.

## **12. Non-Payment and Interests Due**

12.1. If the Customer fails to make full payment any sums due to the Company on demand or within any period agreed in writing, the Company shall immediately be entitled to recover the said amount due together with the relevant interest on any sums outstanding, at the highest rate permissible at law and in accordance with the provisions of Maltese law applicable during the period when the sums are outstanding, including but not limited to those under Chapters 13 and 16 of the Laws of Malta as well as of the Late Payment Directive.

## **13. Lien**

13.1. The Company 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 Customer or Principal and shall be entitled to sell or dispose of such Goods or documents as agent for and at the expense of the Customer or Principal and apply the proceeds towards the monies due and the expenses of the retention, insurance, sale and disposal of the goods. Reasonable notice of thirty (30) running days of the intention to sell will be given by the Company to the Customer or Principal unless the Goods are liable to perish or deteriorate in which case the Company shall have the right to sell or dispose of the Goods immediately. The Company shall, upon accounting to the Customer or Principal for any balance remaining, be discharged from all liability whatsoever in respect of the Goods.

## **14. General Average**

14.1. Where any liability for General Average arises in connection with the Goods, the Customer shall, at the request of the Company in its own capacity or in its capacity as agent for the Principal or the Customer itself, promptly provide adequate security to the Company or any other party designated by the Company in a form acceptable to the Company.

## **15. Sub-contractors**

15.1. It is hereby expressly agreed that no servant or agent of the Company (which for the purpose of this clause includes every independent contractor from time to time employed by the Company) shall in any circumstances whatsoever be under any liability whatsoever under these terms and 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 in the course of or in connection with his employment.

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

#### **16. Brokerage Fees, Commissions, Allowances and Other Remuneration**

16.1 The Company shall be entitled to retain and be paid all customary brokerages, commission, allowances and other remuneration permissible at law and/or by custom, usage or trade.

#### **17. Reimbursement**

17.1. The Company shall be entitled to be fully reimbursed for any expenses incurred in pursuing its activities in accordance with the instructions of the Customer, Principal or Supplier or in accordance with relevant legislation.

#### **18. Limited Liability**

18. The Customer, 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, employees, servants or agents (therein collectively called "**the Relevant Persons**") for any loss damage or delay of whatsoever kind arising or resulting directly or indirectly, from any negligent, act, error or omission of the Relevant Persons in the performance of the Services, being the subject of these terms and conditions. The Relevant Persons shall have the benefit of this undertaking and in entering into any contract with the Company, to the extent of this provision, does so not only on its own behalf but also as agent or trustee for the Relevant Persons, who shall to the extent of this clause only be or be deemed to be parties to the contract.

#### **19. Applicable Law**

19. These terms and conditions shall be subject to the Laws of the Republic of Malta.

#### **20. Dispute Settlement.**

20.1 Any dispute arising in connection with the Company's business and or Services (other than disputes arising out of a contract of affreightment entered into with the Company as agent of the Principal) shall be determined by arbitration in Malta in terms of the Malta Arbitration Act 1996 by a sole arbitrator appointed for that purpose by the parties. Failing agreement as to the identity of the sole arbitrator, each party shall nominate its own arbitrator, and the two so chosen, if they cannot agree, shall nominate an umpire, whose decision shall be final and binding on both parties.

20.2. Any dispute arising in connection with a contract of affreightment entered into with the Company, acting as agent of the Principal, shall be terminated by the relevant jurisdiction clause regulating the said contract of affreightment.

## **21. Amendment**

21.1 The Company reserves the right to amend these Standard Terms and Conditions of Trading at any time without notifying the Customer. Such amendments will not apply retrospectively and accordingly shall not affect any business transaction which the Company has contracted prior to such amendments being made or implemented.

## **22. Conflict**

22.1. If there is any conflict between the terms and conditions set out herein and any other disposition agreed between the Company and any other party, these terms and conditions shall prevail unless the Company specifically agrees otherwise in writing.

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## **The Principals' Bills of Lading**

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